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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Draft Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast) - Presidency compromise text

With a view to the meeting of the Working Party on Tax Questions (Indirect Taxation – Excise duties / Energy taxation) on 5 September 2025, delegations will find in the Annex a compromise text prepared by the Presidency.

Modifications compared to the previous compromise text (document ST 9008/25) are shown in bold/underline or strikethrough. The revised compromise text contains three types of modifications:

- 1) legal-linguistic modifications – highlighted in **bold/underline**. These modifications were made in order to increase clarity and readability of the text by aligning it to standard language. No changes in the substance were made;
- 2) technical modifications aimed at improving the clarity of the text proposed by the Presidency – highlighted in **bold/underline**. No changes in the substance were made;
- 3) modifications that can entail some policy implications are highlighted in **grey shade**.

The Presidency has provided explanations in boxes, as appropriate, especially in case of the third category of modifications.

Draft

COUNCIL DIRECTIVE

restructuring the Union framework for the taxation of energy products and electricity (recast)

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2003/96/EC¹ has been substantially amended several times². Since further amendments are to be made, that Directive should be recast in the interests of clarity.

¹ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).

² See Part A of Annex IV.

- (2) Directive 2003/96/EC was adopted ~~in order to~~ ensure the proper functioning of the internal market as in regards to the taxation of energy products and electricity. ~~The That~~ Directive also integrated environmental protection requirements, in particular, in ~~the~~ light of the Kyoto Protocol to the United Nations Framework Convention on Climate Change³.
- (3) It is necessary to ensure ~~that clear~~ legal certainty in relation to taxation rules for energy products and electricity continue to contribute to the smooth functioning of the internal market. The proper functioning of the internal market requires common rules on energy taxation.
- (4) Common rules for taxation of energy products and electricity can ~~also help~~ contribute to tackle ~~the climate and environmental-related challenges~~ related to the climate and environment, as laid out in the context of the Communication from the Commission, entitled ‘The European Green Deal’⁴. Energy taxation can contribute to the Union’s ambition of at least a 55% reduction in net greenhouse gas emissions by 2030 compared to 1990, as well as to the objective of zero pollution through the implementation of the principle ‘polluter pays’, by ensuring that the taxation of motor fuels, heating fuels and electricity better reflects the impact ~~they~~ those products have on the environment and on health. The contribution of energy taxation to ~~those~~ these objectives has been endorsed by the Council in its conclusions of 5 December 2019 on the EU framework for energy taxation ~~framework~~.
- (4a5) Under the current geopolitical and socioeconomic circumstances ~~situation~~, together with the rise in energy prices and the rate of inflation, it is essential to take into consideration the social costs of energy taxation and the different starting points of Member States and provide them with adequate flexibility with regard to the fiscal measures to be taken to respond to the social impact of energy taxation.

³ Council Decision (EU) 2002/358 of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (OJ L 130, 15.05.2002, p.1-3, ELI: <http://data.europa.eu/eli/dec/2002/358/oj>).

⁴ COM(2019) 640 final of 11 December 2019.

- (4~~6~~6) Taking into account the communications ~~recommendations~~ of the European Commission expressed entitled ~~for example in the documents as~~ ‘A Competitiveness Compass for the EU’, ‘Action Plan for Affordable Energy’, and ‘The Clean Industrial Deal’ ~~and~~ and ‘A European Steel and Metals Action Plan’, special treatment should be given to sensitive sectors of the EU Union economy, such as mineralogical, metallurgical and energy-intensive industries, which are affected by the taxation introduced on the basis of this Directive.
- (57) As a Party to the United Nations Framework Convention on Climate Change, the Union has ratified the Paris Agreement⁵. The taxation of energy products and, where appropriate, electricity can also help achieve the ~~Paris Agreement~~ objectives of the Paris Agreement.
- (68) Member States should, however, be able to use the energy taxation of motor fuels, heating fuels and electricity for a variety of purposes and not necessarily nor specifically or exclusively relating to the reduction of greenhouse gases.
- (79) Appreciable differences in the national levels of energy taxation applied by Member States could prove detrimental to the proper functioning of the internal market.
- (810) The establishment of appropriate Union minimum levels of taxation could enable the reduction of existing differences in ~~the~~ national levels of taxation.
- (911) Rules should be ~~laid down~~ established to base energy taxation on the energy content of energy products and electricity, coupled with their environmental performances. Moreover, the list of energy products should be updated to include certain energy products in order to ensure a unified and standardised treatment of those fuels.
- (1012) In the interest of fiscal neutrality, the same minimum levels of taxation should apply for each category, to all energy products put to a given use.
- (1113) Member States should also replicate at any time the ranking of minimum levels of taxation as laid down in Annex I in relation to different products for each given single use in order to ensure an environmentally tailored structure of rates. Member States ~~can~~ should achieve ~~this~~ the vertical ranking within a transitional period of eight years in order to provide for a gradual introduction of the ranking.

⁵ Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1, ELI: <http://data.europa.eu/eli/dec/2016/1841/oj>).

Presidency note:

Recital 13 has been rewritten to enhance clarity.

- (14) The minimum levels of energy taxation should be regularly and automatically updated following a harmonised procedure to ensure the stability of their real value over time, ~~take into account the evolution of their real value in order to~~ and to preserve the level of rate harmonisation across Member States. The index used for this update should not include the energy and food prices and ~~to~~ reduce the volatility stemming from energy and food prices.
- (215) In the case of an energy product ~~consisting~~ composed of one or more energy products, specific provisions should be laid down to ensure ~~as much as possible~~ an effective implementation of the environmentally tailored structure of rates.
- (1316) In order to ensure a smooth implementation of certain provisions relating to some products or uses, transitional periods of application are needed.
- (4417) As a general principle, Member States should not apply ~~to~~ levels of taxation on energy products and electricity ~~levels of taxation not less~~ lower than the minimum levels of taxation set out by laid down in this Directive. For the purposes of complying with Union minimum taxation levels, Member States should be ~~permitted~~ allowed to ~~comply with the Union minimum taxation levels by taking~~ into account the total charge levied in respect of all indirect taxes which they have chosen to apply (excluding value added tax VAT).
- (4518) It is a responsibility of the Member States to put in place the fiscal arrangements necessary for the implementation of this Directive with regard to the taxation of energy products and electricity. In that regard, Member States might decide not to increase the overall tax burden if they consider that the implementation of the principle of tax neutrality could contribute to the restructuring and the modernisation of their tax systems by encouraging behaviour which is conducive to greater protection of the environment and increased labour use. Member States should lay down conditions to ensure the correct and straightforward application of this Directive and the prevention of any evasion, avoidance or abuse.

Presidency note:

Amendment to reflect the Presidency's proposal of a general provision on implementation in Article 25.

(1619) Energy prices are key elements of energy, transport and environment policies in the Union.

(1720) **Output taxation of heat should be outside the scope of this Directive,** ~~a~~As heat is only subject to very limited intra-Union trade, ~~output taxation of heat should remain outside the scope of this Directive.~~

(1821) Waste **used as heating fuel** should be outside the scope of this Directive. ~~The inclusion of such waste could imply a deviation of waste from waste incineration installations towards landfills in the Union, which create methane emissions, and towards exports to third countries, with a potential hazardous impact on the environment.~~ **However, listed energy products including other products used as motor fuel and other hydrocarbon-containing products used as heating fuel should be covered by the Directive and fall within its scope.**

Presidency note:

As waste used as heating fuel will be outside the scope of the ETD, it is proposed to simplify the recital. Furthermore, it is proposed to clarify which kinds of energy products connected to waste will be covered by the Directive. Please also see the Presidency note to Article 2.

(1922) **This Directive should only cover** ~~e~~Energy products should essentially be subject to this Directive when used as heating fuel or motor fuel **and electricity**, ~~which is understood as their single use. To that extent, it is in the nature and the logic of the tax system to exclude from the scope of the framework dual uses and a~~Non-fuel uses of energy products **should therefore fall outside the scope of this Directive. Dual uses of energy products, covering chemical reduction and in electrolytic and metallurgical processes, and use of energy products for mineralogical processes should also fall outside the scope of this Directive.** Electricity used for these ~~sc~~ purposes of chemical reduction and in electrolytic, mineralogical and metallurgical processes should be treated on an equal footing **and therefore fall outside the scope of this Directive.**

Energy products used in fuel cells installed on board vehicles, vessels and aircraft should be considered to be used as motor fuels. Energy products used as fuel in stationary fuel cells should be considered to be used as heating fuels, thereby also falling under the possibility to tax those products as used to produce electricity.

(19a~~23~~) Taxation of the energy products and electricity used in a way that brings them within the scope of this Directive should be equal or superior to the minimum level of taxation set out in this Directive ~~with the exception of special uses of energy products and electricity for which it should be possible for the Member State to determine the level of taxation on the basis of provisions which allow for different treatment in justified cases.~~

In ~~such~~ special cases, it ~~should be possible for the~~ level of taxation **can** ~~determined by the Member State to~~ differ from the minimum level of taxation that would ~~be normally~~ **be** applied pursuant to this Directive.

Presidency note:

Recital 22 is adjusted to reflect the general provisions in Chapter 1 of the compromise text.

Recital 23 is adjusted to reflect the general computation provisions in Chapter 2 of the compromise text.

(19b~~24~~) **Energy products should be divided into different tax categories depending on the environmental performance of the energy product.** In view of the **aim to give preferential tax treatment to more environmentally friendly energy products** ~~financial, economic and environmental situation in each Member State, it is necessary to require the Commission~~ **should** ~~to~~ monitor the **technological development and changes in relevant legal frameworks** ~~environmental performance of the energy products falling within the scope of this Directive and, in~~ **In** case their categorisation **of the energy products** under this Directive becomes inconsistent with their actual environmental impact, the Commission should propose to the Council, as appropriate, a targeted amendment to this Directive. **The development of other Union measures such as the Union Database for biofuels, including advanced**

biofuels, renewable fuels, and low-carbon fuels should support the administration of component-based taxation.

Presidency note:

Adjusted based on the deletion of article 2(6).

A delegation has raised a concern about how to implement different taxation on hydrogen based on its environmental performance, especially when hydrogen is exchanged on the internal market. It is the Presidency's understanding that the Union Database for liquids and gaseous biofuels, bioliquids, renewable fuels, and low-carbon fuels will provide a database and needed traceability of the fuels, and the associated Proof of Sustainability certificate (PoS), such as renewable fuels of non-biological origin (category 3) and low-carbon fuels (category 2 and 3). Hydrogen, that cannot be certified as low-carbon or renewable (category 1), will not be included in the database.

The Union Database is still under development by the Commission in collaboration with Member States.

~~(2025)~~ The fact that certain products and their uses are outside the scope of this Directive does not prevent Member States from subjecting those products and uses to taxation at national level.

~~(2126)~~ It is necessary to establish different Union minimum levels of taxation according to the use of energy products and electricity. **Where the Directive allows for differentiated tax rates, this should be understood as single use. Single use should be the legal ground after the Directive to differentiate for example between tax level of electricity used for charging vehicles and for heating purposes.**

Presidency note:

Adjustment to introduce the concept of single use in terms of differentiated tax rates.

~~(2227)~~ Energy products used as a motor fuel for certain purposes and those used as heating fuel are normally taxed at lower levels than those applicable to energy products used as a propellant. It is important that electricity is amongst the least taxed energy sources with a view to fostering its use, in particular in the transport sector.

~~(2328)~~ Different national circumstances may justify ~~optional distinguishing~~ **a distinction** between commercial and non-commercial use of energy products used as propellant, as well as between tax rates that are directly linked to product quality, business and non-business use or depending on quantitative consumption levels for heating fuels and electricity.

~~(2429)~~ ~~The taxation under fiscal control~~ The use of energy products and electricity used to produce and to maintain the ability to produce electricity should be exempted from taxation. The consumption of energy products and electricity to produce energy products should not be taxed. However, Member States should have the option to pursue more ambitious environmental policy, including climate policy, by taxing these products. Electricity produced on board a vehicle, vessel or aircraft should always be exempt, since energy products used to produce this electricity should be taxed.

Presidency note:

The Presidency suggests aligning the text with the provisions in art. 12.

~~(2530)~~ While respecting the existing international obligations and ~~in order~~ to maintain the competitive position of Union companies, ~~it is advisable to continue to~~ Member States should apply the ~~an~~ exemption of energy products and electricity supplied for air navigation and waterborne navigation in Union waters. It should still be possible for Member States to limit the exemptions to international or intra-Union transport or in accordance with bilateral agreements for air and sea transport between parties to the agreement.

~~(31)~~ The exemption for air navigation should not apply to, except for aircrafts used for the carriage of passengers and having a maximum of 19 seats, unless these are ~~and private~~ pleasure waterborne navigation. Furthermore, regardless of the number of seats, the tax exemption should also be applied to scheduled commercial flights, armed forces, other national security forces, search and rescue services and public authorities.

~~(32)~~ The exemption for waterborne navigation in Union waters should not be applied for private pleasure waterborne navigation.

~~(33)~~ The exemption should not apply for waterborne navigation in inland waterways. However, Member States should be able to exempt or reduce the level of taxation for navigation on inland waterways.

~~(34)~~ ~~By In [31 December 203534],~~ the Commission should examine the possibility of taxation of air navigation and waterborne navigation and propose legislative amendments to this Directive, ~~as where~~ appropriate. ~~That~~ examination should primarily focus on the availability of sustainable alternative fuels and electricity and on ~~the~~ international developments.

Presidency note:

Amendment to better reflect the wording in the current directive regarding provisions that are a part of the compromise text. In the compromise text as well as in the current directive, air navigation and waterborne navigation within Union waters (including fishing) is exempted.

For aircraft, this exemption does not apply to aircraft used for the carriage of passengers and having a maximum of 19 seats as well as scheduled commercial flights etc. For waterborne navigation in Union waters the exemption does not apply to private pleasure craft.

Member States has the option to limit these exemptions to international or intra-Union transport or in accordance with bilateral agreements. This means that Member States can choose nationally to tax national transport (both aircraft and vessels) and other navigation within Union waters (including fishing) and air navigation than transport.

The date of the evaluation is adjusted to align with the legal text.

To ensure clarity about the provision regarding waterborne navigation in inland waterways, which is not covered by the exemption for waterborne navigation in Union waters, this is also added to the recital.

(2635) **It should be possible for highly efficient combined heat and power generation and, for the purposes of promoting the use of alternative energy sources, renewable forms of energy, electricity of renewable origin and pilot projects may to qualify for preferential treatment. Most of these measures are retained from Directive 96/2003. For advanced and intermediate biofuels, bioliquids, biogas, and renewable fuels of non-biological origin, it is relevant to account for their potential role for decarbonisation, as well as the fact that they are in pre-commercial phase and deserve support. For those reasons and to support more ambitious national environmental policies, it should be possible for Member States to apply a more favourable tax treatment to those energy products.**

(26a36) Member States ~~may~~ **should be allowed to** provide **for** reductions **in the level of taxation** or exemptions ~~in the level of taxation to~~ **for** the agricultural, horticultural, aquaculture and forestry sector **until the end of 2037.**

Presidency note:

Please see Presidency note on Article 16d(1)(c).

