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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	15 July 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 563 final
Subject:	Proposal for a COUNCIL DIRECTIVE restructuring the Union framework for the taxation of energy products and electricity (recast)

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Delegations will find attached document COM(2021) 563 final.

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Encl.: COM(2021) 563 final



Brussels, 14.7.2021  
COM(2021) 563 final

2021/0213 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

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

(Text with EEA relevance)

{SEC(2021) 663 final} - {SWD(2021) 640 final} - {SWD(2021) 641 final} -  
{SWD(2021) 642 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

The taxation of energy products and electricity plays an important role in the area of climate and energy policy. The harmonized rules set under the Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ("Energy Taxation Directive" or "ETD") aim to ensure the proper functioning of the Internal Market.

However, since the adoption of the ETD, the underlying climate and energy policy framework changed radically and the Directive is no longer aligned with current EU policies. Furthermore, the ETD is no longer ensuring a proper functioning of the internal market.

The proposal for recasting is part of the European Green Deal ("EGD") and of the Fit for 55 legislative package, as it focuses on environmental and climate issues to support the Commission's commitment to tackling environmental-related challenges and achieve the EU's domestic greenhouse gas emissions reductions objectives and air pollution reduction.

The EGD launched a new growth strategy for the EU that aims to transform the EU into a fair and prosperous society. It reaffirms the Commission's ambition to increase its climate ambition and make Europe the first climate-neutral continent by 2050. The necessity and value of the European Green Deal have only grown in light of the very severe effects of the COVID-19 pandemic on the health and economic well-being of the Union's citizens.

Based on the EGD strategy and a comprehensive impact assessment, the Commission's Communication of September 2020 on **Stepping up Europe's 2030 climate ambition**<sup>1</sup> ('2030 Climate Target Plan') proposed to raise the EU's ambition and put forward a comprehensive plan to increase the European Union's binding target for 2030 towards at least 55% net emission reduction, in a responsible way. Raising the 2030 ambition now helps give certainty to policymakers and investors, so that decisions made in the coming years do not lock in emission levels inconsistent with the EU's objective to be climate neutral by 2050. The 2030 target is in line with the Paris Agreement objective to keep the global temperature increase to well below 2°C and pursue efforts to keep it to 1.5°C. The European Council endorsed the new EU binding target for 2030 at its meeting of December 2020<sup>2</sup>.

The **European Climate Law**<sup>3</sup>, as agreed by the European Parliament and the European Council<sup>4</sup>, makes the EU's climate neutrality target legally binding, and raises the 2030 ambition by setting a target of at least 55% net emission reductions by 2030 compared to 1990.

In order to follow the pathway proposed in the European Climate Law, and deliver this increased level of ambition for 2030, the Commission has reviewed the climate and energy related legislation currently in place. The '**Fit for 55**' legislative package, as announced in the

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<sup>1</sup> COM (2020) 562 final.

<sup>2</sup> European Council Conclusions 10-11 December 2020 EUCO 22/20 CO EUR 17 CONCL 8.

<sup>3</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), COM/2020/80 final.

<sup>4</sup> See press release '[Commission welcomes provisional agreement on the European Climate Law](#)', IP/21/1828 of 21.04.2021.

2030 Climate Target Plan, is the most comprehensive building block in the efforts to implement the ambitious new 2030 climate target, and all economic sectors and policies will need to contribute.

In the EGD the Commission committed to review the ETD focusing on environmental issues and in order to ensure that energy taxation is aligned with climate objectives. Taxation plays a direct role in supporting the green transition by sending the right price signals and providing the right incentives for sustainable consumption and production.

In this context, effective environmental taxation and the removal of incentives for fossil fuel consumption throughout the EU are needed to deliver the greenhouse gas emission reductions together with other regulatory measures.

The ETD can contribute to the increased ambition of at least 55% reduction in greenhouse gas emissions by 2030 by ensuring that the taxation of motor and heating fuels reflects better the impact they have on the environment and on health. This can be achieved by removing disadvantages for clean technologies and introducing higher levels of taxation for inefficient and polluting fuels, in complement to carbon pricing through emissions trading. It will facilitate the transition away from fossil fuels towards cleaner energy to deliver on the EU's climate neutrality objective, in line with the commitments under the Paris Agreement.

The ETD was evaluated in 2019<sup>5</sup>. Following that evaluation, the Council adopted conclusions<sup>6</sup> whereby it considered that energy taxation can play an important role as one of the economic incentives that steer successful energy transition, driving low greenhouse gas emissions and energy savings investments while contributing to sustainable growth and invited the Commission to revise the ETD.

The current ETD raises a series of issues linked to its disconnection from climate and energy efficiency objectives and its shortcomings regarding the functioning of the internal market.

Firstly, the ETD is not in line with EU climate and energy objectives. The Directive does not adequately promote greenhouse gas emissions reductions, energy efficiency and the take-up of electricity and alternative fuels (renewable hydrogen, synthetic fuels, advanced biofuels, etc.). The reason for this is that new, less carbon-intensive fuels are taxed as their fossil equivalent if the new fuel emerged since the 2003 adoption of the last ETD and therefore there is no explicit rate for it. Biofuels are disadvantaged by the volume-based taxation (rates expressed per litre). The reason for it is that one litre biofuel typically has a lower energy content than one litre of the competing fossil fuel while the same tax rate applies. As an overall result, the ETD does not provide sufficient incentives for investments in clean technologies.

Secondly, the ETD *de facto* favours fossil fuel use. Highly divergent national rates are applied in combination with a wide range of tax exemptions and reductions. The wide range of exemptions and reductions are forms of fossil fuel incentives, which are not in line with the objectives of the EGD. The new proposal would help reducing the use of fossil fuels in two ways. Firstly, by setting higher rates for fossil fuels and lower rates for renewables products thereby decreasing the relative price advantage of fossil fuels over less polluting alternatives. This would discourage the use of fossil fuels. Secondly by reviewing the possibility of tax reductions and exemptions, which currently lower the taxation of fossil fuels. Those include

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<sup>5</sup> SWD(2019) 329 final.

<sup>6</sup> Council Conclusions 29 November 2019 14608/19 FISC 458.

gas oil used in agriculture, gas oil and coal used by households to heat (the possibility to exempt vulnerable households would remain) or fossil fuels used by energy intensive industries. Moreover, the proposal would end the current mandatory exemption of the aviation and waterborne navigation and fishing sector.

Thirdly, the ETD is no longer contributing to the proper functioning of the internal markets the minimum tax rates have lost their converging effect on national tax rates. Minimum rates are low as they have not been updated since 2003 although national rates are significantly above the ETD minima in most cases. In any case, the ETD minima therefore do no longer prevent a “race to the bottom” nor constitute a floor for taxation. All this, joined to the existence of exemptions and reductions, increases the fragmentation of the internal market and in particular distorts the level playing field across the involved sectors of the economy.

