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**WK 1050/2023 INIT**

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**NOTE**

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<b>From:</b>	Presidency
<b>To:</b>	Working Party on Tax Questions (Indirect Taxation – Excise duties/Energy taxation)

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<b>Subject:</b>	Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast) - Presidency compromise text
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In view of the meeting of the Working Party on Tax Questions on 2 February 2023, delegations will find attached the Presidency compromise text covering the whole Directive.

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WK 1050/2023 INIT

## **Note from the Presidency**

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

#### *Presidency compromise text*

The compromise text below covers the whole Directive and is based on the compromise text presented and discussed at the meeting of the Working Party on Tax Questions (WPTQ) on 10 November 2022 (WK 14524/2022) as well as written comments from delegations.

All modifications compared to the previous compromise text (WK 14524/2022) are highlighted in bold, underlined or strikethrough. In addition, the text incorporates changes suggested by the lawyer-linguists. These are presented in bold but not underlined. Some minor changes, for example deleted commas, are not highlighted at all. Modifications that, in the view of the Presidency, change the meaning of the proposal are underlined.

Annex II in the previous compromise text (WK 14524/2022) is not modified in the present compromise text. The Presidency intends to revise Annex II, but until then, the previous compromise text remains unchanged with previous changes in bold or strikethrough.

Finally, the transitional periods mentioned in the proposal have not yet been amended but are expected to be adjusted depending on the time of 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, taxation shall be calculated in Euro/Gigajoule (EUR/GJ) on the basis of net calorific value.

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.

3. The Commission is empowered to adopt ~~a~~ delegated acts in accordance with ~~the procedure laid down in~~ Article 29 to amend or supplement Annex II. For ~~that~~ ~~is~~ 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~~ **Union legal act** modifying or replacing those **legal** acts or in any delegated or implementing acts based on such Union **legal acts 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 **legal** acts referred to in point (a) do not contain the relevant conversion factor from any unit to GJ, the conversion factor shall be ~~determined~~ **assessed**:

- by using the conversion factors laid down in the **legal** 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 **legal** 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 **determined 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 **Council** 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 codes 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;
- (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, **if intended for use as heating fuel or motor fuel, CN code 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;

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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)

(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:**

*If the inclusion of solid biomass by 2033 is supported by the delegations, consequential changes will be made also to e.g. Articles 5(2) and 16(1)(d).*

(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;

(s) other hydrocarbon-containing products than those referred to in points (a) to (q) with a 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:**

*Most delegations oppose a mandatory inclusion of waste in the ETD due to difficulties to determine the correct tax rate based on the varying energy content in waste. However, it is hard to define a general threshold that both excludes waste with a high proportion of plastic and still includes some fossil heating fuels and possible future heating fuels.*

*Some delegations have also questioned the limitation to hydrocarbons, or hydrocarbon-containing products, as also other products can be used as heating fuels and the content of hydrocarbons can be hard to determine in practice. According to our understanding hydrocarbon-containing products means products consisting, at least partly, of pure hydrocarbon molecules. I.e. paragraph (s) does not cover products whose content does not consist to any extent of pure hydrocarbons. Some but not all types of plastic consist of pure hydrocarbon molecules.*

**Questions:**

1. **a)** *Do you agree that it should be possible for Member States to exclude waste from the scope of ETD?*  
**b)** *If so, should it apply to only low energy content waste or waste in general?*  
**c)** *If not, should waste be fully or partly excluded from the scope?*
2. *Do you agree that hydrocarbon-containing products includes products consisting, at least partly, of pure hydrocarbon molecules?*

*The Presidency plans to present a new wording of paragraph (s) after taking into account comments from delegations.*

- 1a. For the purposes of this Directive, ‘total rated thermal input’ ~~shall~~ means the sum of the maximum rated thermal inputs of all fixed units combusting heating fuels within the boundaries of an installation consisting of technically and functionally associated units.
2. This Directive shall also apply to electricity falling within CN code 2716.
3. Energy products used as fuel in fuel cells installed on board ~~of~~ vehicles, ~~including~~ vessels and aircrafts shall be considered to be used as motor fuels. **Energy products used as fuel in stationary fuel cells shall be considered to be used as heating fuels.**

**Presidency note:**

*The inclusion of fuel in stationary fuel cells is proposed in order to fully include hydrogen in the scope of the ETD. This would make the scope more coherent and would also ensure that the production of hydrogen is always regarded as production of an energy product. However, hydrogen used for electricity generation in stationary fuel cells should in most cases be exempt from tax in accordance with Art. 13.*