- (2737) In order to promote and enhance the use of local public passenger transport and other public services, Member States ~~may~~ **should be allowed to** apply targeted reductions in the levels of taxation.
- (2838) Targeted reductions ~~or exemptions~~ in the level of taxation **or exemptions of taxation might** ~~may~~ prove necessary to incentivise the achievement of environmental protection objectives and improvements in energy efficiency of the Union productive sector.
- (2939) Targeted reductions ~~or exemptions~~ in the level of taxation **or exemptions of taxation might** ~~may~~ prove necessary to tackle the social impact of energy taxes. Different levels of taxation may temporarily prove necessary to protect households.
- (40) Member States should have the option to apply exemptions or reductions in the level of taxation for electricity provided to aircraft stationed at gates and vessels berthed in ports used for other purposes than navigation. In so far as such use avoids emissions of air pollutants originating from the burning of fuels in vessels or aircraft, it contributes to an improvement in the local air quality in cities and to noise reduction. The exemption is therefore expected to contribute to the environmental, health and climate policy objectives of the Union.**

Presidency note:

The Presidency suggests adding a recital covering the option to reduce or exempt from taxation electricity used for aircraft stationed at gates and vessels berthed at ports as regulated in Article 16e.

- (3041) In view of the financial, economic and environmental situation in each Member State, it is necessary to provide for a procedure authorising the introduction by Member States, for a set period, of other exemptions or reductions in the level of taxation. Such authorisation, following a justified request by a Member States and on a proposal from the Commission, should, **because of the sensitive implications that these exemptions or reductions may have on national budgetary issues,** be adopted by means of a Council ~~Implementing~~ ~~Decision~~ in accordance with Article 291 TFEU. Such measures should be kept under regular review **to ensure that they continue to be of sustainable nature taking into account the proper functioning of the internal market, the need to ensure fair competition and Union health, environment, energy and transport policies.**

Although the scope of the implementing measures may be limited, those measures would have a budgetary impact which for one or more Member States could be significant. Accordingly, the Council is justified in reserving to itself the right to exercise implementing powers.

Presidency note:

Adjustments proposed to justify further this provision when deleting the phrase ‘exceptional cases’ in Article 17. See the note on Article 17.

- (3142) In the event of a significant and lasting increase in the average retail price of energy products or electricity, Member States should be allowed, after informing the Commission, to apply reductions in the level of taxation that ~~can~~ **could** go below the minimum rates for a limited period of time.
- (3243) Due to the special treatment of certain products, different chargeability rules should apply ~~for~~ **to** electricity, **to** gaseous products transported by pipelines and **to** coal.
- (32a44) ~~Provision-~~It should be ~~made~~ **possible** for the Member States to apply different chargeability rules ~~for~~ **to** small installations, where electricity is produced and not fed into a public network. However, with a view to limiting **the** administrative burden, it should be ~~made~~ possible for the Member States to differentiate the threshold for identifying such small installations, depending on the energy sources used.
- (3345) The list of energy products subject to the control and movement provisions of Council Directive (EU) 2020/262⁶ should include selected energy products, in order to ensure a unified and standardised treatment of those products and to take into account the risk of tax evasion, avoidance or abuse.
- (3446) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to determine whether the control and movement provisions of Directive (EU) 2020/262 are to apply to the products giving rise to evasion, avoidance or abuse. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷.

⁶ Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27.2.2020, p. 4).

⁷ 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).

- (3547) In order to ensure free movement while at the same time respecting the security requirements applicable to commercial motor vehicles and special containers, the definition of standard tanks of such vehicles should reflect the fact that fuel tanks are not exclusively fitted to commercial vehicles by their manufacturer.
- (3648) Member States should inform the Commission of ~~those~~ national measures such as tax exemptions, tax reductions, tax differentiations and tax refunds which have the effect of lowering the rate for energy products below the corresponding minimum level of taxation laid down in Annex I **to this Directive**. Such information does not release Member States from the obligation to examine the compatibility of ~~such~~ **those** measures with ~~R~~ regulations adopted by the Commission on the basis of Article 108(4) TFEU and from the obligation to notify certain national measures laid down in Article 108(3) TFEU.
- (3749) In order to ensure that the references to Combined Nomenclature (CN) codes in this Directive, references made to the greenhouse gas emissions saving criteria set out in Article 29 of Directive (EU) 2018/2001 and references to the products in Annex IX to that Directive are updated whenever necessary, that Annex II of this Directive reflects the commonly used energy products, and that the minimum rates of taxation reflect prices evolution, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁸. In particular, to ensure equal participation in the preparation of delegated acts, the Council receives all documents at the same time as Member States' experts, and these experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (3850) Five years after the entry into force of this Directive and every five years thereafter, the Commission should report to the Council on the application of this Directive, examining in particular the minimum levels of taxation, the impact of innovation and technological developments, especially as regards energy efficiency, the use of electricity in transport and the justification for the exemptions, reductions and differentiations laid down in this Directive.

⁸ **Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1-14, ELI: http://data.europa.eu/eli/agree_interinstit/2016/512/oj).**

The report should 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 wider relevant objectives of the Treaties.

- (39~~51~~**51**) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (40~~52~~**52**) This Directive should be 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 **Directive 2003/96/EC, and Council Directives 2004/74/EC⁹ and 2004/75/EC¹⁰** the Directives set out in Annex IV, Part B,

⁹ **Council Directive (EU) 2004/74 of 29 April 2004 amending Directive 2003/96/EC as regards the possibility for certain Member States to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation (OJ L 157, 30.4.2004, p. 87-99, ELI: <http://data.europa.eu/eli/dir/2004/74/oj>).**

¹⁰ **Council Directive (EU) 2004/75 of 29 April 2004 amending Directive 2003/96/EC as regards the possibility for Cyprus to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation (OJ L 157, 30.4.2004, p. 100-105, ELI: <http://data.europa.eu/eli/dir/2004/75/oj>).**

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I GENERAL PROVISIONS

Article 1

Scope

1. This Directive applies to energy products defined in Article 3(1) and to electricity defined in Article 3(2).
2. **However,** ~~For~~ this Directive, with the exception of Article 18, does not apply to the following uses of **such** energy products ~~defined in Article 3(1) and electricity defined in Article 3(2):~~

Presidency note:

Modification made for the purposes of simplification, as the Articles are referred to in paragraph 1.

- (a) energy products used for purposes other than as motor fuel or as heating fuel;
- (b) dual use of energy products;
- (~~dc~~) **energy products used for mineralogical processes, where energy products are used directly in or to provide a direct energy input to the process;** ~~electricity used for the purposes of chemical reduction and or in electrolytic, mineralogical and metallurgical processes, where electricity is used directly in or to, provide a direct energy input to the process;~~
- (~~ed~~) **electricity used for the purposes of chemical reduction or in electrolytic, mineralogical and metallurgical processes, where electricity is used directly in or to provide a direct energy input to the process.** ~~energy products used for mineralogical processes, where energy products are used directly in or to provide a direct energy input to the process.~~

Presidency note:

For reasons of clarity the Presidency suggests that all provisions regarding energy products are mentioned first and then in the end, the provision regarding electricity. This follows the general structure of the Directive. The content of the provisions is not changed. Except for the correction of “and” to “or” in paragraph 2(d).

3. For the purposes of paragraph 2, point (b), ‘dual use’ means an energy product that 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.
4. For the purposes of paragraph 2, points (c) **and (d)**, ‘mineralogical processes’ means the processes classified in the NACE nomenclature under code C 23 in Annex I ~~of~~ **to** Regulation (EC) No 1893/2006, regardless of the code under which the main manufacturing activity of the business entity is classified.

Presidency note:

Adjustment to include the reference to point (d), where such processes are mentioned.

5. For the purposes of paragraph 2, points ~~(ed)~~, **and paragraph 3** ‘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~~ **to** Council Regulation (EC) No 1893/2006¹¹, regardless of the code under which the main manufacturing activity of the business entity is classified.

Presidency note:

Adjustment to include the reference to paragraph 3, where such processes are mentioned, and to reflect the changed sequence of (c) and (d) in paragraph 2 of this Article.

¹¹ 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)

6. This Directive does not apply to the following:

- (a) output taxation of heat;
- (b) taxation of products falling within CN codes 4401 and 4402;
- (c) taxation of waste used as heating fuel **except for taxation of energy products mentioned in article 3, paragraph 1, (a) to (p), when those energy products are recovered from waste.**

Presidency note:

Definition of waste

The Presidency has received requests to add a definition of waste into the ETD.

In general, waste is defined in Directive 2008/98/EC of 19 November 2008 on waste and repealing certain Directives (so-called waste Directive). National legislation on waste follows this Directive.

According to Article 3(1), in the waste Directive, “‘waste’ means any substance or object which the holder discards or intends or is required to discard.” Furthermore, the European Court of Justice (ECJ) has interpreted this definition in several cases. Concrete circumstances play an essential part of how to interpret the definition.

In the Renewable Energy Directive (RED) waste is defined as ‘waste as defined in point (1) of Article 3 of Directive 2008/98/EC, excluding substances that have been intentionally modified or contaminated in order to meet this definition’. An adjustment of the provision and application of similar wording can be considered.

Analysis of waste in or outside the scope

Waste used as heating fuel is outside the scope of the Directive, cf. Article 1(6)(c), except for energy products covered by letters (a) to (p) in Article 3(1). These covers for example waste oils covered by CN code 2710 which are listed in Article 3(1)(e) of the compromise text. This CN code is also covered by Article 2(1)(b) in the currently applicable ETD.

The Presidency proposes to clarify the interplay between the waste outside the scope and energy products covered in Article 3(1)(a)-(p).

Question for the delegations

Do you agree with the proposed language clarifying what is out of scope of the Directive?

Article 2

Subject matter and units

1. Member States shall impose taxation on the energy products as defined in Article 3(1) and on electricity as defined in Article 3(2) in accordance with this Directive.
2. Taxation shall be calculated in Euro/Gigajoule (EUR/GJ) on the basis of net calorific value as set out in Annex II.

Member States may use different specific values based on measured values in the case of products falling within CN codes 2701, 2702 and 2714 10. Member States shall inform the Commission of such different specific values before they are used.

3. Member States may express their national levels of taxation in other units, provided that the corresponding levels of taxation, following conversion into those units, are not below the Union minimum levels of taxation. ~~Where~~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.
4. The Commission is empowered to adopt delegated acts in accordance with Article ~~26~~27 to amend or supplement Annex II in order to update the list of products, the conversion factors and the product categories.

For ~~that~~the purposes of amending or supplementing, ~~with regard to~~ the conversion factors, the following rules shall apply ~~for~~in respect of each energy product:

- (a) where the conversion factor from any unit to GJ is referred to in Annex VI to Commission Implementing Regulation (EU) 2018/2066, 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~~those 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 (EU) 2018/2066 and in Annex III to Directive (EU) 2018/2001, the conversion factor laid down in Annex III to Directive (EU) 2018/2001 ~~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:

(i) 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; **or**

(ii) 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).

5. Where Annex II does not contain a net calorific value for the energy product **concerned**, Member States shall ~~refer to~~ **use** the conversion factor determined ~~according to the principles laid down~~ in paragraph 4. Member States shall inform the Commission **without delay** of ~~this~~ **the** conversion factor ~~without delay~~ **used**.

6. ~~Every [3 years] the Commission shall assess the environmental performance of the energy products listed in the different categories set out in Article 5 paragraph 2 and Annex II on the basis of the available data. In case of inconsistency between an energy product and its category, the Commission shall present a legislative proposal according to paragraph 4 to amend this Directive by changing the category of the energy product whose category became inconsistent with its environmental performance.~~

Presidency note:

According to Article 2(4) 'the Commission is empowered to [...] amend or supplement Annex II in order to update the list of products, the conversion factors and the product categories'. This suffices to ensure the alignment of the table in the ETD to environmental performance in other legislation, without the triannual check by the Commission services.

The Presidency therefore proposes to delete Article 2(6). It is the Presidency's understanding that there is no overlap between Articles 2(4), 3(6), 3(7) and 3(9). If changes based on Articles 3(6), 3(7) or 3(9) entail a change in product categories, the Commission can act using Article 2(4), which can be triggered also in other cases, such as a change of category of a specific product for another reason. However, Articles 3(6), 3(7) or 3(9) have their own content. Article 3(6) and 3(9) regard amendments to definitions used in Article 3. Article 3(7) regards amendments of Annex IX to Directive (EU) 2018/2001 having an effect on Annex III of the ETD.

Article 3

Key definitions

1. For the purposes of this Directive, 'energy products' means:

- (a) products falling within CN codes 1507 to 1518, if those products are intended for use as heating fuel or motor fuel;
- (b) products falling within CN codes 2207 20, if those products 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 Council Directive 92/83/EC¹²;
- (c) products falling within CN codes 2701 and 2702;
- (d) products falling within CN code 2703, if those products are used as heating fuel in installations with a total rated thermal input equal to or exceeding 7,5 MW;
- (e) products falling within CN codes 2704 to 2715;
- (f) products falling within CN code 2804 10, if those products are intended for use as heating fuel or motor fuel;
- (g) products falling within CN code 2814, if those products 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 those products are intended for use as heating fuel or motor fuel;
- (j) products falling within CN code 2909 19 10 and, if intended for use as heating fuel or motor fuel, products falling within CN code 2909 19 90;

Presidency note:

In Article 3(1)(j) a delegation has proposed to add after ‘if’ the following words: ‘those products are’. Products under CN code 2909 19 10 are included as energy products, while products under CN code 2909 19 90 are included if intended for use as heating fuel or motor fuel. The addition proposed would imply another relation between the products in CN code 2909 19 10 and CN code 2909 19 90 which could create unclarity and change the meaning. Therefore, the Presidency has not made this modification in the text.

¹² 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)

- (k) products falling within CN code 3403;
- (l) products falling within CN code 3811;
- (m) products falling within CN code 3814, if those products 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 those products 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 those products are intended for use as heating fuel or motor fuel;
- (q) products other than those referred to in points (a) to (p), including additives and extenders to motor fuels, if those products are intended for use, offered for sale or used as motor fuel;
- (r) hydrocarbon-containing products other than those referred to in points (a) to (p) if those products are intended for use, offered for sale or used as heating fuel.
2. For the purposes of this Directive, ‘electricity’ means electricity falling within CN code 2716.
3. For the purposes of this Directive, energy products used as fuel in fuel cells installed on board vehicles, vessels and aircraft shall be considered to be used as motor fuels. **Without prejudice to Article 12,** ~~E~~energy products used as fuel in stationary fuel cells shall be considered to be used as heating fuels.

Presidency note:

The Presidency proposes to clarify the interplay between Article 3(3) and Article 12, as this provision does not limit Article 12 regarding the possibility for exemption for fuels used to produce electricity.