In addition, there are some aspects of the ETD that lack clarity, relevance and coherence, which creates legal uncertainty. These include, among others, the definition of taxable products and uses that are out of the scope of the Directive and the interpretation of the exemption related to motor fuels used in air and waterborne navigation. The present proposal, therefore, aims at the following objectives:

- (1) Providing an adapted framework contributing to the EU 2030 targets and climate neutrality by 2050 in the context of the European Green Deal. This would involve aligning taxation of energy products and electricity with EU energy, environment and climate policies thus contributing to the EU efforts to reduce emissions.
- (2) Providing a framework that preserves and improves the EU internal market by updating the scope and the structure of rates as well as by rationalising the use of tax exemptions and reductions by Member States.
- (3) Preserving the capacity to generate revenues for the budgets of the Member States.

As mentioned above, these objectives will be achieved by switching from volume to energy content based taxation, by eliminating incentives for fossil fuel use and by introducing a ranking of rates according to their environmental performance. Moreover, the current tax structure will be simplified by grouping energy products (used as motor or heating fuels) and electricity into categories and by ranking them according to their environmental performance. The ‘environmental performance’ has been defined in relation to other EU policies under the European Green Deal and in particular to the rest of the proposals in the “Fit for 55” package. According to this ranking, conventional fossil fuels, such as gas oil and petrol will be taxed at the highest rate. The next category of rates applies to fuels that are fossil based but are less harmful and still have some potential to contribute to decarbonisation in the short and medium term. 2/3 of the reference rate applies for example to natural gas, LPG and hydrogen of fossil origin for a transitional period of 10 years. Thereafter this rate will increase to the full reference rate. The next category is that of sustainable but not advanced biofuels. To reflect their contribution to decarbonisation, ½ of the reference rate applies. The lowest rate applies to electricity, regardless of its use, advanced biofuels, bioliquids, biogases and hydrogen of renewable origin. The rate applicable to this group is set significantly below the reference rate as electricity and these fuels can drive the EU’s clean energy transition towards achieving the objectives of the European Green Deal and ultimately climate neutrality by 2050.

In some sectors, mainly in those that may currently benefit from total exemptions such as aviation, or heating fuels for non- vulnerable households, transition periods will apply to mitigate the economic and social costs of introducing taxation.

The proposal also takes into account the social dimension by introducing the possibility to exempt vulnerable households from taxation of heating fuels for a period of ten years and by introducing a transitional period of ten years for attaining the minimum rate of taxation.

Member States can also grant reductions not below the minima to heating fuels for all households. It is up to Member States to decide on the use of tax revenues and they can further ensure fairness by using those revenues to mitigate the social impact.

- **Consistency with existing policy provisions in the policy area**

Council Directive 2003/96/EC defines the taxable energy products, the uses that make them subject to tax and the minimum levels of taxation applicable to each product depending on whether it is used as propellant, for certain industrial and commercial purposes or for heating. Amended provisions will remain consistent with those provisions that remain unchanged.

- **Consistency with other Union policies**

The initiatives linked to the EU climate objectives under the EGD, in particular the 2030 climate target, are presented under the ‘Fit for 55 Package’. This package will cover in particular the review of sectorial legislation in the fields of climate, energy, transport, and taxation<sup>7</sup>.

This proposal for recasting of the ETD is part of this coherently designed package. In complement to the other proposals in the package, it contributes to the EU climate targets by addressing exemptions and reductions in energy taxation that constitute de facto fossil fuel incentives, while promoting energy efficiency and the take-up of cleaner fuels. The proposal for recasting of the ETD and the proposal revising the EU ETS, including the introduction of emissions trading for buildings and road transport, therefore complement each other.

The other initiatives of the ‘Fit for 55 Package’ include new proposals and the review of the existing acquis in the area of climate, energy and transport policy:

- the EU Emissions Trading System (ETS)<sup>8</sup>, to adapt it to the new climate target and to introduce emissions trading in the building, maritime and road transport sectors as well as to change the treatment of the aviation sector, which is already included in its scope;
- the Effort Sharing Regulation (ESR)<sup>9</sup> on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030;
- the regulation setting CO<sub>2</sub> emission performance standards for cars and light commercial vehicles<sup>10</sup>;
- the Renewable Energy Directive (RED)<sup>11</sup>;

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<sup>7</sup> European Commission. (2020). Commission Work Programme 2021: Annex I outlines all the instruments to be proposed, including among others the review of energy taxation (the ETD).

<sup>8</sup> Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

<sup>9</sup> Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement

<sup>10</sup> Regulation (EU) 2019/631 on setting CO<sub>2</sub> emission performance standards for new passenger cars and for new light commercial vehicles

- the ‘ReFuelEU Aviation’ initiative aimed at boosting the production and uptake of sustainable aviation fuels in the air transport sector;
- the ‘FuelEU Maritime’ initiative aimed at increasing the demand of renewable and low-carbon fuels in the maritime transport sector;
- the Energy Efficiency Directive to implement the ambition of the new 2030 climate target (EED) and to contribute to a just transition;
- a new Carbon Border Adjustment Mechanism;
- the Regulation on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry (LULUCF)<sup>12</sup>;
- the Directive on deployment of alternative fuels infrastructure<sup>13</sup>;
- the Regulation on the establishment of the framework to facilitate sustainable investments (Taxonomy)<sup>14</sup>.

Furthermore, the recasting of the ETD is supportive of the zero-pollution ambition committed under the European Green Deal and of the R&I policies in climate, energy and mobility under the 2021-2027 Research Framework Programme Horizon 2020.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

### • Legal basis

The proposal is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU), which permits the EU to lay down harmonised rules in order to ensure the proper functioning of the internal market. Additionally, appropriate provisions of fiscal nature intended, inter alia, to preserve and protect the environment can be adopted according to Article 192(2), first subparagraph, of the TFEU.

### • Subsidiarity (for non-exclusive competence)

The shortcomings of the present Directive can only be remedied by means of a revision of the ETD, in coordination with other EU policy measures. Under the existing ETD, Member States can increase the rates of their taxes on energy products and electricity, decide not to make use of possible exemptions and reductions or introduce environmental and climate related objectives. However, such national approaches risk distorting the internal market and undermining the EGD objectives due to the non-harmonised structure and level of the national taxes:

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<sup>11</sup> Directive (EU) 2018/2001– This directive establishes an obligation on fuel suppliers to ensure a minimum mandatory share of renewable energy within the final consumption of energy in the transport sector by 2030.

<sup>12</sup> Regulation (EU) 2018/841 of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework

<sup>13</sup> Directive 2014/94/EU of 22 October 2014 on the deployment of alternative fuels infrastructure

<sup>14</sup> 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 (OJ L 198, 22.6.2020, p. 13)

- (1) The current minimum rates may limit the level of environmental ambition that Member States can pursue with taxes on energy, in particular because energy taxation directly affects the costs for companies.
- (2) The harmonisation of energy taxation through the Energy Taxation Directive should contribute to reducing the harmful effects of energy tax competition between the Member States, stemming for example from the possible relocation of businesses to Member States with more beneficial tax regimes.
- (3) The EU Emissions Trading System (ETS) has proven to be an effective tool in reducing greenhouse gas emissions from installations covered by the scheme. The extension of the EU ETS to the maritime sector and introduction of emissions trading to road transport and buildings are proposed as part of the “Fit for 55” package. However, energy taxation in Member States coexists with emissions trading at EU level and the ETD needs to ensure that minimum tax rates set at EU level provide incentives which are aligned with EU energy, climate and environmental objectives. In that context, action at EU level can ensure the coherence between the application of the EU ETS and the taxation of energy products and electricity, as well as a common EU approach with respect to taxation of energy products.

