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**NOTE**

From: Presidency  
To: Working Party on Tax Questions (Indirect Taxation – Excise duties/Energy taxation)  
Subject: Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast)  
- Presidency compromise text

In view of the meeting of the Working Party on Tax Questions on 10 November 2022, delegations will find attached the Presidency compromise text covering the whole Directive.

WK 14524/2022 INIT

**LIMITE**

**EN**

## **Note from the Presidency**

### **Revision of the Energy Taxation Directive**

#### *Presidency compromise text*

The compromise text below covers the whole Directive and reflects the discussions held in the WPTQ meeting on 12 October 2022 as well as the written comments from Member States.

All modifications are highlighted in bold, underlined or strikethrough.

The Presidency believes that the levels of taxation should be decided at the ministerial level and therefore it is suggested to keep them in square brackets. The proposed rates should be considered together within the whole framework of the proposal. It means that if the proposed rates are substantially lowered, the rest of the text would reflect it, for instance, by modifying the scope of exemptions or reduced rates, or length of transitional periods.

It is also important to stress that the text could be subject to changes and adjustments depending on further discussions within the WPTQ.

Finally, the deadlines mentioned in the proposal have not yet been amended but are expected to be adjusted depending on the final adoption of the proposal.

Proposal for a  
**COUNCIL DIRECTIVE**  
**restructuring the Union framework for the taxation of energy products and  
electricity (recast)**

*Article 1*

1. Member States shall impose taxation on energy products referred to in Article 2(1) and electricity referred to in Article 2(2) in accordance with this Directive.

2. For the purposes of this Directive, ~~without prejudice to Article 11,~~ taxation shall be calculated in Euro/Gigajoule (EUR/GJ) on the basis of net calorific value, ~~as set out in Annex II.~~

**2a. Member States may express their national levels of taxation in units other than those specified in paragraph 2 provided that the corresponding levels of taxation, following conversion into those units, are not below the minimum levels of taxation specified in this Directive. When volume units are applied, the volume shall be measured at a temperature of 15°C. The conversion factors shall be those laid down in Annex II.**

**Presidency note:**

*Based on comments of Member States and to improve the understanding of Article 1, the Presidency suggests to move the text from Article 11 to the proposed provision. The text implies that, wherever possible, the Member States can apply national rates in EUR/GJ, net calorific value. If so, the recalculation coefficients in Annex II are not used and are irrelevant. In case Member States apply national rates expressed in other units, the coefficients from Annex II are applied in order to comply with the EU minima and the vertical ranking rule.*

3. The Commission is empowered to adopt a delegated act, in accordance with the procedure laid down in Article 29, to amend or supplement Annex II. For this purpose, the following rules shall apply for each energy product:

(a) where the conversion factor from any unit to GJ is referred to in Annex VI to the Commission Implementing Regulation 2018/2066/EU, in Annex III to Directive (EU) 2018/2001, in any act of the Union law modifying or replacing those acts or in any delegated or implementing acts based on such Union law, that conversion factor shall be used; where the conversion factor from any unit to GJ is referred to in both Annex VI to the Commission Implementing Regulation 2018/2066/EU,

and Annex III to Directive (EU) 2018/2001, the conversion factor laid down in the latter shall be used;

(b) where the acts referred to in point (a) do not contain the relevant conversion factor from any unit to GJ, the conversion factor shall be assessed:

- by using the conversion factors laid down in the acts referred to in point (a) for an energy product with similar physical and chemical properties used as motor or heating fuel;
- on the basis of the relevant available information where no such similar energy product is mentioned in the acts referred to in point (a).

4. Where Annex II does not contain a net calorific value for the energy product and unit concerned, Member States shall refer to the conversion factor assessed according to the principles laid down in paragraph 3. Member States shall inform the Commission of this conversion factor without delay.

#### *Article 2*

1. For the purposes of this Directive, the term ‘energy products’ shall apply to:

- (a) products falling within CN codes 1507 to 1518, if these are intended for use as heating fuel or motor fuel;
- (b) products falling within CN codes 2207 20, if these are intended for use as heating fuel or motor fuel and are exempted from the harmonized excise duty on alcohol and alcoholic beverages in accordance with Article 27(1), points (a) or (b), of Directive 92/83/EC<sup>1</sup>;
- (c) products falling within CN codes 2701 and 2702;
- (d) products falling within CN code 2703, if these are used as heating fuel in installations with a total rated thermal input equal to or exceeding 10 MW;
- (e) products falling within CN code 2704 to 2715;
- (f) products falling within CN code 2804 10, if these are intended for use as heating fuel or motor fuel;
- (g) products falling within CN code 2814, if these are intended for use as heating fuel or motor fuel;
- (h) products falling within CN codes 2901 and 2902;

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<sup>1</sup> Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages (OJ L 316, 31.10.1992, p. 21)

- (i) products falling within CN code 2905 11 00, if these are intended for use as heating fuel or motor fuel;
- (j) products falling within CN codes 2909 19 10 and 2909 19 90, the latter if intended for use as heating fuel or motor fuel;
- (k) products falling within CN code 3403;
- (l) products falling within CN code 3811;
- (m) products falling within CN code 3814, if these are intended for use as heating fuel or motor fuel;
- (n) products falling within CN code 3817;
- (o) products falling within CN code 3823 19, if these are intended for use as heating fuel or motor fuel;
- (p) products falling within CN codes 3824 99 86, 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93, 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90 if these are intended for use as heating fuel or motor fuel;
- (q) **[from 1 January 2033]** products falling within CN codes 4401 and 4402, if these are used as heating fuel in installations with a total rated thermal input equal to or exceeding 10 MW;

**Presidency note:**

*Following repeated requests of some Member States, the Presidency suggests to exclude products falling within CN codes 4401 and 4402 from the scope of the Directive for a transitional period of 10 years. The text is kept in square brackets to be further discussed among the Member States.*

*If an agreement on this particular point is reached, further changes in the proposal will be needed (for example in Article 16).*

*Although, these products will be temporarily out of the scope of the Directive, the Member States wishing to tax them can do so at national level during the proposed transitional period.*

- (r) other products than those referred to in points (a) to (q), **including additives and extenders to motor fuels**, if these are intended for use, offered for sale or used as motor fuel, **including additives and extenders to motor fuels**;

**Presidency note:**

*The Presidency suggests a technical change for the sake of legal clarity of the text.*

- (s) other **hydrocarbons hydrocarbon-containing products** than those referred to in points (a) to (q) with a **gross net** calorific value **of** at least [0,018 GJ/kg], if these are intended for use, offered for sale or used as heating fuel.

**Presidency note:**

*The aim of the proposed change is to ensure legal certainty. The proposed threshold is linked to types of waste (and other products) consisting of (among others) hydrocarbons, and not to hydrocarbons contained in waste.*

*In addition, in order to be consistent with the rest of the text, the unit “net calorific value” instead of “gross calorific value” is used.*

*The limit on net calorific value could be derived from the classification according to which the types of waste are distinguished based on their calorific value:*

- *Low-calorific: 0 – 11 MJ/kg*
- *Mid-calorific: 11.5 – 18 MJ/kg*
- *High-calorific: above 18.5 MJ/kg*

*To limit any potential administrative burden only high calorific products are proposed to be included in the scope of the Directive. Of course, this parameter can be further discussed.*

1a. For the purpose of this Directive ‘total rated thermal input‘ shall mean the sum of the maximum rated thermal inputs of **all** fixed **installations units** combusting heating fuels within the **curtilage of the producing establishment boundaries of an installation consisting of technically and functionally associated units.**

**Presidency note:**

*Since the vast majority of the Member States have not expressed objections to the proposed text and many Member States have also welcomed that the harmonized definition of total rated thermal input is included in the proposal, the Presidency decided to keep the definition in the text. In addition, a minor change of wording is used in order to better comply with the terminology of ETS provisions.*

*As far as the interpretation of the definition of total rated thermal input, the Guidance on Interpretation of Annex I of the EU ETS Directive could be used. In this respect, the Presidency refers to the “aggregation rule” as described in the Guidance (Article 4.2). This rule implies that the rated thermal inputs of all technical units which are part of an installation are put together.*

*These units could include all types of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal or catalytic post-combustion units.*

*Nevertheless, unlike the ETS system, the units are put together without exception. It means, for instance, that units with the thermal inputs under 3 MW and units combusting biomass are also taken into account.*

2. This Directive shall also apply to **FE** electricity falling within CN code 2716.

3. Energy products used as fuel in fuel cells installed on board of **electric** vehicles, **including** vessels and aircrafts shall be considered to be used as motor fuels.

**Presidency note:**

*In the Presidency's view, the category of vehicles includes not only cars, buses, motorbikes, trains, but also vessels, aircrafts, helicopters, etc. Those are all means of transport carrying passengers or goods from one place to another.*

*Nevertheless, some other definitions of vehicles are more restrictive and include only wheeled means of transport. Consequently, for the sake of legal clarity, the Presidency proposes to have the text explicitly state that also these other "non-wheeled" means of transport are within the scope.*

*In addition, the Presidency is aware of the fact that there is still no clear consensus on how to treat stationary fuel cells.*

*The **first approach** represents the current wording of the compromise text (also described in the non-paper WK 13043/2022). It means that hydrogen, for example,*

- *used in fuel cells in cars is considered as motor fuel (therefore taxed according to Table A of Annex I), and the electricity produced is out of scope of the ETD (therefore can be freely taxed at national level).*
- *used in stationary fuel cells is out of scope of the ETD (therefore can be freely taxed at national level) and produced electricity is in the scope (taxed according to Table D of Annex I) and can be exempted according to Article 16.*

*The **second possible approach** would include hydrogen (or other possible products used as fuel in fuel cells) used in stationary fuel cells in the scope of the ETD. It would mean that hydrogen, for example,*

- *used in stationary fuel cells would be in the scope of the ETD (as it could be taxed only based on environmental reasons) and produced electricity would also be in the scope (taxed according to Table D of Annex I) and could be exempted under Article 16.*

4. For the purpose of this Directive, the following definitions shall apply:

- (a) 'biomass' means the biodegradable fraction of products, waste and residues from biological origin from agriculture, including vegetal and animal substances, from forestry and related industries, including fisheries and aquaculture, as well as the biodegradable fraction of waste, including industrial and municipal waste of biological origin;
- (b) 'biofuels' mean liquid motor fuels referred to in paragraph 1 produced from biomass;
- (c) 'biogas' means gaseous motor and heating fuels referred to in paragraph 1 produced from biomass;
- (d) 'bioliquids' mean liquid heating fuels referred to in paragraph 1 produced from biomass;
- (e) 'sustainable biofuels, bioliquids, biogas and products falling within CN codes 4401 and 4402' mean motor and heating fuels referred to in paragraph 1, produced from biomass, fulfilling the sustainability and greenhouse gas saving criteria set out in Article 29 of Directive (EU) 2018/2001, excluding high indirect land-use change-risk products set out in Article 26(2) of that Directive;
- (f) 'non-sustainable biofuels, bioliquids, biogas and products falling within CN codes 4401 and 4402' mean motor and heating fuels referred to in paragraph 1, produced from biomass, not fulfilling the sustainability and greenhouse gas saving criteria set out in Article 29 of

