



Council of the European Union
General Secretariat

Brussels, 06 February 2024

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

WK 5659/2023 REV 1

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NOTE

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 compromise text

In view of the meeting of the Working Party on Tax Questions on 29 February 2024, delegations will find attached the Presidency compromise text.

Note from the Presidency

Revision of the Energy Taxation Directive

Presidency compromise text

Building on the work carried out by the previous Presidencies and taking into account delegations' comments, the Belgian Presidency has drafted a compromise text below. This text covers the whole Directive. The Presidency has tried to converge the diverging views and to find compromise solutions to the outstanding issues as much as possible.

Modifications compared to the last full compromise text (document WK 5659/2023) are highlighted in bold, underlined or strikethrough.

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.
 - 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/EC¹;
- (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 ~~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;
- (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;

¹ 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)

~~(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;~~

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

~~(rs) other hydrocarbon-containing products than those referred to in points (a) to (pe) 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.~~

Presidency note:

Article 2(1)(d): as suggested by the Spanish Presidency in document WK 14063/2023 the threshold is changed from 10 MW to 7,5 MW.

Article 2(1)(q): this point has been deleted given the strong position of a significant number of delegations.

Article 2(1)(r): as suggested by the Swedish Presidency in document WK 5659/2023. The majority of the delegations could agree with this change. The addition of “by weight” as suggested by the Spanish Presidency in document WK 14063/2023 has been taken into account.

~~1a. For the purposes of this Directive, ‘total rated thermal input’ 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.~~

Presidency note:

This paragraph is deleted as suggested by the Spanish Presidency in document WK 14063/2023.

Total rated thermal input is a generic concept, therefore there is no need to have a definition in the ETD, in the same way that we do not define other generic concepts.

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

~~2a. This Directive shall not apply to hazardous or municipal waste, in the meaning of Directive 2008/98/EC², used as fuel.~~

Presidency note:

Some delegations consider that hazardous or municipal waste should be taxed according to the ETD and do not want the exemption, while other delegations are fine with the exemption. If these products are exempt from the scope of the ETD, it is the Presidency's opinion that if a Member State wants to tax these products it can be done at national level.

Article 2(2a) is moved to Article 3 of the proposal.

~~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~~

² Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives

be considered to be used as heating fuels.

Presidency note:

This paragraph (Article 2(3)) is moved to Article 5. The Presidency considers this move appropriate, given that this paragraph determines the nature of the taxation (as motor fuel or as heating fuel) of the energy products (that are defined in Article 2) used in fuel cells.

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 ~~referred to in paragraph 1~~ produced from biomass;
- (c) ‘biogas’ means gaseous **energy products used as** motor and heating fuels ~~referred to in paragraph 1~~ produced from biomass;
- (d) ‘bioliquids’ means liquid **energy products used as** heating fuels ~~referred to in paragraph 1~~ produced from biomass;
- (e) ‘sustainable biofuels, bioliquids, **and** biogas ~~and products falling within CN codes 4401 and 4402²~~ means **energy products used as** motor and heating fuels ~~referred to in paragraph 1~~, produced from biomass, fulfilling the sustainability and greenhouse gas saving criteria **as laid down in paragraph 5c** ~~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, **and** biogas ~~and products falling within CN codes 4401 and 4402²~~ means 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** ~~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 **as laid down in paragraph 5c** ~~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 4402²~~ means biofuels, bioliquids, **and** 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 apply:

- (a) ‘renewable fuels of non-biological origin’ means **energy products used as** 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 **energy products used as** 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.

Presidency note:

The suggestions made by the Spanish Presidency in document WK 14063/2023 regarding the reference made to paragraph 1 have been maintained. These changes make the text easier to read.

Furthermore, adaptations were made given the proposal to put products of CN codes 4401 and 4402 out of scope.

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) 2021/2139³.

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.

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.

³ Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (OJ L 442, 9.12.2021, p. 1).

Presidency note:

The changes made by the Spanish Presidency in document WK 14063/2023 have been maintained.

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.
7. For the purposes of **this Directive** ~~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).

Presidency note:

The changes made by the Spanish Presidency in document WK 14063/2023 have been maintained.

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 2658/87⁴ as amended by [Commission Implementing Regulation (EU) 2020/1577⁵].

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

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

Article 3

1. This Directive shall not apply to the following:

- (a) output taxation of heat;
- (b) **taxation of products falling within CN codes 4401 and 4402;**

⁴ 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).