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

~~(ah)~~ 'advanced biofuels, bioliquids and biogas' means biofuels, bioliquids and biogas that are produced from ~~the~~ feedstock listed in Annex III, part A;

(b) 'biofuels' means liquid energy products used as motor fuels and produced from biomass;

(c) 'biogas' means gaseous energy products used as motor and heating fuels and produced from biomass;

(d) 'bioliquids' means liquid energy products used as heating fuels and produced from biomass

~~(ea)~~ '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;

(f) 'intermediate biofuels, bioliquids and biogas' means biofuels, bioliquids and biogas that are produced from feedstock listed in Annex III, part B;

Presidency note:

A delegation has proposed to add a definition of the products produced from feedstock listed in Annex III, part B of the compromise text. The definition in point (a) of advanced biofuels, bioliquids and biogas is adjusted accordingly.

Biofuels, bioliquids and biogas produced from feedstock listed in part B of Annex IX in RED is not 'advanced'. The Commission has highlighted that already in their original proposal, these products listed in part B were supposed to benefit from the category 3 tax treatment.

Therefore, the Presidency has added a missing definition of energy products listed in part B of the compromise text.

The definition of 'advanced biofuels, bioliquids or biogas' in point (a) of Article 3(4) is adjusted accordingly.

~~(gj)~~ '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 8; 'recycled carbon fuels' shall be included in this definition category;

(h) 'Non-fossil low-carbon hydrogen' means hydrogen with the energy content of which

is derived from non-fossil non-renewable sources, which meet lifecycle emissions savings threshold of 70% and the methodologies for assessing such lifecycle emissions savings pursuant to the Delegated Regulation (EU) 2025/4674.

(i) ‘Non-fossil synthetic low-carbon fuels’ means fuels that are of non-biological origin, the energy content of which is derived from non-fossil low-carbon hydrogen, which meet lifecycle emissions savings threshold of 70% and the methodologies for assessing such lifecycle emissions savings pursuant to relevant Union law.

Presidency note:

See the Presidency note on Article 5(3).

(j) ‘non-sustainable biofuels, bioliquids and biogas’ means energy products used as motor and heating fuels and produced from biomass, **which do** not fulfilling the sustainability and greenhouse gas saving criteria as laid down in paragraph 5;

(k) ‘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.

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

(m) ‘sustainable biofuels, bioliquids and biogas’ means energy products used as motor and heating fuels; and produced from biomass, **which** fulfilling the sustainability and greenhouse gas saving criteria as laid down in paragraph 5;

(n) ‘sustainable food and feed crop biofuels, bioliquids and biogas’ means energy products used as motor and heating fuels and 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, **which** fulfilling the sustainability and greenhouse gas saving criteria as laid down in paragraph 5;

Presidency note:

The structure of paragraph 4 has been revised to present the elements in alphabetical order. The substance remains unchanged. Consequently, references to these points have been adjusted in Articles 3(5), (6) and (8).

Definitions of ‘non-fossil low-carbon hydrogen’ and ‘non-fossil synthetic low-carbon fuels’ has been added because of the amendments to Article 5(3).

5. For the purposes of points (~~em~~), (~~fj~~) and (~~go~~) of paragraph 4 of this Article ‘sustainability and greenhouse gas emissions 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~~ **referred to** in Article 26(2), **first subparagraph**, of that Directive.
6. In the case of future amendments ~~of to~~ the sustainability and greenhouse gas emissions saving criteria referred to in ~~in~~ points (~~em~~), (~~fj~~) and (~~go~~) of paragraph 4 **of this Article**, and by way of derogation from the **entry into force of such amendments** ~~provisions concerning their applicability in time~~, the Commission is empowered to adopt delegated acts in accordance with Article ~~26~~**27** to amend this Directive by setting the date **of entry into force** of application of the sustainability and greenhouse gas emissions saving criteria ~~under~~ **for the purposes of** this Directive.
7. In the case of future amendments of Annex IX to Directive (EU) 2018/2001, the Commission is empowered to adopt delegated acts in accordance with Article ~~26~~**27 of this Directive** in order to amend Annex III of this Directive in order to bring it **Annex III** in line with the ~~revised~~ **amended** ~~version of~~ Directive (EU) 2018/2001.
8. For the purposes of point (~~g~~) of paragraph 4 of this Article, ‘**T**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 Council¹³ and Annex I to Commission

¹³ **Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance) (OJ L 198, 22.6.2020, p. 13-43).**

Delegated Regulation (EU) 2021/2139¹⁴.

By way of derogation from Article 10(6) of Regulation (EU) 2020/852 and from Article 3 of Commission Delegated Regulation (EU) 2021/2139, the technical screening criteria shall apply to this Directive ~~as from~~ [1 January 2028].

9. ~~If In the event of future amendments to Regulation (EU) 2020/852 or Annex I to Commission Delegated Regulation (EU) 2021/2139 affect the definition of the technical screening criteria within the meaning of in paragraph 8 of this Article, and by way of derogation from the provisions concerning their applicability in time, the Commission is empowered to adopt delegated acts in accordance with Article 2627 to amend this Directive and by setting the application date for the revised definition, regardless of when those amendments have taken effect of application of the technical screening criteria under this Directive.~~

Presidency note:

The Presidency proposes to adjust paragraph 6 and 9 to clarify that the provision for the entry into force of such new 'sustainability and greenhouse gas emissions saving criteria' or 'technical screening criteria' may have to be delayed due to implementation difficulties. As the entry into force of the provisions regulating these criteria is unknown, the text is adjusted to reflect this.

Paragraph 9 is further adjusted to simplify the text.

Adjustments are made as a new Article 25 is introduced, making the previous Article 26 to Article 27. This adjustment is made in several provisions.

10. 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, also for the purposes of ~~and~~ Article 18(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, also for the purposes of ~~and~~ Article 18(1), point (p).

¹⁴ 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).

11. 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 2658/87¹⁵ as amended by [Commission Implementing Regulation (EU) 2020/1577¹⁶].

Where the Regulation referred to in the first subparagraph **of this paragraph** 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 ~~26~~**27** to amend this Directive by updating the codes of the Combined Nomenclature of the products referred to in this Directive or by updating the reference provided for in the first subparagraph **of this paragraph** 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 **out** in this Directive or in the addition or removal of any energy products and electricity.

CHAPTER II COMPUTATION OF EXCISE DUTIES

Section 1

General computation provisions

Article 4

Levels of taxation

1. The levels of taxation which Member States apply to the energy products and to electricity shall be in accordance with Article 5(3).
2. For the purposes of paragraph 1, the ‘level of taxation’ is **means** the total charge levied in respect of all indirect taxes in compliance with conditions set by this Directive applied by the Member State, calculated directly or indirectly on the quantity of energy products and electricity at the time of the tax chargeability, excluding **Value Added Tax**~~VAT~~.
3. The minimum levels of taxation laid down in this Directive shall be adapted every three years

¹⁵ 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).

¹⁶ 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).

starting from [1 January 2038] to take into account the cumulative changes in the harmonised index of consumer prices excluding energy and unprocessed food as published by the Commission (Eurostat). Those minimum levels shall be adapted automatically, by increasing or decreasing the base amount in euro by the percentage change in that index over the three calendar years preceding the year in which the delegated act as referred to in paragraph 4 is adopted.

~~In any case, that~~ **Each of the three-year** adaptations shall not exceed 10%.

Presidency note:

The indexation ensures a stable relationship between energy taxes and broader consumer prices. If the rates are not indexed, they are in real terms being lowered every year. Thereby, indexation simply preserves the real value of the minimum rates over time. In practical terms, the indexation means the following:

- the mechanism tracks realised inflation over a 3-year period;
- on average, this corresponds to the European Central Banks (ECB's) inflation target of around 2% per year;
- a cap of 10% ensures that even if core inflation rises sharply, the upward adjustment cannot exceed this limit.

A concern was raised by one delegation that a sharp rise in energy prices may potentially lead also to high energy taxes as a result of indexation. However, as the indexation is based on the index excluding energy and food, such volatility will not affect the indexation of the minimum tax level.

The Presidency understands the concern of specific delegations regarding the rise in energy prices. Those rises in energy prices will not be connected to the indexation and can be handled in other articles of the ETD compromise text.

As discussed previously, in case of a spike in energy prices, Member States can use the emergency brake set out in Article 17(4). The emergency brake does not allow to deviate as such from indexation. However, Member States can have an emergency measure lasting for six months.

The currently applicable ETD allows for derogations and there has previously been requests for derogations based on high energy prices, which have been granted. This possibility for derogation request is continued in Article 17(1) of the compromise text. Therefore, the compromise text entails other measures that can be used if energy prices are very high. The Presidency finds that such measures are better to tackle spikes in energy prices while keeping the concept of real indexation in the future ETD.

Since the energy crisis in 2022, several Union initiatives, e.g. the Electricity Market Directive and the Gas Storage Regulation, has been implemented to avoid similar rises in energy prices.

4. The Commission is empowered to adopt **every three years** by 31 March ~~every third year~~ a delegated act in accordance with Article ~~26~~**27** to amend the minimum levels of taxation as referred to in paragraph 3. 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 2037].

Article 5

Fiscal categories ~~and their exceptions~~

1. Energy products ~~falling under each of~~ **with** the following uses shall be taxed independently from each other:
- (a) products used as motor fuels other than those referred to in points (b) and (d);
 - (b) products used as motor fuels for each of the purposes laid down in Article 8(2) other than those referred to in point (d);
 - (c) products used as heating fuels other than those referred to in point (d);
 - (d) products used for each of the other specific purposes as referred to in paragraph 8 of this Article, Article 12(3) and (7), Article 14(3), Article 15(1), Article 16 **to Article 16e** and Article 22.

The independent taxation of the different uses listed in points (a) to (d) shall be referred to as 'single use'.

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~~ **under** category 2 or category 3;
 - (b) category 2 shall include the following products ~~where~~ they do not fall ~~into~~ **under** 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;

- (c) category 3 shall include renewable fuels of non-biological origin, advanced **and intermediate** biofuels, bioliquids and biogas.

Presidency note:

Adjustment to reflect the definition of intermediate biofuels, bioliquids and biogas.

A question was raised on the fiscal category of sewage sludge. The Presidency is of the view that since sewage sludge is listed in Annex III, energy products produced on sewage sludge should be covered by category 3.

3. Unless otherwise specified in this Directive, for each of the single uses laid down in paragraph 1, the following rules shall apply:
- (a) the rate applied to each energy product **within** the same category shall be equal or superior to the corresponding minimum level of taxation laid down in Annex I in relation to ~~this~~ **that** use, except in the case of the specific purposes referred to in paragraph 1, point (d);
 - (b) the rate applied to each energy product **within** 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;
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 specific purposes as referred to in paragraphs 8 and ~~10~~ **of this Article**, Article 12(3) and (7), Article 13(1), Article 14(1), Article 15(1), Article ~~16~~ **16(c) and 16(e)** (1), (3), (4) and (5) and Article 22 shall also be considered as single uses.

Presidency note:

Reference to paragraph 10 is deleted, as paragraph 10 was redrafted and moved to Article 2(6) in the compromise text from 12 May 2025 (ST 8765/25). However, reference to Article 2(6) is not inserted into Article 5(4) since Article 2(6) does not concern electricity used for any specific purposes. Moreover, the Presidency proposes to delete Article 2(6).

References to Article 16 have been adjusted in accordance with changes made to Article 16.

- ~~58.~~ Member States may apply ~~under fiscal control~~ specific levels of taxation, which shall not ~~go~~ be set below the minimum levels of taxation set out in Table D of Annex I, to electricity used for charging electric vehicles, **and electric or hybrid electric** vessels and aircraft, or for heating purposes. Member States may limit the scope of this paragraph based on the characteristics of the recharging points or specific heating systems.

For the purposes 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.

Presidency note:

An electric vehicle is a motor vehicle equipped with a powertrain containing at least one non-peripheral electric machine as energy converter with an electric rechargeable energy storage system, which can be recharged externally; Electric Vehicle covers BEV (Battery Electric Vehicle), FCEV (Fuel cell electric vehicle) and PHEV (Plug-in hybrid electric vehicle).

A Hybrid Electric Vehicle is a vehicle that combines a conventional internal combustion engine (ICE) system with an electric propulsion system, which cannot be recharged externally.

Plug-in hybrid electric vehicles can be recharged externally, while a hybrid electric vehicle cannot. Therefore, there is no need to add ‘hybrid electric vehicle’.

The definitions follow from the Commissions glossary on alternative fuels observatory: <https://alternative-fuels-observatory.ec.europa.eu/general-information/glossary>

However, in Articles 13 and 14, it is specified that the exemption applies for charging electric or hybrid aircraft or vessel. A request was put forward to ensure that Articles 5(8), 13 and 14 are aligned. It seems as if it is also possible to recharge an electric hybrid airplane or a vessel.

The Presidency therefore proposes to specify in Article 5(8), that the possibility to apply lower tax rates also applies to ‘electric or hybrid electric vessels and aircraft’.

Furthermore, the Presidency has deleted ‘other than those covered by Articles 13 and 14’, as several delegations had comments on this. This wording was not clear and could have led to unfair treatment.

The Presidency has deleted “under fiscal control” through the compromise text, as the Presidency has included the expression in the proposed Article 25 on general provision on implementation.

- 65.** From [1 January 2028 to 31 December 2035], where the rules referred to in paragraph 3, point (b), is ~~are~~ not fulfilled **applied** on [1 January 2028] for two products of different categories, the superiority of tax rates of those products shall be gradually achieved at least every second year.

Article 5a

Fiscal categories during transitional periods

- 16.** **By way of derogation from Article 5, paragraph 2, point (a), and paragraph 3, point (b), and paragraph 5:**

a) the minimum levels of taxation for natural gas and liquefied petroleum gas:

- i) when used as motor fuel, shall be fixed as set out in Table E1 of Annex I.
- ii) when used as motor fuel for the purposes of Article 8(2), shall be fixed as set out in Table E2 of Annex I.
- iii) when used as heating fuel, shall be fixed as set out in Table E3 of Annex I.

b) the minimum levels of taxation for sustainable food and feed crop biofuels and biogas:

- i) when used as motor fuel, shall be fixed as set out in Table F1 of Annex I.
- ii) when used as motor fuel for the purposes of Article 8(2), shall be fixed as set out in Table F2 of Annex I.
- iii) when used as heating fuel, shall be fixed as set out in Table F3 of Annex I.

However, the applied tax rate according to points a) and b) shall not be lower than the rate applied by the Member State for products in accordance with category 2 in respectively Table A, Table B and Table C of Annex I.

6. ~~By way of derogation from paragraph 2, point (a), and paragraph 3, point (b), and paragraph 5, 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 shall 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), and paragraph 5, the minimum levels of taxation for natural gas and liquefied petroleum gas, when used as motor fuel for the purposes of Article 8(2), shall be fixed as set out in Table E2 of Annex I. However, the applied tax rate shall 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), and paragraph 5, 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 shall not be lower than the rate applied by the Member State for products in accordance with category 2 in Table C of Annex I.~~

~~By way of derogation from paragraph 2, point (a), and paragraph 3, point (b), and paragraph 5, 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 shall 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), and paragraph 5, the minimum levels of taxation for sustainable food and feed crop biofuels and biogas, when used as motor fuel for the purposes of Article 8(2), shall be fixed as set out in Table F2 of Annex I. However, the applied tax rate shall 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), and paragraph 5, 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 shall not be lower than the rate applied by the Member State for products in accordance with category 2 in Table C of Annex I.~~

Presidency note:

Article 5 has been divided into separate Articles, Article 5 to 5b, to enhance clarity and readability. This change has not been marked in bold, underline, strikethrough to avoid unnecessary disruption when reading the text. The substance of Article 5 has not been changed.