4. For the purposes 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’ means 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’ means liquid heating fuels referred to in paragraphs 1 produced from biomass;
  - (e) ‘sustainable biofuels, bioliquids, biogas and products falling within CN codes 4401 and 4402’ means 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’ means 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’ means 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’ means 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 purposes of this Directive, the following definitions ~~shall~~ apply:

- (a) ‘renewable fuels of non-biological origin’ means 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’ means 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;
- (c) ‘low-carbon fuels’ means 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 purposes of the first subparagraph, ‘recycled carbon fuels’ means 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~~ means 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 acts in accordance with Article 29 in order to set the date of application of the technical screening criteria under ~~this the present~~ Directive.

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.

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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:**

*In paragraph 6, “part of” is deleted for simplification purposes.*

6a. ~~Where paragraph 6 is not applicable~~ **By way of derogation from paragraph 6** 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,
- 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:**

*Several delegations think that a MS should be free to decide not to apply component taxation and there should be no hierarchy between the two options. Therefore, the phrase “Where paragraph 6 is not applicable” is deleted and replaced by “By way of derogation from paragraph 6”.*

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>3</sup> as amended by [Commission Implementing Regulation (EU) 2020/1577<sup>4</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.

<sup>3</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>4</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).

### 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:
  - (i)** energy products used for purposes other than as motor fuels or as heating fuels;
  - (ii)** dual use of energy products;
  - (iii)** electricity used for the purposes of chemical reduction and in electrolytic and metallurgical processes, where electricity is used directly in or to provide a direct energy input to the process;
  - (iv)** mineralogical processes;

For the purposes of point (b), an energy product has a dual use where ~~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, ~~where when~~ energy products are used directly in or to provide a direct energy input to the process, shall be regarded as dual use.

For the purposes of point (b), ‘metallurgical processes’ ~~shall~~ means 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 (EC) No 1893/2006<sup>5</sup>, regardless of the code under which the main manufacturing activity of the 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~~

For the purposes of point (b), ‘mineralogical processes’ ~~shall~~ means the processes classified in the NACE nomenclature under code C 23 in Annex I of Regulation (EC) No 1893/2006<sup>6</sup>, regardless of the code under which the main manufacturing activity of the business entity is classified.

#### **Presidency note:**

*The new structure in paragraph (b) is suggested by lawyer-linguists. Also, some linguistic adjustments are made.*

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

<sup>5</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)

**Presidency note:**

*The exemption for electricity generated on board vehicles is deleted in this Article, since it is regulated in Article 13, paragraph 4.*

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

**Presidency note:**

*Some delegations oppose the extension of the transitional period until 2033 while other delegations want to keep mineralogical processes out of scope. As a compromise we suggest keeping the extension presented by the CZ Presidency. In addition, linguistic adjustments have been made.*

3. 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 ~~that this~~ purpose, when Member States express their national levels of taxation in units other than EUR/GJ (net calorific value), ~~those 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 purposes 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 ~~that this~~ purpose, uses referred to in Article 13(3), Articles 14 ~~and, Article~~ 15, Article 17(1), points (a) to ~~, Article 17(1)(b), Article 17(1)(c), Article 17(1)(d)~~, and Article 18 shall be considered as different single uses.

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

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

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

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

(ii) 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), **the minimum levels of taxation** 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), **the minimum levels of taxation** 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), **the minimum levels of taxation** 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.

~~**By way of derogation from paragraph 2, point (a), and paragraph 3, point (b), the minimum levels of taxation for sustainable food and feed crop biofuels and biogas, when used as motor fuel, shall be fixed as set out in Table F1 of Annex I.**~~

~~**By way of derogation from paragraph 2, point (a), and paragraph 3, point (b), the minimum levels of taxation for sustainable food and feed crop biofuels and biogas, when used as motor fuel for purposes of Article 8(2), shall be fixed as set out in Table F2 of Annex I.**~~

~~**By way of derogation from paragraph 2, point (a), and paragraph 3, point (b), the minimum levels of taxation for sustainable food and feed crop bioliquids and biogas, when used as heating fuel, shall be fixed as set out in Table F3 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:**