Directive (EU) 2018/2001, excluding high indirect land-use change-risk products set out in Article 26(2) of that Directive;

- (g) ‘sustainable food and feed crop biofuels, bioliquids and biogas’ mean motor and heating fuels referred to in paragraph 1, produced from starch-rich crops, sugar crops or oil crops produced on agricultural land as a main crop excluding residues, waste or ligno-cellulosic material and intermediate crops, such as catch crops and cover crops, provided that the use of such intermediate crops does not trigger demand for additional land, fulfilling the sustainability and greenhouse gas saving criteria set out in Article 29 of Directive (EU) 2018/2001, excluding high indirect land-use change-risk products set out in Article 26(2) of that Directive;
- (h) ‘advanced biofuels, bioliquids and biogas and products falling within CN codes 4401 and 4402’ mean biofuels, bioliquids, biogas and products falling within CN codes 4401 and 4402 that are produced from the feedstock listed in Annex III;

5. For the purpose of this Directive, the following definitions shall apply:

- (a) ‘renewable fuels of non-biological origin’ mean motor and heating fuels referred to in paragraph 1 other than biofuels, bioliquids or biogas, the energy content of which is derived from renewable sources other than biomass;
- (b) ‘non-renewable fuels of non-biological origin’ mean motor and heating fuels referred to in paragraph 1 other than biofuels, bioliquids or biogas, the energy content of which is derived from non-renewable sources other than biomass;

**Presidency note:**

*Some Member States asked how the compliance with the sustainability and greenhouse gas saving criteria of biofuels and similar products will be proven.*

*The sustainability criteria are proven by proofs of sustainability. The definition of ‘proof of sustainability’ is in Article 2 of Commission Implementing Regulation (EU) 2022/996 of 14 June 2022 on rules to verify sustainability and greenhouse gas emissions saving criteria and low indirect land-use change-risk criteria.*

*It means a declaration by an economic operator, made on the basis of a certificate issued by a certification body within the framework of a voluntary scheme certifying the compliance of a specific quantity of feedstock or fuels with the sustainability and greenhouse gas emissions savings criteria set out in Articles 25(2) and 29 of Directive (EU) 2018/2001 is applied. Within the system it is possible to distinguish between feedstock and therefore to distinguish between advanced, sustainable food and feed crop, and sustainable non-food and feed crop biofuels and biogas.*

*In the case of recycled carbon fuels and renewable fuels of non-biological origin Article 22 of the same Implementing Regulation is applied.*

*According to this Article, voluntary schemes shall require economic operators participating in the scheme to apply the methodology set out in Article 28(5) of Directive (EU) 2018/2001 when determining the GHG emissions of recycled carbon fuels and renewable fuels of non-biological origin.*

*In addition, Article 30 of Directive (EU) 2018/2001 stipulates verification of compliance with the sustainability and greenhouse gas emissions saving criteria for biofuels, bioliquids and*

*biomass fuels, or other eligible fuels.*

*Based on Article 30(4) of Directive 2018/2001, the Commission adopted Implementing Decision (EU) on the recognition of the 'SURE' voluntary scheme for demonstrating compliance with the requirements set in Directive (EU) 2018/2001 of the European Parliament and of the Council for biofuels, bioliquids, biomass fuels, renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels.*

*It is probable that also other voluntary schemes aimed at proving of sustainability criteria of biomass products will be recognized soon.*

*According to these harmonized schemes it might be possible to distinguish a type of feedstock from which fuels are produced. The tax category of relevant fuels might therefore be determined. However, it should be further analysed if the categorization is possible in all cases at necessary level (for instance, to determine whether a bioliquid is non-sustainable, sustainable (food and feed crop), sustainable (non-food and feed crop), or advanced).*

- (c) 'low-carbon fuels' mean low-carbon hydrogen and synthetic gaseous and liquid fuels the energy content of which is derived from low-carbon hydrogen, as well as any fossil-based fuels, whose manufacturing meets the technical screening criteria as laid down in paragraph 5a; 'recycled carbon fuels' shall be included in this category.;

**For the purpose of the first subparagraph,** 'recycled carbon fuels' mean liquid and gaseous fuels that are produced from liquid or solid waste streams of non-renewable origin which are not suitable for material recovery, or from waste processing gas and exhaust gas of non-renewable origin which are produced as an unavoidable and unintentional consequence of the production process in industrial installations.

5a. For the purpose of paragraph 5, point (c) 'technical screening criteria' shall mean criteria determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change mitigation according to Article 10 of Regulation (EU) 2020/852 of the European Parliament and of the Council and Annex I to Commission Delegated Regulation (EU) 2021/2139<sup>2</sup>.

By way of derogation from Article 10 (6) of the Regulation **(EU)** 2020/852 and from Article 3 of the Commission Delegated Regulation (EU) 2021/2139, technical screening criteria shall be applicable to this Directive as from 1 January 2023.

5b. In case of future amendments of the technical screening criteria within the meaning of paragraph 5a and by way of derogation from the relevant provisions concerning their applicability in time, the Commission is empowered to adopt a delegated act in accordance with Article 29 in order to set the date of application of the technical screening criteria under the present Directive.

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<sup>2</sup> Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (OJ L 442, 9.12.2021, p. 1).

**Presidency note:**

*The aim is to simplify the text. It is therefore explicitly stated that the meaning of “recycled carbon fuels” is used for the purpose of the definition of “low-carbon fuels”.*

*However, the definition of low-carbon still refers to technical screening criteria and therefore to Regulation (EU) 2020/852 and Delegated Regulation (EU) 2021/2139 which can be possibly frequently amended. Therefore, presidency proposed in previous compromise texts paragraph 5b which stipulates which “version” of technical screening criteria will be applied in the future.*

*Nevertheless, as some Member States noted, the text could be simplified and made more transparent, for instance, by using the wording from the Directive on common rules for internal markets in renewable and natural gases and in hydrogen<sup>3</sup>.*

*If so, the text would be as following:*

*“(c) ‘low-carbon fuels’ mean recycled carbon fuels, low-carbon hydrogen and synthetic gaseous and liquid fuels the energy content of which is derived from low-carbon hydrogen, which meet the greenhouse gas emission reduction threshold of 70%;*

*For the purposes of the first subparagraph, ‘recycled carbon fuels’ mean liquid and gaseous fuels that are produced from liquid or solid waste streams of non-renewable origin which are not suitable for material recovery, or from waste processing gas and exhaust gas of non-renewable origin which are produced as an unavoidable and unintentional consequence of the production process in industrial installations.”*

*The definition of low-carbon fuels is copied from Article 1(12) of the Gas Directive Proposal. The only difference is that Gas Directive Proposal directly refers to RED for recycled carbon fuels definition. In the text above, the wording of Article 2(35) of RED is copied to the proposed text, instead of using reference to RED.*

*In the Presidency’s view, the main advantage of this alternative proposal could be, that the text of the ETD would not refer to the delegated act and that the wording is more transparent. On the other hand, the future changes in, for instance, technical screening criteria, would not be reflected.*

*In this respect, the Presidency would like to know the views of the Member States on this alternative approach.*

6. Where part of an energy product consists of one or more energy products, taxation of those parts shall be determined accordingly based on this Directive, independently from the CN code under which the energy product falls as a whole.

6a. **Where paragraph 6 is not applicable, sufficient evidence of the parts of the energy product is not available,** Member States may

- determine taxation of any of the part of energy products referred to in paragraph 6 in accordance with category 1 referred to in Article 5(2), or

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<sup>3</sup> **Doc. st 15111/21.**

- assess the content of all or some energy products on an average basis. Member States shall define the scope of the average in a coherent, transparent and non-discriminatory manner. The Member States shall inform the Commission thereof without delay.

**Presidency note:**

*Based on comments of some Member States, the Presidency suggests to redraft the first sentence of paragraph 6a as the wording “sufficient evidence...” was not clear enough. The Presidency believes that more general wording could accommodate concerns of the Member States.*

7. For the purposes of paragraph 1, points (a), (b), (f), (g), (i), (j), (m), (o), (p), (r), and (s) of this Article, and of Article 21(1), points (a), (b), **(c)**, (f), (g), (j), (k), (n), (o), and (p) energy products destined for supply shall be considered to be intended for use as heating fuel or motor fuel when the supplier is aware, or should reasonably be aware, that the recipient intends to use the energy products as heating fuel or motor fuel. Energy products referred to in paragraph 1, point (a) of this Article and Article 21(1), point (a) shall not be considered to be intended for use as heating fuel or motor fuel if they are supplied to a producer of goods referred to in paragraph 1, point (p) of this Article and Article 21(1), point (p).

8. References in this Directive to codes of the Combined Nomenclature shall be understood as references to the codes of Combined Nomenclature in Council Regulation (EEC) No 2658/87<sup>4</sup> as amended by [Commission Implementing Regulation (EU) 2020/1577<sup>5</sup>].

Where the Regulation referred to in the first subparagraph is replaced or where an amendment to the Combined Nomenclature necessitates a modification of the codes referred to in this Directive, the Commission is empowered to adopt delegated acts in accordance with Article 29 in order to update the codes of the Combined Nomenclature of the products referred to in this Directive or in order to update the reference provided for in the first subparagraph so as to align it to the applicable version of the Combined Nomenclature.

Those delegated acts shall not result in any changes in the minimum tax rates set in this Directive or in the addition or removal of any energy products and electricity.

### *Article 3*

1. This Directive shall not apply to the following:

- (a) output taxation of heat;
- (b) the following uses of energy products and electricity:
  - energy products used for purposes other than as motor fuels or as heating fuels,
  - dual use of energy products.

<sup>4</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

<sup>5</sup> Commission Implementing Regulation (EU) 2020/1577 of 21 September 2020 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 361, 30.10.2020, p. 1).

An energy product has a dual use when it is used both as heating fuel and for purposes other than as motor fuel and heating fuel. The use of energy products for chemical reduction and in electrolytic and metallurgical processes, when energy products are used directly in or to provide a direct energy input to the process shall be regarded as dual use.

‘Metallurgical processes’ shall mean the processes classified in the NACE nomenclature under codes C 24.1, 24.4, 24.5 and powder metallurgy under code C 25.5 in **Annex I of Council Regulation (EEC) No 3037/90<sup>6</sup> as amended by** Regulation (EC) No 1893/2006<sup>7</sup>, regardless the code under which the main manufacturing activity of business entity is classified.

— electricity used for the purposes of chemical reduction and in electrolytic and metallurgical processes, when electricity is used directly in or to provide a direct energy input to the process.

— mineralogical processes

‘Mineralogical processes’ shall mean the processes classified in the NACE nomenclature under code C 23 in **Annex I of Council Regulation (EEC) No 3037/90<sup>8</sup> as amended by** Regulation (EC) No 1893/2006<sup>6</sup>, regardless the code under which the main manufacturing activity of business entity is classified.,

**Presidency note:**

*For the sake of legal certainty and feasibility the Presidency suggests to specify the reference to the respective legal act based on the comments from the Member States.*

(c) electricity generated by the fuel cells installed on board of **electric** vehicles, **including** vessels and aircrafts referred to in Article 2(3).