Article 5a(1), former Article 5(6), has been restructured to enhance clarity and readability. As this paragraph has been rewritten the change has been marked in bold, underline, strikethrough. The substance of Article 5(6) has not been changed.

Article 5a(1) consist of:

Article 5a(1)(a), subparagraph 1: Article 5(6), subparagraph 1-6, of 12 May 2025 (ST 8765/25) compromise text

Article 5a(1)(a)(i): Article 5(6), subparagraph 1, of 12 May 2025 (ST 8765/25) compromise text

Article 5a(1)(a)(ii): Article 5(6), subparagraph 2, of 12 May 2025 (ST 8765/25) compromise text

Article 5a(1)(a)(iii): Article 5(6), subparagraph 3, of 12 May 2025 (ST 8765/25) compromise text

Article 5a(1)(b)(i): Article 5(6), subparagraph 4, of 12 May 2025 (ST 8765/25) compromise text

Article 5a(1)(b)(ii): Article 5(6), subparagraph 5, of 12 May 2025 (ST 8765/25) compromise text

Article 5a(6)(b)(iii): Article 5(6), subparagraph 6, of 12 May 2025 (ST 8765/25) compromise text

Article 5a(6), subparagraph 2: Article 5(6), subparagraphs 1-6 of 12 May 2025 (ST 8765/25) compromise text

~~27.~~ By way of derogation from paragraph 2, point (b), Member States may decide, ~~from [1 January 2028 to 31 December 2037]~~, to include, **from [1 January 2028 to 31 December 2037]**, low-carbon fuels and sustainable biofuels, bioliquids and biogas other than food and feed crop biofuels, bioliquids and biogas, ~~where~~**ren** used as motor or heating fuels, in category 3.

3. By way of derogation from Article 5, paragraph 2, point (b), Member States may decide to include non-fossil low carbon hydrogen and non-fossil synthetic low-carbon fuels in category 3. These energy products are based primarily on renewable and clean electricity.

Presidency note:

Some delegations have requested an option where Member States can decide that low carbon hydrogen should be included in category 3 instead of category 2.

Low carbon hydrogen covers both hydrogen based on natural gas and hydrogen based on electricity from the grid, e.g. nuclear power. The delegated regulation on low-carbon fuels supplements the Gas Market Directive (EU) 2024/1788.

In the compromise text from May, low carbon fuels can be part of category 3 during the transitional period.

The Presidency finds that a possibility for Member States to treat hydrogen based on grid electricity e.g., from nuclear power as covered by category 3 would be in line with the objectives of the revision of the ETD. However, including hydrogen based on fossil fuels, such as natural gas, would go against these objectives.

The Presidency proposes a possibility for Member States to treat hydrogen based on grid electricity e.g., from nuclear power, also called ‘non-fossil low carbon hydrogen’, and its derivatives, called ‘synthetic low-carbon fuels’, as a part of category 3.

A distinction between low-carbon hydrogen and low-carbon fuels derived from non-fossil and fossil sources is made in ReFuelEU Aviation regulation (EU) 2023/2405. Here, ‘low-carbon hydrogen’ means hydrogen of which, the energy content of which is derived from non-fossil non-renewable sources, which meet lifecycle emissions savings threshold of 70% and the methodologies for assessing such lifecycle emissions savings pursuant to relevant Union law. Such hydrogen is defined in Article 3(13) and its derivatives in Article 3(15) of ReFuelEU Aviation regulation (EU) 2023/2405.’

The Delegated Regulation EU (2025) 4674 specifies the methodologies to assess the lifecycle emissions savings from low-carbon hydrogen and low-carbon fuels. By introducing the distinction, low-carbon hydrogen based on fossil fuels (e.g. steam reforming of natural gas with carbon capture and storage, also known as ‘blue hydrogen’) will be kept as part of category 2. Whereas low-carbon hydrogen and low-carbon fuels produced from non-fossil pathways e.g. via electrolysis will be part of category 3. This differentiation will thereby support technological development and help weaken the reliance on fossil fuels.

Low-carbon hydrogen produced through electrolysis will likely be using electricity from the grid. The Delegated Regulation introduces four methodologies for attributing greenhouse gas emissions values to the electricity sourced from the grid. These values are considered when evaluating whether a fuel meets the 70% lifecycle emissions savings threshold. The four methodologies differentiate in how they take into account the amount of renewable and clean electricity produced in a Member State. For example, by using average greenhouse gas emissions values of electricity mix on hourly or yearly basis or based on the marginal electricity production unit.

Thus, reaching the 70% lifecycle emissions threshold requires a considerable level of clean and/or renewable electricity in the electricity grid mix.

Article 5b

Mixed energy products

Where an energy product consists of one or more energy products taxation of those components shall be determined accordingly on the basis of this Directive, independently ~~from~~of the CN code under which the energy product falls as a whole. Alternatively, Member States may:

- ~~(a) tax the whole energy product in accordance with the rate of the main component or;~~
- ~~(a)~~ **(b)** assess the content of all or some energy products on an average basis, in which case Member States shall define the scope of ~~such an~~ **that** average in a coherent, transparent and non-discriminatory manner or;
- ~~(b)~~ **(e)** tax the whole energy product in accordance with the rate of the component falling **within** the highest rate category, and Member States may reimburse the difference ~~where~~**re** the person liable to pay the excise duty proves the composition of the products released for consumption.

Presidency note:

Article 5 has been divided into separate Articles, Article 5 to 5b, to enhance clarity and readability. This change has not been marked in bold, underline, strikethrough to avoid unnecessary disruption when reading the text. The substance of Article 5 has not been changed.

Deletion of the 'main component' option was requested by several delegations, partly because this possibility would give wrong incentives. Instead, an administrable solution to the provision on mixed products was requested by these delegations. The Presidency is of the view that the two remaining options will provide administrable solutions as alternatives to the component taxation.

Article 6

Application of exemptions and reductions

1. 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~~ **as follows**:
 - (a) directly;
 - (b) by means of a differentiated rate; or
 - (c) by refunding all or part of the amount of taxation.

2. Where an energy product consists of one or more energy products, Member States may determine the refundable amount of taxation on an average basis, in which case Member States shall define the scope of ~~such an~~ **that** average in a coherent, transparent and non-discriminatory manner.

Section 2

Special provisions for general uses

Article 7

Products used as motor fuels

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~~ **of** [1 January 2028], ~~as from~~ [1 January 2033] and ~~as from~~ [1 January 2038], respectively.

Article 8

Products used as motor fuels for specific purposes

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 **as** 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~~ **of** [1 January 2028], ~~as from~~ [1 January 2033] and ~~as from~~ [1 January 2038], respectively.
2. Paragraph 1 shall apply to the following purposes:
 - (a) agricultural, horticultural or aquaculture works; and ~~in~~ forestry;
 - (b) stationary motor;
 - (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.

Article 9

Products used as heating fuels

The minimum levels of taxation applicable to energy products used as heating fuels as 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~~ of [1 January 2028], ~~as from~~ [1 January 2033] and ~~as from~~ [1 January 2038], respectively.

Article 10

Electricity

The minimum levels of taxation applicable to electricity shall be fixed as set out in Table D of Annex I as ~~from~~ of [1 January 2028], ~~as from~~ [1 January 2033] and ~~as from~~ [1 January 2038], respectively.

Article 11

National currency

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 exchange rate of the business days between 1 January and 30 June. Those averages exchange rates 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 the national currency.

Section 3

Special provisions for ~~special~~ certain uses and reduced rates

Presidency note:

The word “special” has been changed to “certain” as the Presidency finds this more accurate.

Article 12

Products used in the energy sector

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.

Where ~~the~~ the process of production or storage of electricity leads to the production of products other 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~~ **those** products.

3. ~~In case Member States wish to pursue more ambitious~~ **For reason of** environmental policy including climate policy, ~~they~~ **Member States** may tax the energy products and electricity referred to in paragraph 1 without having to respect the minimum levels of taxation laid down in this Directive. The taxation of energy products shall comply with Article 5(3), point (b).

Taxation pursuant to the first subparagraph of products classified within category 1 shall be considered as justified for reasons of environmental policy, including climate policy.

Presidency note:

The Presidency has deleted “more ambitious” and restructured the sentence since the wording created some unclarity, without adding any substance.

The same modification has been made in paragraph 7.

4. **Notwithstanding paragraphs 1, 2 and 3 of this Article, Member states shall in accordance with Articles 13 and 14 tax the products referred to in Article 2(1) and (3) used on board vehicles, vessels and aircraft and exempt from taxation electricity produced and consumed on board vehicles, vessels and aircraft.**

~~With the exception of products that are fully exempted under Article 13 or Article 14, paragraphs 1, 2 and 3 of this Article shall not apply to the products referred to in Article 2(1) and Article 2(3) when used to produce electricity in vehicles, vessels and aircraft where that electricity is used on board vehicles. Member states shall exempt electricity produced and consumed on board vehicles, vessels and aircraft.~~

Presidency note:

Presidency proposes to rephrase paragraph 4 for reasons of clarity. No changes are made to the substance of the provision.

5. 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.

6. The consumption of energy products and electricity referred to in paragraph 5, 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 5, 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.

Where~~ren~~ 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.

7. ~~In case Member States wish to pursue~~ **For reason of** ~~more ambitious~~ environmental policy including climate policy, ~~they~~ **Member States** may consider the consumption of energy products and electricity referred to in paragraph 5, first subparagraph, ~~as a chargeable event giving rise to taxation, without having to respect the minimum levels of taxation laid down in this Directive.~~ The taxation of energy products shall comply with Article 5(3), point (b).

Taxation pursuant to the first subparagraph of products classified within category 1 shall be considered ~~as justified for reasons of environmental policy, including climate policy.~~

- 8.** Member States may exclude the following from the concept of ‘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.

Point (c)(i) of the first subparagraph shall not apply where the mixture is exempted for a specific use.

Presidency note:

The Presidency proposes to move Article 19(10) to Article 12(8) as the provision concerns the concept ‘production of energy products’ which is primarily regulated in Article 12.

Article 13

Energy products and electricity used for air navigation

1. ~~In addition to the general provisions set out in Directive (EU) 2020/262 on exempt uses of taxable products, and without prejudice to other Union provisions, Member states shall exempt from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such an exemption and of preventing any evasion, avoidance~~

~~or abuse,~~ **Member States shall exempt the following products from taxation for the purpose of air navigation:**

(a) energy products supplied for use as fuel, and

(b) electricity used directly for charging electric or hybrid aircraft ~~for the purpose of air navigation.~~

This exemption does not apply ~~other than~~ when those aircraft **primarily** are used for the carriage of passengers and have 19 or less seats, with the exception of **those used by** scheduled commercial flights, armed forces, other national security forces, search and rescue services and public authorities.

Presidency note:

Article 13(1) has been restructured into Article 13(1)(a) and (b) to enhance clarity and readability.

The phrase ‘under conditions to ensure the correct and straightforward application of this Directive and the prevention of any evasion, avoidance or abuse’ has been moved partly to the recitals and partly to Article 25 to enhance readability, as this must be ensured for any part of the Directive.

A concern has been raised to the Presidency regarding aircraft covered by taxation. Such aircraft might have some flights without passengers. If those flights should be covered by the taxation, the Presidency proposes to adjust to ‘when those aircraft primarily are used for the carriage of passengers’. This will ensure that also some specific flights are covered, for example flights without passengers when an aircraft has to get to another airport.

2. For the purposes of **the second subparagraph of paragraph 1 of** this Article, ‘seat’ means the maximum operational passenger seating configuration (MOPSC) as defined in **point (47) of Annex I to** Commission Regulation (EU) No^o 965/2012.
3. Member States may limit the scope of the exemptions provided for in paragraph 1 to international and intra-Union transport. In addition, where a Member State has entered into a bilateral agreement with another Member State, it may also waive the exemptions provided for in paragraph 1. In such cases, Member States may apply a level of taxation below the minimum level set out in this Directive.

4. In [2035], the Commission shall assess the option of amending this Directive ~~in order to include~~ the taxation of energy products supplied for use as fuel used for air navigation and of electricity used directly for charging aircraft **for the purpose of air navigation** and, if ~~where~~ appropriate, submit a legislative proposal to that effect.

Presidency note:

The Presidency has added 'for the purpose of air navigation' for the sake of coherence.

Article 14

Energy products and electricity used for waterborne navigation

1. ~~In addition to the general provisions set out in Directive (EU) 2020/262 on exempt uses of taxable products, and without prejudice to other Union provisions, Member States shall exempt from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such an exemption and of preventing any evasion, avoidance or abuse,~~ **Member States shall exempt the following products from taxation for the purposes of navigation within Union waters (including fishing):**

(a) energy products supplied for use as fuel, and

(b) electricity used directly for charging electric or hybrid vessels ~~for the purposes of navigation within Union waters (including fishing).~~

The exemption does not apply for, other than private pleasure craft.

Presidency note:

Article 14(1) has been restructured into Article 14(1)(a) and (b) to enhance clarity and readability.

It was brought to the attention of the Presidency that the word ‘directly’ could pose a problem for the concept of swappable battery containers, which are charged outside the vessel before placing them onboard for propulsion.

However, the Presidency is of the view that deletion of the word ‘directly’ could open for more unclear situations. With the current wording, a Member State should be able to set up conditions nationally regarding charging of swappable batteries and when those are viewed as used ‘directly’ for charging vessels. Therefore, the Presidency proposes to not change the wording.

The phrase ‘under conditions to ensure the correct and straightforward application of this Directive and the prevention of any evasion, avoidance or abuse’ has been moved partly to the recitals and partly to Article 25 to enhance readability, as this must be ensured for any part of the Directive.

2. Member States may limit the scope of the exemptions provided for in paragraph 1 to international and intra-Union transport. In addition, where a Member State has entered into a bilateral agreement with another Member State, it may also waive the exemptions provided for in paragraph 1. In such cases, Member States may apply a level of taxation below the minimum level set out in this Directive.
3. Without prejudice to other ~~Union~~ provisions of Union law, Member States may apply, ~~under fiscal control~~ total or partial exemptions from, or reductions in the level of, taxation to energy products supplied for use as fuel, and to electricity used directly for charging electric or hybrid vessels for navigation on inland waterways (including fishing) other than in private pleasure craft.
4. For the purposes of this Article ‘private pleasure craft’ means any craft used by its owner or by the natural or legal person that enjoys its use either through hire or ~~through~~ any other means, for other than commercial purposes and, in particular, other than for the carriage of passengers or goods, for the supply of services for consideration or for the purposes of public authorities.

