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**NOTE**

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From:	Presidency
To:	Working Party on Tax Questions (Indirect Taxation – Excise duties/Energy taxation)
Subject:	Draft Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast) - Presidency drafting suggestions on some Articles

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In view of the meeting of the Working Party on Tax Questions on 13 March 2024, delegations will find attached the Presidency drafting suggestions on some Articles.

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

*Presidency drafting suggestions on some Articles*

*Working Party on Tax Questions (Indirect Taxation) 13 March 2024*

Following the WPTQ meeting on 29 February 2024 and in order to find compromise solutions, the Presidency provides drafting suggestions in some parts of the text, namely in Articles 1, 2, 5, 13, 14, 15, 20, 29 and Annex II. In addition, a new Article 25a is added.

Modifications compared to the Presidency compromise text contained in document WK 5659/2023 REV 1 are highlighted in bold, underlined or strikethrough.

## Presidency drafting suggestions on some Articles

### Draft

### 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 as set out in Annex II.

#### **Member States may use different specific values based on measured values.**

##### ***Presidency note:***

*Regarding the questions raised by some delegations concerning the obligation to use the net calorific value of energy products set out in Annex II the Presidency is of the opinion that in order to have harmonisation on the net calorific value the values used in Annex II should be obligatory for the Member States.*

*The values mentioned in Annex II are the conversion factors used in Annex III to Directive (EU) 2018/2001 or in Annex VI to Commission Implementing Regulation 2018/2066/EU, following the rule mentioned in article 1, 3, a).*

*So if the Member States don't want Annex II to be added to this proposal this will not change the fact that the values mentioned in Annex II will have to be used by the Member States according to the principles of Article 1, 3, since these are the values that are mentioned in the above named EU-legislation*

*Regarding the questions raised during the WPTQ of 29 February 2024 on the CN-codes and the number of digits mentioned in Annex II, the Presidency believes that since the Annex III to Directive (EU) 2018/2001 and Annex VI to Commission Implementing Regulation 2018/2066/EU do not mention the CN-codes of the products, Annex II aims to determine the most encountered energy products with different net calorific values with the correct number of digits of the CN-code in order to already make a difference between those products.*

*A sentence has been added in Article 1, 2 enabling the Member States to derogate from the values mentioned in Annex II by measured values.*

- 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 delegated acts in accordance with Article 29 to amend or supplement Annex II. For that 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 Commission Implementing Regulation 2018/2066/EU, in Annex III to Directive (EU) 2018/2001, in any Union legal act modifying or replacing those legal acts or in any delegated or implementing acts based on such Union legal acts, that conversion factor shall be used; where the conversion factor from any unit to GJ is referred to in both Annex VI to 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:

- 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 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 7,5 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;

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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)

- (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;
- (k) products falling within CN code 3403;
- (l) products falling within CN code 3811;
- (m) products falling within CN code 3814, if these are intended for use as heating fuel or motor fuel;
- (n) products falling within CN code 3817;
- (o) products falling within CN code 3823 19, if these are intended for use as heating fuel or motor fuel;
- (p) products falling within CN codes 3824 99 86, 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93, 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90, if these are intended for use as heating fuel or motor fuel;
- (q) other products than those referred to in points (a) to (p), including additives and extenders to motor fuels, if these are intended for use, offered for sale or used as motor fuel;
- (r) other hydrocarbon-containing products than those referred to in points (a) to (p) with a net calorific value of at least [9 GJ/1 000 kg], if these are intended for use, offered for sale or used as heating fuel. Products not containing any pure hydrocarbon molecules or consisting of less than 5 percent by weight of such molecules are not considered as hydrocarbon-containing products.