⁵ 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).

(c) taxation of hazardous or municipal waste, within the meaning of Directive 2008/98/EC, used as fuel;

(d) the following uses of energy products and electricity:

- (i) energy products used for purposes other than as motor fuel or as heating fuel;
- (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 **(db)**, an energy product has a dual use where 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 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 **(db)**, ‘metallurgical processes’ 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 1893/2006⁶, regardless of the code under which the main manufacturing activity of the business entity is classified.

For the purposes of point **(db)**, ‘mineralogical processes’ means the processes classified in the NACE nomenclature under code C 23 in Annex I of Regulation (EC) No 1893/2006⁶, regardless of the code under which the main manufacturing activity of the business entity is classified.

Presidency note:

The provision indicating what is not covered by the Directive has been complemented with products falling within CN codes 4401 and 4402 and hazardous and municipal waste.

After analysing legal elements, there should be no problem to tax at a national level the products that are not in the scope of this Directive.

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

3. Article 21 shall apply to energy products used as provided for in paragraph 1, point **(db)**, 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).

⁶ 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)

For that purpose, when Member States express their national levels of taxation in units other than EUR/GJ (net calorific value), those 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).

Presidency note:

The changes made by the Spanish Presidency in document WK 14063/2023 have been maintained given that the majority of the delegations could agree with them.

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), **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:

This paragraph has been moved from Article 2 to Article 5. The Presidency considers this more appropriate, given that this paragraph determines the nature of the taxation (as motor fuel or as heating fuel) of the energy products (that are defined in Article 2) used in fuel cells.

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;
 - (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~~;
- (c) category 3 shall include 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 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 CB of Annex I.

Presidency note:

The reference to 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) is not correct, this paragraph concerns heating fuels, so a reference has to be made to Table C (minimum levels of taxation applicable to energy products used as heating fuels).

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

Presidency note:

As requested by a delegation, the Presidency foresees that the sustainable biofuels and biogas other than food and feed crop biofuels and biogas may be included into category 3 during a transitional period of ten years.

~~By way of derogation from paragraph 2, 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, in 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 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:

Adaptations were made given the proposal to put products of CN codes 4401 and 4402 out of scope.

~~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.~~

Presidency note:

Removal as suggested by the Spanish Presidency in document WK 14063/2023.

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.

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 to ~~heating fuels and electricity~~:

- (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 reduced level 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.

4c. From [1 January 2023 to 31 December 2033] 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.

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/EC⁷.

⁷ OJ L 151/1, 14.6.2018, p. 1.

Presidency note:

The Presidency suggests to re-introduce, for a period of 10 years, the possibility to differentiate between commercial and non-commercial use of energy products used as propellant, as suggested by some delegations.

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~~ **two** years starting from 1 January ~~2036~~ **2035** to take **into** 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 ~~three~~ **two** 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 concept of indexation is kept in the compromise text. To reach a compromise, the period is changed from 2 years to 3 years.

Annex I concerning the minimum rates provides tax rates until the 1st of January of 2033, so the first year that the indexation will take place is 2036. No indexation will take place during the transitional period (until 2035).

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.

$(IPCH\ UE27\ 2022/IPCH\ UE27\ 2019) - 1 = (118,82/105,04) - 1 = 0,1312 = 13,12\ %$

The Presidency also points out that 2022 was an exceptional year and thus the only year since 2002 where the inflation surpasses 7% over 2 years and 10 % over 3 years.

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

Presidency note:

To clarify that the first delegated act will have to be adopted by 31 March of 2035, the Presidency suggests to state this clearly in the text.

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, 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, other than petrol, 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, 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, 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 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 calculated as the average of the exchange rate of the business days between 1 January and 30 June. These averages shall be published by the European Commission 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%, 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 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.

Presidency note:

As suggested by the Spanish Presidency in document WK 14063/2023.

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

Presidency note:

These changes have been made because Article 2(3) (fuel cells) has been moved to Article 5.

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.

Presidency note:

Changes have been made to clarify the different situation of paragraph 6, subparagraphs 1 and 2.

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.

Presidency note:

The Presidency suggests to keep the changes proposed by the Spanish Presidency in document WK 14063/2023.

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 ~~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.

Presidency note:

Changes have been made to this Article mainly according to the suggestion made by the Austrian delegation in document WK 14334/2023.