Achieving EU climate and environmental objectives requires a mix of policy instruments and an effective EU taxation framework can, while supporting other EU policy measures, avoid national choices that lead to internal market distortions and/or double taxation.

The ETD recast and its timing need to be seen in the broader context of the European Green Deal agenda. The objective to bring the ETD more closely in line with its objectives can only be implemented by means of an act adopted by the Union, recasting the ETD.

- **Proportionality**

The proposal complies with the proportionality principle for the following reasons.

The objectives of the current proposal are best achieved by recasting the current Directive to the effect explained above. The proposal is mainly concerned with some essential components of the Directive: the structure of taxation and the relationship between the respective tax treatment of the various energy sources.

The proposal is in all respects limited to what is necessary in order to achieve the objectives pursued.

- **Choice of the instrument**

The proposal is a Directive. In this area already covered by an existing Directive, Member State should continue to retain a margin of flexibility, as explained above. Other means than a Directive amending Directive 2003/96/CE would thus be inadequate.



### 3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation<sup>15</sup>**

The ETD initially made an overall positive contribution towards its main objective of ensuring the proper functioning of the internal market, preventing double taxation or any distortion of trade and competition between energy sources and energy consumers and suppliers.

However, as technologies, national tax rates and energy markets evolved over the past 15 years, the ETD in its present form no longer delivers the same positive contribution. Furthermore, the EU legislative framework and policy objectives developed significantly since the adoption of the ETD in 2003 resulting in some issues of relevance and coherence. As a result, the overall EU added value of the ETD eroded significantly over time in particular due to the lack of indexation of the minimum rates and the extensive and highly divergent use of optional tax exemptions by Member States and because of the changing policy environment.

The present ETD contributes only to a very limited extent to the wider economic, social and environmental EU policy objectives. The ETD is at least partially coherent with policy efforts to promote the use of renewable energy and increased energy efficiency but less so with regard to the reduction of greenhouse and other gas emissions as well as energy diversification or energy independence and security. The main reasons identified for this lack of coherence include disregard of the energy content and CO<sub>2</sub> emissions of energy products and electricity, (too) low minimum levels of taxation and (too) many exemptions. For the same reasons, the ETD does not contribute to the decarbonisation of transport and the reduction of the air pollution emissions. As a result, the contribution of the ETD to meeting the objectives set in international agreements such as the 2015 Paris Agreement is limited. Moreover, the ETD does not differentiate between renewable and carbon intensive sources of electricity nor does it take into account the environmental performance of biofuels. The ETD provisions on taxation of biofuels are therefore not in line with the EU energy, climate change and environment policies.

The ETD covers a shrinking share of the EU's energy mix as new technologies and products (e.g. power- to- gas, fuels of non- biological origin) continue to emerge or come to importance. Consequently, the current regime of energy taxation cannot ensure preferential treatment of environmentally sustainable new technologies and products. For example, despite the growing market relevance of renewable fuels, their tax treatment under the ETD still relies on rules developed at that time when these fuels were niche alternatives.

The current ETD disadvantages petrol compared to diesel in the form of a lower minimum rate for diesel. This creates higher demand for diesel. Furthermore, emerging fuels are also disadvantaged. If they are not explicitly listed in the current ETD, the tax rate of the fuel that is used for equivalent purposes applies. The per litre energy content of these fuels is typically lower than that of the equivalent fuel. This leads to a higher per litre tax rate for new fuels.

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<sup>15</sup> Report - Evaluation of Energy Taxation Directive, 2019

Moreover, the mandatory tax exemption concerning international aviation and waterborne navigation is in particular problematic because is not coherent with the present climate challenges and policies.

Regarding aviation, the EU has negotiated, on behalf of the Union and of the Member States, horizontal air services agreements and comprehensive air transport agreements with third countries. Additionally, Member States have also concluded bilateral air services agreement with third countries. The horizontal air services agreements allow the EU to amend a number of provisions in Member States' bilateral agreements. The comprehensive air transport agreements supersede the bilateral agreements that have been concluded by individual Member States with third countries. In most situations, those agreements allow for the taxation of fuel supplied in Member States' territory for use in an aircraft that operates flights inside the EU.

Regarding waterborne transport, the revised Mannheim Convention of 17 October 1868 for the Navigation of the Rhine regulates the transport on the Rhine. In addition, the Agreement on customs and tax regime for gas oil applicable to the stores of vessels in Rhine navigation<sup>16</sup> concluded in Strasbourg on 16 May 1952 ("the Strasbourg Agreement") provides for the exemption of gas oil used on the Rhine and its tributaries and other waterways. Since fuel used for waterborne transport should be equally taxed in the EU, the Member States parties to the Strasbourg Agreement have to take all appropriate steps to effectively eliminate the incompatibilities. According to Article 351, paragraph 2 TFEU, to the extent that treaties concluded by EU Member States with third countries are incompatible with EU law, Member States concerned must take all appropriate steps to eliminate the incompatibilities established.

Minimum rates for heating fuels are too low to contribute to the smooth functioning of the internal market as they represent only a negligible share of the price of these products. Moreover, the use of optional exemptions and reductions granted to households and business users alike further increase divergence, leading to effective taxation rates being significantly lower in some Member States than in others.

Highly divergent rates on electricity and natural gas are applied in combination with a wide range of tax exemptions and reductions which contribute to increase the fragmentation of the internal market.

As the levels of taxation under the ETD do not reflect any specific logic – for example, by not taking into account the energy content and externalities – Member States are allowed to set their national rates as they wish without having to follow any indication or ratio between products. Consequently, the current ETD can result in inappropriate price signals to users, disincentivising them from choosing greener and more efficient energy sources and no consistent treatment of energy sources is ensured at the national level.

The ETD did not create any considerable regulatory burden or cost for the Member States or the economic operators to comply with the Directive. Much of the costs and burdens come either from horizontal legislation or national implementing measures not prescribed in the Directive and varying significantly across Member States or sector of economic activity.

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<sup>16</sup> Accord relatif au régime douanier et fiscal du gasoil consommé comme ravitaillement de bord dans la navigation rhénane Conclu à Strasbourg le 16 mai 1952.

The difficulties with the ETD's implementation related to the complexity, the lack of clarity, ambiguous wording and interpretations of some of the ETD provisions. This in turn led to uncertainties such as unclear conditions for eligibility to preferential tax treatment. Such uncertainty can represent a cost for tax authorities and economic operators, particularly when it leads to litigation, expressed as opportunity costs or legal expenses.

- **Stakeholder consultations**

The present proposal has been formulated against the background of a wide range of external contributions. Stakeholders were consulted first via the Inception Impact Assessment feedback mechanism and via a dedicated Public Consultation.