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 vehicles, vessels and aircraft 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:***

*As requested by a delegation this paragraph has been reintroduced in Article 2.*

*There is consensus that hydrogen and the use of energy in general to operate fuel cells should in future be subject to the regulations of the Energy Tax Directive.*

*The definition of all the energy products that are basically subject to the ETD can be found in Article 2 (“what is included”). The use of hydrogen in fuel cells, for example, would therefore only be subject to the directive if it is directly used for heating or as motor fuel. However, when used in*

*fuel cells hydrogen would not be an energy product within the meaning of the ETD, since it is neither used as a heating fuel nor as a motor fuel. From a legal perspective, therefore it is necessary to first state in Article 2 that use in a fuel cell is considered to be used as a motor fuel or heating fuel and only then hydrogen used in fuel cells becomes an energy product, that can be taxed under Article 5.*

*Article 5 of the ETD only regulates the “how” and not the “what”. If the use in the fuel cell is assumed to be motor fuel use, for example, hydrogen will still **not be an energy product** when reference is made to Article 2.*

*If we would follow the current proposal for a shift of fuel cell used in Article 5, a circular argument arises, according to which the use in the fuel cell is a use of motor fuel, although according to Article 2 there is no use (e.g. of hydrogen) as a motor fuel. This should be avoided.*

4. For the purposes of this Directive, the following definitions 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 energy products used as motor fuels produced from biomass;
- (c) ‘biogas’ means gaseous energy products used as motor and heating fuels produced from biomass;
- (d) ‘bioliquids’ means liquid energy products used as heating fuels produced from biomass;
- (e) ‘sustainable biofuels, bioliquids and biogas means energy products used as motor and heating fuels, produced from biomass, fulfilling the sustainability and greenhouse gas saving criteria as laid down in paragraph 5c;
- (f) ‘non-sustainable biofuels, bioliquids and biogas means **energy products used as** motor and heating fuels referred to in paragraph 1, produced from biomass, not fulfilling the sustainability and greenhouse gas saving criteria as laid down in paragraph 5c;
- (g) ‘sustainable food and feed crop biofuels, bioliquids and biogas’ means **energy products used as** 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 as laid down in paragraph 5c;
- (h) ‘advanced biofuels, bioliquids and biogas means biofuels, bioliquids and biogas that are produced from the feedstock listed in Annex III;

**Presidency note:**

*Several delegations asked to replace Annex III with a reference to Annex IX of Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources.*

*As agreed in previous meetings dynamic references should be avoided.*

*In the document WK10101 of 11 July 2022 the following can be found:*

*“The majority of Member States has expressed the view that, if possible, definitions having impact on tax rates should be laid down directly in the tax directive. Taking into account these concerns the respective text from RED is copied into the legal text of ETD.”*

**4b. The Commission is empowered to adopt delegated acts in accordance with Article 29 in order to change Annex III.**

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

- (a) ‘renewable fuels of non-biological origin’ means energy products used as motor and heating fuels 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 energy products used as motor and heating fuels other than biofuels, bioliquids or biogas, the energy content of which is derived from non-renewable sources other than biomass;~~
- (e) **(b)** ‘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.

***Presidency note:***

*As noticed by a delegation the term ‘non-renewable fuels of non biological origin’ is unclear. This could either mean fossil fuels or low-carbon fuels, which are both already defined.*

*This term is also only used in this article so the removal is suggested.*

5a. For the purpose of paragraph 5, point (c) ‘technical screening criteria’ 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 Regulation (EU) 2020/852 and from Article 3 of 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 delegated acts in accordance with Article 29 in order to set the date of application of the technical screening criteria under this Directive.

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

5c. For the purpose of paragraph 4, subparagraphs (e), (f) and (g) ‘sustainability and greenhouse gas saving criteria’ means the 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.

5d. In case of future amendments of the sustainability and greenhouse gas saving criteria within the meaning of paragraph 5c and by way of derogation from the relevant provisions concerning their applicability in time, the Commission is empowered to adopt delegated acts in accordance with Article 29 in order to set the date of application of the sustainability and greenhouse gas saving criteria under this Directive.