**Presidency note:**

*In the Presidency’s view, the category of vehicles includes not only cars, buses, motorbikes, trains, but also vessels, aircrafts, helicopters, etc. Those are all means of transport carrying passengers or goods from one place to another.*

*Nevertheless, some other definitions of vehicles are more restrictive and include only wheeled means of transport. Consequently, for the sake of legal clarity, the Presidency proposes to have the text explicitly state that also these other “non-wheeled” means of transport are considered.*

1a. This Directive shall apply to the mineralogical processes within the meaning of Regulation 1893/2006 as from 1 January [**2028 2033**].

**Presidency note:**

*At the request of Member States, the Presidency suggests to prolong the transitional period in*

<sup>6</sup> Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1)

<sup>7</sup> Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1)

<sup>8</sup> Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community

*which mineralogical processes remain out of the scope of the Directive. The text is kept in square brackets to be further discussed among Member States.*

*Although these processes will be temporarily out of the scope of the Directive, the Member States wishing to tax them can do it at national level during the proposed transitional period.*

2. Article 21 shall apply to energy products used as provided for in paragraph 1, point (b), of this Article.

#### *Article 4*

1. The levels of taxation which Member States apply to the energy products and to electricity shall be compliant with Article 5(3).

For this purpose, when Member States express their national levels of taxation in units other than EUR/GJ (net calorific value), these national levels of taxation shall be converted into EUR/GJ (net calorific value) in accordance with the conversion factors laid down in Annex II or the provisions of Article 1(4).

2. For the purpose of this Directive ‘level of taxation’ is the total charge levied in respect of all indirect taxes in compliance with conditions set by this Directive applied by the Member State calculated on the quantity of energy products and electricity at the time of the tax chargeability, excluding VAT.

#### *Article 5*

1. Energy products falling under each of the following uses shall be taxed independently from each other as a single use:

(a) Products used as motor fuels other than those referred to in points (b) and (d);

(b) Products used as motor fuels for the purposes laid down in Article 8 (2) other than those referred to in point (d);

(c) Products used as heating fuels, other than those referred to in point (d);

(d) Products used for any other single use specified in this Directive. For this purpose, uses referred to in Article 13(3), Article 14, Article 15, Article 17(1)(a), Article 17(1)(b), Article 17(1)(c), Article 17(1)(d) and Article 18 shall be considered as different single uses.

**Presidency note:**

*A technical adjustment is suggested following the changes proposed in Article 17.*

2. For each one of the single uses laid down in paragraph 1, energy products shall fall into the following categories depending on their environmental performances:

(a) Category 1 shall refer to products which do not fall into category 2 or category 3;

(b) Category 2 shall refer to the following products when they do not fall into category 3:

- when used as motor fuels, low-carbon fuels and sustainable biofuels and biogas other than food and feed crop biofuels and biogas;

- when used as heating fuels, low-carbon fuels and sustainable bioliquids; **and** biogas **other than food and feed crop bioliquids and biogas** and **sustainable** products falling within CN codes 4401 and 4402;

**By way of derogation from point (a), Member States may decide, from 1 January 2023 to 31 December 2032, to include liquefied petroleum gas, natural gas, sustainable food and feed crop biofuels and biogas and non-sustainable biofuels and biogas, when used as motor fuels, into category 2.**

**By way of derogation from point (a), Member States may decide, from 1 January 2023 to 31 December 2032, to include liquefied petroleum gas, natural gas, sustainable food and feed crop bioliquids and biogas, non-sustainable bioliquids and biogas, and non-sustainable products falling within CN codes 4401 and 4402, when used as heating fuels, into category 2.**

**-OR-**

**[By way of derogation from paragraph 2, point (a) and paragraph 3, point (b) for natural gas and liquefied petroleum gas when used as motor fuel the minimum levels of taxation shall be fixed as set out in Table E1 of Annex I.**

**By way of derogation from paragraph 2, point (a) and paragraph 3, point (b) for natural gas and liquefied petroleum gas when used as motor fuel for purposes of Article 8(2) the minimum levels of taxation shall be fixed as set out in Table E2 of Annex I.**

**By way of derogation from paragraph 2, point (a) and paragraph 3, point (b) for natural gas and liquefied petroleum gas when used as heating fuel the minimum levels of taxation shall be fixed as set out in Table E3 of Annex I.]**

**~~as from 1 January 2023 to 31 December 2032 when used as motor fuels, liquefied petroleum gas, natural gas, sustainable food and feed crop biofuels and biogas and non-sustainable biofuels and biogas;~~**

**~~as from 1 January 2023 to 31 December 2032 when used as heating fuels, liquefied petroleum gas, natural gas and non-sustainable bioliquids and biogas.~~**

**Presidency note:**

*Based on comments obtained at the last meeting, the categorization of energy products brought closer to the categorization of the Commission initial proposal. The categorization for the year 2033 stems from the EU minima proposed by the Commission.*

*This means that the following energy products belong to category 1: petrol, gas oil, kerosene, natural gas, liquefied petroleum gas, non-sustainable biofuels, non-sustainable biogas, non-renewable fuels of non-biological origin, sustainable food and feed crop biofuels, sustainable food and feed crop biogas, heavy fuel oil, coal and coke, non-sustainable bioliquids, non-sustainable products falling within CN codes 4401 and 4402, sustainable food and feed crop bioliquids and other energy products not included in category 2 or 3.*

*It also means that, in comparison to the previous compromise texts, non-sustainable products falling within CN codes 4401 and 4402 and sustainable food and feed crop bioliquids and biogas*

were moved from category 2 to category 1.

*In addition, the transitional period is defined as voluntary for the following products: natural gas, liquefied petroleum gas, sustainable food and feed crop biofuels and biogas and non-sustainable biofuels and biogas, when used as motor fuels and for liquefied petroleum gas, natural gas, sustainable food and feed crop bioliquids and biogas, non-sustainable bioliquids and biogas, and non-sustainable products falling within CN codes 4401 and 4402, when used as heating fuels. Thus, between 2023 and 2032 it is up to a Member State to decide whether to include these products into category 1 or category 2.*

*Nevertheless, based on the discussion at the last WPTQ and written comments, the Presidency is of the view that only LPG and natural gas would deserve a more favourable treatment and **therefore suggests to stipulate special provisions for those two products** (defined in square brackets).*

*According to these provisions, Member States may apply different rates on LPG and natural gas for a transitional period of 10 years. In this transitional period LPG and natural gas are temporarily put outside the system of categorization. Moreover, the vertical ranking rule does not temporarily apply to these products.*

*The levels of EU minimum rates are temporarily specified in Annex I (Tables E1, E2, and E3) depending on their use and are fully in line with the EU minimum rates for products in category 2. After the transitional period, natural gas and LPG become products of category 1 and Tables A, B and C of Annex I will be applied.*

*The Presidency believes that such a targeted approach related to only these most sensitive products could better contribute to reaching a compromise under the current economic and energy policy circumstances.*

***This solution is for discussion as an alternative to possible temporarily inclusion of these products in category 2.***

(c) Category 3 shall refer to renewable fuels of non-biological origin, advanced sustainable biofuels, bioliquids and biogas and, when used as heating fuels, advanced products falling within CN codes 4401 and 4402.

By way of derogation from point (b), Member States may decide, from 1 January 2023 to 31 December 2032, to include low-carbon fuels when used as motor or heating fuels into category 3.

By way of derogation from point (b), Member States may decide [ , from 1 January 2023 to 31 December 2032, ] to include sustainable products falling within CN codes 4401 and 4402, when used as heating fuels, into the category 3. Member States may limit the scope of this derogation on the basis of the environmental characteristics of those products.

The Council, acting unanimously on a proposal from the Commission, may adopt implementing acts to change the category of any energy product when it is inconsistent with its environmental performances. Those implementing acts shall not result in adding more categories, in changing the use listed in this paragraph or in derogating from the rules listed in paragraph 3.

**Presidency note:**

*Based on the request of a Member State, the Presidency suggests to put the transitional period in square brackets. It means that the possibility of not differentiating between sustainable and advanced products falling within CN codes 4401 and 4402 will be further discussed with a view to finding a compromise solution.*

3. Unless otherwise specified in this Directive, for each one of the uses laid down in paragraph 1, the following rules shall apply:

(a) The rate for each energy product in the category shall be equal or superior to the corresponding minimum level of taxation laid down in Annex I in relation to this use.

(b) The rate for each energy product in category 1 shall be superior to the rate for each energy product in category 2 and the rate for each energy product in category 2 shall be superior to the rate for each energy product in category 3.

(c) For single uses mentioned in point (d) of paragraph 1, the applicable minimum level of taxation is the one mentioned by the provisions referred to in paragraph 1, point (d).

3a. When intended for use, offered for sale or used as motor fuel or heating fuel, energy products other than those for which minimum levels of taxation are specified in this Directive shall be taxed according to the use referred to in paragraph 1 and the category referred to in paragraph 2.

4. The use of electricity shall be taxed independently as single use, without any reference to other fuels. **Electricity used for any other single use as referred to in paragraphs 4a and 4b of this Article, Article 13(3), Article 14, Article 15, Article 17(1)(a), Article 17(1)(b), Article 17(1)(c), Article 17(1)(d) and Article 18 shall be considered as different single uses.**

**Presidency note:**

*To ensure the coherence of the whole legislative text, the Presidency proposes to explicitly stipulate each single use of electricity.*

4a. By way of derogation from paragraph 4, **as applicable as single uses**, Member States may apply under fiscal control specific levels of taxation, which shall not go below the **minimum levels of taxation** as set out in Table D of Annex I, to electricity used for charging electric vehicles, **including vessels and aircrafts** [or for heating purposes]. Member States may limit the scope of this paragraph based on the characteristics of the recharging points [or specific heating systems].

**Presidency note:**

*The Presidency suggests to align the definition of vehicles (Article 2(3), Article 3(1)(c) and Article 5(4a)). The wording explicitly states that ‘vehicles’ include also other means of transport than road (wheeled) ones. The provision allows to apply specific rates on electricity for charging electric vehicles (including private pleasure and business flights and navigation). Articles 14, 15 and 17 are not affected by Article 5(4a) and are superior to this provision. It means that electricity used in rail, air and maritime transport (excluding private and business transport) will be taxed (or exempted) according to those provisions.*

*Following the last debate, the Presidency would like to come up with a further explanation with respect to the possibility to differentiate national rates for heating purposes. Based on comments of Member States, this measure could be administered in practice by using different electricity*

*meters with separate records. For example, heat-pumps could be connected with an extra electricity meter based on a special supply contract to save a part of network charges. Special heating systems like heat-pumps could be taxed below the regular national electricity tax, particularly for Member States with high taxes on electricity and could help the electrification of heating. In this case, this would be an advantage for efficient heating-systems and therefore in line with the environmental objectives.*

**For the purpose of this paragraph ‘electric vehicle’ means a motor vehicle equipped with a powertrain containing at least one non-peripheral electric machine as energy converter with an electric rechargeable energy storage system, which can be recharged externally.**

**Presidency note:**

*For the sake of legal clarity, the Presidency suggests to include a definition of electric vehicles in the Directive. The text is in line with the Directive on the deployment of alternative fuels infrastructure.*

4b. By way of derogation from paragraph 4 and respecting the minimum levels of taxation set out in Annex I, **as applicable as single uses**, Member States may apply, under fiscal control, differentiated tax rates to **[natural gas used as heating fuel and]** electricity.