5. In [2035], the Commission shall assess the option of amending this Directive in order to include the taxation of energy products supplied for use as fuel used for waterborne navigation and of electricity used directly for charging electric or hybrid vessels **for the purpose of waterborne navigation** and, ~~if~~ **where** appropriate, submit a legislative proposal to that effect.

Presidency note:

The Presidency has added ‘for the purpose of waterborne navigation’ for the sake of coherence.

Article 15

Exemptions and reduced rates depending on the ~~origin of the product~~

1. Member States may apply ~~under fiscal control~~ total or partial exemptions **from,** 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 **abandoned** 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 **of the European Parliament and of the Council**¹⁷;
- (d) renewable fuels of non-biological origin, advanced **and intermediate** biofuels, bioliquids and biogas;
- (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 of electricity ~~produced from the products~~ referred to in paragraph 1, point (b).

Presidency note:

The Presidency proposes to change the title of Article 15. Article 15 primarily consist of exemptions and reductions based on the origin of the energy product, however, paragraph 1, a), is a reduction based on the use of a product. The provision does not fit in Articles 16-16e regarding reductions based on specific uses. The Presidency finds that with a change of the title the provision fits into Article 15.

For legal reasons presented at the meeting in April 2025, options to go below the minimum tax levels shall, in principle, be at least explained. However, the Presidency's approach is that only new options to go below the minimum levels should be explained. In the currently applicable ETD, Member States can decide to go below the minimum tax levels for electricity generated from methane emitted from abandoned coalmines.

'Abandoned' in paragraph 1, b), (iv), was deleted in the compromise text from 11 July 2022 (WK 10101/2022). The Presidency cannot find a reasoning for the broadening of the scope of the exemption. Therefore, the Presidency proposes to reintroduce that electricity generated from methane emissions can only be covered by Article 15, when those are emitted from abandoned coalmines.

Article 16

General differentiations

1. By way of derogation from Article 5 ~~paragraphs 1 and 4~~ **(1) and (4)** and respecting the minimum levels of taxation set out in Annex I, Member States may apply ~~under fiscal control~~ differentiated tax rates:

¹⁷ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1-56)

- (a) that are directly linked to product quality;
- (b) for heating fuels and electricity:
 - (i) depending on quantitative consumption levels;
 - (ii) for business and non-business use.

Member States may **also** limit the scope of the differentiated levels of taxation **for subcategories (a) and (b) above.**

For the purposes of this paragraph, 'business use' means the use by a business entity.

2. For the purposes of paragraph ~~2 and 5~~ **1 and Article 16 d**, 'business entity' means an entity which complies with the criteria under paragraph ~~413~~, which independently carries out, in any place, the supply of goods and services, whatever is the purpose or results of such economic activities.

3. ~~For the purposes of paragraph 6, the e~~ Economic activities comprise all activities of producers, traders and persons supplying services, including mining and agricultural activities and activities of the professions.

~~For the purposes of paragraph 6, the s~~ States, regional and local government authorities and other bodies governed by public law shall not be considered business entities in respect of the activities or transactions in which they engage as public authorities. However, ~~if~~ **where** 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.

4. A business entity shall not be considered ~~to be~~ smaller than a part of an enterprise or a legal entity that from an organisational point of view constitutes an independent business, ~~that is to say~~ **meaning** 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.

Presidency note:

Article 16 has been divided into six separate Articles, Article 16 to Article 16e, to enhance clarity and readability. This change has not been marked in bold, underline, strikethrough to avoid unnecessary disruption when reading the text. The substance of Article 16 has not been changed.

Article 16 consists of:

Article 16(1): Article 16(5), of 12 May 2025 (ST 8765/25) compromise text

Article 16(2): Article 16(6), of 12 May 2025 (ST 8765/25) compromise text

Article 16(3): Article 16(7), of 12 May 2025 (ST 8765/25) compromise text

Article 16(4): Article 16(8), of 12 May 2025 (ST 8765/25) compromise text

Article 16a

Reductions for transport

1. Without prejudice to Article 5(3), ~~points a and b,~~ Member States may apply ~~under fiscal control:~~ 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:
- a) ~~i) the carriage of goods and passengers by rail, metro, tram and trolley bus or~~ **and** for **other regular** local or collective public passenger **road** transport,
 - b) ~~ii) waste collection, armed forces and public administration,~~
 - c) ~~iii) disabled people and ambulances, regardless of the means of transport;~~

However, for the purposes of carriage of goods and passengers by rail, metro, tram and trolley bus ~~or~~ **and** for other regular ~~collective~~ public passenger **road** transport, the minimum level of taxation of electricity shall be set to 0 EUR/GJ from [1 January 2028 to 31 December 2032].

Presidency note:

The aim for the restructuring of the provisions is partly to simplify but also to take into account the green transition of the transport.

When deleting the specific provision for ‘gas oil for M2 and M3 category vehicles’ and adding these means of transport to the general provision for carriage of goods and passengers, also other energy products than diesel can be covered by the reduced rate. In the currently applicable ETD, the tax rate for gas oil for M2 and M3 category vehicles can be reduced to the minimum rate for regular motor fuel in table A. In the current compromise text, the tax rate can be reduced to the minimum rate for special uses of motor fuel in table B.

The Presidency proposes that the scope of the exemption for public transport should be ‘regular public passenger road transport’.

By adding ‘road’, aviation and maritime transport is out of scope of this provision. Scheduled regular passenger transport by aircraft or vessel would already be exempted due to Articles 13 and 14.

The provision does not cover fuel for taxis, which is also not covered in the currently applicable ETD, which only allows for differentiated rates for fuel used for taxis.

Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services contains different definitions for regular service.

‘Regular service’ is transport available for general public use, following a set schedule and route. ‘Special regular services’ is limited to carry specific categories of passengers and covers e.g. the transport of workers or schoolchildren. These kinds of services are not open to the public and therefore fall outside the scope of the provision. ‘Occasional service’ covers e.g. transport of a group of people as a one-time trip and is not regular service.

‘Collective passenger transport’ covers public transport, but also shared mobility, e.g. car-sharing, car-pooling and privately owned mini-busses and taxis. It is the Presidency’s understanding that the latter should not be covered by the reduced rate. As it is also a condition that the collective transport is regular, shared mobility transport would maybe not be covered. However, it is unclear to the Presidency what ‘collective’ adds separately to the definition. Therefore, the Presidency proposes to delete ‘collective’.

It is the Presidency’s view, that the term ‘regular public passenger road transport’ covers the regular transport happening both in urban areas and long-distance transport.

- 2.** From [1 January 2028 to 31 December 2042] Member States may apply different levels of taxation to commercial and non-commercial use of energy products used as propellant, which shall not go below the minimum levels of taxation set out in Table A, E1 and F1.

For the purposes of this paragraph, ‘commercial use of an energy product used as propellant’ means an energy product used as propellant for 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.

Presidency note:

Article 16 has been divided into six separate Articles, Article 16 to Article 16e, to enhance clarity and readability. This change has not been marked in bold, underline, strikethrough to avoid unnecessary disruption when reading the text. The substance of Article 16a has not been changed. Except for the definition of road transport, which is explained in the Presidency note under paragraph 1.

Article 16a consists of:

Article 16a(1): Article 16(1)(b), of 12 May 2025 (ST 8765/25) compromise text

Article 16a(2): Article 16(9), of 12 May 2025 (ST 8765/25) compromise text

The reference in Article 16a(1) to Article 5(3), points a) and b), is updated, as there are no points a) and b) in that provision anymore.

Article 16b

Exemption and reduced rates for combined heat and power production and households

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

- (a) to energy products and electricity used for combined heat and power generation, without prejudice to Article 12 **of this Directive**;

However, the minimum level of taxation shall be set to 0 EUR/GJ from [1 January 2028 to 31 December 2032] to energy products and electricity used for combined heat and power generation, provided that the cogeneration is high-efficient as defined in Article 2, point (34), of Directive 2012/27/EU;

- (b) 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 purposes 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.

2. For the purpose of paragraph 1, b) the following minimum levels of taxation shall apply:

- a)** for energy products falling ~~into~~ within category 1, the minimum level of taxation shall be set ~~to at~~ at [0 EUR/GJ] from [1 January 2028 to 31 December 2032] and ~~to at~~ at [0,52 EUR/GJ] from [1 January 2033 to 31 December 2037];
- b)** for energy products falling ~~into~~ within category 2, the minimum level of taxation shall be set ~~to at~~ at [0 EUR/GJ] from [1 January 2028 to 31 December 2032] and ~~to at~~ at [0,26 EUR/GJ] from [1 January 2033 to 31 December 2037];
- c)** for energy products falling ~~into~~ within category 3 and electricity, the minimum level of taxation shall be set ~~to at~~ at [0 EUR/GJ] from [1 January 2028 to 31 December 2032] and ~~to at~~ at [0,09 EUR/GJ] from [1 January 2033 to 31 December 2037];

3. ~~For the purposes of this point, e~~Energy products and electricity used by households that are recognised as vulnerable may be exempt from taxation from [1 January 2028 to 31 December 2048].

4. **For the purposes of paragraph 3,** ~~For that purpose,~~ Member States shall ~~set~~ lay 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.

Presidency note:

Article 16 has been divided into six separate Articles, Article 16 to Article 16e, to enhance clarity and readability. This change has not been marked in bold, underline, strikethrough to avoid unnecessary disruption when reading the text. The substance of Article 16b has not been changed.

Article 16b consists of:

Article 16b(1)(a): Article 16(1)(a), subparagraph 1, of 12 May 2025 (ST 8765/25) compromise text

Article 16b(1)(b): Article 16(1)(c), subparagraph 1, 12 May 2025 (ST 8765/25) compromise text

Article 16b(2): Article 16(1)(c)(i) to (iii), of 12 May 2025 (ST 8765/25) compromise text

Article 16b(3) and (4): Article 16(1)(c)(iv), of 12 May 2025 (ST 8765/25) compromise text

Article 16c

Exemptions and reduced rates for households in certain Member States

1. Without prejudice to Article 5(3), ~~points (a) and (b)~~, Member States which have a chain linked volume of real gross domestic product measured in euro per ~~inhabitant~~ capita of less than 60% of the EU-27 average may ~~be exempt or subject to reductions in the level of taxation from [1 January 2028 to 31 December 2048]~~; apply for the purposes of this point, exemptions and reductions in the level of taxation of energy products and electricity without prejudice to the minimum levels of taxation as set out in Tables C, E3, F3 and D of Annex I to this Directive from [1 January 2028 to 31 December 2048] when:
 - a) used by households in those Member States;
 - b) used for combined heat and power generation for households in those Member States.

- 2. ~~The which have a chain linked volume of real gross domestic product measured in euro per inhabitant~~ capita** and the EU-27 average taken into consideration will be those for [the penultimate year before the entry into force of this Directive].⁵

Presidency note:

Article 16 has been divided into six separate Articles, Article 16 to Article 16e, to enhance clarity and readability. This change has not been marked in bold, underline, strikethrough to avoid unnecessary disruption when reading the text. The substance of Article 16c has not been changed.

Article 16c consists of:

Article 16c(1): Article 16(1)(a), subparagraph 1, and Article 16(1)(c)(v), of 12 May 2025 (ST 8765/25) compromise text Article 16c(2): Article 16(1)(a), subparagraph 1, and Article 16(1)(c)(v), of 12 May 2025 (ST 8765/25) compromise text The reference in Article 16a(1) to Article 5(3), points a) and b), is updated, as there is no points a) and b) in that provision anymore.

The Presidency proposes to adjust from per ‘inhabitant’ to ‘capita’ to align with Eurostat.

Article 16d

Exemptions and reductions for businesses

- 1.** Without prejudice to Article 5, Member States may apply:

- (a) reductions in the level of taxation, 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 (~~ba~~) and (~~cb~~), and on electricity, in the following cases:
 - (i) in favour of energy-intensive business; **or**
 - (ii) where agreements are concluded with business entities, 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;

Presidency note:

Article 16d(1)(a) has been modified to correctly refer to Article 8(2), points (b) and (c), instead of points (a) and (b).

- (b) total or partial exemptions ~~on~~ **for** electricity, in favour of energy-intensive business which concluded agreements or implemented tradable permit schemes or equivalent measures that lead to the achievement of environmental protection objectives or to improvements in energy efficiency.
- c)** total or partial exemptions or reductions in the level of taxation to energy products and electricity used for agricultural, horticultural or aquaculture works and forestry **until 31 December 2037.**

Presidency note:

Some delegations have asked for the possibility for a transitional period for the option to apply exemptions or reductions in the level of taxation of energy products and electricity used for the agricultural, horticultural, aquaculture and forestry sector.

To align with other preferential treatments of business uses, it is proposed that the possibility to apply preferential treatment for the agricultural, horticultural, aquaculture and forestry sector, should expire by the end of 2037. From 2038, the minimum tax rates according to Articles 8, 9 and 10 should apply for these sectors.

- 2.** For the purposes of **the first paragraph**, ~~points (a) and (b), an~~ ‘energy-intensive business’ means a business entity, ~~as referred to in paragraph 6,~~ where the purchases of energy products and electricity amount to at least 3,0% of the production value or where the national energy tax payable amounts to at least 0,5% of the added value. ~~Within~~ **For the purpose of** this definition, Member States may apply more restrictive concepts, including sales value, process and sector definitions.

Presidency note:

A delegation has requested for the option to introduce sectoral definitions regarding the exemption for businesses. It is the Presidency’s view that Article 16(2) provides for such a possibility. This provision is also found in the currently applicable ETD.

- 32.** For the purposes of the second ~~sub~~paragraph, ‘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 (a) and (b), are included. All taxes are included, except deductible VAT.

- 43.** For the purposes of the second ~~sub~~paragraph, ‘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.
- 54.** For the purposes of the second ~~sub~~paragraph, ‘added value’ means the total turnover liable to VAT including export sales minus the total purchases liable to **Value Added Tax**~~VAT~~ including imports.
- 65.** For the purposes of **the first subparagraph** ~~point (a), subpoint (ii),~~ ‘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 Council ¹⁸.

Presidency note:

Article 16 has been divided into six separate Articles, Article 16 to Article 16e, to enhance clarity and readability. This change has not been marked in bold, underline, strikethrough to avoid unnecessary disruption when reading the text. The substance of Article 16d has not been changed.

Article 16d consists of:

Article 16d(1): Article 16(2)(a) and (b), subparagraph 1 and Article 16(4), of 12 May 2025 (ST 8765/25) compromise text

Article 16d(2): Article 16(2)(b), subparagraph 2, of 12 May 2025 (ST 8765/25) compromise text

Article 16d(3): Article 16(2)(b), subparagraph 3, of 12 May 2025 (ST 8765/25) compromise text

Article 16d(4): Article 16(2)(b), subparagraph 4, of 12 May 2025 (ST 8765/25) compromise text

Article 16d(4): Article 16(2)(b), subparagraph 5, of 12 May 2025 (ST 8765/25) compromise text

¹⁸ 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).