**5e. In case of future amendments of Annex IX of Directive (EU) 2018/2001, the Commission is empowered to adopt delegated acts in accordance with Article 29 in order to change Annex III mentioned in paragraph 4, (h).**

***Presidency note:***

*As the Commission suggested, the Presidency has integrated the possibility to change Annex III with a Delegated Act.*

6. Where an energy product consists of one or more energy products,

- (a) 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; or
- (b) taxation of the energy product shall be determined in accordance with the category applicable for the main component; or
- (c) Member States may 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; **or**
- (d) **Member States may tax the whole energy product in accordance with the rate of the component falling in the highest rate category, and Member States may reimburse the difference when the person liable to pay the excise duty proves the composition of the products released for consumption.**

***Presidency note:***

*As requested by a delegation.*

7. For the purposes of this Directive, 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.

#### *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), ~~including products used as fuel in fuel cells installed on board of vehicles, vessels and aircraft;~~
- (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), ~~including products used as fuel in stationary fuel cells;~~
- (d) products used for any other single use specified in this Directive. For that purpose, uses referred to in Article 13(3), Articles 14 and 15, Article 17(1), ~~points (a) to (d)~~, and Article 18 shall be considered as different single uses.

***Presidency note:***

*Paragraph 3 of Article 2 has been reintroduced.*

*As pointed out by a delegation Article 17(1) only contains points (a) to (d), so this reference is unnecessary.*

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

- (a) category 1 shall include products which do not fall into category 2 or category 3;
- (b) category 2 shall include 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;

<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).

- (ii) when used as heating fuels, low-carbon fuels and sustainable bioliquids and biogas other than food and feed crop bioliquids and biogas;
- (c) category 3 shall include renewable fuels of non-biological origin, advanced sustainable biofuels, bioliquids and biogas.

***Presidency note:***

*The suggestion made by a delegation to include the CN-codes from Annex II in Annex I will not be followed.*

*As Member States have already indicated that Annex II is too complex, the Presidency does not want to add the same complexity to 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, shall be fixed as set out in Table E1 of Annex I. However, the applied tax rate may not be lower than the rate applied, by the Member State, for products in accordance with category 2 in Table A 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), shall be fixed as set out in Table E2 of Annex I. However, the applied tax rate may not be lower than the rate applied, by the Member State, for products in accordance with category 2 in Table B 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, shall be fixed as set out in Table E3 of Annex I. However, the applied tax rate may not be lower than the rate applied, by the Member State, for products in accordance with category 2 in Table C 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. However, the applied tax rate may not be lower than the rate applied, by the Member State, for products in accordance with category 2 in Table A 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. However, the applied tax rate may not be lower than the rate applied, by the Member State, for products in accordance with category 2 in Table B 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. However, the applied tax rate may not be lower than the rate applied, by the Member State, for products in accordance with category 2 in Table C of Annex I.

By way of derogation from paragraph 2, point (b), Member States may decide, from [1 January 2023 to 31 December 2032], to include low-carbon fuels and sustainable biofuels, **bioliquids** and

biogas other than food and feed crop biofuels, **bioliquids** and biogas, when used as motor or heating fuels, into category 3.

**Presidency note:**

*The Presidency forgot to mention the bioliquids although the use as heating fuel was already included.*

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 performance. 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 in paragraph 3.

3. Unless otherwise specified in this Directive, for each 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 in paragraph 1, point (d), the applicable minimum level of taxation is that set out in the provisions referred to in that point.

**Presidency note:**

*Paragraph 3a is unnecessary. The current proposal already specifies in Article 2(q) and (r) that other products used as motor fuel or as heating fuel are “energy products” and therefore the general minimum taxation levels apply.*

*According to the principles laid down in paragraphs 1 and 2 every energy product will have a minimum rate attached to it.*

*Paragraph 1 will determine if the energy product is used as motor fuel, motor fuel (article 8), heating fuel, or single use. Paragraph 2 will determine the category of the product. So for every energy product there is always a minimum level of taxation, based on the use and on the category.*

*Furthermore the document WK13041/2022 of 5 October 2022 provides more information regarding the initial deletion of this paragraph linked with the introduction of Article 2(q) and (r).*

*It should be highlighted that products newly included in article 2(1) are in the scope of the ETD, only if they are intended for use, offered for sale or used as motor or heating fuel. Otherwise they are out of scope of the ETD (no change in substance).*