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** 2027, to [4,09 EUR/GJ] from 1 January **2033** 2028 to 31 December **2035** 2032, to [8,18 EUR/GJ] from 1 January **2036** 2033 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.

Presidency note:

In order to make the transition more feasible for all Member States, taking into account the Member States' economic, geopolitical, geographical and social circumstances, the Presidency proposes to prolong the first transitional period where a zero rate is still possible for intra-Union air navigation of flights to or from aerodromes located on islands.

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** ~~owner or the natural or legal person who enjoys its use either through hire or through any other means~~, where the use is 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 or for the purposes of public authorities~~.

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.

For the purposes of this Article, ‘business flights’ shall mean the non-commercial operations other than special operations, by complex aircraft conducted by an operator to carry its own personnel and/or and property or by an operator for the business purposes of the aircraft owner. An ‘operator’ shall mean any legal or natural person.

Presidency note:

The suggestion of the Austrian delegation in document WK 14334/2023 concerning the definition of ‘for commercial purposes’ has been integrated in the text.

With regard to point b) ‘for adequate consideration for the respective flight’ the following clarification can be given:

With this wording we try to tackle problems with the Austrian national case law regarding cases in which there is only a (monthly) management fee paid – not a consideration for the individual flight (several owners task an air operator that also provides the AOC, sometimes even a crew, takes care of the maintenance of the aircraft, ...; the owners use the aircraft themselves, the aircraft is formally on the market, but booking by third persons is blocked for most of the time, ...)

or

there are invoices (& tickets) for individual flights, but they are only formally issued – often for companies that are owned by the owners of the aircraft. In an substance over form approach there is a payment from one pocket of the owner into another of his pockets.

E.g. in a recent case the Court confirmed that exclusively flights for private purposes are not eligible for the exemption – interpreting commercial/for consideration widely. It found a management fee that an air operator receives that is calculated independently from the flights he organises for the owner or persons other than the owner, plus an arrangement according to which he bills the flights of the owner and other clients to the company that (formally) owns the aircraft (a company from which all the costs he incurs are reimbursed and to which he transfers the consideration he receives for the flights) was sufficient, that the flights he organises are eligible for the exemption, regardless of the lack of economic risk born by the air operator (what we would understand as characteristic of „commercial“).

Furthermore an anti-abuse clause is added. The Austrian proposal is inspired by the general anti-abuse clause of the ATAD-Directive (<https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=CELEX:02016L1164-20220101&qid=1698398599710>).

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 or 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. Member States may 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:

In order to take into account the Member States’ economic, geopolitical, geographical and social circumstances, the Presidency proposes to introduce the possibility for Member States to apply a total or partial exemption for the purposes of armed forces and other national security forces, public authorities, aircraft search and rescue operations and aerial firefighting.

The scope can be defined as following:

- armed forces;

- other national security forces: for example:

- the Hellenic Coast Guard, the basic roles are: law enforcement in sea, search and rescue, maritime safety and security, pollution prevention in sea (including response to marine pollution incidents), fishery patrolling, prevention of the illegal immigration, drug interdiction;

- *aerial firefighting;*
- *search and rescue services;*
- *public authorities: for example: aircraft of a public hospital airlifting patients from an island (air-ambulance services).*

The Presidency thinks that this optional exemption (total or partial) will not have a significant impact on the internal market.

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.

~~For the purposes of this Article ‘private pleasure navigation’ 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, where the use is 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 or for the purposes of public authorities.~~

Presidency note:

The Presidency suggests to introduce the same definition for ‘commercial purposes’ for the waterborne navigation as the definition for the air navigation.

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 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:

In order to take into account the Member States’ economic, geopolitical, geographical and social circumstances, the Presidency proposes to introduce the possibility for Member States to apply a total or partial exemption for the purposes of armed forces and other national security forces, public authorities and search and rescue operations.

The scope can be defined as following:

- armed forces;

- other national security forces: for example: the Hellenic Coast Guard, the basic roles are: law enforcement in sea, search and rescue, maritime safety and security, pollution prevention in sea

(including response to marine pollution incidents), fishery patrolling, prevention of the illegal immigration, drug interdiction;

- search and rescue services;

- public authorities: for example: vessel of a public hospital evacuation patients from an island. The Presidency thinks that this optional exemption (total or partial) will not have a significant impact on the internal market.

5. Member States may 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:

In order to take into account the Member States' economic, geopolitical, geographical and social circumstances, the Presidency proposes to introduce the possibility for Member States to apply a total or partial exemption for the purposes of small-scale coastal fishing.