The public consultation was open from 22 July 2020 to 14 October 2020. In total, 563 responses from 25 Member states and from 5 third countries were received, together with 129 position papers. An overwhelming majority of respondents agree with the general EU objectives of fighting climate change and pollution and with the application of these objectives to the revision of the ETD. In terms of priorities for the ETD review, most respondents agreed that the ETD revision should take into account greenhouse gas emissions in the definition of rates (which should also be expressed in energy content rather than in volume) and should introduce incentives for alternative energy sources such as clean hydrogen and sustainable biofuels. Overall, respondents showed their disagreement with taxation of sectors at risk of carbon leakage. The public consultation revealed some support to equalising the taxes for different transport modes so that they can compete on a level playing field and the development of more energy efficient and low carbon transport modes. With respect to accompanying social measures, most of the respondents supported a tax shift from labour taxation and social security contributions as well as social welfare programmes directed at poor households.

Besides the public consultation, direct consultations with Member States have taken place, including requests for input in view of the computation of effective tax rates, as well as with other stakeholders, were also undertaken.

- **Impact assessment**

In order to examine how the different policy objectives could best be addressed, a number of approaches were examined and compared to the baseline scenario.

The baseline represents the existing 2030 climate and energy legislative framework, namely the previously agreed climate and energy targets of 40% GHG emission reduction by 2030, as well as the main policy tools to implement these. This policy option assumes that the ETD remains unchanged.

Option 1 would index the minimum rates and partly broaden the tax basis while substantially keeping its structure intact. The intra-EU aviation and maritime sectors would be included in the scope with a zero minimum rate by removing the current tax exemptions.

Option 2 introduces a system of simplified rates. Minimum rates would be indexed and based on energy content and a transitional period (10 years for option 2a and a shorter period until 2030 for option 2b) would be applied. It focuses on energy content with an increased taxation level (mostly for heating fuels) and extension of the taxable base to intra-EU navigation in aviation and maritime sectors would be included in the scope of the Directive with minimum

rates which would be linearly increased during a transitional period of 10 years. Option 2c introduces a new component in order to determine the rates that takes into account air pollutant emissions of the products on top of the features of option 2a.

Option 3 brings in a carbon content component for the sectors that are currently not covered by the ETS, in order to ensure those sectors are subject to carbon pricing. As for option 2, also in this case, two transitional periods (10 years and a shorter period until 2030) are considered. The introduction of a pollution component is also analysed in this option.

### ***Main results***

When proposing, in September 2020, its updated 2030 greenhouse gas emissions reduction of at least 55%, compared to 1990, the European Commission also described the actions across all sectors of the economy that would complement national efforts to achieve the increased ambition. Impact assessments have been prepared to support the envisaged revisions of key legislative instruments in the “Fit for 55” package.

Against this background, this impact assessment has analysed the various options through which the revision of the Energy Taxation Directive could effectively and efficiently contribute to the delivery of the updated target as part of such a wider “Fit for 55” package while fulfilling the internal market objective avoiding revenues erosion.

Based on the options’ comparison as well as on the analysis of the specific policy options, both Option 2 and 3 would fulfil the objectives in a desirable way.

These options contribute to the Climate and Energy objectives as well as to the other policy objectives.

Concerning the transitional period, both periods (10 years or 7 years) will have the same impact by 2035 in every option. However, the options with a transitional period of ten years (option 2a and 3a) provide the best results compared to a shorter transitional period when considering the social dimension.

When the air pollution component is considered, the positive impact on emission reductions is associated with a negative social impact, through a substantial increase of the price of coal and biomass.

Considering that emissions trading should be introduced for carbon emissions of road transport and buildings, as proposed in the revision of the EU ETS proposal under the “Fit for 55” package, option 2a is considered the best option because it avoids any overlap between the two mechanisms.

A well-calibrated extension of the EU ETS to the maritime sector and introduction of emissions trading to road transport and buildings, coupled with option 2 for the ETD would help to achieve the EU’s ambitious climate objective of 55% emission reductions by 2030 while allowing attaining the rest of the objectives of the ETD review.

The impact assessment also showed that the ETD revision would not create an undue burden on the economy. The objectives set out above can be achieved with very limited economic costs and the revision can potentially bring economic benefits, in particular if additional revenue from general energy consumption taxation would be used by Member States for compensating unintended social costs.

The impact assessment has shown that increased taxation of fossil fuels may impact more on low-income households, in particular for heating. In those cases, the possible regressivity of energy taxes could be compensated by recycling those revenues to support the green

transition through financing investments in low-carbon and energy efficient goods and appliances or through lump sum transfers. For example, the analysis shows that when the extra tax revenues from energy taxes are transferred back to households in the form of a lump-sum, the proposed changes turn to be progressive as these transfers determine a larger increase in the disposable income of poorer households.

In the baseline, revenues in Member States are projected to decrease by nearly 32% between 2020 and 2035 due to the expected evolution of the energy system with a decreasing dependency on fuels thanks to energy savings and a shift from fossil fuels. The preferred option would mitigate largely this trend by increasing revenues.

- **Regulatory fitness and simplification**

Concerning the costs of the Directive's functioning, the specific implementation of the ETD is dependent upon several other factors. These include aspects such as specific national or other EU policies being applied in the same domain, national priorities and industrial legacy, prevailing economic and trading conditions or business models of individual sectors or companies.

According to the (already published) evaluation of the current ETD<sup>17</sup>, due to the wide ranging flexibility left by the current ETD to Member States to apply exemptions, reductions and refunds it was complex to calculate effective rates in a harmonised way across the EU. In particular, at the time of the evaluation no official data collection existed that was equipped to capture effective tax rates. It was therefore difficult to single out and quantify some effects of the Directive.

However, in the current impact assessment, some economic costs have been identified in the relevant section on impacts of the policy options.

Some regulatory costs (mostly managing authorisations, declarations and IT systems update) will arise for the traders in energy products newly introduced in the ETD's scope and for administrations as these products will be subject to some provisions of the excise general arrangements<sup>18</sup>; however these costs should be limited for hydrogen and solid biomass traders as these products will be allowed the same movement control simplifications as natural gas and coal respectively. The termination of excise duty exemptions for some fuels or sectors of activity (e.g. aviation and maritime) does not change the regulatory costs related to general arrangements as exempted fuels were anyway subject to holding and movement controls.

The collection of a fuel tax in the aviation sector is not expected to be problematic from an administrative perspective. Member States already have experience in collecting fuel taxes in other transport modes (mainly road transport). It is expected that an aviation fuel tax would be collected in a similar manner, with the fuel suppliers collecting the tax when they supply kerosene at airports, then transferring those funds to the relevant tax authorities.

In terms of efficiency, the costs of collecting the current motor fuel taxes can be used as a proxy for how much it would cost to collect an aviation fuel tax. A 2012 study<sup>19</sup> found that administrative costs for public authorities represented between 0.65% and 0.85% of the

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<sup>17</sup> See the [Commission report: evaluation of the Energy Taxation Directive](#), SWD(2019) 329 final, of 11.09.2019.