- depending on quantitative consumption levels;
- for business and non-business use.

Member States may limit the scope of the reduced level of taxation for business use.

‘Business use’ shall mean the use by a business entity referred to in Article 18(2).

**Presidency note:**

*First, it is specified, that the use of electricity under this paragraph represents different single uses. It means, for instance, that electricity used for business and non-business purposes represents two different single uses of electricity.*

*In addition, based on several comments of the Member States, the possibility to differentiate tax rates depending on business and non-business use or on the level of consumption is extended to natural gas. On one hand, this option could allow some Member States to keep their current tax system, on the other hand, the Presidency is of the view that maintaining the above-mentioned differentiation for natural gas and electricity does not undermine the environmental objectives of the ETD.*

5. From 1 January 2023 to 31 December 2030, where the rule referred to in paragraph 3, point (b), is not fulfilled on 1 January 2023 for two products of different categories, the superiority of tax rates of concerned products shall be gradually achieved at least every second year.

6. The minimum levels of taxation laid down in this Directive shall be adapted every two years starting from 1 January 2035 to take account of the cumulative changes in the harmonised index of consumer prices excluding energy and unprocessed food as published by Eurostat. The minimum levels shall be adapted automatically, by increasing or decreasing the base amount in euro by the

percentage change in that index over the two calendar years preceding the year in which the delegated act as referred to in paragraph 7 is adopted.

7. The Commission is empowered to adopt **by 31 March** a delegated act in accordance with Article 29 to amend the minimum levels of taxation as referred to in paragraph 6. Member States shall apply the new minimum levels of taxation from **31-December 1 January** of the year following the year **of adoption of the respective delegated act**.

**Presidency note:**

*In order to give the Commission services a sufficient time to adopt a delegated act, paragraph 7 is amended. The proposed text implies that the delegated act proposing the first increase of the EU minimum rates will enter into force in March 2035, at the latest, and the same deadline should be applied for the subsequent years (2037, 2039 etc.). Member States have to implement the new rates from 1 January 2036 and in the same way in the following every two years.*

*Article 6*

Member States shall be free to give effect, under fiscal control, to the exemptions or reductions in the level of taxation prescribed by this Directive either:

- (a) directly,
- (b) by means of a differentiated rate,
- or
- (c) by refunding all or part of the amount of taxation.

*Article 7*

The minimum levels of taxation applicable to energy products used as motor fuels referred to in Article 5(1), point (a), shall be fixed as set out in Table A **[and Table E1]** of Annex I as from 1 January 2023, as from 1 January 2028 and as from 1 January 2033 respectively.

**Presidency note:**

*Technical adjustments are made following the changes proposed in Article 5 paragraph 2.*

*Article 8*

1. Notwithstanding Article 7, the minimum levels of taxation applicable to energy products used as motor fuels for the purposes set out in paragraph 2 of this Article and referred to in Article 5(1) point (b) shall be fixed as set out in Table B **[and Table E2]** of Annex I as from 1 January 2023, as from 1 January 2028 and as from 1 January 2033 respectively.

2. Paragraph 1 shall apply to the following purposes:

- (a) agricultural, horticultural or aquaculture works, and in forestry;
- (b) stationary motors;

- (c) plant and machinery used in construction, civil engineering and public works;
- (d) vehicles intended for use off the public roadway or which have not been granted authorisation for use mainly on the public roadway.

3. By way of derogation from Article 5(1) each of the purposes specified in paragraph 2, points (a), (b), (c) or (d) may be considered to be a single use.

**Presidency note:**

*Technical adjustments are made following the changes proposed in Article 5 paragraph 2.*

*Article 9*

The minimum levels of taxation applicable to energy products used as heating fuels referred to in Article 5(1), point (c), shall be fixed as set out in Table C **[and Table E3]** of Annex I as from 1 January 2023, as from 1 January 2028 and as from 1 January 2033 respectively.

**Presidency note:**

*Technical adjustments are made following the changes proposed in Article 5 paragraph 2.*

*Article 10*

The minimum levels of taxation applicable to electricity shall be fixed as set out in Table D of Annex I as from 1 January 2023, as from 1 January 2028 and as from 1 January 2033 respectively.

**Article 11**

**1. Member States may express their national levels of taxation in units other than that specified in Articles 7 to 10 provided that the corresponding levels of taxation, following conversion into those units, are not below the minimum levels specified in this Directive.**

**2. When volume units are applied, the volume shall be measured at a temperature of 15° C.**

**3. For the purposes of paragraph 1, conversion factors shall be those laid down in Annex II.**

**Presidency note:**

*The Presidency is of the view that for the sake of logic and better understanding the wording of Article 11 should be moved to Article 1.*

*The Presidency maintains this provision empty in case of its use for the future legislative work.*

*Article 12*

1. For Member States that have not adopted the euro, the value of the euro in national currencies to be applied to the value of the levels of taxation shall be fixed once a year. The rates to be applied

shall be those obtaining on the first working day of October and published in the *Official Journal of the European Union* and shall have effect from 1 January of the following calendar year.

2. Member States may maintain the amounts of taxation in force at the time of the annual adjustment provided for in paragraph 1 if the conversion of the amounts of the level of taxation expressed in euro would result in an increase of less than 5 % or EUR 5, whichever is the lower amount, in the level of taxation expressed in national currency.

### *Article 13*

1. Member States shall exempt from taxation under fiscal control:

- a) energy products and electricity used to produce electricity and
- b) electricity used to maintain the ability to produce electricity.

~~**2. The tax exemption referred to in paragraph 1 shall not apply to consumption of those products not related to the production of electricity including the propulsion of vehicles, and consumption of electricity not related to maintaining the ability to produce electricity.**~~

**2. The tax exemption referred to in paragraph 1 shall not apply to consumption of those products not used directly in or to provide a direct energy input to the process of production of electricity and maintaining the ability to produce electricity, including the propulsion of vehicles, the general functioning of the installation used for production or storage of electricity or other processes that take place in the installation.**

**When the process of production or storage leads to the production of other products than electricity from which economic value can be derived, the tax exemption shall not apply to the part of the consumption leading to the production of such products.**

**Presidency note:**

*Based on comments of some Member States the Presidency unifies the text stipulating taxation of energy products and electricity consumed in installations producing electricity. It means that energy products and electricity consumed in processes that are not directly used for production of electricity shall be subject to taxation.*

*In addition, the conclusions in the Repsol case (concerning energy products) are also reflected for the purposes of the production of electricity. It follows that if other products than electricity with economic value are produced as by-products, the input products should be taxed proportionally.*

3. By way of derogation from paragraph 1, as applicable as a single use, Member States may, for reasons of environmental policy, tax energy products and electricity referred to in paragraph 1 without having to respect the minimum levels of taxation laid down in this Directive. In such case, the taxation of energy products shall comply with Article 5(3), point (b).

**4. Paragraphs 1, 2 and 3 shall not apply to products used as fuel in fuel cells referred to in Article 2(3).**

**5. By way of derogation from paragraphs 1, 2 and 3, Member States may exempt electricity produced by small producers of electricity, provided that they tax energy products and electricity used for the production of that electricity.**

**Presidency note:**

*In order to improve the structure of Article 13, or more precisely to regroup provisions concerning electricity as an output product, respective paragraphs have been moved up.*

**4. 6.** The consumption of energy products and electricity within the curtilage of an establishment producing energy products shall not be considered as a chargeable event giving rise to taxation, if the consumption consists of those **energy** products produced within the curtilage of the establishment.

Member States may also consider the consumption of energy products and electricity not produced within the curtilage of such an establishment as not giving rise to a chargeable event.

**Presidency note:**

*The aim of this amendment is to explicitly state that energy products and electricity produced and consumed within the curtilage of an establishment producing energy products shall not be taxed (with exception as stipulated in paragraph 7).*

*In addition, it is up to a Member State if electricity or energy products consumed but not produced within the curtilage of an establishment producing energy products would subject to taxation.*

**4a. 7.** The consumption of energy products and electricity referred to in paragraph **4. 6** shall be considered as chargeable event giving rise to taxation only if those products are not used directly in or to provide a direct energy input to the process of production of energy products. It shall include the propulsion of vehicles, the general functioning of the installation used for production or storage or other processes that take place in the installation.

When the process of production or storage leads to the production of non-energy products from which economic value can be derived, the chargeable event shall apply to the part of the consumption leading to the production of such products.

**8. By way of derogation from paragraph 6, as applicable as a single use, Member States may, for reasons of environmental policy, consider consumption of energy products and electricity referred to in paragraph 6, first subparagraph as a chargeable event giving rise to taxation, without having to respect the minimum levels of taxation laid down in this Directive. In such case, the taxation of energy products shall comply with Article 5(3), point (b).**

**Presidency note:**

*Based on the written comments of some Member States, the Presidency proposes to include the possibility of taxation of input energy products and electricity (produced within the curtilage of an establishment producing energy products) if consumed in this facility.*

*If a Member State decides to do so, the environmental goals need to be followed and the vertical ranking rule shall be respected. However, EU minima are not binding.*

**5. Paragraphs 1, 2 and 3 shall not apply to products used as fuel in fuel cells referred to in Article 2(3).**

**6. By way of derogation from paragraphs 1, 2 and 3, Member States may exempt electricity produced by small producers of electricity, provided that they tax the energy products and electricity used for the production of that electricity.**

**Presidency note:**

*In order to improve the structure of Article 13, or more precisely to regroup provisions concerning electricity as an output product, respective paragraphs have been moved up.*

**7. 9.** Member States may exempt biogas produced by small producers of biogas provided that they tax ~~the~~ energy products and electricity used for the production of that biogas.

*Article 14*

1. Without prejudice to international obligations and to Article 5 of this Directive, as applicable as a single use, Member States shall apply, under fiscal control, not less than the minimum levels of taxation prescribed in this Directive to energy products supplied for use as fuel to aircrafts, and to electricity used directly for charging electric aircrafts, for the purposes of intra-EU air navigation of flights other than private pleasure and business flights.

As from 1 January 2033, the minimum levels of taxation referred to in Article 5(3), shall be fixed as set out in Table A and D of Annex I.

For energy products falling into category 1 [**natural gas and liquefied petroleum gas**] the minimum rate shall be set to [0 EUR/GJ] from 1 January 2023 to 31 December 2027 and to [6,14 EUR/GJ] from 1 January 2028 to 31 December 2032.