6. Member States may 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.

Presidency note:

In order to take into account the Member States' economic, geopolitical, geographical and social circumstances, the Presidency proposes to introduce the possibility for Member States to apply a total or partial exemption for the purposes of maritime transport services.

This possibility only applies to the regular passengers and ferry services by sea between the locations mentioned in paragraph 6. Other vessels can't benefit from this total or partial exemption.

7. Island Member States may 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:

In order to take into account the Member States' economic, geopolitical, geographical and social circumstances, the Presidency proposes to introduce the possibility for island Member States to apply a total or partial exemption for the purposes of maritime transport services.

This possibility only applies to the regular passengers and ferry services by sea. Other vessels can't benefit from this total or partial exemption.

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 fuel cells;
- (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; **and** biogas ~~and advanced sustainable products falling within CN codes 4401 and 4402;~~
- (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).

~~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:

Adaptations were made given the proposal to put products of CN codes 4401 and 4402 out of scope.

Article 17

1. Without prejudice to Article 5(3), points (a) and (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, the minimum level of taxation 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];

(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 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 limit the application of reductions to energy products used for the purpose of non-business activities; in cases of mixed use 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 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, the minimum level of taxation 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 taxation 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, energy products and electricity used by households that are recognised as vulnerable may be exempt for a maximum period of ~~twenty~~ **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;

- for the purposes of this point, energy products and electricity used by households in Member States which have a gross domestic product per inhabitant of less than 50 % of the European average may be exempt for a maximum period of twenty years after the entry into force of this Directive. The assessment of the gross domestic product per inhabitant shall be made every five years on 1 January and for the first time at the moment of entry into force of this Directive.

The gross domestic product per inhabitant and the European average will be the one of the penultimate year.

Presidency note:

In order to take into account the Member States' economic, geopolitical, geographical and social circumstances, the Presidency proposes to introduce the possibility for Member States which have a gross domestic product per inhabitant of less than 50 % of the European average to apply an exemption for energy products and electricity used by households, and this for a maximum period of twenty years.

This threshold will be assessed every five years.

The first assessment will be made at the moment of entry into force of this Directive.

For example if the Directive will enter into force on 1 January 2025, the gross domestic products per habitant and the European average will be the ones of 2023.

The transitional period for the households that are recognised as vulnerable is, accordingly, adapted to twenty years instead of ten years.

(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, Member States may apply tax reductions, which shall not go below the relevant minimum levels of taxation 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), an 'energy-intensive business' means 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, 'purchases of energy products and electricity' means 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, ‘production value’ means 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, ‘added value’ means the total turnover liable to VAT including export sales minus the total purchases liable to VAT including imports.

For the purposes of point (b), ‘tradable permit schemes’ means tradable permit schemes other than the Union scheme within the meaning of Directive 2003/87/EC of the European Parliament and of the Council⁸.

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

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

States, regional and local government authorities and other bodies governed by public law shall not be considered as business entities in respect of the activities or transactions in which they engage as public authorities. However, if 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 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 mixed use, 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 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, ~~for example to temporarily counteract an unexpected and exceptional rise in energy prices. Where 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.

⁸ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

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

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

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 1 **a** shall be granted for a maximum period of **six** ~~eighteen~~ months, ~~if measures are taken to counter an unexpected and exceptional rise in energy prices.~~

3. 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:

Article 20(1): Adaptations are made based on the Spanish Presidency proposal in document WK14063/2023.

Article 20(1a): The Presidency designed a proposal to tackle unexpected and exceptional increase in the price of an energy product, as requested by several delegations ('emergency brake'). Due to the specific circumstances (unexpected and exceptional), the Presidency believes that for these exceptional circumstances a shorter lead time of one month can be justified to respond efficiently to this type of circumstances.

Maybe the period of one month has to be adjusted in the text due to the internal procedures of the Commission: preparation of a proposal, interservice consultation, translation, signatures, registration in the Commission 's registry, written procedure for adoption, etc..

Article 20(2a): Due to the integration of the condition of an 'unexpected and exceptional rise in energy products' in paragraph 1a, the last part of this sentence has been deleted.

The authorisation shall be granted for a maximum period of six months given the fact that it has to counter an unexpected and exceptional rise in energy prices.