<sup>18</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC

<sup>19</sup> CE Delft et al. (2012). An inventory of measures for internalising external costs in transport. Brussels: European Commission.

revenue of fuel tax. It is estimated that the collection of a kerosene fuel tax would be somewhat simpler, as the supply of kerosene is concentrated at airports, of which there are only a few in each Member State. Given this, the lowest figure of 0.65% of revenue is considered as representing the administrative costs of collecting a fuel tax.

An external study on the taxation of the aviation has also been commissioned by the Commission for the purposes, among others, of the impact assessment.

- **Fundamental rights**

The measure has no bearing on fundamental rights.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no implications for the budget of the Union.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Monitoring of taxation of energy consumption is regularly carried out at least once a year through the collection of information from Member States on the occasion of the meetings of the Indirect Tax Expert Group (ITEG). Moreover, twice yearly DG TAXUD together with the Member States update the information database on the applicable energy tax rates (Tax in Europe Database).

Moreover, the ETD provides for a regular examination, on the basis of a report and, where appropriate, a proposal from the Commission to modify the various provisions of the Directive and the minimum levels of taxation. This examination shall take into account the proper functioning of the internal market and the wider objectives of the Treaty. Once the ETD will be reviewed, this examination will have to focus in particular, on the following:

- (a) how Member States have implemented the new framework for the taxation of energy products and electricity in their national systems,
- (b) how it has allowed them to better integrate environmental and energy efficiency considerations and
- (c) what is the economic impact by taking into account the way in which Member States have used any additional revenues.

- **Explanatory documents (for directives)**

No explanatory documents on the transposition of the provisions of this proposal are considered necessary.

- **Detailed explanation of the specific provisions of the proposal**

The Commission proposes with effect from first of January 2023:

1) *Energy taxation based on the energy content of the energy products and electricity, and their environmental performance.*

To allow for the already mentioned diversified objectives (energy efficiency, reduction of greenhouse gases emissions, revenue generation, etc.), and to ensure, to the extent possible, that all of them can be pursued in a consistent manner, taxation should be linked to the energy content of the energy products and electricity, coupled with their environmental performance derived from the overall EU framework.

Taxation based on energy content provides a better reference to compare different energy products and electricity and eliminates the current possible disadvantageous tax treatment of certain products, such as biofuels.

The concept of ‘environmental performance’ and the corresponding ranking of applicable rates takes into account the specific characteristics of the different products and their treatment under the current ETD and in the Member States, the expected evolution of the EU energy mix and it is consistent with the other proposals in the “Fit for 55 package” (in particular the proposals to revise the EU ETS and RED II) and with the objective of zero pollution via the implementation of the polluter-pays principle, to ensure coherence and a contribution to the common objectives. Therefore, energy taxation would be based on the net calorific value of the energy products and electricity as set out in Annex IV to Directive 2012/27/EU<sup>20</sup>. In the case of products derived from biomass the reference values shall be those set out in Annex III to Directive (EU) 2018/2001<sup>21</sup> (see Article 1(2)(1<sup>st</sup> subpar.)).

Where the above-mentioned Directives do not contain a net calorific value for the product concerned, reference should be made to the relevant available information on its net calorific value (see Article 1(2)(2<sup>nd</sup> subpar.)).

Minimum levels of taxation are set out according to the mentioned environmental performance (meaning e.g. that sustainable biofuels would be taxed with lower rates) and are expressed in €/GJ (see Articles 7, 8, 9, 10 and Annex I).

## *2) List of energy products and applicable definitions*

The scope of taxation should include, in the list of energy products, competing energy sources and consequently a unified and standardised fiscal treatment of them should be ensured, also in terms of their subjection to control and movement provisions (see Articles 2(1), and 21(1)).

Additional definitions coming from other parts of EU legislation (namely the above-mentioned Directive (EU) 2018/2001) or specified in the proposal will allow for a differentiated tax treatment (see the definitions in Article 2(4) and (5)).

In case of a product consisting of a mixture of one or more products, the taxation of each component should be determined accordingly, based on the applicable rates and independently from the CN code under which the product falls as a whole (see Article 2(6)).

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<sup>20</sup> 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).

<sup>21</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast) (OJ L 328 21.12.2018, p. 82).

Finally, reference is made to the version presently applicable of the Combined Nomenclature (CN)<sup>22</sup>. In order to ensure that the reference to CN codes is updated whenever needed, the power to adopt delegated acts should be conferred to the Commission for proceeding to the update (see Articles 2(8) and 29).

### *3) Provisions regarding the exclusion from the scope of the legal framework*

Energy taxation covers energy products used as motor or heating fuels, and electricity. Consequently, only uses other than motor or heating fuel, and dual uses of energy products, as well as output taxation of heat, should be excluded from the scope of ETD. Electricity used in similar ways should be treated on an equal footing (see Article 3).

### *4) Ranking of rates and indexation of the minimum levels*

To ensure that a consistent treatment of energy sources extends to the levels of taxation fixed nationally -above the minimum levels set in the proposal-, Member States should replicate the relationship between the minimum levels of taxation fixed in the proposal for the various energy sources and uses. For that requirement, electricity should always be among the least taxed energy sources in view of fostering its use, notably in the transport sector, and should be ranked together with other motor fuels and heating fuels (see Article 5(1)).

The ranking of energy products and electricity should be considered as a general principle equally applicable, *mutatis mutandis*, whenever the Directive allows for differentiations (see Articles 13, 14, 15, 16, 17 and 18).

Moreover, the real value of the minimum levels of taxation should be preserved. The minimum rates should be yearly adjusted to take into account the evolution of their real value in order to preserve the current level of rate harmonisation. To reduce the volatility stemming from energy and food prices, that alignment should be made on the basis of the changes in the EU-wide harmonised index of consumer prices excluding energy and unprocessed food as published by Eurostat. The Commission shall publish the resulting minimum levels of taxation in the Official Journal of the European Union (see Article 5(2)).

### *5) Different minimum levels of taxation for motor fuels, heating fuels and electricity*

Different minimum levels of taxation should be set out for motor fuels for transport, for motor fuels used for specific purposes (such as in the primary sector), for heating fuels and for electricity. When a transitional period is applicable, the increase of the minimum levels of taxation -except for low-carbon fuels- should be fixed at one tenth per year until the end of the transitional period, taking also into account the need to index those minimum levels of taxation (see Articles 7, 8, 9, 10 and Annex I).

In accordance with the objectives of the proposal, no distinction should be made between commercial and non-commercial use of gas oil as motor fuel as well as business and non-business use for heating fuels and electricity.

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<sup>22</sup> Commission Implementing Regulation (EU) 2020/1577 of 21 September 2020 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 361, 30.10.2020, p. 1).



To simplify the structure of minimum tax levels where possible, the minimum levels of taxation for some uses of motor fuels (see Table B in Annex I) are aligned with the minimum levels of taxation applicable to heating fuels (see Table C in Annex I).