*At the meeting on November 10 two different alternatives were presented. Based on the discussion and delegations comments the Presidency suggests to stick to alternative 2 with separate tables for natural gas and LPG. However, this would imply a more favourable treatment of natural gas than some sustainable biofuels, something that is opposed by several delegations. The Presidency therefore suggests an inclusion of separate tables (F) also for sustainable food and feed based biofuels/bioliquids/biogas. With this construction the MS can apply lower taxation during the transitional period to none, one or both categories of energy products. Non-sustainable biofuels will be kept in category 1. With this alternative the taxation during the transitional period is more in line with how biofuels are treated within the EU ETS.*

(c) category 3 shall ~~include 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 its **category** is inconsistent with its environmental performances. Those implementing acts shall not result in adding more categories, in changing **any of the uses** listed in this paragraph or in derogating from the rules **set out listed** in paragraph 3.

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 ~~referred to mentioned in point (d) of~~ paragraph 1, **point (d)**, the applicable minimum level of taxation is ~~that set out in the one mentioned by~~ the provisions referred to in ~~that point 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 a single use, without any reference to other fuels. ~~The use of electricity used~~ for any other single use as referred to in paragraphs 4a and 4b of this Article, Article 13(3), Articles 14 and ~~Article~~ 15, Article 17(1), points (a) to, ~~Article 17(1)(b), Article 17(1)(c), Article 17(1)(d)~~, and Article 18 shall be considered as different single uses.

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], **taxing such uses independently as single uses**. Member States may limit the scope of this paragraph based on the characteristics of the recharging points [or specific heating systems].

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 an energy converter with an electric rechargeable energy storage system, which can be recharged externally.

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, **as a single use**, under fiscal control, differentiated tax rates to ~~natural gas used as~~ heating fuels and electricity:

**Presidency note:**

*The widening of taxation based on business-non business use from only electricity to also natural gas used as heating fuel suggested in the last compromise text was welcomed by the delegations. However, a further widening to heating fuels in general has been suggested, in order to treat all heating fuels in the same way. It is not justified to give natural gas a favourable treatment compared to e.g. LPG, biogas or fuel oils.*

(a) depending on quantitative consumption levels;

(b) for business and non-business use.

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

**For the purposes of this paragraph**, ‘business use’ ~~shall~~ means the use by a business entity referred to in Article 18(2).

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 **those 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 **the Commission** (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 **every second year** 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 1 January of the year following the year of adoption of the respective delegated act.

#### *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** ~~and~~ **Table F1** of Annex I as from [1 January 2023], as from [1 January 2028] and as from [1 January 2033], respectively.

#### *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** ~~and~~ **Table F2** 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.

#### *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** ~~and~~ **Table F3** of Annex I as from [1 January 2023], as from [1 January 2028] and as from [1 January 2033], respectively.

#### *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*

#### *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 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 that** installation.

When the process of production or storage **of electricity** 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.

3. By way of derogation from paragraph 1, ~~as applicable as a single use~~, Member States may, for reasons of environmental **or climate** policy, tax **as a single use** 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 **a** case, the taxation of energy products shall comply with Article 5(3), point (b).

**Presidency note:**

*The inclusion of climate policy as a justification makes it possible for MS to include climate policy in the energy taxation. The same inclusion is made in paragraph 8.*

4. Paragraphs 1, 2 and 3 shall not apply to products ~~used as fuel in fuel cells~~ referred to in Articles 2(1) and 2(3) when used to produce electricity in vehicles vessels and aircraft where this electricity is used on board vehicles. However, paragraphs 1, 2 and 3 still apply to products when they are fully exempt under Articles 14 and 15. Member states shall exempt electricity produced and consumed on board vehicles vessels and aircraft.

**Presidency note:**

*The paragraph only covered electricity generated by fuel cells. However, electricity is also generated on board vehicles from combustion engines, for example in a hybrid car. In order to treat all electricity produced and consumed on board vehicles in the same way, the paragraph is extended to also cover products covered by Article 2(1). This electricity shall be exempt from tax, mainly for practical reasons. As a consequence, motor fuels used to generate this electricity should be taxed. This should apply both to fuels used in fuel cells and in combustion engines.*

*An addition is made to avoid a situation where Articles 14 or 15 allow full tax exemption for fuels, whereas Article 13(1) and (4) could be considered requiring taxation of fuel used on board for electricity production.*

5. ~~By way of derogation from paragraphs 1, 2 and 3,~~ Member States may exempt from taxation electricity not fed into the grid produced by ~~small producers of electricity~~ an entity in a small installation producing electricity, ~~provided that they tax energy products and electricity used for the production of that electricity.~~