*Article 2(q) is comparable with article 2, 3, second Alinea of the current Energy Taxation Directive and states that “In addition to the taxable products listed in paragraph 1, any product intended for use, offered for sale or used as motor fuel, or as an additive or extender in motor fuels, shall be taxed at the rate for the equivalent motor fuel.”*

*Article 2(r) is comparable with article 2, 3, third Alinea of the current Energy Taxation Directive and states that “In addition to the taxable products listed in paragraph 1, any other hydrocarbon, except for peat, intended for use, offered for sale or used for heating purposes shall be taxed at the rate for the equivalent energy product.”*

*The energy content threshold of 9 GJ/1000 kg in article 2(r) is introduced to decrease the administrative burden associated with the taxation of hydrocarbons with low calorific values.*

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

4a. By way of derogation from paragraph 4, Member States may apply under fiscal control specific levels of taxation, which shall not go below the minimum levels of taxation set out in Table D of Annex I, to electricity used for charging electric vehicles, vessels and aircraft 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 paragraphs 1 and 4 and respecting the minimum levels of taxation set out in Annex I, Member States may apply, as a single use, under fiscal control, differentiated tax rates:

- (a) when the differentiated rates are directly linked to product quality;
- (b) for heating fuels and electricity, depending on quantitative consumption levels;
- (c) for business and non-business use, for heating fuels and electricity.

Member States may limit the scope of the **differentiated** ~~reduced~~ levels of taxation ~~for business use~~.

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

***Presidency note:***

*The Presidency suggests to add the possibility to differentiate tax rates based on the product quality, as suggested by some delegations. For example gasoil with different levels of sulphur content.*

*Some more examples are the octane rating of petrol, the difference between “ordinary” and “diesel-like” heavy fuel oil based on density, viscosity and sulphur content in order to tackle excise evasion.*

*The Presidency suggests to modify the sentence “Member States may limit the scope of the reduced level of taxation for business use.”*

*In the current directive there are reduced minimum levels for business use. In this proposal this distinction is no longer made, therefore we can't refer to reduced levels of taxation for business use anymore.*

*The possibility to limit the scope means that Member States may choose for which products they want to differentiate.*

4c. From [1 January 2023 to 31 December 2032~~3~~] Member States may, as a single use, differentiate between commercial and non-commercial use of energy products used as propellant, which shall not go below the minimum levels of taxation set out in Table A, **E1 and F1**.

For the purpose of this paragraph, 'commercial energy product used as propellant' shall mean an energy product used as propellant for the following purposes:

(a) the carriage of goods for hire or reward, or on own account, by motor vehicles or articulated vehicle combinations intended exclusively for the carriage of goods by road and with a maximum permissible gross laden weight of 7,5 tonnes or above;

(b) the carriage of passengers, whether by regular or occasional service, by a motor vehicle of category M2 or category M3, as defined in Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) 595/2009 and repealing Directive 2007/46/EC<sup>5</sup>.

***Presidency note:***

*The Presidency made a mistake, the 10 year period ends on 31 December 2032 instead of 2033.*

*Moreover, the references to tables E1 and F1 were forgotten.*

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 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 three years starting from 1 January 2036 to take into account 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 three calendar years preceding the year in which the delegated act as referred to in paragraph 7 is adopted.

In any case, the above mentioned adaptation shall not exceed 10%.

***Presidency note:***

*The Presidency suggests that the percentage is calculated taking into account the compound interest. As an example we calculated the percentage for 2023, based on the years 2020, 2021 and 2022.*

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<sup>5</sup> OJ L 151/1, 14.6.2018, p. 1.

$(HICP\ EU27\ 2022/HICP\ EU27\ 2019) - 1 = (118,82/105,04) - 1 = 0,1312 = 13,12\ %$

*This 13,12 % is capped at 10 %. The 3,12 % that exceeds the 10% will not be taken into account for the following period.*

7. The Commission is empowered to adopt by 31 March every third 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. The first delegated act shall be adopted by 31 March of 2035.

### *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 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 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, Member States may, for reasons of environmental policy including 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).

In the case of products classified within category 1, their taxation according to the first subparagraph shall be considered as justified for reasons of environmental policy, including climate policy.