Article 16e

Exemptions and reductions for electricity in aircraft and vessels used for other purposes than navigation

Member States may apply, ~~under fiscal control~~, total or partial exemptions from, or reductions in the level of taxation, to electricity used for purposes other than navigation:

- (a) supplied through a standardised fixed or mobile interface to aircraft ~~where~~ when those aircraft are stationed at the gate or at an airport outfield position;
- (b) directly supplied to vessels berthed at ports.

Presidency note:

Article 16 has been divided into six separate Articles, Article 16 to Article 16e, to enhance clarity and readability. This change has not been marked in bold, underline, strikethrough to avoid unnecessary disruption when reading the text. The substance of Article 16e has not been changed.

Article 16e consists of:

Article 16e: Article 16(3), of 12 May 2025 (ST 8765/25) compromise text.

A delegation has raised a question regarding taxation of energy products and electricity used by fishermen for non-propulsion activities such as refrigeration, processing etc. Such non-propulsion activities are already covered by tax today. However, several delegations have requested an exemption for shore side electricity. This exemption is now being inserted in Article 16e allowing Member States to exempt electricity used for non-propulsion activities from taxation. It was also a part of original proposal from the Commission.

Article 17

Reduced rates and exemptions for specific policy considerations

1. In the context of the implementation of ~~previous Articles~~ **the Directive**, ~~in particular Articles 13 to 16~~, the Council, acting ~~unanimously~~ **by unanimity** on a proposal from the Commission, may adopt implementing acts, authorising, ~~in exceptional cases~~, **a** Member State to introduce further exemptions or reductions for **specific relevant** policy considerations ~~specific to the Member State requesting them~~.

A Member State wishing to introduce such measures shall inform the Commission and provide **it** with all **the** relevant and necessary information.

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

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

Presidency note:

The Presidency proposes to amend paragraph 1 to the implementation of ‘the Directive’ instead of ‘previous Articles, in particular Articles 13 to 16’. The Presidency finds that amending to ‘the Directive’ does not entail any substantial change as Article 17(1) concerns all provisions related to exemptions or reductions in the Directive.

In the currently applicable ETD wording ‘specific policy considerations’ is used. The Commission proposes to keep ‘specific’ instead of ‘relevant’.

A delegation has requested for the deletion of ‘in exceptional cases. The Commission has highlighted that a derogation is an exceptional case in itself. The Presidency notes that ‘exceptional cases’ is a remark of more political nature, than legal nature. The Presidency proposes to delete ‘in exceptional cases’ and align with the wording of the currently applicable ETD.

2. The authorisations ~~as~~ referred to in paragraph 1 shall be justified by the specific situation of the Member State requesting it and shall be granted for a maximum period of six years. Authorisations may be renewed in accordance with the procedure set out in paragraph 1.

Presidency note:

A delegation has requested to delete ‘by the specific situation’ in paragraph 2. The Presidency finds that it is aligned with the text in paragraph 1, first subparagraph and proposes therefore to keep it.

3. If the Commission considers that the measures authorised according to paragraph 1 are no longer sustainable, particularly in terms of fair competition or distortion of the operation of the internal market, or in terms of Union policy in the areas of health, environmental protection ~~of the environment~~, energy and transport, it shall submit ~~appropriate~~ proposals to the Council. The Council, acting ~~unanimously~~ by unanimity, shall take a decision on those proposals.
4. In cases where the average retail price of an energy product or electricity over a period of three months increases by more than 40% compared with the average retail price of that energy

product or electricity over the previous twelve months, Member States may, after informing the Commission, apply reductions in the level of taxation that can go below the minimum rates.

The maximum time for applying such reductions shall be six months. This procedure ~~can~~may be used only once during a period of ~~12~~twelve months starting from the first day of application of the reductions in the level of taxation.

CHAPTER III SPECIAL PROCEDURAL PROVISIONS

Article 18

Control and movement provisions

1. Only the following energy products shall be subject to Chapter III, Chapter IV, Articles 33 to 43 and **Articles** 45 to 46 of Directive (EU) 2020/262 (“the control and movement provisions”):
 - (a) products falling within CN codes 1507 to 1518, ~~if these~~ **where they** are intended for use as heating fuel or motor fuel;
 - (b) products falling within CN codes 2207 20, ~~if these~~ **where they** 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~~ **where** intended for use as heating fuel or motor fuel, 2707 99 99;
 - (d) products falling within CN codes 2710 12 to 2710 20 90; however, for products falling within CN codes 2710 12 21, 2710 12 25, 2710 19 29, and 2710 19 71 to 2710 19 99 and 2710 20 90, 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~~ **where they** are intended for use as heating fuel or motor fuel, except when transported by pipelines;
 - (g) products falling within CN code 2814, ~~if these~~ **where they** 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 44;
 - (j) products falling within CN code 2905 11 00, ~~if these~~ **where they** are intended for use as

heating fuel or motor fuel;

- (k) products falling within CN codes 2909 19 10 and, if where 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~~ where they 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~~ where they 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~~ where they 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 to electricity. The Commission shall transmit ~~that~~ the Commission's communication to the other Member States within one month of its receipt. Within two months of ~~that~~ the Commission's 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~~ 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 **Chapter III, Chapter IV, Articles 33 to 43 and Articles 45 to 46 of 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 ~~265~~ 265(2) of this Directive.

Presidency note:

Adjustment to reflect clearly which provisions are meant by reference to paragraph 1 of the Article.

3. Member States may, pursuant to bilateral or multilateral 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, insofar as they are not covered by Articles 7 to 9 **of this Directive**. ~~Such~~ **Those** arrangements shall not affect Member States which are not party to them. All such bilateral or multilateral arrangements shall be notified to the Commission, which shall inform the other Member States thereof.
4. By way of derogation from paragraph 1, ~~points (d) and (l)~~ Member States may, pursuant to bilateral or multilateral agreements, apply the control and movement provisions to **non-bulk** commercial movements ~~not in bulk~~ **of products listed in points (d) and (l)**. Such agreements shall not affect Member States which are not party to them. All such bilateral agreements shall be notified to the Commission, which shall inform the other Member States ~~thereof~~.

Article 19

Taxable event and chargeability for specific products

1. In addition to the general provisions defining the chargeable event **set out in Article 34 of Directive (EU) 2020/262** and the provisions for payment set out in **Article 7, Article 11 and Article 13 of** Directive (EU) 2020/262, the amount of taxation on energy products not referred to in Article 18(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.

Presidency note:

Adjustment to reflect clearly which provisions are meant in Directive (EU) 2020/262.

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 purposes of a reduced level of taxation, specific rate or exemption is not, or is no longer, fulfilled.

3. Articles 1 to 5, 11, and 52 of Directive (EU) 2020/262 shall apply to products referred to in paragraphs 4 to 9 of this Article.
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 in accordance with 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 ~~where~~ they supply electricity.

Any natural or legal person producing electricity for its own use shall be considered ~~to be a distributor~~. **The distributor or redistributor means the natural or legal person who delivers the electricity and carries out invoicing or arranges for invoicing to be carried out.**

Presidency note:

The Presidency has included a definition of "distributor or redistributor" in both paragraph 4 and 6. This definition was established in the Council statement adopted at the time of the adoption of the currently applicable ETD. The addition shall ensure that the definition of the term is consistent with the currently applicable ETD.

5. 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:

- a) where electricity is produced from an energy source not taxed under this Directive, an installation whose electricity production is not expected to exceed ceilings specified in national law and in any case is not expected to exceed 850 MWh per year or 500 kW of installed production power.
- b) where electricity is produced from an energy source taxed under this Directive, an installation whose expected electricity production or installed production power do not exceed ceilings specified in national law.

Article 12(1), (2) and (3) shall not apply to energy products and electricity used to produce electricity exempted ~~according to~~ **in accordance with** this paragraph.

6. 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 in accordance with procedures laid down by each Member State.

Notwithstanding the first subparagraph, Member States may 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 shall be considered ~~to be~~ a distributor. **The distributor or redistributor means the natural or legal person who delivers the gas and carries out invoicing or arranges for invoicing to be carried out.**

7. 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.

In defining ‘small installation’, Member States may apply limits below those expressed in the second subparagraph.

Article 12(1), (2) and (3) shall not apply to energy products and electricity used to produce biogas exempted ~~pursuant to~~ **in accordance with** this paragraph.

8. 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 in accordance with 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.

9. Products falling within CN codes 2703 **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 [7,5 MW].

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

~~10. [...]~~

Presidency note:

The Presidency proposes to move Article 19(10) to Article 12(8) as the provision concerns the concept 'production of energy products' which is primarily regulated in Article 12.

Article 20

Contaminated products, accidents and stocks

1. Member States may refund the amounts of taxation already paid on contaminated or accidentally mixed energy products **that have been** sent back to a tax warehouse for recycling.
2. Where ~~ren~~ taxation rates are changed, stocks of energy products already released for consumption may be subject to an increase in, or a reduction of, the tax.

Article 21

Products contained in standard tanks

1. Energy products released for consumption in a Member State that are contained in the standard tanks of commercial motor vehicles and are intended to be used as fuel by those same vehicles, as well as those contained in special containers and that are 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' means:
- (a) the tanks permanently fixed to a motor vehicle by the manufacturer or by a third party and which, according to the registration documents or the certificate of roadworthiness of the vehicle, comply with the applicable technical and security requirements, and whose permanent fitting enables fuel to be used directly, both for the purpose of propulsion and, where appropriate, for the operation, during transport, of refrigeration systems and other systems, including gas tanks fitted to motor vehicles designed for the direct use of gas as a fuel and tanks fitted to the other systems with which the vehicle may be equipped;
 - (b) the tanks permanently fixed to a special container by the manufacturer or a third party which, according to the registration documents of the container, comply with the applicable technical and security requirements, and whose permanent fitting enables fuel to be used directly for the operation, during transport, of the refrigeration systems and other systems with which special containers are equipped.

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

Article 22

Specific exceptions

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

CHAPTER IV MISCELLANEOUS PROVISIONS

Article 23

Information to be submitted to the Commission

1. Member States shall inform the Commission of the levels of taxation which they apply to the products listed in Article 3 following any change in national law and, in any case, by 1 January of each year.

2. Where the levels of taxation applied by the Member States are expressed in units other than Euro/Gigajoule, Member States shall ~~also~~ inform the Commission of the corresponding levels of taxation following conversion into those units.
3. By [30 September] of each year, Member States shall inform the Commission of the available information from the previous calendar year ~~concerning~~ as regards the quantities subject to different tax rates and the available information concerning the quantities of products to which the exemptions ~~outlined~~ laid down in national law ~~legislation~~ have been applied. Those quantities shall be expressed in Gigajoules.

Presidency note:

‘National legislation’ has been changed to ‘national law’ to keep the wording as broad as possible.

Article 24

Information about measures that are considered State aid

1. Member States shall inform the Commission of measures taken pursuant to Articles 12 to ~~176~~.
2. Measures such as tax exemptions, tax reductions, tax differentiations and tax refunds within the meaning of this Directive might constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ~~when such measures have the effect of lowering the rate for energy product or electricity below the corresponding minimum level of taxation laid down in Annex I~~. In such cases, those measures shall comply with the regulations adopted by the Commission pursuant to Article 108(4) ~~of the Treaty on the Functioning of the European Union~~ TFEU, or shall be notified to the Commission pursuant to Article 108(3) ~~of the Treaty on the Functioning of the European Union~~ TFEU.

3. Information provided to the Commission in accordance with this Directive does not exonerate Member States from the notification obligation pursuant to the applicable State aid rules **Article 108(3) TFEU**.

Presidency note:

During the discussions some concerns were raised regarding the wording of Article 24. Therefore, the Presidency proposes to align the wording with the currently applicable ETD while still giving information about the State aid procedure. This wording does not regulate State aid but merely renders what follows from the State aid rules.

Further, it is proposed to adjust paragraph 1 to also cover Article 17 regarding reduced rates and exemptions for specific policy reasons. Any of such measures will have to comply with the State aid rules.

Article 25

General implementation

1. **In the implementation of the Directive, Member States shall, under fiscal control, ensure the correct and straightforward application of the Directive and prevent any evasion, avoidance or abuse.**
2. **The general provisions set out in Directive (EU) 2020/262 on exempt uses of taxable products shall apply in addition to the exemptions provided for in this Directive.**

Presidency note:

The Presidency proposes to insert a general provision regarding matters of implementation of the Directive. Previously those provisions were part of specially art. 13 and 14, however they are of general nature and should therefore be written as a separate provision.

Article 25~~25~~26

Committee procedure

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 **of the European Parliament and of the Council**¹⁹.

¹⁹ **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).**

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) 182/2011²⁰ shall apply.

Article 26~~27~~

Exercise of the delegation

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 2(4), Article 3(6), Article 3(7), Article 3(9), Article 3(11) and Article 4(4) shall be conferred on the Commission for an indeterminate period of time from [1 January 2028].
3. The delegation of power referred to in Article 2(4), Article 3(6), Article 3(7), Article 3(9), Article 3(11) and Article 4(4) 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 **on** 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-Making²¹.
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 2(4), Article 3(6), Article 3(7), Article 3(9), Article 3(11) or Article 4(4) 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.

²⁰ — ~~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).~~

²¹ OJ L 123, 12.5.2016, p. 1.

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.

CHAPTER V FINAL PROVISIONS

Article ~~27~~28

Transposition

1. Member States shall adopt and publish by [**OJ, please insert 2 years after adoption** ~~1 June 2026~~], the laws, regulations and administrative provisions necessary to comply with Article 1(1) point (c), Article 2(2), Article 3(1), points (b) to (r), Article 3(3) to (11), Articles 4(3) and (4), Article 5(1) point (d) and (2) to (9), Article 7, Article 8(1), Article 9, Article 10 to 14, Article 15(1), point (c) to (e), Article 15 (2) to (3), Articles 16 and 17, Article 18(1), points (b) to (g), (i) and (k) to (p), Article 18(2) and (4), Article 19(1) and (3) to (10), Article 21(2), Article 23(1) and (3), Article 24, Article ~~27~~28, Articles ~~29-30~~ to ~~31-32~~ and Annex I to III and shall immediately communicate the text of those measures to the Commission.
2. They shall apply those measures from [**OJ, please insert 4 years after adoption** ~~1 January 2028~~].

Presidency note:

The references in Article 28 and Annex IV, will be updated at a later stage once the final structure of the directive has been determined.

The transposition dates in paragraphs 1 and 2 have been changed to dynamic dates reflecting the dates in the compromise text from 12 May 2025 (ST 8765/25). These dates will depend on the time of the proposal's adoption.

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 ~~28~~29

Reporting

1. By 5 years after [1 January 2028] and thereafter every five years, the Commission shall submit to the Council a report on the application of this Directive.
2. The report by the Commission shall, inter alia, examine:
 - (a) -the minimum levels of taxation,
 - (b) the impact of innovation and technological developments, in particular as regards energy efficiency,
 - (c) the use of electricity in transport and
 - (d) the justification for the exemptions, reductions and differentiations laid down in this Directive.

Presidency note:

Article 29 has been restructured to enhance clarity and readability.