**For the purposes of this paragraph, ‘small installation’ means installation with:**

**a) a production of electricity not exceeding [2000 GJ] annually, or**

**b) an installed production power for electricity not exceeding [0,1 MW].**

**Paragraphs 1, 2 and 3 shall not apply to products used to produce electricity exempted according to this paragraph.**

**Presidency note:**

*The Presidency suggests that the wording “[b]y way of derogation from paragraphs 1, 2 and 3,[...], provided that they tax energy products and electricity used for the production of that electricity” is replaced by “[p]aragraphs 1,2 and 3 shall not apply to products used to produce electricity exempted according to this paragraph”, as the former suggests that energy products and electricity used for the production of the exempted electricity need to be taxed in order to use this exemption. However, not all production of electricity, for example electricity produced by solar panels, is dependent on energy products and electricity that can be taxed. The Presidency suggests this replacement to enable the usage of this paragraph to also exempt electricity that is not produced by taxable products.*

*It is the Presidency’s view that this redrafted paragraph can be used to exempt from taxation electricity that Article 22(4a) intended to cover. Article 22(4a) had also other potential problems, see below the associated Presidency note on Article 22. Hence, the Presidency suggests to remove Article 22(4a).*

*Some delegations pointed out that this paragraph may contain some loopholes since “small producers” are not defined. The Presidency suggests to instead use ‘electricity produced by an entity in a small installation’ and define small installation.*

**Questions:**

1. Do you see any problems with the replacement in the first subparagraph?
2. Do you see any problems with the removal of Article 22(4a)?
3. Do you see any problems using the suggested definition of “small installation”?

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 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.

7. The consumption of energy products and electricity referred to in paragraph 6 shall be considered as a 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 that~~ 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 or climate policy, consider consumption of energy products and electricity referred to in paragraph 6, first subparagraph, as a chargeable event giving rise to taxation **as a single use**, without having to respect the minimum levels of taxation laid down in this Directive. In such a case, the taxation of energy products shall comply with Article 5(3), point (b).

9. Member States may exempt **from taxation** biogas produced by an entity in a small installation producing biogas. ~~provided that they tax the energy products and electricity used for the production of that biogas.~~

**For the purposes of this paragraph, ‘small installation’ means installation with an production of biogas not exceeding [2000 GJ] annually.**

**Paragraphs 1, 2 and 3 shall not apply to products used to produce biogas exempted according to this paragraph.**

**Presidency note:**

*The Presidency suggests that the wording “provided that they tax energy products and electricity used for the production of that biogas” is replaced by “[p]aragraphs 1,2 and 3 shall not apply to products used to produce biogas exempted according to this paragraph”, for analogous reasons to the replacement in Article 13(5).*

*The Presidency suggests introducing a definition of ‘small installation’ for the same reasons*

listed in Article 13(5).

**Questions:**

1. Do you see any problems with the replacement in the first subparagraph?
2. Do you see any problems using the suggested definition of “small installation”?

Article 14

**Presidency note:**

Please note that no changes have been made to Articles 14 and 15, except the changes in previous Articles 14(5) and 15(3). The Presidency plans to present a new wording of these articles after taking into account comments from delegations.

**Temporary derogation: Island Member States**

The main motive behind the transitional periods is to give remote regions and more specifically islands time to adapt to the proposed taxation regime. There is no available systematic or harmonised list of European Union (EU) islands (including the smaller ones). However, some recent sources estimate that there were 2200-2400 inhabited islands in the EU-28. Three Member States are insular Member States, namely Cyprus, Ireland and Malta. Islands belong to 13 Member States: Germany, Denmark, Sweden, Estonia, Finland, Netherlands, Italy, France, Greece, Spain, Portugal, Croatia and Poland. Island member state is a term that could include the countries where the full territory is an island, namely Cyprus, Ireland and Malta. But an island Member State could possibly also include/cover Member States that have islands. Some MS have previously asked for clear definitions and the compromise proposal may need some clarification regarding which geographical areas are intended to be included in the temporary exemption. Given the ambiguity of the meaning of “island Member State” a definition might be needed. It is the Presidency’s view that such a definition should be restricted to MS with a particularly high dependence on maritime and air transport. A definition of “island Member State” in the context of the ETD should therefore be sought which in effect includes Malta, Cyprus and possibly Ireland.