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

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 (“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;
- (d) products falling within CN codes 2710 12 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 19 71 to 2710 19 99** 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 ~~to, 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;

- (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 11 10, 3811 11 90, 3811 19 00 and 3811 90 00;
- (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, ‘bulk commercial movement’ 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 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 there is a risk to the proper functioning of the internal market or to 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 to 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.

Presidency note:

Article 21(1)(d): Adaptations are made based on the Spanish Presidency proposal in document WK 14063/2023.

Article 21(1)(i): Adaptations are made based on the Spanish Presidency proposal in document WK 14063/2023.

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 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 or use 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 that distributor or redistributor or a company which 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 electricity transformers may be considered as redistributors when they supply electricity.

Any natural or legal person producing electricity for its own use is regarded as a distributor.

4a. Member States may decide that the supply or use of electricity does not give rise to a chargeable event if the electricity is produced in a small installation and not fed into a public network.

For the purposes of this paragraph, ‘small installation’ means installation with a production of electricity not expected to exceed 850 MWh annually **or 500 KW of installed production power**. ~~This may also be expressed as a certain level of installed production power not exceeding the equivalent annual production limit.~~

In defining “small installation” Member States may apply limits below those expressed in the second subparagraph.

Paragraphs 1, 2 and 3 of Article 13 shall not apply to energy products and electricity used to produce electricity exempted according to 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 or use 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 that distributor or redistributor or a company which 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.

Any natural or legal person producing the products referred to in this paragraph for its own use is regarded as a distributor.

5a. Member States may decide that the supply or use of biogas does not give rise to a chargeable event if the biogas is produced in a small installation and not fed into a public network

For the purposes of this paragraph, ‘small installation’ means installation with a production of biogas not expected to exceed 3 000 GJ annually **or 500 KW of installed production power**. ~~This may also be expressed as a certain level of installed production power not exceeding the equivalent annual production limit.~~ **In defining “small installation” Member States may apply limits below those expressed in the second subparagraph.**

Paragraphs 1, 2 and 3 of Article 13 shall not apply to energy products and electricity used to produce biogas exempted according to this paragraph.

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 or use 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.

Any natural or legal person producing the products referred to in this paragraph for its own use shall be tax liable and the tax becomes chargeable at the time of use.

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 [~~7,540~~ MW].

The tax shall be chargeable to the operator of 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.

Presidency note:

Article 22(4a): Adaptations are made based on the Spanish Presidency proposal in document WK 14063/2023.

Article 22(5a): Adaptations are made based on the Spanish Presidency proposal in document WK 14063/2023.

Article 22(7): Adaptations were made given the proposal to put products of CN codes 4401 and 4402 out of scope. Based on the Spanish Presidency proposal, the total rated thermal input threshold is set at 7,5 MW (see document WK 14063/2023).

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' mean:

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

For the purposes of this Article, 'special container' 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 **Euro/Gigajoule** ~~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.

3. Before 30 June of each year, and in reference to the previous calendar year, Member States shall inform the Commission of the quantities subject to different tax rates and the quantities

of products to which the exemptions outlined in national legislation have been applied. These quantities shall be expressed in Gigajoules.

Presidency note:

These changes have been made based on the Spanish Presidency proposal in document WK 14063/2023.

For the sake of clarity the Presidency has chosen to change the wording 'taxable amounts' into 'quantities'.

Article 27

1. Member States shall inform the Commission of measures taken pursuant to **Article 5 and 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.

Presidency note:

The Presidency believes that Article 5(4b) should be included because this provision provides an opportunity to Member States to provide tax differentiations depending on quality, quantitative consumption levels or for business and non-business use.

Regarding State aid, the understanding of the Presidency is that it is not possible to make changes in the ETD that have an influence on the State aid procedures. So, all the tax exemptions, tax reductions, tax differentiation and tax refunds within the meaning of this Directive have to be notified. If the Member States wish to make changes to the State aid rules, for example extending Article 44 of the General Block Exemption Regulation (GBER), this has to be done following the procedures foreseen for adapting the GBER.

Further discussion on this point in the WPTQ is futile.

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) 182/2011⁹ shall apply.

Article 29

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt the delegated acts referred to in Article 1(3), Article 2(5a), Article 2(8) and Article 5(7) shall be conferred on the Commission for an indeterminate period of time from 1 January 2023.

3. The delegation of power referred to in Article 1(3), Article 2(5a), Article 2(8) and Article 5(7) may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the 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-Making¹⁰.