**Presidency note:**

*Technical adjustments are made following the changes proposed in Article 5 paragraph 2.*

[From 1 January 2028 to 31 December 2032 the minimum rate shall be set to [0 EUR/GJ] for energy products falling into category 1 [**natural gas and liquefied petroleum gas**] used for intra-EU flights ~~between to or from~~ airports located in the outermost regions in accordance with Articles 349 and 355 the Treaty on the Functioning of the European Union **and airports located in their mainland.**]

**Presidency note:**

*Technical adjustments are made following the changes proposed in Article 5 paragraph 2.*

*Moreover, following the request of the Commission services, aiming at preserving consistency with other proposals, in particular, the one for the revision of the ETS, the Presidency suggests to limit the application of this provision to flights between outermost regions and their mainland.*

[From 1 January 2028 to 31 December 2032, the minimum rate shall be set to [0 EUR/GJ] for energy products falling into category 1 [**natural gas and liquefied petroleum gas**] used for intra-EU flights, to or from airports located in island Member States].

**Presidency note:**

*Technical adjustments are made following the changes proposed in Article 5 paragraph 2.*

*Moreover, the Presidency is of the view that this provision would deserve further analysis in case it remains in the proposal. For example, the legal clarity on the notion of “an island Member State” should be ensured.*

For energy products falling into category 2 and 3 and electricity the minimum rate shall be set to [0 EUR/GJ] from 1 January 2023 to 31 December 2032.

For the purposes of this Article, ‘intra-EU air navigation’ shall mean flights between two airports located in the Union, including domestic flights.

For the purposes of this Article, ‘private pleasure flights’ shall mean the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration.

For the purposes of this Article, 'business flights' shall mean the operation or use of aircraft by groups of companies, companies or individuals for the carriage of passengers who are members of the group or the own company or of goods for internal purposes, flown for purposes generally considered not for public hire. **[A company that only operates flights for another company or a group of companies and does not offer these flights on the general market shall also fall within the scope of 'business flights'.]**

**Presidency note:**

*Following the last debate and further comments of the Member States the Presidency suggests to complete the definition of business flights in order to include all possible situations covering business flights.*

*Moreover, other options for the definition of business flights are still under consideration and might be submitted for a discussion at a later stage.*

2. Energy products supplied for use as fuel to aircrafts and electricity used directly for charging electric aircrafts, for the purposes of intra-EU air navigation of cargo-only flights shall be exempted.

By way of derogation from the first subparagraph, for energy products and electricity used for cargo-only domestic flights Member States may apply the same level of taxation as laid down in paragraph 1. Where a Member State has entered into an agreement with one or several Member States, they may also apply the same level of taxation as laid down in paragraph 1 for energy products and electricity used for intra-EU air navigation of cargo-only flights.

For the purposes of this paragraph, ‘cargo-only flight’ shall mean a scheduled or non-scheduled air service performed by aircraft carrying revenue loads other than revenue passengers, excluding flights carrying one or more revenue passengers and flights listed in published timetables as open to passengers.

**Presidency note:**

*Some Member States expressed the view that cargo-only flights should be also taxed in order to prevent distortions of competition between cargo-only flights and mixed flights. According to the impact assessment for the Commission proposal, taxing fuel for cargo-only flights could affect the competitiveness of EU carriers for two reasons. Firstly, US carriers have a significant market share in the intra-EU cargo market as under the US-EU Open Skies agreement, some US cargo carriers are allowed to fly intra-EU flights without restriction. Secondly, the current exemption of US carriers from the taxation of aviation fuel uplifted in the EU for use in international (including intra-EU) flights does not allow the taxation of fuel uplifted by US carriers in the EU.*

*In the light of this impact assessment, the Presidency is afraid that such a proposal (taxing cargo flights) could have an adverse effect on the competitiveness of EU companies. Nevertheless, the opinions of other Member States and the Commission are welcome.*

3. Without prejudice to international obligations Member States may exempt or apply the same level of taxation as laid down in paragraph 1 to energy products used for extra-EU air navigation according to the type of flight and electricity used directly for charging electric aircrafts, for the purposes of this air navigation.

That rule is not applicable to private pleasure and business flights.

4. Member States may apply under fiscal control total or partial exemptions to electricity supplied through a standardised fixed or mobile interface to aircraft when stationed at the gate or at an airport outfield position.

5. Electricity produced on board of aircrafts shall be exempted from taxation.

#### Article 15

**Presidency note:**

*Some Member States have expressed strong political concerns about taxing of small-scale coastal fishing. In this respect, the Presidency would like to discuss whether such a sector deserves a more favourable treatment. For this purpose, for example, a definition according to Regulation No 508/2004 on the European maritime and fisheries fund could be applied. As a result, 'small-scale coastal fishing' would mean fishing carried out by fishing vessels of an overall length of less than 12 metres and not using towed fishing gear.*

*However, a more favourable treatment for small-scale fishing should be considered in a broader context, for example the discussions at the WTO on fisheries subsidies should be also taken into account.*

1. Without prejudice to Article 5, Member States shall apply, as a single use, under fiscal control not less than minimum levels of taxation as set out in Tables B, **E2** and D of Annex I to energy products supplied for use as fuel to vessels, and to electricity used directly for charging electric vessels, for the purposes of intra-EU waterborne navigation (including fishing) other than private pleasure navigation.

As from 1 January 2033, the minimum levels of taxation referred to in Article 5(3), shall be fixed as set out in Table B and D of Annex I.

For energy products falling into category 1[, **natural gas and liquefied petroleum gas**] the minimum rate shall be set to [0 EUR/GJ] from 1 January 2023 to 31 December 2027 and to [0,52 EUR/GJ] from 1 January 2028 to 31 December 2032.

**Presidency note:**

*Technical adjustments are following the changes proposed in Article 5 paragraph 2.*

For energy products falling into category 2 and 3 and electricity the minimum rate shall be set to [0 EUR/GJ] from 1 January 2023 to 31 December 2032.

For the purposes of this Article, ‘intra-EU waterborne navigation’ shall mean navigation between two ports located in the Union, including domestic navigation.

For the purposes of this Article ‘private pleasure navigation’ shall mean the use of a craft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration. 2. Member States may exempt or apply the same levels of taxation as laid down in paragraph 1 to energy products used for extra-EU waterborne navigation according to the type of activity and electricity used directly for charging electric vessels for the purposes of this navigation.

That rule is not applicable to private pleasure navigation.

3. Electricity produced on board a vessel shall be exempted from taxation.

4. Member States may apply under fiscal control total or partial exemptions to electricity directly supplied to vessels berthed in ports.

### *Article 16*

1. By way of derogation from Article 5 and without prejudice to other Union provisions, Member States may apply under fiscal control total or partial exemptions or reductions in the level of taxation to any of the following:

(a) energy products and electricity used in the field of pilot projects for the technological development of more environmentally-friendly products or in relation to fuels from renewable resources;

(b) electricity:

– of solar, wind, wave, tidal or geothermal origin;

– of hydraulic origin produced in hydroelectric installations;

– generated from sustainable biomass or from products produced from sustainable biomass;

– generated from methane emitted by coalmines;

**– generated from nuclear power plants;**

– generated from fuel cells.

Member States may also refund to the producer some or all of the amount of tax paid by the consumer on electricity produced from products specified in this paragraph.

**Presidency note:**

*At the request of several Member States and recent developments in the EU legislation (supported by the Council of the EU as well as by the European Parliament – 2022/2594 (DEA)), the Presidency suggests to include in Article 16 an option for Member States to apply a total or partial exemption on electricity produced in nuclear power plants. In accordance with Article 10(2) of Regulation (EU) 2020/852, activities related to nuclear energy shall be considered as intermediate low-carbon alternatives available to support the transition to a climate-neutral and environmentally sustainable economy provided the project related to nuclear processes complies with the screening criteria specified in Annex I of Commission Delegated Regulation (EU) 2022/1214.*

*This suggestion corresponds to the agreed approach for the transition towards a more environmental-friendly economy and the Presidency believes that as such it could contribute to achieving the EU environmental objectives.*

(c) electricity produced from combined heat and power generation, provided that cogeneration by the combined generators is high-efficiency cogeneration as defined in Article 2, point (34), of Directive 2012/27/EU;

(d) renewable fuels of non-biological origin, advanced sustainable biofuels, bioliquids, biogas and advanced sustainable products falling within CN codes 4401 and 4402;

Member States may apply total or partial exemptions or reductions in the level of taxation to sustainable products falling within CN codes 4401 and 4402 until 31 December 2032.

(e) products falling within CN code 2705 used as heating fuels.

*Article 17*

**1.** Without prejudice to Article 5 (3), points (a) and point (b), Member States may apply under fiscal control:

(a) reductions in the level of taxation, which shall not go below the **minimum levels of taxation** as set out in Table C[, E3] and D of Annex I, to energy products and electricity used for combined heat and power generation, without prejudice to Article 13;

By way of derogation from the first subparagraph, the minimum rate shall be set to 0 EUR/GJ from 1 January 2023 to 31 December 2027 to energy products and electricity used for combined heat and power generation, provided the cogeneration is high-efficient as defined in Article 2, point (34), of Directive 2012/27/EU.

(b) reductions in the level of taxation, which shall not go below the **minimum levels of taxation** as set out in Table B[, E2] and D of Annex I, to energy products and electricity used for

- the carriage of goods and passengers by rail, metro, tram and trolley bus;

- ~~for~~ local public passenger transport, waste collection, armed forces and public administration, disabled people and ambulances, regardless of means of transport.

**Presidency note:**

*Technical adjustments are made following the changes proposed in Article 5 paragraph 2.*

By way of derogation from the first subparagraph, for the purposes of carriage of goods and passengers by rail, metro, tram and trolley bus the minimum rate of electricity shall be set to 0 EUR/GJ from 1 January 2023 to 31 December 2027.

**[(ba) reductions in the level of taxation, which shall not go below the minimum levels of taxation as set out in Table C, [E3] and D of Annex I, to energy products and electricity used for armed forces and public administration.]**

**Presidency note:**

*The Presidency suggests to extend the application of Article 17 point b) to energy products and electricity used for heating by armed forces and public administration to ensure a level playing field with other sectors. It is proposed to apply such an option only for the two above-mentioned services since for other types of activities it is not relevant.*

*This provision is included in square brackets and should be subject to further discussion.*

(c) reductions in the level of taxation, which shall not go below the **minimum levels of taxation** as set out in Table C[, **E3**] and D of Annex I, to energy products used as heating fuel and electricity if used by households and/or by organisations recognised as charitable by the Member State concerned. In the case of such charitable organisations, Member States shall confine the reduction to use for the purpose of non-business activities. Where mixed use takes place, taxation shall apply in proportion to each type of use. If a business use is insignificant, it may be treated as nil.

For energy products falling into the category 1[, **natural gas and liquefied petroleum gas**] the minimum rate shall be set to [0 EUR/GJ] from 1 January 2023 to 31 December 2027 and [0,52 EUR/GJ] from 1 January 2028 to 31 December 2032.

For energy products falling into the category 2 the minimum rate shall be set to [0 EUR/GJ] from 1 January 2023 to 31 December 2027 and [0,26 EUR/GJ] from 1 January 2028 to 31 December 2032.

For energy products falling into category 3 and electricity the minimum rate shall be set to [0 EUR/GJ] from 1 January 2023 to 31 December 2027 and [0,09 EUR/GJ] from 1 January 2028 to 31 December 2032.