In the Presidency’s view that the text about the transitional period for flights to or from island Member States means that a MS that wants to tax aviation fuel during the transitional period must exclude fuel used in flights to island member states while still taxing the fuel in flights to other destinations. If this is not the intention a possibility would be to change “shall” to “may” in the derogation. The Presidency would like to receive input from the delegations on this matter.

### **Temporary derogation: Outermost regions**

*The CZ Presidency proposed a temporary derogation for fuels used for intra-Union flights to and from airports located in the outermost regions in accordance with articles 349 and 355 TFEU and airports located in their mainland. The lawyer-linguists have changed “to and from” to “between”.*

*The definition of intra-Union air navigation is “flights between two airports located in the Union, including domestic flights”*

*The outermost regions according to Articles 349 and 355 TFEU are Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin, the Azores, Madeira and the Canary Islands. These regions belong to France, Spain and Portugal, but are located in parts of the globe that are remote from Europe, such as the Atlantic or the Indian Ocean. The outermost regions are part of the Union.*

*The definition of intra-Union air navigation therefore also includes flights to and from outermost regions. However, the outermost regions are not part the territory to which the present energy tax directive shall be applied according to Article 3 in the Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty.*

*In our understanding flights **from** airports located in the outermost regions and their mainland do not need a derogation in order to exempt the fuel from taxation, since the excise duty directive and the ETD shall not apply to fuel refuelled at airports in outermost regions. But the derogation is needed for the flights from the mainland **to** a Member States’ outermost region. After the temporary derogation the fuel refuelled in i.e. Spain for a flight from Spain to the Canary Islands will be taxed according to Article 14, but the fuel refuelled in the Canary Islands will still not be taxed.*

### **Questions:**

- a)** What do you think about a temporary derogation of fuels used in flights (to or) from island Member States?

**b)** If you find there is a need for such a temporary derogation, do you see any problems with seeking a definition of “island Member State” as suggested by the Presidency?

**c)** Should such a temporary derogation for aviation fuels be mandatory (shall) or voluntary (may)?
- Do you agree with the interpretation of the application of the excise duty directive and the ETD in outermost regions?
- In EU ETS “aerodrome” is frequently used instead of “airport”. An aerodrome includes more types of flights than an airport. Is a change in wording needed?
- The definition defines “intra-Union air navigation” but the text in the Article states “intra-Union flights”. The Presidency proposes that the text of the Article should be consistent with the definition. Do you agree?

1. Without prejudice to international obligations and to Article 5 of this Directive, **as applicable as a single use**, Member States shall apply, **as a single use**, 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, **where such fuel or**

**electricity is used** for the purposes of intra-**Union 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 Tables A and D of Annex I.

For energy products falling into category 1[, natural gas and liquefied petroleum gas], the minimum **level of taxation 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.

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

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

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

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

For the purposes of this Article, ‘private pleasure flights’ **shall** means 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~~ means 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’.]

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

For the purposes of this paragraph, ‘cargo-only flight’ ~~shall~~ means 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.

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

That rule is not applicable to private pleasure ~~or 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 **those aircraft are** stationed at the gate or at an airport outfield position.

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

**Presidency note:**

*The exemption for electricity generated on board aircraft is deleted here and replaced by the wording in Article 13, paragraph 4.*

*Article 15*

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, **where those vessels are used** for the purposes of intra-~~Union 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 Tables B and D of Annex I.

For energy products falling into category 1[, natural gas and liquefied petroleum gas] the minimum **level of taxation 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.

For energy products falling into category 2 and 3 and electricity, the minimum **level of taxation 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** means navigation between two ports located in the Union, including domestic navigation.

For the purposes of this Article ‘private pleasure navigation’ **shall** means 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 **to** electricity used directly for charging electric vessels for the purposes of ~~such this~~ navigation.

That rule is not applicable to private pleasure navigation.

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

**Presidency note:**

*The exemption for electricity generated on board a vessel is deleted here and replaced by the wording in Article 13, paragraph 4.*

43. 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:

(i)– of solar, wind, wave, tidal or geothermal origin;

(ii)– of hydraulic origin produced in hydroelectric installations;

(iii)– generated from sustainable biomass or from products produced from sustainable biomass;

(iv)– generated from methane emitted by coalmines;

~~(v)– generated from nuclear power plants;~~

**Presidency note:**

*Several delegations oppose the inclusion of electricity generated from nuclear power plants.*

(vi) 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.~~

(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.