4. Paragraphs 1, 2 and 3 shall not apply to products referred to in Articles 2(1) and **2(3)** ~~5(4a)~~ 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 or 15. Member states shall exempt electricity produced and consumed on board vehicles, vessels and aircraft.

#### ***Presidency note:***

*These changes have been made because the provision on fuel cells has been moved back to Article 2(3).*

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 (first subparagraph) 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. That shall include the propulsion of vehicles, the general functioning of the installation used for production or storage, or other processes that take place in that installation.

The consumption of energy products and electricity referred to in paragraph 6 (second subparagraph) may be considered as a non-chargeable event not giving rise to taxation only if those products are used directly in, or to provide a direct energy input to, the process of production of energy products.

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, Member States may, for reasons of environmental policy including 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).

In the case of products classified within category 1, their taxation according to the first subparagraph shall be considered as justified for reasons of environmental policy, including climate policy.

#### *Article 14*

1. Without prejudice to international obligations and to Article 5 of this Directive, 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 aircraft, and to electricity used directly for charging electric aircraft, where such fuel or electricity is used for the purposes of intra-Union air navigation of flights other than private pleasure 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 the minimum level of taxation 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.

By way of derogation from the second and third subparagraph, energy products falling into category 1 used for intra-Union air navigation of flights to or from aerodromes located on islands, the minimum level of taxation shall be set to 0 EUR/GJ from 1 January 2023 to 31 December 2032, to [4,09 EUR/GJ] from 1 January 2033 to 31 December 2035, to [8,18 EUR/GJ] from 1 January 2036 to 31 December 2037 and at the same level as for other motor fuels according to Table A of Annex I from 1 January 2038.

**For the purpose of the previous paragraph the derogation only applies to aerodromes located on islands with no road or rail link with the mainland.**

***Presidency note:***

*As requested by several delegations the derogation for the islands only applies to aerodromes located on islands with no road or rail link with the mainland.*

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

For the purposes of this Article, ‘intra-Union air navigation’ means flights between two aerodromes located in the territory to which Directive (EU) 2020/262 applies, including domestic flights. For the purpose of this Article air navigation to or from aerodromes in the autonomous regions of the Azores and Madeira are not considered intra-Union air navigation.

For the purposes of this Article, ‘private pleasure flight’ means the use of an aircraft by its holder, where the use is for other than commercial purposes.

For the purposes of this Article ‘holder of an aircraft’ means the owner (or one of the owners) or the natural or legal person, who enjoys the use of the aircraft either through hire or through any other means.

For the purposes of this Article, the use of an aircraft ‘for commercial purposes’ means:

- a) the use of an aircraft for the carriage of passengers or goods or for the supply of services, and
- b) for adequate consideration for the respective flight, and
- c) in the course of an independent lasting economic activity with profit-making intentions and
- d) that is available to the general public.

Flights for the purposes of public authorities are deemed to fulfil conditions a) to d).

Condition a) is not fulfilled in case of the carriage of passengers who are employed by the holder or a company that belongs to the same group as the holder or who hold management functions for the holder or such a company. This applies also for owners of a company holding an aircraft.

For the purposes of applying this Article, a Member State may furthermore ignore an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of this Directive, are not genuine having regard to all relevant facts and circumstances. An arrangement may compromise more than one step or part. For the purposes of this Article, an arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.

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

By way of derogation from the first subparagraph, 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 air navigation of cargo-only flights.



For the purposes of this paragraph, ‘cargo-only flight’ 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 air navigation according to the type of flight, and to electricity used directly for charging electric aircrafts for the purposes of such air navigation.

That rule is not applicable to private pleasure 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. Member States may **from 1 January 2023 to 31 December 2062** apply under fiscal control total or partial exemptions to energy products supplied for use as fuel to aircrafts and electricity used directly for charging electric aircrafts for the purposes of:

- armed forces,
- other national security forces,
- search and rescue services and
- public authorities.