3. 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 ~~29~~30

Repeal

1. Directive 2003/96/EC as amended by **Directives 2004/74/EC and 2004/75/EC**, ~~the acts listed in [Annex IV], Part A,~~ is repealed with effect from **[OJ, please insert 4 years after adoption]** ~~1 January 2028~~, 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 ~~those~~ Directives ~~set out in [Annex IV, Part B].~~
2. **Commission implementing Decisions (EU) 2018/552²² and (EU) 2022/2521²³ are repealed with the effect from [OJ, please insert 4 years after adoption].**

²² **(OJ L 91, 9.4.2018, p.27)**

²³ **(OJ L 326, 21.12.2022, p. 57-58)**

Presidency note:

The dates of repeal in paragraphs 1 and 2 have been changed to dynamic dates reflecting the dates the compromise text from 12 May 2025 (ST 8765/25). These dates will depend on the time of the proposal's adoption.

Annex IV has been deleted and incorporated into Article 30(1) and (2) to improve coherence and ensure clarity.

3. References to the **Directives 2003/96/EC, 2004/74/EC and 2004/75/EC** ~~repealed directives~~ shall be construed as references to this Directive and shall be read in accordance with the correlation table in [Annex **IV**].

*Article ~~30~~**31***

Entry into force

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 3(1), point (a), Article 3(2), Article 6(1), Article 8(2), Article 15(1), points (a) and (b), Article 18(1), point (a), (h) and (j), Article 18(3), Article 19(2), Article 20, Article 21(1) and Article 23(2), which are unchanged by comparison with ~~the repealed~~ Directive **2003/96/EC**, shall apply from [1 January 2028].

*Article ~~31~~**32***

Addressees

This Directive is addressed to the Member States.

Done at...,

For the Council

The President

ANNEX I

MINIMUM LEVELS OF TAXATION

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	1.1.2028	1.1.2033	1.1.2038
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	1.1.2028	1.1.2033	1.1.2038
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 referred to in Article 5(1), point (c), for the purpose of Article 9 (in EUR/GJ net calorific value)

Category	1. 1.2028	1.1.2033	1.1.2038
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 referred to in Article 5(4) for the purpose of Article 10 (in EUR/GJ)

	1. 1.2028	1.1.2033	1.1.2038
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 referred to in Article 5(6), point (a)(i), for the purposes of Article 7 (in EUR/GJ net calorific value) from 1 January 2028 to 31 December 2042

	1. 1.2028	1.1.2033	1.1.2038
Natural gas, LPG	[5,38]	[5,77]	[9]

Table E2. — Minimum levels of taxation applicable to natural gas and liquefied petroleum gas used as motor fuels referred to in Article 5(6), point (a)(ii), for the purposes of Article 8 (in EUR/GJ net calorific value) from 1 January 2028 to 31 December 2042

	1. 1.2028	1.1.2033	1.1.2038
Natural gas, LPG	[0,45]	[0,48]	[0,75]

Table E3. — Minimum levels of taxation applicable to natural gas and liquefied petroleum gas used as heating fuels **referred to in Article 5(6), point (a)(iii)**, for the purposes of Article 9 (in EUR/GJ net calorific value) from 1 January 2028 to 31 December 2042

	1. 1.2028	1.1.2033	1.1.2038
Natural gas, LPG	[0,45]	[0,48]	[0,75]

Table F1. — Minimum levels of taxation applicable to sustainable food and feed crop biofuels and biogas used as motor fuels **referred to in Article 5(6), point (b)(i)**, for the purposes of Article 7 (in EUR/GJ net calorific value) from 1 January 2028 to 31 December 2042

	1. 1.2028	1.1.2033	1.1.2038
Sustainable food and feed crop biofuels and biogas	[5,38]	[5,77]	[9]

Table F2. — Minimum levels of taxation applicable to sustainable food and feed crop biofuels and biogas used as motor fuels **referred to in Article 5(6), point (b)(ii)**, for the purposes of Article 8 (in EUR/GJ net calorific value) from 1 January 2028 to 31 December 2042

	1. 1.2028	1.1.2033	1.1.2038
Sustainable food and feed crop biofuels and biogas	[0,45]	[0,48]	[0,75]

Table F3. — Minimum levels of taxation applicable to sustainable food and feed crop bioliquids and biogas used as heating fuels **referred to in Article 5(6), point (b)(iii)**, for the purposes of Article 9 (in EUR/GJ net calorific value) from 1 January 2028 to 31 December 2042

	1. 1.2028	1.1.2033	1.1.2038
Sustainable food and feed crop bioliquids and biogas	[0,45]	[0,48]	[0,75]

Presidency note:

The titles of the tables in Annex I have been updated to ensure consistency and clarity.

ANNEX II
CONVERSION TABLE OF NET CALORIFIC VALUES

No	Combined Nomenclature Code	Product name	Category	Net calorific value
1	ex.1507 to ex.1515	Pure vegetable oil (oil produced from oil plants through pressing, extraction or comparable procedures, crude or refined but chemically unmodified) if it is intended for use as heating fuel or motor fuel	1	37 GJ/1000 kg 34 GJ/1000 l
2	ex.1515 60, ex.1516 to ex.1518	Mixtures or preparations, microbial fats and oils, or vegetable or microbial or animal fats and oils that have been chemically modified if these are intended for use as heating fuel or motor fuel, excluding items 3 and 4	1	27,4 GJ/1000 kg
3		Sustainable mixtures or preparations, microbial fats and oils, or vegetable or microbial or animal fats and oils that have been chemically modified if these are intended for use as heating fuel or motor fuel	2	
4		Mixtures or preparations, microbial fats and oils, or vegetable or microbial or animal fats and oils that have been chemically modified (advanced sustainable) if these are intended for use as heating fuel or motor fuel	3	
5	ex 2207 20	Ethanol denatured if it is intended for use as heating fuel or motor fuel and are exempted from the harmonized excise duty on alcohol and alcoholic beverages in accordance with Article 27(1), points (a) or (b), of Council Directive 92/83/EC, excluding items 6 and 7	1	27 GJ/1000 kg 21,3 GJ/1000 l
6		Sustainable, other than food and feed crop Bio-Ethanol denatured if it is intended for use as heating fuel or motor fuel and are exempted from the harmonized excise duty on alcohol and alcoholic beverages in accordance with Article 27(1), points (a) or (b), of Council Directive 92/83/EC	2	
7		Advanced Sustainable or renewable of non-biological origin Ethanol denatured if it is 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	3	

		Article 27(1), points (a) or (b), of Council Directive 92/83/EC		
8	2701 11 00	Anthracite	1	26,7 GJ/1000 kg
9	2701 12 10	Coking coal	1	28,2 GJ/1000 kg
10	2701 12 90	Other bituminous coal	1	25,8 GJ/1000 kg
11	ex.2701 19 00	Sub-bituminous coal	1	18,9 GJ/1000 kg
12	ex.2701 20 00	Patent fuel	1	20,7 GJ/1000 kg
13	2702	Lignite	1	11,9 GJ/1000 kg
14	ex 2703 00 00	Peat if it is used as heating fuel in installations with a total rated thermal input equal to or exceeding 7,5 MW	1	9,8 GJ/1000 kg
15	ex.2704 00	Coke oven and lignite coke	1	28,2 GJ/1000 kg
16	ex.2705 00 00	Coke oven gas	1	38,7 GJ/1000 kg
17		Gas coke	1	28,2 GJ/1000 kg

18		Oxygen steel furnace gas	1	7,1 GJ/1000 kg
19		Blast furnace gas	1	2,5 GJ/1000 kg
20	ex.2706 00 00	Coal tar	1	28,0 GJ/1000 kg
21	2707 10, 2707 20, 2707 30	Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents benzol (benzene, toluol (toluene), xylol (xylenes)	1	40,2 GJ/1000 kg
22	2707 50	Other aromatic hydrocarbon mixtures of which 65% or more by volume (including losses) distils at 250°C by the ISO 3405 method (equivalent to the ASTM D 86 method)	1	40,2 GJ/1000 kg
23	ex.2707 99 99	Heavy aromatic hydrocarbon mixtures other than other aromatic hydrocarbon mixtures of which 65% or more by volume (including losses) distils at 250°C by the ISO 3405 method (equivalent to the ASTM D 86 method)	1	40,4 GJ/1000 kg
24	2708 20 00	Pitch coke	1	32,5 GJ/1000 kg
25	2709 00 10	Natural gas condensates	1	44,2 GJ/1000 kg
26	2710 12 21 and ex.2710 12 25	White spirit and Special spirits excluding item 37	1	40,2 GJ/1000 kg
27	ex.2710 12 31 to	Motor spirit and spirit type jet fuel excluding items 28 to 36	1	44,3 GJ/1000 kg

	ex.2710 12 70			33 GJ/1000 l
28	ex.2710 12 31 to ex.2710 12 90	Hydrotreated oil of biomass origin to be used for replacement of petrol excluding items 29 and 30	1	45 GJ/1000 kg
29		Hydrotreated oil of biomass origin to be used for replacement of petrol (sustainable, other than food and feed crop)	2	30 GJ/1000 l
30		Hydrotreated oil of biomass origin to be used for replacement of petrol (advanced sustainable)	3	44 GJ/1000 kg
31		Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of petrol excluding items 32 and 33	1	32 GJ/1000 l
32		Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of petrol (sustainable, other than food and feed crop)	2	44 GJ/1000 kg
33		Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of petrol (advanced sustainable)	3	33 GJ/1000 l
34		Fischer-Tropsch petrol excluding items 35 and 36	1	44 GJ/1000 kg
35		Fischer-Tropsch petrol (sustainable, other than food and feed crop)	2	33 GJ/1000 l
36		Fischer-Tropsch petrol (advanced sustainable or renewable of non-biological origin)	3	44,5 GJ/1000 kg
37	ex.2710 12 25 and ex.2710 12 90	Light oils and preparations for other purposes excluding items 28 to 36	1	43 GJ/1000 kg
38	ex.2710 19 21	Kerosene-type jet fuel excluding items 39 to 47	1	34 GJ/1000 l
39		Hydrotreated oil of biomass origin to be used for replacement of jet fuel excluding items 40 and 41	1	44 GJ/1000 kg
40		Hydrotreated oil of biomass origin to be used for replacement of jet fuel (sustainable, other than food and feed crop)	2	34 GJ/1000 l
41		Hydrotreated oil of biomass origin to be used for replacement of jet fuel (advanced sustainable)	3	

42		Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of jet fuel	1	
43		Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of jet fuel (sustainable, other than food and feed crop)	2	43 GJ/1000 kg
44		Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of jet fuel (advanced sustainable)	3	33 GJ/1000 l
45		Fischer-Tropsch jet fuel excluding items 46 and 47	1	
46		Fischer-Tropsch jet fuel (sustainable, other than food and feed crop)	2	44 GJ/1000 kg
47		Fischer-Tropsch jet fuel (advanced sustainable or renewable of non-biological origin)	3	33 GJ/1000 l
48	ex.2710 19 25	Kerosene - other than jet type	1	43,8 GJ/1000 kg 35,3 GJ/1000 l
49	ex.2710 19 42 to	Gas oils excluding items 50 to 58	1	43 GJ/1000 kg 36 GJ/1000 l
50	ex.2710 19 48, 2710 20 11 to 2710 20 19	Hydrotreated oil of biomass origin to be used for replacement of diesel excluding items 51 and 52	1	
51		Hydrotreated oil of biomass origin to be used for replacement of diesel (sustainable, other than food and feed crop)	2	44 GJ/1000 kg 34 GJ/1000 l
52		Hydrotreated oil of biomass origin to be used for replacement of diesel (advanced sustainable)	3	

53		Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of diesel excluding items 54 and 55	1	43 GJ/1000 kg
54		Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of diesel (sustainable, other than food and feed crop)	2	
55		Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of diesel (advanced sustainable)	3	
56		Fischer-Tropsch diesel excluding items 57 and 58	1	36 GJ/1000 l
57		Fischer-Tropsch diesel (sustainable, other than food and feed crop)	2	
58		Fischer-Tropsch diesel (advanced sustainable or renewable of non-biological origin)	3	
59	2710 19 62 to	Fuel oil excluding item 60	1	40,4 GJ/1000 kg
60	2710 19 67, 2710 20 32, 2710 20 38	Shale-derived fuel oil	1	38,1 GJ/1000 kg
61	2710 19 81 to 2710 19 99	Lubricating oils	1	40,2 GJ/1000 kg
62	2710 91 to 2710 99 00	Waste oil	1	40,2 GJ/1000 kg
63	2711 11 00 and 2711 21 00	Liquefied natural gas and natural gas in gaseous state	1	48 GJ/1000 kg
64	ex.2711 19 00	Methane liquefied	1	50 GJ/1000 kg

65	ex.2711 12 to ex.2711 19	Liquefied petroleum gases - propane, butanes, ethylene, propylene, butylene and butadiene and others (LPG) excluding items 66 to 81	1	47,3 GJ/1000 kg
66	ex.2711 12	Bio-Propane liquefied excluding items 73 to 81	2	46 GJ/1000 kg 24 GJ/1000 l
67	ex.2711 19 00	Liquified raw biogas excluding items 68 and 69	1	30 GJ/1000 kg
68		Liquified raw biogas (sustainable other than food and feed crop)	2	
69		Liquified raw biogas (advanced sustainable)	3	
70		Liquified biogas excluding items 71 and 72	1	50 GJ/1000 kg
71		Liquified biogas (sustainable other than food and feed crop)	2	
72		Liquified biogas (advanced sustainable)	3	
73	ex.2711 12 to ex.2711 19	Hydrotreated oil of biomass origin to be used for replacement of LPG excluding items 74 and 75	1	46 GJ/1000 kg
74		Hydrotreated oil of biomass origin to be used for replacement of LPG (sustainable other than food and feed crop)	2	24 GJ/1000 l
75		Hydrotreated oil of biomass origin to be used for replacement of LPG (advanced sustainable)	3	46 GJ/1000 kg 23 GJ/1000 l
76		Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of LPG excluding items 77 and 78	1	
77		Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of LPG (sustainable other than food and feed crop)	2	
78		Co-processed oil of biomass or pyrolysed biomass origin to be used for replacement of LPG (advanced sustainable)	3	

79		Fischer-Tropsch LPG excluding items 80 and 81	1	46 GJ/1000 kg
80		Fischer-Tropsch LPG (sustainable other than food and feed crop)	2	
81		Fischer-Tropsch LPG (advanced sustainable or renewable of non- biological origin)	3	
82	ex 2711 29 00	Gaseous hydrocarbons in gaseous state excluding items 83 to 86	1	50 GJ/1000 kg
83		Biogas in gaseous state (low-carbon fuels, sustainable other than food and feed crop)	2	
84		Biogas in gaseous state (advanced sustainable or renewable of non- biological origin)	3	
85	ex.2711 29 00	Landfill and sludge gas (low-carbon fuels, sustainable other than food and feed crop)	2	50,4 GJ/1000 kg
86		Landfill and sludge gas (advanced sustainable)	3	
87	2712 20	Paraffin wax containing by weight less than 0,75% of oil	1	40,2 GJ/1000 kg
88	2713 11 00 and 2713 12 00	Petroleum coke	1	32,5 GJ/1000 kg
89	2713 20 00	Petroleum bitumen	1	40,2 GJ/1000 kg
90	ex.2714 10 00	Oil shale and tar sands	1	8,9 GJ/1000 kg
91	ex.2714 90 00	Natural bitumen	1	40,2 GJ/1000 kg