2. 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 paragraph 1, point (b).

**Presidency note:**

*Moving the possibility for refund to a separate paragraph 2 is suggested by lawyer-linguists.*

**3. 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.]**

**Presidency note:**

*Moving the exemption possibility for solid biofuels to a separate paragraph 3 is suggested by lawyer-linguists. However, should the wording of Article 2 paragraph 1 (q) be accepted, the provision in Article 16 paragraph 3 is redundant and should be deleted.*

*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 Tables C[, E3, **F3** and D of Annex I, to energy products and electricity used for combined heat and power generation, without prejudice to Article 13; ~~however~~ ~~By way of derogation from the first subparagraph~~, the minimum level of taxation 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 Tables B, E2, **F2** 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;

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

**however, for the purposes of carriage of goods and passengers by rail, metro, tram and trolley bus, the minimum level of taxation of electricity shall be set to 0 EUR/GJ from 1 January 2023 to 31 December 2027];**

~~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.~~

**Presidency note:**

*Changes suggested by lawyer-linguists.*

**~~[(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 last compromise text included a suggestion to extend the application of Article 17(1) (b) to energy products and electricity used for heating by armed forces and public administration. The proposal has not received broad support from the delegations and in order not to extend the exemptions from the ETD without support, the Presidency proposes to delete the extension. This provision is therefore not incorporated in the current compromise text.*

(c) reductions in the level of taxation, which shall not go below the minimum levels of taxation as set out in Tables C, E3, **F3** and D of Annex I, to energy products used as heating fuel and electricity **where those energy products are** ~~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 ~~limiteonfine~~ **the application of** reductions to **energy products** used for the purpose of non-business activities; ~~Wherein cases of mixed use takes place, different levels of 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 **level of taxationrate** 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];

- for energy products falling into ~~the~~ category 2, the minimum **level of taxationrate** shall be set to [0 EUR/GJ] from [1 January 2023 to 31 December 2027] and **to** [0,26 EUR/GJ] from [1 January 2028 to 31 December 2032];

- for energy products falling into category 3 and electricity, the minimum **level of taxationrate** shall be set to [0 EUR/GJ] from [1 January 2023 to 31 December 2027] and **to** [0,09 EUR/GJ] from [1 January 2028 to 31 December 2032];

- for the purposes of **this point(e)**, energy products and electricity used by households **that are** 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, **F3**] 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.

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

### 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, **F2**, C, E3, **F3** 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, **taxing such uses as single uses**, in the following cases:

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

**For the purposes of point (a),** ~~a~~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.

**For the purposes of the second subparagraph,** ~~P~~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.

**For the purposes of the second subparagraph,** ~~P~~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.

**For the purposes of the second subparagraph,** ~~a~~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.~~

**Presidency note:**

*Moving paragraph 1(b) up below paragraph 1(a) is suggested by lawyer-linguists. Some additional minor linguistic changes are also made.*

For the purposes of ~~the first paragraph~~**point (b)**, ‘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>6</sup>.

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

<sup>6</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).

engage as public authorities. However, ~~if 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 ~~shall not~~**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.

~~In cases of Where~~ **Where** mixed use ~~takes place~~, **different levels of** 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~~ **to** 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~~**is** necessary, for reasons of protection of ~~the~~ 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.

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 six 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 ~~and~~, 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 harmonised 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, **if intended for use as heating fuel or motor fuel, 2707 99 99, ~~the latter if intended for use as heating fuel or motor fuel~~**;
- (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, **if intended for use as heating fuel or motor fuel, 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 code 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 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.

For the purposes of **this** paragraph ~~1~~, ‘bulk commercial movement’ **shall** means transport of unpackaged products or products in packages exceeding 220 litres **in** 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 **communicate that fact to 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. **Where the Commission, on the basis of the views received from the Member States, considers that Based on the views received from the Member States, and in case** there is a risk **tofor** the proper functioning of the internal market or **tofor** 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 **Directive** (EU) 2020/262 in respect of some or all of the energy products referred to in paragraph 1 of this Article, in so far 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) **of this Directive** shall also become due at the time they are intended for use, offered for sale or used as motor or heating fuels.

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.