***Presidency note:***

*Since most delegations are not in favour of permanent exemptions, a transitional period has been mentioned.*

*A rewording is been suggested to clarify that “for the purposes of” is applicable to all the mentioned uses.*

*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 this Directive 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 waterborne navigation (including fishing) other than private pleasure navigation.

By way of derogation from the first subparagraph, energy products used for fishing may be exempted from taxation from 1 January 2023 to 31 December 2032.

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 the minimum level of taxation 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 shall be set to [0 EUR/GJ] from 1 January 2023 to 31 December 2032.

For the purposes of this Article, ‘intra-Union waterborne navigation’ means navigation between two ports located in the territory to which Directive (EU) 2020/262 applies, including domestic navigation. For the purpose of this Article waterborne navigation to or from ports in the autonomous regions of the Azores and Madeira are not considered intra-Union waterborne navigation.

For the purposes of this Article, ‘private pleasure navigation’ means the use of a vessel by its holder, where the use is for other than commercial purposes.

For the purposes of this Article ‘holder of a vessel’ means the owner (or one of the owners) or the natural or legal person, who enjoys the use of the vessel either through hire or through any other means.

For the purposes of this Article, the use of a vessel ‘for commercial purposes’ means:

- a) the use of a vessel for the carriage of passengers or goods or for the supply of services, and
- b) for adequate consideration for the respective navigation, and
- c) in the course of an independent lasting economic activity with profit-making intentions and
- d) that is available to the general public.

Navigation for the purposes of public authorities are deemed to fulfil conditions a) to d).

Condition a) is not fulfilled in case of the carriage of passengers who are employed by the holder or a company that belongs to the same group as the holder or who hold management functions for the holder or such a company. This applies also for owners of a company holding an aircraft.

For the purposes of applying this Article, a Member State may furthermore ignore an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of this Directive, are not genuine having regard to all relevant facts and circumstances. An arrangement may compromise more than one step or part. For the purposes of this Article, an arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.

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 navigation.

That rule is not applicable to private pleasure navigation.

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

4. Member States may **from 1 January 2023 to 31 December 2062** apply under fiscal control total or partial exemptions to energy products supplied for use as fuel to vessels and electricity used directly for charging electric vessels for the purposes of:

- armed forces,
- other national security forces,
- search and rescue operations and
- public authorities.

***Presidency note:***

*Since most delegations are not in favour of permanent exemptions, a transitional period has been mentioned.*

*A rewording is being suggested to clarify that “for the purposes of” is applicable to all the mentioned uses.*

5. Member States may **from 1 January 2023 to 31 December 2062** apply under fiscal control total or partial exemptions to energy products supplied for use as fuel to vessels and electricity used directly for charging electric vessels for the purposes of ~~small-scale coastal fishing~~. ~~Small-scale coastal fishing means fishing~~ carried out by fishing vessels of an overall length of less than 24 metres.

***Presidency note:***

*Since most delegations are not in favour of permanent exemptions, a transitional period has been mentioned.*

*The length of less than 24 metres was found in articles 31 and 41 of Regulation N° 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund.*

*And to avoid confusion with other EU regulation, the wording ‘small scale’ has been removed.*

6. Member States may **from 1 January 2023 to 31 December 2062** apply under fiscal control total or partial exemptions to energy products supplied for use as fuel to vessels and electricity used directly for charging electric vessels used to provide maritime transport services within a Member State. Maritime transport services within a Member State shall mean services normally provided for remuneration for the carriage of passengers or goods by regular passengers and ferry services by sea between:

- ports situated on the mainland and on one or more of the islands of one and the same Member State

- ports situated on the islands of one and the same Member State.

**For the purpose of the previous paragraph the derogation only applies to ports located on islands with no road or rail link with the mainland.**

***Presidency note:***

*Since most delegations are not in favour of permanent exemptions, a transitional period has been mentioned.*

*As requested by several delegations the derogation for the islands only applies to aerodromes located on islands with no road or rail link with the mainland.*

7. Island Member States may **from 1 January 2023 to 31 December 2062** apply under fiscal control total or partial exemptions to energy products supplied for use as fuel to vessels and electricity used directly for charging electric vessels used to provide maritime transport services. Maritime transport services shall mean services normally provided for remuneration for the carriage of passengers or goods by regular passengers and ferry services by sea.