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.

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, 5 and 7, Article 8(1), Articles 9(1), 13, to 15, Article 16, point (b), last sentence, Article 16, points (c), (d) and (e), Articles 17 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 (3), Article 25(2), Article 26(1), Articles ~~28~~ to 31 and Annex I and shall immediately communicate the text of those measures to the Commission.

⁹ 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).

¹⁰ OJ L 123, 12.5.2016, p. 1.

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 repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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

Article 31

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

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 6, Article 8(2), Articles 10 to 12, Article 16, points (a) and (b), Article 20, Article 21(1), point (a), (c), (e) to (h) and (n), Article 21(3), Article 22(2) and (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]

ANNEX II
Conversion table of net calorific values

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

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

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

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

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 ¹³⁾

Gasoil CN 2710 19 43 to 2710 19 48	0,036 GJ/l 0,043 GJ/kg	Annex III to Directive (EU) 2018/2001 ⁱ⁾
Kerosene-type jet fuel CN 2710 19 21	0,034 GJ/l 0,043 GJ/kg	Annex III to Directive (EU) 2018/2001 ⁱⁱⁱ⁾
Kerosene—other than jet type CN 2710 19 25	0,0438 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾
Hydrogen CN 2804 10 00	0,12 GJ/kg	Annex III to Directive (EU) 2018/2001 ⁱ⁾
Natural gas CN 2711 21 00	0,048 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾
Methane CN 2711 19 00 and CN 2711 29 00	0,05 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾
Natural gas liquids CN 2711 11 00	0,0442 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾
Shale-derived fuel oil CN 2710 19 62 to 67 and CN 2710 20 31 to 38 [CN 2707 99 99]	0,038 GJ/kg	?
Residual fuel oil (heavy fuel oil) CN 2710 19 62 to 67 and CN 2710 20 31 to 38	0,0404 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾

Liquefied petroleum gases (LPG) CN 2711 12 97, CN 27 11 13 97 and CN 2711 19	0,0473 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
Ethane CN 2901 10 00	0,0464 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
Naphtha CN 2707 50 00, CN 2710 12 21 and CN 2710 12 25	0,0445 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
Bitumen CN 2713 20 00	0,0402 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
Lubricants CN 2710 19 71 to 2710 19 99, CN 3403 and CN 3811	0,0402 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
Petroleum coke CN 2713 11 00, 2713 12 00	0,0325 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
Paraffin waxes CN 2712 20	0,0402 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
White spirit and SBP CN 2710 12 21 and 2710 12 25	0,0402 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾

Anthracite CN 2701 11 00	0,0267 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾
Coking coal CN 2701 12 10	0,0282 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾
Other bituminous coal CN 2701 12 90	0,0258 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾
Sub-bituminous coal CN 2701 12 90	0,0189 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾
Lignite CN 2702	0,0119 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾
Oil shale and tar sands CN 2714 10 00	[0,0089 GJ/kg]	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾
Patent fuel CN 2701 20	0,0207 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾
Coke oven coke and lignite coke CN 2704 00	0,0282 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱ⁾

Gas coke CN 2705 00 00	0,0282 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
Coal tar CN 2706 00 00	0,028 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
Coke oven gas CN 2705 00 00	0,0387 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
Blast furnace gas CN 2705 00 00	0,00247 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
Oxygen steel furnace gas CN 2705 00 00	0,00706 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
Waste oils CN 2710 91 00, 2710 99 00	0,0402 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
Peat CN 2703 00 00	0,00976 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁽ⁱⁱ⁾
FUELS FROM BIOMASS (OR BIOMASS PROCESSING OPERATIONS)		
Biodiesel (FAME) CN 3826 00	0,033 GJ/l 0,037 GJ/kg	Annex III to Directive (EU) 2018/2001 ⁽ⁱ⁾
Biodiesel (FAEE) CN 3826 00	0,034 GJ/l 0,038 GJ/kg	Annex III to Directive (EU) 2018/2001 ⁽ⁱ⁾