#### 6) *Input used for electricity production*

Taxation of energy products and electricity used to produce electricity is allowed to Member States aside the ETD, without the need to respect the minimum levels of taxation provided for in the proposal, for reasons of environmental policy. Member States wishing to introduce such taxation should at least replicate the ranking set between the minimum levels laid down in the proposal, in order to provide the right environmental signals (see Article 13).

#### 7) *Energy products and electricity used by aircrafts and vessels*

Without prejudice to international aviation-related agreements, energy products and electricity supplied for intra-EU air navigation<sup>23</sup> (except those supplied for cargo-only flights), and for intra-EU waterborne navigation, including fishing<sup>24</sup>, should be taxed (see Articles 14 and 15).

A different level of taxation would be applicable to the use of energy products and electricity for intra-EU non-business aviation and non-pleasure flights. Energy products and electricity used for intra-EU business aviation and pleasure flights<sup>25</sup> should be subject to the standard levels of taxation applicable to motor fuels and electricity in the Member States.

In order to ensure a smooth implementation of the provisions regarding intra-EU non-business aviation and non-pleasure flights, the minimum levels of taxation for motor fuel use would be reached over a transitional period of ten years, whereas sustainable alternative fuels (including sustainable biofuels and biogas, low-carbon fuels, advanced sustainable biofuels and biogas, and renewable fuels of non-biological origin) and electricity would have a minimum rate of zero for ten years.

Energy products and electricity used for intra-EU air navigation of cargo-only should be exempt with a possibility for a Member State to tax those fuels either for domestic cargo-only flights or by virtue of bilateral or multilateral agreements concluded with other Member States.

For extra-EU air navigation, without prejudice to international obligations, Member States may exempt or apply the same levels of taxation as for intra-EU air navigation, according to the type of flight.

Regarding waterborne navigation, considering the risk of tankering fuel outside the EU, a different level of taxation would be applicable to the use of energy products and electricity for

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<sup>23</sup> 'Intra-EU air navigation' would mean flights between two airports located in the EU, including domestic flights.

<sup>24</sup> 'Intra-EU maritime waterborne navigation' would mean navigation between two ports located in the EU, including domestic navigation.

<sup>25</sup> 'Business aviation' shall mean the operation or use of aircraft by companies for the carriage of passengers or goods as an aid to the conduct of their business, flown for purposes generally considered not for public hire and piloted by individuals having, at the minimum, a valid commercial pilot license with an instrument rating.

'Pleasure flights' shall mean the use of an aircraft for personal or recreational purposes not associated with a business or professional use.

intra-EU (from an EU port to another EU port) maritime and inland waterways regular service navigation, fishing and freight transport. Energy products and electricity used for the remaining intra-EU waterborne navigation (including among others navigation of private pleasure crafts) should be subject to the standard levels of taxation applicable to motor fuels and electricity in the Member States.

The uses for intra-EU maritime and inland waterways regular service navigation, fishing and freight transport, the minimum levels of taxation should be the ones applicable to motor fuel use for specific purposes (therefore lower than the ones applicable to general motor fuel use). In order to provide an incentive to their use, sustainable alternative fuels (including sustainable biofuels and biogas, low-carbon fuels, advanced sustainable biofuels and biogas, and renewable fuels of non-biological origin) and electricity would have a minimum rate of zero for ten years.

For extra-EU waterborne navigation, Member States may exempt or apply the same levels of taxation mentioned before, according to the type of activity.

Finally, in some harbours, a cleaner alternative to the production of electricity on board a vessel exists with the use of shore-side electricity (i.e. connection to the on-shore electricity grid). In order to set an incentive for its development and use, shore-side electricity provided to vessels while at berth in ports can be exempt.

The same treatment should be applicable to electricity supplied to stationary aircrafts.

#### *8) Possibility for tax exemptions for certain products or for electricity from certain sources*

The possibility to apply exemptions or reductions in the level of taxation would be justified by specific reasons, in particular energy efficiency and environmental protection objectives, in certain cases such as: electricity from renewable sources; electricity produced from combined heat and power generation, provided that the combined generators are environmentally friendly according to the EU definition; renewable fuels of non-biological origin, advanced sustainable biofuels, bioliquids, biogas and advanced sustainable products falling within CN codes 4401 and 4402 (see Article 16).

#### *9) Possibility for tax reductions for certain uses*

Targeted reductions, not going below the minimum levels set out by the proposal, may prove necessary for different reasons, such as implementing energy efficiency or taking into account social considerations (see Article 17).

Among others, a possible reduction not going below the minima would be applicable to energy products used as heating fuel and electricity if used by households. In that case, the minimum levels of taxation should start from zero and increase over a transitional period of ten years by one tenth of the final minimum rates in each year (see Article 17(c)).

Energy products and electricity used by households recognised as vulnerable according to a harmonised EU definition could be exempted for a maximum period of ten years after the entry into force of the Directive (see Article 17(c)).

As regards certain sectors (agricultural, horticultural or aquaculture works, and forestry), reductions in the level of taxation not going below the minima for energy products used for heating purposes and for electricity would be applicable (see Article 17(d)).

### *10) Energy intensive businesses and other business entities*

Targeted reductions in the tax level not going below the minima may prove necessary to incentivise the achievement of environmental protection objectives and improvements in energy efficiency of the EU productive sector (see Article 18).

Those reductions would be linked either to a stringent definition or to verifiable efforts leading to the mentioned goals.

### *11) List of energy products subject to control and movement provisions*

To improve the legal certainty and address the risk of fraud, selected energy products (e.g. lubricating oils) should be subject to control and movement provisions (see Article 21)

### *12) Chargeability of certain energy products*

Considering the analogies in terms of physical properties, the chargeable event for hydrogen should be aligned to the one for natural gas, for which the tax is chargeable at the time of supply by the distributor or redistributor (see Article 22(4)(1<sup>st</sup> subpar.)).

As regards electricity, recent and future developments of storage technologies would require that electricity storage facilities and transformers of electricity could be considered redistributors when they supply electricity in order to avoid the risk of double taxation (see Article 22(4)(2<sup>nd</sup> subpar.)).

Moreover, due to the similarities in terms of physical properties and the diversified situations in the Member States, products falling within CN codes 2703 (peat), 4401 (fuel wood, wood in chips or particles, sawdust and wood waste and scrap) and 4402 (wood charcoal) should be subject to taxation and become chargeable at the time of delivery as for coal, coke and lignite and according to procedures laid down by each Member State (see Article 22(4)(5<sup>th</sup> subpar.)).

### *13) Definition of standard tanks*

In order to ensure free movement whilst 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 (see Article 25).

### *14) Reporting obligation for Member States*

In order to have precise information on the functioning of the Directive, Member States should inform the Commission of the levels of taxation which they apply as well as of the related volumes of energy products and electricity subject to taxation (see Article 26).

### *15) Report from the Commission to the Council*

Every five years and for the first time five years after the entry into force of this Directive, the Commission should submit to the Council a report on the application of the Directive and, where appropriate, a proposal for its modification.