92	ex 2804 10 00	Hydrogen if it is intended for use as heating fuel or motor fuel excluding items 93 and 94	1	120 GJ/1000 kg
93		Low-Carbon Hydrogen if it is intended for use as heating fuel or motor fuel	2	
94		Renewable of non-biological origin Hydrogen if it is intended for use as heating fuel or motor fuel	3	
95	ex 2814 10 00	Anhydrous ammonia if it is intended for use as heating fuel or motor fuel excluding items 96 and 97	1	18,6 GJ/1000 kg
96		Low-Carbon anhydrous ammonia if it is intended for use as heating fuel or motor fuel	2	
97		Renewable of non-biological origin anhydrous ammonia if it is intended for use as heating fuel or motor fuel	3	
98	ex.2901 10 00	Ethane	1	46,4 GJ/1000 kg
99	ex.2902	Cyclic hydrocarbons (benzene, toluene, xylenes, mixed xylene isomers, ethylbenzene)	1	40,2 GJ/1000 kg
100	ex 2905 11 00	Methanol if it is intended for use as heating fuel or motor fuel excluding items 101 and 102	1	20 GJ/1000 kg 16 GJ/1000 l
101		Bio-Methanol (sustainable other than food and feed crop) if it is intended for use as heating fuel or motor fuel	2	
102		Bio-Methanol (advanced sustainable or renewable of non-biological origin) if it is intended for use as heating fuel or motor fuel	3	
103	ex 2905 12 00	Propan-1-ol (propyl alcohol) and propan-2-ol (isopropyl alcohol) if these are intended for use as heating fuel or motor fuel, excluding items 104 and 105	1	31 GJ/1000 kg
104		Propan-1-ol (propyl alcohol) and propan-2-ol (isopropyl alcohol) (sustainable other than food	2	

		and feed crop) if these are intended for use as heating fuel or motor fuel;		25 GJ/1000 l
105		Propan-1-ol (propyl alcohol) and propan-2-ol (isopropyl alcohol) (advanced sustainable or renewable of non-biological origin) if these are intended for use as heating fuel or motor fuel;	3	
106	ex 2905 13 00 and ex 2905 14	Butan-1-ol (n-butyl alcohol), other butanols if these are intended for use as heating fuel or motor fuel, excluding items 107 and 108	1	33 GJ/1000 kg
107		Butan-1-ol (n-butyl alcohol), other butanols (sustainable other than food and feed crop) if these are intended for use as heating fuel or motor fuel;	2	
108		Butan-1-ol (n-butyl alcohol), other butanols (advanced sustainable or renewable of non-biological origin) if these are intended for use as heating fuel or motor fuel;	3	27 GJ/1000 l
109	ex 2909 19 10	Ethyl-tertio-butyl-ether (ETBE) if it is intended for use as heating fuel or motor fuel excluding items 110 and 111	1	36 GJ/1000 kg
110		Ethyl-tertio-butyl-ether (ETBE) (sustainable other than food and feed crop) if it is intended for use as heating fuel or motor fuel	2	27 GJ/1000 l
111		Ethyl-tertio-butyl-ether (ETBE) (advanced sustainable or renewable of non-biological origin) if it is intended for use as heating fuel or motor fuel	3	
112	ex.2909 19 90	Methyl-tertio-butyl-ether (MTBE) if it is intended for use as heating fuel or motor fuel excluding items 113 and 114	1	35 GJ/1000 kg
113		Methyl-tertio-butyl-ether (MTBE) (sustainable other than food and feed crop) if it is intended for use as heating fuel or motor fuel	2	26 GJ/1000 l
114		Methyl-tertio-butyl-ether (MTBE) (advanced sustainable or renewable of non-biological origin) if it is intended for use as heating fuel or motor fuel	3	
115		Tertiary-amyl-ethyl-ether (TAEE) if it is intended for use as heating fuel or motor fuel excluding items 116 and 117	1	38 GJ/1000 kg

116		Tertiary-amyl-ethyl-ether (TAE) (sustainable other than food and feed crop) if it is intended for use as heating fuel or motor fuel	2	29 GJ/1000 l
117		Tertiary-amyl-ethyl-ether (TAE) (advanced sustainable or renewable of non-biological origin) if it is intended for use as heating fuel or motor fuel	3	
118		Tertiary-amyl-methyl-ether (TAME) if it is intended for use as heating fuel or motor fuel excluding items 119 and 120	1	36 GJ/1000 kg
119		Tertiary-amyl-methyl-ether (TAME) (sustainable other than food and feed crop) if it is intended for use as heating fuel or motor fuel	2	28 GJ/1000 l
120		Tertiary-amyl-methyl-ether (TAME) (advanced sustainable or renewable of non-biological origin) if it is intended for use as heating fuel or motor fuel	3	
121	ex.2909 19 90	Tertiary-hexyl-ethyl-ether (THxEE) if it is intended for use as heating fuel or motor fuel excluding items 122 and 123	1	38 GJ/1000 kg
122		Tertiary-hexyl-ethyl-ether (THxEE) (sustainable other than food and feed crop) if it is intended for use as heating fuel or motor fuel	2	30 GJ/1000 l
123		Tertiary-hexyl-ethyl-ether (THxEE) (advanced sustainable or renewable of non-biological origin) if it is intended for use as heating fuel or motor fuel	3	
124		Tertiary-hexyl-methyl-ether (THxME) if it is intended for use as heating fuel or motor fuel excluding items 125 and 126	1	38 GJ/1000 kg
125		Tertiary-hexyl-methyl-ether (THxME) (sustainable other than food and feed crop) if it is intended for use as heating fuel or motor fuel	2	30 GJ/1000 l
126		Tertiary-hexyl-methyl-ether (THxME) (advanced sustainable or renewable of non-biological origin) if it is intended for use as heating fuel or motor fuel	3	

127		Dimethylether (DME) if it is intended for use as heating fuel or motor fuel excluding items 128 and 129	1	28 GJ/1000 kg 19 GJ/1000 l
128		Dimethylether (DME) (sustainable other than food and feed crop) if it is intended for use as heating fuel or motor fuel	2	
129		Dimethylether (DME) (advanced sustainable or renewable of non-biological origin) if it is intended for use as heating fuel or motor fuel	3	
130	ex.3403 11 00 to ex.3403 19 80	Lubricating preparations containing petroleum oils or oils obtained from bituminous minerals	1	40,2 GJ/1000 kg
131	ex.3824 99 92	Chemical products or preparations, predominantly composed of organic compounds, not elsewhere specified or included in the form of a liquid at 20°C if these are intended for use as heating fuel or motor fuel;	2	27,4 GJ/1000 kg
132	ex 3826 00 10	Biodiesel - fatty acid methyl esters (FAME) if these are intended for use as heating fuel or motor fuel excluding items 133 and 134	1	37 GJ/1000 kg 33 GJ/1000 l
133		Biodiesel - fatty acid methyl esters (FAME) (sustainable other than food and feed crop) if these are intended for use as heating fuel or motor fuel	2	
134		Biodiesel - fatty acid methyl esters (FAME) (advanced sustainable) if these are intended for use as heating fuel or motor fuel	3	
135		Biodiesel - fatty acid ethyl esters (FAEE) if these are intended for use as heating fuel or motor fuel excluding items 136 and 137	1	38 GJ/1000 kg
136		Biodiesel - fatty acid ethyl esters (FAEE) (sustainable other than food and feed crop) if these are intended for use as heating fuel or motor fuel	2	34 GJ/1000 l

137	Biodiesel - fatty acid ethyl esters (FAEE) (advanced sustainable) if these are intended for use as heating fuel or motor fuel	3	
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PUBLIC

ANNEX III

FEEDSTOCK FOR THE PRODUCTION OF 'ADVANCED AND INTERMEDIATE BIOFUELS, BIOLIQUIDS AND BIOGAS' AS REFERRED TO IN ARTICLE 2(4)(AH) AND (F)

Part A

- 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, and excluding feedstocks listed in part B of this Annex;
- Straw;
- Animal manure and sewage sludge;
- Palm oil mill effluent and empty palm fruit bunches;
- 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;
- Other ligno-cellulosic material except saw logs and veneer logs;
- Fusel oils from alcoholic distillation;
- Raw methanol from kraft pulping stemming from the production of wood pulp;
- Intermediate crops, such as catch crops and cover crops that are grown in areas where due to a short vegetation period the production of food and feed crops is limited to one harvest and provided their use does not trigger demand for additional land, and provided the soil organic matter content is maintained, where used for the production of biofuel for the aviation sector;
- Crops grown on severely degraded land, except food and feed crops, where used for the production of biofuel for the aviation sector;
- Cyanobacteria;

Part B

- Used cooking oil;
- Animal fats classified as categories 1 and 2 in accordance with Regulation (EC) No 1069/2009;
- Damaged crops that are not fit for use in the food or feed chain, excluding substances that have been intentionally modified or contaminated in order to meet this definition;
- Municipal wastewater and derivatives other than sewage sludge;
- Crops grown on severely degraded land excluding food and feed crops and feedstocks listed in Part A of this Annex, where not used for the production of biofuel for the aviation sector;
- Intermediate crops, such as catch crops and cover crops, and excluding feedstocks listed in Part A of this Annex, that are grown in areas where due to a short vegetation period the production of food and feed crops is limited to one harvest and provided their use does not

trigger demand for additional land and provided the soil organic matter content is maintained, where not used for the production of biofuel for the aviation sector.



ANNEX IV

Part A

Repealed Directive with list of the successive amendments thereto (referred to in Article 29)

~~Council Directive 2003/96/EC
(OJ L 283, 31.10.2003, p. 51)~~

~~Council Directive 2004/74/EC
(OJ L 157, 30.4.2004, p. 87)~~

~~Council Directive 2004/75/EC
(OJ L 157, 30.4.2004, p. 100)~~

~~Commission Implementing Decision (EU) 2018/552
(OJ L 91, 9.4.2018, p. 27)~~

~~Commission Implementing Decision (EU) 2022/2521
(OJ L 326, 21.12.2022, p. 57-58)~~

Part B

Time limits for transposition into national law (referred to in Article 29)

Directive	Time limit for transposition
2003/96/EC	31 December 2003
2004/74/EC	1 May 2004
2004/75/EC	1 May 2004

ANNEX IV
CORRELATION TABLE

Directive 2003/96/EC	This Directive
Article 1	Article 1(1)
-	Article 1(2), to (4)
Article 2(1), point (a)	Article 2(1), point (a)
Article 2(1), points (b) to (h)	-
-	Article 2(1), points (b) to (r)
Article 2(2)	Article 2(2)
Article 2(3), first subparagraph	-
Article 2(3), second subparagraph	Article 2(1), point (q)
Article 2(3), third subparagraph	Article 2(1), point (r)
-	Article 2(4) to (7)
Article 2(4)	Article 3(1) and (2)
Article 2(4), point (b), last sentence	Article 3(3)
Article 2(5)	Article 2(8)
Article 3	-
Article 4(1)	Article 4
Article 4(2)	Article 2, 5(c)
-	Article 5(1) to (4a)
Article 5, first indent	Article 5(4b, point (a)
Article 5, second indent	Article 5(4b, point (b, i)
Article 5, third indent	-
Article 5, fourth indent	Article 5(4b, point (b, ii)
-	Article 5(5), (6) and (7)
Article 6	Article 6
Article 7(1)	Article 7
Article 7(2) and (3)	Article 5(4c)
Article 7(4)	-
Article 8(1)	Article 8(1)
Article 8(2, point (a)	-
Article 8(2, point (a) to (d)	Article 8(2)
-	Article 8(3)
Article 9(1)	Article 9
Article 9(2)	-
Article 10(1)	Article 10
Article 10(2)	-
Article 11(1)	Article 2(5), point (c)
Article 11(2) and (3)	Article 2(5c)
Article 11(4)	-
Article 12	Article 1(2a)
Article 13	Article 11
Article 14(1), point (a)	Article 12(1), (2) and (3)
-	Article 12(4)
-	Article 12(7)
Article 14(1), points (b) and (c)	-
Article 14(2)	-

-	Article 13
-	Article 14
Article 15(1), point (a)	Article 15(1), point (a)
Article 15(1), point (b)	Article 15(1), point (b)
Article 15(1), point (c)	Article 16(1), point (a)
Article 15(1), point (d)	Article 15(1), point (c)
Article 15(1), point (e)	Article 16(1), point (b)
Article 15(1), point (f)	-
Article 15(1), point (g)	-
Article 15(1), point (h)	Article 16(1), point (c)
Article 15(1), point (i)	-
Article 15(1), point (j)	-
Article 15(1), point (j)	-
Article 15(1), point (k)	-
Article 15(1), point (l)	Article 15(1), point (e)
-	Article 15(1), point (d)
Article 15(2)	Article 15(2)
Article 15(3)	Article 15(1), point (f)
Article 16	-
-	Article 16(2)
Article 17	Article 16(3)
Article 18(1) to (6)	-
Article 18(7)	Article 22
Article 18(8) to (14)	-
Article 18a	-
Article 18b	-
Article 19	Article 17(1) to (3)
-	Article 17(4)
Article 20(1), point (a)	Article 18(1), point (a)
-	Article 18(1), point (b)
Article 20(1), point (b)	Article 18(1), point (c)
Article 20(1), point (c)	-
-	Article 18(1), point (d)
Article 20(1), point (d)	Article 18(1), point (e)
	Article 18(1), points (f) and (g)
Article 20(1), points (e), (f) and (g)	Article 18(1), points (h), (i) and (j)
-	Article 18(1), points (k) to (o)
Article 20(1), point (h)	Article 18(1), point (p)
-	Article 18(1), second subparagraph
Article 20(2) and (3)	Article 18(2) and (3)
Article 21(1)	Article 19(1)
Article 21(2)	-
Article 21(3)	Article 12(5) and (6)
Article 21(4)	Article 19(2)
Article 21(5), first subparagraph	Article 19(4), first subparagraph
Article 21(5), second subparagraph	-
-	Article 19(4), second subparagraph
Article 21(5), third subparagraph, first sentence	Article 19(4), third subparagraph

Article 21(5), third subparagraph, second sentence	Article 19(4a)
-	Article 19(5) and (5a)
Article 21(5), fourth subparagraph	Article 19(6)
-	Article 19(7)
Article 21(6)	Article 19(8)
Articles 22 and 23	Article 20
Article 24	Article 21
Article 25	Article 23(1) and (2)
-	Article 23(3)
Article 26(1) and (2)	Article 24
Article 26(3)	-
Articles 27 to 31	-
-	Articles 25 to 31
Article 32	Article 32
Annexes I, II and III	-
-	Annexes I to V