Bio-propane CN 2711 12 and CN 2711 29 00	0,024 GJ/l 0,046 GJ/kg	Annex III to Directive (EU) 2018/2001 ^{†)}
Pure vegetable oil CN 1507 to 1518	0,034 GJ/l 0,037 GJ/kg	Annex III to Directive (EU) 2018/2001 ^{†)}
Biogas CN 2711 19 00 and CN 2711 29 00	0,05 GJ/kg	Annex III to Directive (EU) 2018/2001 ^{†)}
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 ^{†)}
Hydrotreated oil of biomass origin to be used for replacement of petrol CN 2710 12 31 to 90	0,03 GJ/l 0,045 GJ/kg	Annex III to Directive (EU) 2018/2001 ^{†)}
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 ^{†)}
Hydrotreated oil of biomass origin to be used for replacement of LPG CN 2710 12 97, CN 2710 13 97 and CN 2711 19	0,024 GJ/l 0,046 GJ/kg	Annex III to Directive (EU) 2018/2001 ^{†)}
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 ^{†)}

Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of petrol CN 2710 12 131 to 90	0,032 GJ/l 0,044 GJ/kg	Annex III to Directive (EU) 2018/2001 ⁱⁱ⁾
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 ⁱⁱ⁾
Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of LPG CN 2710 12 97, CN 2710 13 97 and CN 2711 19	0,023 GJ/l 0,046 GJ/kg	Annex III to Directive (EU) 2018/2001 ⁱⁱ⁾
Other liquid biofuels CN 1507 to 1518 and CN 3824 99 92	0,0274 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱⁱ⁾
Wood and wood waste CN 4401	0,0156 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱⁱ⁾
Other primary solid biomass CN 4401 21, 4401 22	0,0116 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱⁱ⁾
Charcoal CN 4402	0,0295 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱⁱ⁾
Landfill and sludge gas CN 2711	0,0504 GJ/kg	Annex VI to Commission Implementing Regulation (EU) 2018/2066 ⁱⁱⁱ⁾

RENEWABLE FUELS FROM VARIOUS SOURCES (INCL. BIOMASS)		
Methanol CN 2905 11 00	0,016 GJ/l 0,02 GJ/kg	Annex III to Directive (EU) 2018/2001 ¹⁾
Ethanol CN 2207 20	0,021 GJ/l 0,027 GJ/kg	Annex III to Directive (EU) 2018/2001 ¹⁾
Propanol CN 2905 12 00	0,025 GJ/l 0,031 GJ/kg	Annex III to Directive (EU) 2018/2001 ¹⁾
Butanol CN 2905 13 00 and CN 2905 14	0,027 GJ/l 0,033 GJ/kg	Annex III to Directive (EU) 2018/2001 ¹⁾
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 ¹⁾
Fischer-Tropsch petrol CN 2710 12 11 to 90	0,033 GJ/l 0,044 GJ/kg	Annex III to Directive (EU) 2018/2001 ¹⁾
Fischer-Tropsch jet fuel CN 2710 19 21	0,033 GJ/l 0,044 GJ/kg	Annex III to Directive (EU) 2018/2001 ¹⁾
Fischer-Tropsch LPG CN 2710 12 97, CN 2710 13 97 and CN 2711 19	0,024 GJ/l 0,046 GJ/kg	Annex III to Directive (EU) 2018/2001 ¹⁾
Dimethylether (DME) CN 2909 19 90	0,019 GJ/l 0,028 GJ/kg	Annex III to Directive (EU) 2018/2001 ¹⁾
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 ¹⁾
Methyl tertio-butyl ether produced on the basis of	0,026 GJ/l 0,035 GJ/kg	Annex III to Directive (EU) 2018/2001 ¹⁾

methanol (MTBE) 2909 19 90		
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 ⁱ⁾
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 ⁱ⁾
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 ⁱ⁾
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 ⁱ⁾

- i) — 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).

Presidency note:

Annex II has been changed according to the proposal of the Spanish Presidency (document WK 13706/2023). Additional adaptations were made given the proposal to put products of CN codes 4401 and 4402 out of scope.

Some of the descriptions of the 'product name' have been changed as requested by some delegations. The Presidency believes that these descriptions are solely intended to provide a general (non-exhaustive) description of the concerned CN-code.

At request of some delegations, the unit for the conversion factor GJ/1000 litres has been added for certain products (petrol, diesel and kerosene JET-A1). In these cases the conversion factors are expressed in 2 units, once in GJ/1000 l and once in GJ/1000 kg.

ANNEX III

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

- 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.

Presidency note:

Firstly, the heading of Annex III has been modified to the wording of Article 2(4)(h).

Secondly, the reference to products of CN codes 4401 and 4402 has been deleted given the proposal to put products of CN codes 4401 and 4402 out of scope.