The report by the Commission should, inter alia, examine the minimum levels of taxation, the impact of innovation and technological developments, in particular as regards energy efficiency, the use of electricity in transport and the justification for the exemptions, reductions and differentiations laid down in the proposal. 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 wider relevant objectives of the Treaties (see Article 31).

16) *Annex I and tables with minimum rates*

Annex I contains the tables with the minimum levels of taxation -expressed in EUR/GJ- generally applicable to motor fuels for the purposes of Articles 7 and Article 8(2), to heating fuels and to electricity (see Tables A, B, C and D).

Those minimum levels are likewise applicable when mentioned by other relevant provisions of the Directive.

Proposal for a

## COUNCIL DIRECTIVE

### restructuring the ~~Community~~ 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 ~~establishing the European Community~~  on the Functioning of the European Union,  and in particular Article ~~93~~  113 and Article 192(2), first subparagraph, point (a)  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:

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↓ new

- (1) Council Directive 2003/96/EC<sup>26</sup> has been substantially amended several times<sup>27</sup>. Since further amendments are to be made, that Directive should be recast in the interests of clarity.
- (2) Directive 2003/96/EC was adopted in order to ensure the proper functioning of the internal market as regards the taxation of energy products and electricity. Directive 2003/96 also integrated environmental protection requirements, in particular, in the light of the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

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<sup>26</sup> 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).

<sup>27</sup> See Annex II, Part A.

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↓ 2003/96/EC recital 1 (adapted)

~~The scope of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils<sup>28</sup> and of Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils<sup>29</sup> is restricted to mineral oils.~~

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↓ 2003/96/EC recital 2 (adapted)

~~The absence of Community provisions imposing a minimum rate of taxation on electricity and energy products other than mineral oils may adversely affect the proper functioning of the internal market.~~

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↓ new

(3) It is necessary to ensure that clear taxation rules for energy products and electricity continue to contribute to the smooth functioning of the internal market while at the same time tackling the climate and environmental-related challenges in the context of the Communication from the Commission ‘The European Green Deal’<sup>30</sup>. Energy taxation can contribute to the ambition of at least 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 polluter-pays principle, by ensuring that the taxation of motor fuels, heating fuels and electricity better reflects the impact they have on the environment and on health. The contribution of energy taxation to those objectives has been endorsed by the Council Conclusions on the EU energy taxation framework<sup>31</sup>.

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↓ 2003/96/EC recital 3 (adapted)

~~The proper functioning of the internal market and the achievement of the objectives of other Community policies require minimum levels of taxation to be laid down at Community level for most energy products, including electricity, natural gas and coal.~~

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↓ new

(4) Environmental taxation can be a cost-effective mean for Member States to achieve the targeted reductions of greenhouse gasses. The proper functioning of the internal market requires common rules on that taxation.

(5) Member States should, however, be able to use the energy taxation of motor fuels, heating fuels and electricity for a variety of purposes not necessarily nor specifically or exclusively related to the reduction of greenhouse gases.

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<sup>28</sup> OJ L 316, 31.10.1992, p. 12. Directive as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

<sup>29</sup> OJ L 316, 31.10.1992, p. 19. Directive as last amended by Directive 94/74/EC.

<sup>30</sup> COM(2019) 640 final of 11 December 2019.

<sup>31</sup> 14861/19 of 5 December 2019.

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↓ 2003/96/EC recital 4

- (6) Appreciable differences in the national levels of energy taxation applied by Member States could prove detrimental to the proper functioning of the internal market.
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↓ 2003/96/EC recital 5 (adapted)

- (7) The establishment of appropriate ~~Community~~ ☒ Union ☒ minimum levels of taxation may enable existing differences in the national levels of taxation to be reduced.
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↓ 2003/96/EC recital 6 (adapted)

~~In accordance with Article 6 of the Treaty, environmental protection requirements must be integrated into the definition and implementation of other Community policies.~~

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↓ 2003/96/EC recital 7 (adapted)

- (8) As a party to the United Nations Framework Convention on Climate Change, the ~~Community~~ ☒ Union ☒ has ratified the ~~Kyoto Protocol~~ ☒ Paris Agreement ☒ . The taxation of energy products and, where appropriate, electricity is one of the instruments available for achieving the ~~Kyoto Protocol~~ ☒ Paris Agreement ☒ objectives.
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↓ new

- (9) Rules should be laid down to base energy taxation on the energy content of energy products and electricity, coupled with their environmental performances. For those purposes, reference should be made to the definitions of Directive 2012/27/EU of the European Parliament and of the Council<sup>32</sup>, to Directive (EU) 2018/2001 of the European Parliament and of the Council<sup>33</sup>, and to Regulation (EU) 2020/852 of the European Parliament and of the Council<sup>34</sup>. 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.
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↓ 2003/96/EC recital 8 (adapted)

~~The Council needs to examine the exemptions and reductions and the minimum levels of taxation periodically, taking into consideration the proper functioning of the internal market,~~

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<sup>32</sup> 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).

<sup>33</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast) (OJ L 328 21.12.2018, p. 82).

<sup>34</sup> 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 (OJ L 198, 22.6.2020, p. 13).

~~the real value of the minimum levels of taxation, the competitiveness of Community businesses in the international framework and the wider objectives of the Treaty.~~

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↓ new

(10) In the interest of fiscal neutrality, the same minimum levels of taxation should apply for each component of energy taxation, to all energy products put to a given use. Where equal minimum levels of taxation are thus set, Member States should, also for reason of fiscal neutrality, ensure equal levels of national taxation on all products concerned.

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↓ 2003/96/EC recital 9 (adapted)

~~Member States should be given the flexibility necessary to define and implement policies appropriate to their national circumstances.~~

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↓ new

(11) Member States should also replicate at any time the ranking of minimum levels of taxation as laid down in the annex in relation to different products for each given use in order to ensure an environmentally tailored structure of rates. The minimum levels of energy taxation should be automatically aligned every year to take into account the evolution of their real value in order to preserve the current level of rate harmonization and therefore reduce the volatility stemming from energy and food prices. This alignment should be made on the basis of the changes in the Union-wide harmonised index of consumer prices excluding energy and unprocessed food as published by Eurostat.

(12) In order to ensure a smooth implementation of certain provisions relating to some products or uses, a transitional period of application is needed.

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↓ 2003/96/EC recital 10 (adapted)  
⇒ new

(13) ⇒ As a general principle, Member States should apply to energy products and electricity levels of taxation not less than the minimum levels of taxation as set out by the Directive. ⇐ ~~Member States wish to introduce or retain different types of taxation on energy products and electricity. To that end,~~ Member States should be permitted to comply with the ~~Community~~  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 VAT).

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↓ 2003/96/EC recital 11 (adapted)

(14) Fiscal arrangements made in connection with the implementation of this ~~Community~~  Union  framework for the taxation of energy products and electricity are a matter for each Member State to decide. In this regard, Member States might decide not to increase the overall tax burden if they consider that the implementation of such a principle of tax neutrality could contribute to the restructuring and the modernisation



of their tax systems by encouraging behaviour conducive to greater protection of the environment and increased labour use.