For the purposes of point (c), energy products and electricity used by households recognised as vulnerable may be exempt for a maximum period of ten years after the entry into force of this Directive. For that purpose, Member States shall set down a definition of ‘vulnerable households’ taking into account a wide set of economic and social variables, such as, but not limited to, personal income, energy prices or cost of transport. Member States shall inform the Commission of the relevant criteria without delay.

(d) reductions in the level of taxation, which shall not go below the **minimum levels of taxation** as set out in Table C[, **E3**] and D of Annex I to energy products used as heating fuels and to electricity used for agricultural, horticultural or aquaculture works, and in forestry.

**Presidency note:**

*Technical adjustments are made following the changes proposed in Article 5 paragraph 2.*

**2.** By way of derogation from Article 5 (1), each of the purposes specified in points (a), (b), (c) or (d) **of paragraph 1** may be considered to be a single use.

**Presidency note:**

*A technical adjustment of the text is suggested.*

*Article 18*

1. Without prejudice to Article 5, as applicable as a single use, Member States may apply tax reductions, which shall not go below the relevant **minimum levels of taxation** as set out in Tables B, **[E2]**, C, **[E3]** and D of Annex I on the consumption of energy products used as heating fuels or as motor fuels in accordance with Article 8(2), points (b) and (c), and on electricity in the following cases:

(a) in favour of energy-intensive business

An ‘energy-intensive business’ shall mean a business entity, as referred to in paragraph 2, where either the purchases of energy products and electricity amount to at least 3,0 % of the production value or the national energy tax payable amounts to at least 0,5 % of the added value. Within this definition, Member States may apply more restrictive concepts, including sales value, process and sector definitions.

‘Purchases of energy products and electricity’ shall mean the actual cost of energy purchased or generated within the business. Only electricity, heat and energy products that are used for heating purposes or for the purposes of Article 8(2), points (b) and (c), are included. All taxes are included, except deductible VAT.

‘Production value’ shall mean turnover, including subsidies directly linked to the price of the product, plus or minus the changes in stocks of finished products, work in progress and goods and services purchased for resale, minus the purchases of goods and services for resale.

Added value shall mean the total turnover liable to VAT including export sales minus the total purchases liable to VAT including imports.

(b) where agreements are concluded with business entities as referred to in paragraph 2 or associations of such business entities, or where tradable permit schemes or equivalent measures are implemented, as far as they lead to the achievement of environmental protection objectives or to improvements in energy efficiency.

For the purposes of the first paragraph, ‘tradable permit schemes’ shall mean tradable permit schemes other than the Union scheme within the meaning of Directive 2003/87/EC of the European Parliament and of the Council<sup>9</sup>.

**Presidency note:**

*Technical adjustments are made following the changes proposed in Article 5 paragraph 2.*

2. For the purposes of this Directive, ‘business entity’ shall mean an entity which complies with the criteria under paragraph 3 of this Article, which independently carries out, in any place, the supply of goods and services, whatever is the purpose or results of such economic activities.

The economic activities comprise all activities of producers, traders and persons supplying services, including mining and agricultural activities and activities of the professions.

States, regional and local government authorities and other bodies governed by public law shall not be considered as business entities in respect of the activities or transactions in which they engage as public authorities. However, when they engage in such activities or transactions, they shall be considered as business entities in respect of those activities or transactions where treatment as non-business entities would lead to significant distortions of competition.

3. For the purposes of paragraph 2, a business entity cannot be considered to be smaller than a part of an enterprise or a legal body that from an organisational point of view constitutes an independent business, that is to say an entity capable of functioning by its own means.

Where mixed use takes place, taxation shall apply in proportion to each type of use, although where either the business or non-business use is insignificant, it may be treated as nil.

*Article 19*

*Article 20*

1. In addition to the provisions set out in the previous Articles, in particular in Articles 14, 15, 16, 17 and 18, the Council, acting unanimously on a proposal from the Commission, may adopt implementing acts, authorising any Member State to introduce further exemptions or reductions for specific policy considerations. Where it is necessary, for reasons of protection of environment and human health, including the reduction of air pollution, the Council, acting unanimously on a proposal from the Commission, may adopt implementing acts, authorising any Member State to introduce specific increased rates derogating from the ranking between the minimum levels of taxation as laid down in Annex I.

A Member State wishing to introduce those measures shall inform the Commission accordingly and shall also provide the Commission with all relevant and necessary information.

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<sup>9</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

The Commission shall examine the request, taking into account, *inter alia*, the proper functioning of the internal market, the need to ensure fair competition and Union health, environment, energy and transport policies.

Within three months of receiving all relevant and necessary information, the Commission shall either present a proposal for the authorisation of such a measure by the Council or, alternatively, shall inform the Council of the reasons why it has not proposed the authorisation of such a measure.

2. The authorisations referred to in paragraph 1 shall be granted for a maximum period of 6 years, with the possibility of renewal in accordance with the procedure set out in paragraph 1.

3. If the Commission considers that the measures provided for in paragraph 1 are no longer sustainable, particularly in terms of fair competition or distortion of the operation of the internal market, or in terms of Union policy in the areas of health, protection of the environment, energy and transport, it shall submit appropriate proposals to the Council. The Council shall take a unanimous decision on these proposals.

#### Article 21

1. The following energy products shall be subject to provisions provided by chapter III, chapter IV, Articles 33 to 43, 45 to 46 of Directive (EU) 2020/262 (hereinafter “the control and movement provisions”).

(a) products falling within CN codes 1507 to 1518, if these are intended for use as heating fuel or motor fuel;

(b) products falling within CN codes 2207 20 if these are intended for use as heating fuel or motor fuel and are exempted from the harmonized excise duty on alcohol and alcoholic beverages in accordance with Article 27(1), point (a) or (b), of Directive 92/83/EC;

(c) products falling within CN codes 2707 10, 2707 20, 2707 30, 2707 50, and 2707 99 99, **the latter if intended for use as heating fuel or motor fuel**;

**Presidency note:**

*A technical adjustment of the text is suggested.*

(d) products falling within CN codes 2710 12 to 2710 19 67 and 2710 19 71 to 2710 19 99 and 2710 20 to 2710 20 38 and 2710 20 90 (only for products of which less than 90 % by volume (including losses) distils at 210 °C and 65 % or more by volume (including losses) distils at 250 °C by the ISO 3405 method (equivalent to the ASTM D 86 method)). However, for products falling within CN codes 2710 12 21, 2710 12 25 and 2710 19 29 and 2710 20 90 (only for products of which less than 90 % by volume (including losses) distils at 210 °C and 65 % or more by volume (including losses) distils at 250 °C by the ISO 3405 method (equivalent to the ASTM D 86 method)), and 2710 19 71 to 2710 19 99, the control and movement provisions shall only apply to bulk commercial movements;

(e) products falling within CN codes 2711, except when transported by pipelines;

(f) products falling within CN code 2804 10, if these are intended for use as heating fuel or motor fuel, except when transported by pipelines;

- (g) products falling within CN code 2814, if these are intended for use as heating fuel or motor fuel, except when transported by pipelines;
- (h) products falling within CN code 2901 10;
- (i) products falling within CN codes 2902 20, 2902 30, 2902 41, 2902 42, 2902 43 and 2902 44;
- (j) products falling within CN code 2905 11 00, if these are intended for use as heating fuel or motor fuel;
- (k) products falling within CN codes 2909 19 10 and 2909 19 90, the latter if intended for use as heating fuel or motor fuel;
- (l) products falling within CN codes 3403. The control and movement provisions shall only apply to bulk commercial movements;
- (m) products falling within CN codes 3811;
- (n) products falling within CN codes 3814, if these are intended for use as heating fuel or motor fuel. The control and movement provisions shall only apply to bulk commercial movements;
- (o) products falling within CN codes 3823 19, if these are intended for use as heating fuel or motor fuel.
- (p) products falling within CN codes 3824 99 86, 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93, 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90 if these are intended for use as heating fuel or motor fuel.

For the purposes of paragraph 1, 'bulk commercial movement' shall mean transport of unpackaged product or product in packages exceeding 220 litres volume.

2. If a Member State finds that energy products other than those referred to in paragraph 1 are intended for use, offered for sale or used as heating fuel, motor fuel or are otherwise giving rise to evasion, avoidance or abuse, it shall advise the Commission forthwith. This provision shall also apply for electricity. The Commission shall transmit the communication to the other Member States within one month of receipt. Within two months of that communication, the Member States shall communicate to the Commission their views regarding the detected practice of evasion, avoidance or abuse concerning those energy products and electricity. Based on the views received from the Member States, and in case there is a risk for the proper functioning of the internal market or for the environment, the Commission shall adopt implementing acts to determine that the provisions of Directive (EU) 2020/262 referred to in paragraph 1 of this Article are to apply to the products concerned. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2) of this Directive.

3. Member States may, pursuant to bilateral arrangements, dispense with some or all of the control measures set out in (EU) 2020/262 in respect of some or all of the energy products referred to in paragraph 1 of this Article, insofar as they are not covered by Articles 7, 8 and 9 of this Directive. Such arrangements shall not affect Member States which are not party to them. All such bilateral arrangements shall be notified to the Commission, which shall inform the other Member States.

## Article 22

1. In addition to the general provisions defining the chargeable event and the provisions for payment set out in Directive (EU) 2020/262, the amount of taxation on energy products not referred to in Article 21(1) shall also become due at the time they are intended for use, offered for sale or used as motor or heating fuels.

~~3.~~ ~~2.~~ Member States may also provide that taxation on energy products and electricity become due when it is established that a final use condition laid down in national rules for the purpose of a reduced level of taxation, specific rate or exemption is not, or is no longer, fulfilled.

~~4.~~ ~~3.~~ Only Articles 1, 2, 3, 4, 5, 11, and 52 of Directive (EU) 2020/262 shall apply to products referred to in paragraphs ~~5~~ ~~4~~ to ~~8~~ ~~7~~.

~~5.~~ ~~4.~~ Electricity shall be subject to taxation and shall become chargeable at the time of supply by the distributor or redistributor. Where the delivery to consumption takes place in a Member State where the distributor or redistributor is not established, the tax of the Member States of delivery shall be chargeable to a company that has to be registered in the Member State of delivery. Tax shall in all cases be levied and collected according to procedures laid down by each Member State.

For the purposes of the first subparagraph, electricity storage facilities and transformers of electricity may be considered as redistributors when they supply electricity.

An entity producing electricity for its own use is regarded as a distributor.