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

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 **transformers** 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:**

*The text above was added in the last compromise text. Several delegations have questioned the need for this addition. The Presidency therefore deleted the sentence to leave flexibility for the MS, as is the case today.*

~~**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:**

*Article 22.4a was introduced to exempt electricity produced by very small producers, for example family houses with solar panels, or with small hydro plants. The Presidency has identified a potential problem in that this paragraph can also be used to exempt electricity from other small installations where energy products or electricity is used to generate the electricity, but without taxing these input products. Since article 13.5 can be used to exempt the very small producers intended to be covered by this paragraph, the Presidency suggests deleting this paragraph.*

**Question:**

1. *Do you see any problems in using article 13.5 (or 13.9 for biogas) instead of this paragraph?*

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.

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.

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].

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

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~~ means:

(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~~ means 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 those units.

#### *Article 27*

1. Member States shall inform the Commission of measures taken pursuant to Articles 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>7</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.

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<sup>7</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).

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 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 Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>8</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) **orand** 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 has 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), Articles ~~3, Article 5, Article and 7~~, Article 8(1), Articles 9(1), ~~Article 13, Articles 14 and 15~~, Article 16, point (b), last sentence, Article 16, points (c), (d) and (e), Articles 17, ~~Article and 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), **and Article 22(3)**, Article 25(2), Article 26(1), Articles ~~28, Article 29, Article 30, Article to 31~~ and Annex I **and shall** 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.

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<sup>8</sup> OJ L 123, 12.5.2016, p. 1.

### *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.

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 **repealed** 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, Articles 4, and ~~Article 6~~, Article 8(2), Articles 10, ~~Article 11~~, ~~Article and 12~~, Article 16, points (a), ~~Article 16, point and~~ (b), Article 20, Article 21(1), point (a), ~~Article 21(1), point~~ (c), ~~Article 21(1), points~~ (e) to (h), ~~Article 21(1), point and~~ (n), Article 21(3), Article 22(2) and ~~(24)~~, ~~Article 22(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.

*Done at...*

*For the Council*

*The President*

## ANNEX I

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]

**Table F1. — Minimum levels of taxation applicable to sustainable food and feed crop biofuels and biogas 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
Sustainable food and feed crop biofuels and biogas	5,38	5,77

**Table F2. — Minimum levels of taxation applicable to sustainable food and feed crop biofuels and biogas 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
Sustainable food and feed crop biofuels and biogas	0,45	0,48

**Table F3. — Minimum levels of taxation applicable to sustainable food and feed crop bioliquids and biogas 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
Sustainable food and feed crop bioliquids and biogas	0,45	0,48]

**Presidency note:**

*At the meeting November 10 two different alternatives was presented. Based on the discussion and MS comments the presidency suggests alternative 2 with separate tables for natural gas and LPG. However, this would imply a more favourable treatment of natural gas than some sustainable biofuels, something that is opposed by several member states. The Presidency therefore suggests an inclusion of separate tables (F) also for sustainable food and feed based biofuels/bioliquids/biogas. With this construction the MS can apply lower taxation during the transitional period to none, one or both categories of energy products. Non-sustainable biofuels will be kept in category 1. With this alternative the taxation during the transitional period is more in line with how biofuels are treated within the EU ETS.*

ANNEX II  
Conversion table of net calorific values

**Presidency note:**

*By suggestions from lawyer-linguists, the wording under the last column is changed from Annex **of the** to Annex **to** throughout the table in Annex II.*

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 to Directive (EU) 2018/2001 <sup>i)</sup>
Gasoil CN 2710 19 43 to 2710 19 48 <del>and 2710 20 11 to 2710 20 19</del>	0,036 GJ/l 0,043 GJ/kg	Annex III to Directive (EU) 2018/2001 <sup>i)</sup>
Kerosene-type jet fuel CN 2710 19 21	0,034 GJ/l 0,043 GJ/kg	Annex III to Directive (EU) 2018/2001 <sup>iii)</sup>
Kerosene - other than jet type CN 2710 19 25	? GJ/l 0,0438 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Hydrogen CN 2804 10 00	0,12 GJ/kg	Annex III to Directive (EU) 2018/2001 <sup>i)</sup>
Natural gas CN 2711 21 <u>00</u>	0,048 GJ/kg	Annex VI to 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 to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>

Natural gas liquids CN 2711 11 00	? GJ/l 0,0442 GJ/kg	Annex VI to 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	<u>?</u>
Residual fuel oil (heavy fuel oil) CN 2710 19 62 to 67 and CN 2710 20 31 to 38	? GJ/l 0,0404 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
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 to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Ethane CN 2901 10 <b><u>00</u></b>	0,0464 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
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 to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Bitumen CN <del>2714</del> <b><u>2713 20 00</u></b>	? GJ/l 0,0402 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
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 to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>

