



Council of the European Union
General Secretariat

Brussels, 20 January 2025

**Interinstitutional files:
2021/0213 (CNS)**

WK 575/2025 INIT

LIMITE

**FISC
ECOFIN
ENER
ENV
CLIMA**

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

NOTE

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

Subject: Revision of the Energy Taxation Directive
- Presidency Note – meaning of the term “single use”

In view of the meeting of the Working Party on Tax Questions on 30 January 2025, delegations will find attached a note prepared by the Presidency on the above mentioned subject.

WK 575/2025 INIT



Revision of the Energy Taxation Directive

Presidency Note – meaning of the term “single use”

WPTQ 30 January 2025

Introduction

The original proposal for the revision of the Energy Taxation Directive (ETD) prepared by the European Commission provided for the use of two types of ranking systems for the taxation of products covered by the Directive:

- horizontal ranking - maintaining the same rates for products from a given cluster/use, e.g. for all products for propulsion – e.g. rate for gasoline from category 1 = rate for diesel oil from category 1 = rate for LPG from category 1, etc.;
- vertical ranking - differentiation of rates depending on the classification of the product into the appropriate category determining the impact of the product on the environment – category 1, category 2 or category 3 – e.g. the rate for Fischer-Tropsch gasoline is higher than the rate for Fischer-Tropsch sustainable, other than food and feed crops gasoline, and the latter is higher than the rate for Fischer-Tropsch advanced sustainable or renewable of non-biological origin gasoline.

The above ranking systems were based on the minimum rates provided for energy products and electricity. Member States were to replicate the relationship between the minimum levels of taxation fixed in the proposal for the various energy sources and uses. The amount of the minimum rates has been linked to the purpose of use of the products and electricity (for example as heating, as propellant and as propellant for purposes indicated in Article 8(2) of the Commission proposal). Each such use of products for a given purpose and the use of electricity should be treated as a separate (unitary) use, which is indicated in the text of the Directive as “single use”.

Subsequent findings of the Council

During the discussions at the Council, delegations realised that certain sectors of the economy (such as aviation, maritime, but also agriculture) in which energy products or electricity are used require additional support. It was concluded that in such cases horizontal ranking should not be used. Like this Member States may apply specific reduced levels of taxation (full exemptions from excise duties or reduced tax rates below the EU minimum) to certain specific uses of energy products or electricity. Such cases are indicated in the compromise text as “different single use”.



Following the analysis carried out under the consecutive Presidencies, delegations came to the conclusion that a vertical ranking system would be sufficient as a pivotal principle of the Directive and that horizontal ranking would not be needed.

However, the wording “single use” is still retained in the compromise text. One of the reasons for keeping this wording was that it was intended to distinguish preferential treatment (exemptions/reductions) which, in the opinion of the delegations, would not constitute state aid requiring notification to the European Commission. A notification procedure may result in the Commission prohibiting Member States from granting such aid. Therefore, such preferential treatment (exemptions/reductions) were referred to as “tax as single use/apply as single use/is a single use/use as single use/will be considered as single use”, etc.

At the meeting of the Working Party on Tax Questions on 23 October 2024, the representatives of the Commission’s DG COMP provided explanations on the relationship between the state aid regulations and the provisions of the proposed ETD. It became evident that the use of the term “single use” in the text of the draft ETD does not automatically lead to the recognition of the preferential treatment specified therein as state aid situations that are either considered compatible with the common market or exempted from notification obligations. It was explained that the rules of conduct in this case are determined by the relevant EU treaty provisions and EU regulations. For what concerns the General Block Exemption Regulation (GBER), the DG COMP representatives announced that this regulation will probably be revised after the completion of work on the draft ETD in order to adapt these regulations to each other.

Issues for discussion

In the light of the above, the Presidency doubts that maintaining of the term “single use” is still relevant and would like to invite delegations to address during their interventions the following questions:

- 1) *Are the terms “single use” and “different single use” still necessary?*
- 2) *Do they cause difficulties in understanding the rules in which these terms are used?*
- 3) *Does the draft Directive need to be reworded in order to eliminate the above-mentioned terms or to replace them with other, more understandable expressions?*
- 4) *In case terms “single use” and “different single use” stay in the draft Directive, do you expect that in the future economic operators, tax administrations or citizens may have problems to understand and to interpret the text of the Directive?*