**[Without prejudice to the first subparagraph, electricity supplied by the distributor or redistributor may be determined as the difference between electricity consumed by the final user from the grid and electricity fed into the grid by this final user within an accounting period].**

### **Presidency note:**

*Some Member States raised the issue of double taxation of electricity in cases when final consumers of electricity (a household with an electric vehicle, for instance) reinject the electricity stored in their own batteries back into the electric grid. If the distributor, who has acquired that (already taxed) electricity, supplies it to another final consumer, this supply will become chargeable (Article 22(5), first subparagraph), resulting in a situation of double taxation.*

*A similar problem could occur in the case of active customers (or a group of jointly acting final customers) who consume or store self-generated electricity and then sell it (if it is not their main economic activity).*

*In both cases, in the Presidency's view, the issue could be solved if the supply of the electricity is considered as the difference between electricity that is obtained from the grid and electricity that is injected to the grid by these "final users".*

*In the Presidency's view, this option is already covered by the wording: "Tax shall in all cases be levied and collected according to procedures laid down by each Member State."*

*Nevertheless, for the sake of legal certainty, the Presidency proposes the text of the last subparagraph (in square brackets) and would like to know the views of Member States on it.*

**4a. By way of derogation from paragraph 4, the supply of electricity for own use of an entity producing it in small quantities may be considered as not giving rise to a chargeable event.**

**Presidency note:**

*Based on comments of some Member States and in order to avoid a high administrative burden the Presidency suggests to introduce an option to exempt from taxation electricity produced by very small producers, if it is used for their own consumption. For instance, these can be family houses with solar panels, or with small hydro plants.*

*However, if the electricity produced by these entities is fed to the public grid, the structure of the Directive implies that such electricity will be taxed by the final distributor.*

**6. 5.** Products falling within CN codes 2711, 2804 10 and 2814, when transported by pipelines, as well as other gaseous products transported by pipelines, shall be subject to taxation and shall become chargeable at the time of supply by the distributor or redistributor. Where the delivery to consumption takes place in a Member State where the distributor or redistributor is not established, the tax of the Member States of delivery shall be chargeable to a company that has to be registered in the Member State of delivery. Tax shall in all cases be levied and collected according to procedures laid down by each Member State.

Notwithstanding the first subparagraph, Member States have the right to determine the chargeable event, in the case where there are no connections between their pipelines and those of other Member States.

An entity producing the products referred to in subparagraph 1 for its own use is regarded as a distributor.

**7. 6.** Products falling within CN codes 2701, 2702, 2704 and 2714 10 shall be subject to taxation and shall become chargeable at the time of delivery by companies, which have to be registered for that purpose by the relevant authorities. Those authorities may allow the producer, trader, importer or fiscal representative to substitute the registered company for the fiscal obligations imposed upon it. Tax shall in all cases be levied and collected according to procedures laid down by each Member State.

**Presidency note:**

*Some Member States have expressed the view that the time of chargeability in case of products falling within CN codes 2701, 2702, 2704 and 2714 10 should be aligned as much as possible to their consumption. However, the Presidency is of the opinion that the time of delivery is more systematic than the time of chargeability within the framework of the Directive and the current rule should be kept. On the one hand, if the payer is a final consumer, it would include, for instance households, which is not desirable from the administrative burden point of view. On the other hand, it depends on a Member State how the delivery chain is set up for tax purposes. Nevertheless, this aspect could be further discussed at the Working Party meeting.*

**8. 7.** Products falling within CN codes 2703, 4401 and 4402 shall be subject to taxation at the time they are used as heating fuel within the curtilage of the installation with a total rated thermal input equal to or exceeding [10 MW].

It shall be chargeable to the operator of this installation. Tax shall in all cases be levied and collected according to procedures laid down by each Member State.

9. 8. Member States need not treat as ‘production of energy products’:

- (a) operations during which small quantities of energy products are obtained incidentally;
- (b) operations by which the user of an energy product makes its reuse possible in his own undertaking provided that the taxation already paid on such product is not less than the taxation which would be due if the reused energy product were again to be liable to taxation;
- (c) an operation consisting of mixing, outside a production establishment or a tax warehouse, energy products with other energy products or other materials, provided that:
  - (i) taxation on the components has been paid previously; and
  - (ii) the amount paid is not less than the amount of the tax which would be chargeable on the mixture.

The condition under (i) shall not apply where the mixture is exempted for a specific use.

#### *Article 23*

#### *Article 24*

Member States may refund the amounts of taxation already paid on contaminated or accidentally mixed energy products sent back to a tax warehouse for recycling.

#### *Article 25*

1. Energy products released for consumption in a Member State, contained in the standard tanks of commercial motor vehicles and intended to be used as fuel by those same vehicles, as well as in special containers, and intended to be used for the operation, during the course of transport, of the systems equipping those same containers shall not be subject to taxation in any other Member State.

2. For the purposes of this Article, ‘standard tanks’ shall mean:

(a) the tanks permanently fixed to a motor vehicle by the manufacturer or by a third party and which, according to the registration documents or the certificate of roadworthiness of the vehicle, comply with the applicable technical and security requirements, and whose permanent fitting enables fuel to be used directly, both for the purpose of propulsion and, where appropriate, for the operation, during transport, of refrigeration systems and other systems, including gas tanks fitted to motor vehicles designed for the direct use of gas as a fuel and tanks fitted to the other systems with which the vehicle may be equipped;

(b) the tanks permanently fixed to a special container by the manufacturer or a third party which, according to the registration documents of the container, comply with the applicable technical and security requirements, and whose permanent fitting enables fuel to be used directly for the operation, during transport, of the refrigeration systems and other systems with which special containers are equipped.

For the purposes of this Article, 'special container' shall mean any container fitted with specially designed apparatus for refrigeration systems, oxygenation systems, thermal insulation systems or other systems.

#### *Article 26*

1. Member States shall inform the Commission of the levels of taxation which they apply to the products listed in Article 2 on 1 January each year and following each change in national law as well as the related volumes.
2. Where the levels of taxation applied by the Member States are expressed in units of measurement other than that specified for each product in Articles 7 to 10, Member States shall also inform the Commission of the corresponding levels of taxation following conversion into these units.

#### *Article 27*

1. Member States shall inform the Commission of measures taken pursuant to Article 13 to 18.
  2. Measures such as tax exemptions, tax reductions, tax differentiation and tax refunds within the meaning of this Directive might constitute State aid and in those cases have to be notified to the Commission pursuant to Article 108 (3) of the Treaty on the Functioning of the European Union.
- Information provided to the Commission on the basis of this Directive does not free Member States from the notification obligation pursuant to Article 108 (3) of the Treaty on the Functioning of the European Union.

#### *Article 28*

1. The Commission shall be assisted by the Committee on Excise Duties set up by Article 52 of Directive (EU) 2020/262. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) 182/2011<sup>10</sup> shall apply.

#### *Article 29*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt the delegated acts referred to in Article 1(3), Article 2(5a), Article 2(8) and Article 5(7) shall be conferred on the Commission for an indeterminate period of time from 1 January 2023.
3. The delegation of power referred to in Article 1(3), Article 2(5a), Article 2(8) and Article 5(7) may be revoked at any time by the Council.

A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the

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<sup>10</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13)

European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law- Making<sup>11</sup>.

5. As soon as it adopts a delegated act, the Commission shall notify it to the Council.

6. A delegated act adopted pursuant to Article 1(3), Article 2(5a), Article 2(8) and Article 5(7) shall enter into force only if no objection has been expressed by the Council within a period of two months of notification of that act to the Council or if, before the expiry of that period, the Council have informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.

7. The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, or of the revocation of the delegation of powers by the Council.

#### *Article 30*

1. Member States shall adopt and publish by [31 December 2022], the laws, regulations and administrative provisions necessary to comply with Article 1(2), Article 2(1), points (b) to (o), Article 2(3), second, third and fourth subparagraphs, Article 2(4) to (8), Article 3, Article 5, Article 7, Article 8(1), Article 9(1), Article 13, Articles 14 and 15, Article 16, point (b), last sentence, Article 16, point (c), (d) and (e), Article 17, Article 18, Article 21(1), point (b), Article 21(1), point (d), Article 21(1), points (i) to (m), Article 21(1), second subparagraph, Article 21(2), Article 22(1), Article 22(~~4~~3), Article 25(2), Article 26(1), Article 28, Article 29, Article 30, Article 31 and Annex I immediately communicate the text of those measures to the Commission.

2. They shall apply those measures from [1 January 2023].

3. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive(s) repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated

4. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 31*

Every five years and for the first time five years after [1 January 2023], the Commission shall submit to the Council a report on the application of this Directive.

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<sup>11</sup> OJ L 123, 12.5.2016, p. 1.

The report by the Commission shall, inter alia, examine the minimum levels of taxation, the impact of innovation and technological developments, in particular as regards energy efficiency, the use of electricity in transport and the justification for the exemptions, reductions and differentiations laid down in this Directive. The report shall take into account the proper functioning of the internal market, environmental and social considerations, the real value of the minimum levels of taxation and the relevant wider objectives of the Treaties.

#### *Article 32*

Directive 2003/96/EC as amended by the acts listed in [Annex II], Part A, is with effect from [1 January 2023], without prejudice to the obligations of the Member States relating to the time limits for the transposition into national law and the dates of application of the Directives set out in [Annex II, Part B].

References to the repealed directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in [Annex III].

#### *Article 33*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 1(1), Article 2(1), point (a), Article 2(2), Article 2(3), first subparagraph, Article 4, Article 6, Article 8(2), Article 10, Article 11, Article 12, Article 16, point (a), Article 16, point (b), Article 20, Article 21(1), point (a), Article 21(1), point (c), Article 21(1), points (e) to (h), Article 21(1), point (n), Article 21(3), Article 22(2) and (~~3 2~~), Article 22(~~5 4~~), Article 24, Article 25(1), Article 26(2), and Article 27, which are unchanged by comparison with the repealed Directive, shall apply from 1 January 2023.

#### *Article 34*

This Directive is addressed to the Member States.

## ANNEX I

**Presidency note:**

*The proposed rates should be considered together within the whole framework of the proposal. It means if the proposed rates are substantially lowered, the rest of the text would reflect it, for instance, modifications would be made in the scope of exemptions or reduced rates, or length of transitional periods.*

**Table A. — Minimum levels of taxation applicable to energy products used as motor fuels referred to in Article 5(1) point (a) for the purposes of Article 7 (in EUR/GJ net calorific value)**

Category	1.1.2023	1.1.2028	1.1.2033
1	[10,75]	[11,52]	[12,28]
2	[5,38]	[5,77]	[6,15]
3	[0,15]	[0,16]	[0,17]

**Table B. — Minimum levels of taxation applicable to energy products used as motor fuels referred to in Article 5(1) point (b) for the purposes of Article 8 (in EUR/GJ net calorific value)**

Category	1.1.2023	1.1.2028	1.1.2033
1	[0,9]	[0,97]	[1,03]
2	[0,45]	[0,48]	[0,51]
3	[0,15]	[0,16]	[0,17]

**Table C. — Minimum levels of taxation applicable to energy products used as heating fuels (in EUR/GJ net calorific value)**

Category	1. 1.2023	1.1.2028	1.1.2033
1	[0,9]	[0,97]	[1,03]
2	[0,45]	[0,48]	[0,51]
3	[0,15]	[0,16]	[0,17]

**Table D. — Minimum levels of taxation applicable to electricity (in EUR/GJ)**

	1. 1.2023	1.1.2028	1.1.2033
Electricity	[0,15]	[0,16]	[0,17]

**Table E1. — Minimum levels of taxation applicable to natural gas and liquefied petroleum gas used as motor fuels for the purposes of Article 7 (in EUR/GJ net calorific value) from 1 January 2023 to 31 December 2032**