For the purpose of this paragraph, island Member State means Cyprus, Ireland and Malta.

***Presidency note:***

*Since most delegations are not in favour of permanent exemptions, a transitional period has been mentioned.*

*Article 20*

1. In addition to the provisions set out in the previous Articles, in particular in Articles 14 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.

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.

~~1a. By way of derogation from paragraph 1 the Commission shall, within one month of receiving all relevant and necessary information, 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. This paragraph is only applicable when there is an unexpected and exceptional increase in the price of an energy product or electricity. This requirement is complied with for an increase that exceeds 15 per cent compared with the average retail price of that energy product or electricity over the previous twelve months.~~

~~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.~~

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.

~~2a. By way of derogation from paragraph 2, the authorisation referred to in paragraph 1a shall be granted for a maximum period of six months.~~

**3. In cases where the retail price of an energy product or electricity increases by more than 15 % compared with the average retail price of that energy product or electricity over the previous twelve months, Member States may, after informing the Commission, apply reduced rates of taxation.**

**The maximum time for applying such measures shall be three months and is not renewable.**

~~3.~~ **4.** If the Commission considers that the measures provided for in paragraphs 1 ~~or 1a~~ 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.

***Presidency note:***

*Given the fact that the designed “emergency break” can not be treated by the Commission in one month, the Presidency thinks that an automatic procedure is the only possibility.*

*The price that has to be taken into account is the average retail price.*

*The “emergency break” shall be granted for a maximum period of three months given the fact that it has to counter an exceptional rise in energy prices and that it’s a procedure where no approval of the Commission or other Member States is needed.*

*In case a Member State wants it to last for a longer period, the procedure of Article 20(1) should be launched.*

**Article 25a**

**The Portuguese Republic may from 1 January 2023 to 31 December 2062 apply levels of taxation on energy products and electricity consumed in the Autonomous Regions of the Azores and Madeira lower than the minimum levels of taxation laid down in this Directive in order to compensate for the transport costs incurred as a result of the insular and dispersed nature of these regions.**

***Presidency note:***

*The Portuguese Outermost Regions should be treated in the same way as the Spanish and French outermost regions. Therefore the same derogation as mentioned in the current ETD has been included.*

*Since most delegations are not in favour of permanent exemptions, a transitional period has been mentioned.*

**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(4b)**, Article 2(5**ba**), Article 2(8) and Article 5(7) shall be conferred on the Commission for an indeterminate period of time from 1 January 2023.

3. The delegation of power referred to in Article 1(3), Article 2(5**ba**), **Article 2(5e)**, 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.

***Presidency note:***

*Article 2(5e) has been added and the reference to Article 2(5a) has been changed to Article 2(5b).*

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>6</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) or 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.

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<sup>6</sup> OJ L 123, 12.5.2016, p. 1.

ANNEX II  
Conversion table of net calorific values

Combined Nomenclature Code	Product name	Net calorific value
1507 to 1518	Vegetable, animal or microbial fats and oils	37,0 GJ/1000 kg
2207 20	Ethanol (denatured)	27,0 GJ/1000 kg <b><u>21,3 GJ/1000 l</u></b>
2701 11 00	Anthracite	26,7 GJ/1000 kg
2701 12 10	Coking coal	28,2 GJ/1000 kg
2701 12 90	Other bituminous coal	25,8 GJ/1000 kg
2701 19 00	Sub-bituminous coal	18,9 GJ/1000 kg
2701 20 00	Patent fuel	20,7 GJ/1000 kg
2702	Lignite	11,9 GJ/1000 kg
2703 00 00	Peat	9,8 GJ/1000 kg
2704 00	Coke oven and lignite coke	28,2 GJ/1000 kg
2705 00 00	Coke oven gas	38,7 GJ/1000 kg
	Gas coke	28,2 GJ/1000 kg
	Oxygen steel furnace gas	7,1 GJ/1000 kg
	Blast furnace gas	2,5 GJ/1000 kg