Petroleum coke CN 2713 11 <u>00</u> , 2713 12 <u>00</u>	0,0325 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Paraffin waxes CN 2712 20	? GJ/l 0,0402 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
White spirit and SBP CN 2710 12 21 and 2710 12 25	? GJ/l 0,0402 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Anthracite CN 2701 11 00	0,0267 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Coking coal CN 2701 12 10	0,0282 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Other bituminous coal CN 2701 12 90	0,0258 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Sub-bituminous coal CN <del>2702</del> <u>2701 12 90</u>	0,0189 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Lignite CN 2702	0,0119 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>

Oil shale and tar sands CN 2714 10 <b>00</b>	[0,0089 GJ/kg]	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Patent fuel CN 2701 20	0,0207 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Coke oven coke and lignite coke CN 2704 00	0,0282 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Gas coke CN 2705 00 00	0,0282 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Coal tar CN 2706 00 00	? GJ/l 0,028 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Coke oven gas CN 2705 00 00	0,0387 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Blast furnace gas CN 2705 00 00	0,00247 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Oxygen steel furnace gas CN 2705 00 00	0,00706 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>

Waste oils CN 2710 91 00, 2710 99 00	? GJ/l 0,0402 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Peat CN 2703 00 00	0,00976 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
<b>FUELS FROM BIOMASS (OR BIOMASS PROCESSING OPERATIONS)</b>		
Biodiesel (FAME) CN 3826 00	0,033 GJ/l 0,037 GJ/kg	Annex III to Directive (EU) 2018/2001 <sup>i)</sup>
Biodiesel (FAEE) CN 3826 00	0,034 GJ/l 0,038 GJ/kg	Annex III to 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 to Directive (EU) 2018/2001 <sup>i)</sup>
Pure vegetable oil CN 1507 to 1518	0,034 GJ/l 0,037 GJ/kg	Annex III to Directive (EU) 2018/2001 <sup>i)</sup>
Biogas CN 2711 19 00 and CN 2711 29 00	0,05 GJ/kg	Annex III to 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 to Directive (EU) 2018/2001 <sup>i)</sup>
Hydrotreated oil of biomass origin to be used for replacement of petrol CN 2710 12 <b>131</b> to 90	0,03 GJ/l 0,045 GJ/kg	Annex III to 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 to 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 to 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 to 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 to 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 to 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 to 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 to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>

Wood and wood waste CN 4401	0,0156 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Other primary solid biomass CN 4401 21, 4401 22	0,0116 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Charcoal CN 4402	0,0295 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 <sup>ii)</sup>
Landfill and sludge gas CN <del>3825</del> <u>2711</u>	0,0504 GJ/kg	Annex VI to 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 to Directive (EU) 2018/2001 <sup>i)</sup>
Ethanol CN 2207 20	0,021 GJ/l 0,027 GJ/kg	Annex III to Directive (EU) 2018/2001 <sup>i)</sup>
Propanol CN 2905 12 00	0,025 GJ/l 0,031 GJ/kg	Annex III to Directive (EU) 2018/2001 <sup>i)</sup>
Butanol CN 2905 13 00 <b>and CN</b> <b><u>2905 14</u></b>	0,027 GJ/l 0,033 GJ/kg	Annex III to 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 to 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 to 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 to Directive (EU) 2018/2001 <sup>i)</sup>
Fischer-Tropsch 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 to Directive (EU) 2018/2001 <sup>i)</sup>
Dimethylether (DME) CN 2909 19 90	0,019 GJ/l 0,028 GJ/kg	Annex III to 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 to 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 to 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 to 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 to Directive (EU) 2018/2001 <sup>i)</sup>
Tertiary-hexyl-ethyl-ether produced on the basis of ethanol (THxEE) 2909 19 90	0,03 GJ/l 0,038 GJ/kg	Annex III to Directive (EU) 2018/2001 <sup>i)</sup>
Tertiary-hexyl-methyl-ether produced on the basis of methanol (THxME) 2909 19 90	0,03 GJ/l 0,038 GJ/kg	Annex III to 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 **(OJ L 328, 21.12.2018, p. 82)**.
- 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 **(OJ L 334, 31.12.2018, p. 1)**.

- iii) **The Proposal for the amendment of 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 the production of '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.