	1. 1.2023	1.1.2028
Natural gas, LPG	5,38	5,77

**Table E2. — Minimum levels of taxation applicable to natural gas and liquefied petroleum gas used as motor fuels for the purposes of Article 8 (in EUR/GJ net calorific value) from 1 January 2023 to 31 December 2032**

	1. 1.2023	1.1.2028
Natural gas, LPG	0,45	0,48

**Table E3. — Minimum levels of taxation applicable to natural gas and liquefied petroleum gas used as heating fuels for the purposes of Article 9 (in EUR/GJ net calorific value) from 1 January 2023 to 31 December 2032**

	1. 1.2023	1.1.2028
Natural gas, LPG	0,45	0,48

**Presidency note:**

*Following the alternative proposal in Article 5 paragraph 2, the level of EU minimum rates for LPG and natural gas should be temporarily specified in the tables E1, E2, and E3 depending on their use. These levels are fully in line with the EU minimum rates for products in category 2. After the transitional period, natural gas and LPG become products of category 1 and Tables A, B and C of Annex I will be applied.*

*This solution is for discussion as an alternative to possible temporarily inclusion of these products in category 2.*

**ANNEX II**  
**Conversion table of net calorific values**

Products	Net calorific values/ Quantity	Source
NON-RENEWABLE FUELS		
Petrol CN 2710 12 31, 2710 12 41 to 2710 12 50	0,032 GJ/l 0,043 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Gasoil	0,036 GJ/l 0,043 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>

CN 2710 19 43 to 2710 19 48 <del>and 2710 20 11 to 2710 20 19</del>		
Kerosene-type jet fuel CN 2710 19 21	0,034 GJ/l 0,043 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>iii)</sup>
Kerosene - other than jet type CN 2710 19 25	? GJ/l 0,0438 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Hydrogen CN 2804 10 00	0,12 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Natural gas CN 2711 21 <u>00</u>	0,048 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Methane CN 2711 19 00 and CN 2711 29 00	0,05 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Natural gas liquids CN 2711 11 00	? GJ/l 0,0442 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Shale-derived fuel oil CN 2710 19 62 to 67 and CN 2710 20 31 to 38 [CN 2707 99 99]	? GJ/l 0,038 GJ/kg	<b>?</b>
Residual fuel oil (heavy fuel oil)	? GJ/l 0,0404 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>

CN 2710 19 62 to 67 and CN 2710 20 31 to 38		
Liquefied petroleum gases (LPG) <b><u>CN 2711 12 97, CN 27 11 13 97 and</u></b> CN 2711 19	? GJ/l 0,0473 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Ethane CN 2901 10 <b><u>00</u></b>	0,0464 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Naphtha CN <del>2709 00 90</del> <b><u>2707 50 00,</u></b> <b><u>CN 2710 12 21 and CN</u></b> <b><u>2710 12 25</u></b>	? GJ/l 0,0445 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Bitumen CN <del>2714</del> <b><u>2713 20 00</u></b>	? GJ/l 0,0402 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Lubricants CN 2710 19 71 to 2710 19 99, <b><u>CN 3403 and CN 3811</u></b>	? GJ/l 0,0402 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Petroleum coke CN 2713 11 <b><u>00</u></b> , 2713 12 <b><u>00</u></b>	0,0325 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Paraffin waxes CN 2712 20	? GJ/l 0,0402 GJ/kg	Annex VI of the Commission Implementing

		Regulation (EU) 2018/2066 ii)
White spirit and SBP CN 2710 12 21 and 2710 12 25	? GJ/l 0,0402 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Anthracite CN 2701 11 00	0,0267 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Coking coal CN 2701 12 10	0,0282 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Other bituminous coal CN 2701 12 90	0,0258 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Sub-bituminous coal CN <del>2702</del> <u>2701 12 90</u>	0,0189 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Lignite CN 2702	0,0119 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Oil shale and tar sands CN 2714 10 <u>00</u>	[0,0089 GJ/kg]	Annex VI of the Commission Implementing

		Regulation (EU) 2018/2066 ii)
Patent fuel CN 2701 20	0,0207 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Coke oven coke and lignite coke CN 2704 00	0,0282 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Gas coke CN 2705 00 00	0,0282 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Coal tar CN 2706 00 00	? GJ/l 0,028 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Coke oven gas CN 2705 00 00	0,0387 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Blast furnace gas CN 2705 00 00	0,00247 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Oxygen steel furnace gas CN 2705 00 00	0,00706 GJ/kg	Annex VI of the Commission Implementing

		Regulation (EU) 2018/2066 ii)
Waste oils CN 2710 91 00, 2710 99 00	? GJ/l 0,0402 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
Peat CN 2703 00 00	0,00976 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 ii)
FUELS FROM BIOMASS (OR BIOMASS PROCESSING OPERATIONS)		
Biodiesel (FAME) CN 3826 00	0,033 GJ/l 0,037 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Biodiesel (FAEE) CN 3826 00	0,034 GJ/l 0,038 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Bio-propane CN 2711 12 <b>and</b> CN 2711 29 00	0,024 GJ/l 0,046 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Pure vegetable oil CN 1507 to 1518	0,034 GJ/l 0,037 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Biogas CN 2711 19 00 and CN 2711 29 00	0,05 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Hydrotreated oil of biomass origin to be used for replacement of diesel CN 2710 19 43 to 27 10 19 48	0,034 GJ/l 0,044 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>

Hydrotreated oil of biomass origin to be used for replacement of petrol CN 2710 12 <del>13</del> 1 to 90	0,03 GJ/l 0,045 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Hydrotreated oil of biomass origin to be used for replacement of jet fuel CN 2710 19 21	0,034 GJ/l 0,044 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Hydrotreated oil of biomass origin to be used for replacement of LPG <b><u>CN 2710 12 97, CN 2710 13 97 and</u></b> CN 2711 19	0,024 GJ/l 0,046 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of diesel CN 2710 19 43 to 27 10 19 48	0,036 GJ/l 0,043 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of petrol CN 2710 12 <del>13</del> 1 to 90	0,032 GJ/l 0,044 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of jet fuel CN 2710 19 21	0,033 GJ/l 0,043 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of LPG <b><u>CN 2710 12 97, CN 2710 13 97 and</u></b> CN 2711 19	0,023 GJ/l 0,046 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>

Other liquid biofuels <b><u>CN 1507 to 1518 and CN 3824 99 92</u></b>	? GJ/l 0,0274 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Wood and wood waste CN 4401	0,0156 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Other primary solid biomass CN 4401 21, 4401 22	0,0116 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Charcoal CN 4402	0,0295 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Landfill and sludge gas CN <del>3825</del> <b><u>2711</u></b>	0,0504 GJ/kg	Annex VI of the Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
<b>RENEWABLE FUELS FROM VARIOUS SOURCES (INCL. BIOMASS)</b>		
Methanol CN 2905 11 00	0,016 GJ/l 0,02 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Ethanol CN 2207 20	0,021 GJ/l 0,027 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Propanol CN 2905 12 00	0,025 GJ/l 0,031 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>

Butanol CN 2905 13 00 <b>and CN 2905 14</b>	0,027 GJ/l 0,033 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Fischer-Tropsch diesel CN 2710 19 43 to 27 10 19 48	0,034 GJ/l 0,044 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Fischer-Tropsch petrol CN 2710 12 11 to 90	0,033 GJ/l 0,044 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Fischer-Tropsch jet fuel CN 2710 19 21	0,033 GJ/l 0,044 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Fischer-Tropsch LPG <b>CN 2710 12 97, CN 2710 13 97 and</b> CN 2711 19	0,024 GJ/l 0,046 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Dimethylether (DME) CN 2909 19 90	0,019 GJ/l 0,028 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Ethyl-tertio-butyl-ether produced on the basis of ethanol (ETBE) CN 2909 19 10	0,027 GJ/l 0,036 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Methyl-tertio-butyl-ether produced on the basis of methanol (MTBE) 2909 19 90	0,026 GJ/l 0,035 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Tertiary-amyl-ethyl-ether produced on the basis of ethanol (TAEE) 2909 19 90	0,029 GJ/l 0,038 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Tertiary-amyl-methyl-ether produced on the basis of methanol (TAME) 2909 19 90	0,028 GJ/l 0,036 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>
Tertiary-hexyl-ethyl-ether produced on the basis of	0,03 GJ/l 0,038 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>

ethanol (THxEE) 2909 19 90		
Tertiary-hexyl-methyl-ether produced on the basis of methanol (THxME) 2909 19 90	0,03 GJ/l 0,038 GJ/kg	Annex III of the Directive (EU) 2018/2001 <sup>i)</sup>

- i) The Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.
- ii) Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012.
- iii) **The Proposal for the amendment of the Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (10347/22).**

### ANNEX III

#### Feedstock for production 'advanced sustainable biofuels, bioliquids, biogas and products falling within CN codes 4401 and 4402' as referred to in Article 2(4)

- Algae if cultivated on land in ponds or photobioreactors;
- Biomass fraction of mixed municipal waste, but not separated household waste subject to recycling targets under point (a) of Article 11(2) of Directive 2008/98/EC;
- Biowaste as defined in point (4) of Article 3 of Directive 2008/98/EC from private households subject to separate collection as defined in point (11) of Article 3 of that Directive;
- Biomass fraction of industrial waste not fit for use in the food or feed chain, including material from retail and wholesale and the agro-food and fish and aquaculture industry, Drink waste, Fruit / vegetable residues and waste (Only tails, leaves, stalks and husks), Bean shells, silver skin, and dust: cocoa, coffee, Residues and waste from production of hot beverages: spent coffee grounds, spent tea leaves, Dairy waste scum, Food waste oil: oil extracted from waste food from industry, Non-edible cereal residues and waste from grain milling and processing: wheat, corn, barley, rice, Olive oil extraction residues and waste: olive stones, Other slaughterhouse waste (Animal residues (non-fat) Cat 1), Industrial wastewater and derivatives, Industrial storage settlings, Biogenic fraction of end-of-life tyres, Humins, Spent bleaching earth;
- Straw;
- Animal manure and sewage sludge;
- Palm oil mill effluent and empty palm fruit bunches, Palm sludge oil (PSO);
- Tall oil pitch;
- Crude glycerine;
- Bagasse;
- Grape marcs and wine lees;
- Nut shells;
- Husks;
- Cobs cleaned of kernels of corn;
- Biomass fraction of wastes and residues from forestry and forest-based industries, namely, bark, branches, pre- commercial thinnings, leaves, needles, tree tops, saw dust, cutter shavings, black liquor, brown liquor, fibre sludge, lignin and tall oil;
- Other non-food cellulosic material, Shells/husks and derivatives: soy hulls, Agricultural harvesting residues, Unused feed/fodder from ley;
- Other ligno-cellulosic material except saw logs and veneer logs, Palm fronds, palm trunk; Damaged trees, Recycled/waste wood;
- Used cooking oil;
- Animal fats classified as categories 1 and 2 in accordance with Regulation (EC) No 1069/2009, Waste fish oil classified as categories 1 and 2 in accordance with Regulation (EC) No 1069/2009.