2706 00 00	Coal tar	28,0 GJ/1000 kg
2707 99 99	Heavy aromatic hydrocarbon mixtures	40,4 GJ/1000 kg
2709 00 10	Natural condensates gas	44,2 GJ/1000 kg
2710 12 21	White spirit	40,2 GJ/1000 kg
2710 12 31 to 2710 12 70	Petrol	43,0 GJ/1000 kg 32 GJ/1000 l
2710 12 25 and 2710 12 90	Naphtha	44,5 GJ/1000 kg
2710 19 21	Kerosene-type jet fuel	43,0 GJ/1000 kg 34 GJ/1000 l
2710 19 25	Kerosene - other than jet type	43,8 GJ/1000 kg
2710 19 43 to 2710 19 48	Gas oil	43,0 GJ/1000 kg 36 GJ/1000 l
2710 19 62 to 2710 19 67	Fuel oil	40,4 GJ/1000 kg
2710 19 81 to 2710 19 99	Lubricating oils	40,2 GJ/1000 kg
2710 91 00 and 2710 99 00	Waste oil	40,2 GJ/1000 kg
2711 11 00 and 2711 21 00	Natural gas	48,0 GJ/1000 kg
2711 19 00	Methane (liquefied)	50,0 GJ/1000 kg



2711 13 to 2711 19	Liquefied petroleum gases (LPG)	47,3 GJ/1000 kg
2711 12	Propane (liquefied)	46,0 GJ/1000 kg
2711 19 00	<del>Liquified raw biogas</del>	<del>30,0 GJ/1000 kg</del>
	Liquified biogas	50,0 GJ/1000 kg
2711 29 00	Gaseous hydrocarbons in gaseous state	50,0 GJ/1000 kg
2712 20	Paraffin wax	40,2 GJ/1000 kg
2713 11 00 and 2713 12 00	Petroleum coke	32,5 GJ/1000 kg
2713 20 00	Petroleum bitumen	40,2 GJ/1000 kg
2714 10 00	Oil shale and tar sands	8,9 GJ/1000 kg
2714 90 00	Natural bitumen	40,2 GJ/1000 kg
2804 10 00	Hydrogen	120,0 GJ/1000 kg
<del>2814 10 00</del>	<del>Anhydrous ammonia</del>	<del>18,6 GJ/1000 kg</del>
2901 10 00	Ethane	46,4 GJ/1000 kg
2905 11 00	Methanol	20,0 GJ/1000 kg
2909 19 10	Ethyl-tertio-butyl-ether produced on the basis of ethanol (ETBE)	36,0 GJ/1000 kg
2909 19 90	Methyl-tertio-butyl-ether produced on the basis of methanol (MTBE)	35,0 GJ/1000 kg

	Tertiary-amyl-ethyl-ether produced on the basis of ethanol (TAEE)	38,0 GJ/1000 kg
	Tertiary-amyl-methyl-ether produced on the basis of methanol (TAME)	36,0 GJ/1000 kg
	Tertiary-hexyl-ethyl-ether produced on the basis of ethanol (THxEE)	38,0 GJ/1000 kg
	Tertiary-hexyl-methyl-ether produced on the basis of methanol (THxME)	38,0 GJ/1000 kg
	Dimethylether (DME)	28,0 GJ/1000 kg
3403	Lubricant	40,2 GJ/1000 kg
3826 00 10	Biodiesel (FAME, FAEE)	37,0 GJ/1000 kg
	<b><u>Biodiesel (FAEE)</u></b>	<b><u>37,0 GJ/1000 kg</u></b>

**Presidency note:**

*Two products are removed since these products don't appear in Annex III to Directive (EU) 2018/2001 or in Annex VI to Commission Implementing Regulation 2018/2066/EU.*

*The Presidency suggests to only include the products that are also included in the above mentioned EU legislation.*

*If Member States want to add products the Presidency has no objections, but Member States should agree on the net calorific values and shall be obliged to use these values.*

*The only way to derogate from the values mentioned in Annex II shall be through measured values, as introduced in Article 1, 2.*