↓ 2003/96/EC recital 12 (adapted)

- (15) Energy prices are key elements of ~~Community~~ energy, transport and environment policies ~~↗~~ in the Union ~~↖~~.

↓ 2003/96/EC recital 13

~~Taxation partly determines the price of energy products and electricity.~~

↓ 2003/96/EC recital 14

~~The minimum levels of taxation should reflect the competitive position of the different energy products and electricity. It would be advisable in this connection to base the calculation of these minimum levels as far as possible on the energy content of the products. However, this method should not be applied to motor fuels.~~

↓ 2003/96/EC recital 15

~~The possibility of applying differentiated national rates of taxation to the same product should be allowed in certain circumstances or permanent conditions, provided that Community minimum levels of taxation and internal market and competition rules are respected.~~

↓ 2003/96/EC recital 16 (adapted)

- (16) As heat is only subject to very limited intra-~~Community~~ ~~↗~~ Union ~~↖~~ trade, output taxation of heat should remain outside the scope of this ~~Community~~ ~~↗~~ Union ~~↖~~ framework.

↓ 2003/96/EC recital 17 (adapted)

- (17) It is necessary to establish different ~~Community~~ ~~↗~~ Union ~~↖~~ minimum levels of taxation according to the use of the energy products and electricity.

↓ 2003/96/EC recital 18

⇒ new

- (18) Energy products used as a motor fuel for certain ~~industrial and commercial~~ purposes and those used as heating fuel are normally taxed at lower levels than those applicable to energy products used as a propellant. ⇒ Electricity should always be among the least taxed energy sources in view of fostering its use, notably in the transport sector. To that purpose, Member States should endeavour to apply the same level of taxation to electricity used to charge electric vehicles as for heating purposes during the necessary time following the entry into force of this Directive. ⇐

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↓ 2003/96/EC recital 19

~~The taxation of diesel motor fuel used by hauliers, notably those engaging in intra-Community activities, requires a possibility for a specific treatment, including measures to allow for the introduction of a system of road user charges, in order to limit the distortion of competition operators might be confronted with.~~

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↓ new

(19) The need to pursue the objectives of the Directive requires that no distinction is made between commercial and non-commercial diesel as well as business and non-business use for heating fuels and electricity.

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↓ 2003/96/EC recital 20

~~Member States may need to differentiate between commercial and non-commercial diesel. Member States may use this possibility to reduce the gap between the taxation of non-commercial gas oil used as propellant and petrol.~~

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↓ 2003/96/EC recital 21

~~Business use and non-business use of energy products and electricity may be treated differently for tax purposes.~~

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↓ 2003/96/EC recital 22 (adapted)

(20) Energy products should essentially be subject to a ~~Community~~ ☒ Union ☒ framework when used as heating fuel or motor fuel. 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 non-fuel uses of energy products ~~as well as mineralogical processes~~. Electricity used in similar ways should be treated on an equal footing.

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↓ 2003/96/EC recital 23

~~Existing international obligations and the maintaining of the competitive position of Community companies make it advisable to continue the exemptions of energy products supplied for air navigation and sea navigation, other than for private pleasure purposes, while it should be possible for Member States to limit these exemptions.~~

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↓ new

(21) The Union and the Member States have concluded multilateral agreements regarding air services and air transport, or bilateral agreements with third countries. Those agreements include provisions related to the taxation of aviation fuel. Aviation fuel has traditionally had a privileged tax regime. The need to pursue the objectives of the Directive requires that, without prejudice to those international agreements, energy products and electricity supplied for intra-EU air navigation, except cargo-only flights should be taxed. The exemption for the fuel used by cargo-only flights is still needed in the absence of more efficient alternatives.

- (22) In order to ensure a smooth implementation of this Directive, the minimum levels of taxation for motor fuels used for intra-EU non-business and non-pleasure flights would be reached over a transitional period of ten years, whereas sustainable alternative fuels and electricity would be subject to a zero minimum rate for ten years. Energy products and electricity used for intra-EU business aviation and pleasure flights should be subject to the standard levels of taxation applicable to motor fuels and electricity in the Member States.
- (23) Fuel used for waterborne navigation, including fishing, should also be taxed, and the Member States party to international agreements providing for the exemption of that fuel, have to, by the date of the application of this Directive, ensure they eliminate the incompatibilities. It is necessary to allow for a different level of taxation to be applied to the use of energy products and electricity for intra-EU waterborne regular service navigation, fishing and freight transport and their respective at berth activities. Considering the specificity of those uses, the minimum levels of taxation should be lower than the ones applicable to general motor fuel use. In order to provide an incentive to the use of sustainable alternative fuels and electricity, such fuels and electricity should be exempted from taxation for ten years. Energy products and electricity used for the remaining intra-EU waterborne navigation should be subject to the standard levels of taxation applicable to motor fuels and electricity in the Member States.
- (24) For extra-EU air navigation, without prejudice to international obligations, and for extra-EU waterborne navigation, including fishing, Member States may exempt or apply the same levels of intra-EU taxation, according to the type of activity.

↓ 2003/96/EC recital 24  
⇒ new

- (25) Member States should be permitted to apply certain other exemptions or reduced levels of taxation, where that will not be detrimental to the ⇒ environmental objectives, to the ⇐ proper functioning of the internal market and will not result in distortions of competition.

↓ 2003/96/EC recital 25  
⇒ new

- (26) In particular, ⇒ highly efficient ⇐ combined heat and power generation and, in order to promote the use of alternative energy sources, renewable forms of energy may qualify for preferential treatment.

↓ 2003/96/EC recital 26

~~It is desirable to establish a Community framework to allow Member States to exempt or reduce excise duties so as to promote biofuels, thereby contributing to the better functioning of the internal market and affording Member States and economic operators a sufficient degree of legal certainty. Distortions of competition should be limited and the incentive of a reduction in the basic costs for producers and distributors of biofuels should be maintained through, *inter alia*, the adjustments by Member States taking into account changes in raw material prices.~~

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↓ 2003/96/EC recital 27 (adapted)

~~This Directive shall be without prejudice to the application of the relevant provisions of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products<sup>35</sup>, and Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages<sup>36</sup>, when the product intended for use, offered for sale or used as motor fuel or fuel additive is ethyl alcohol as defined in Directive 92/83/EEC.~~

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↓ 2003/96/EC recital 28

~~Certain exemptions or reductions in the tax level may prove necessary, notably because of the lack of a stronger harmonisation at Community level, because of the risks of a loss of international competitiveness or because of social or environmental considerations.~~

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⇓ new

- (27) Targeted reductions in the tax level may prove necessary to incentivise the achievement of environmental protection objectives and improvements in energy efficiency of the Union productive sector.
- (28) Targeted reductions in the tax level may prove necessary to tackle the social impact of energy taxes. An exemption from taxation may temporarily prove necessary to protect vulnerable households.
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↓ 2003/96/EC recital 29

~~Businesses entering into agreements to significantly enhance environmental protection and energy efficiency deserve attention; among these businesses, energy intensive ones merit specific treatment.~~

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↓ 2003/96/EC recital 30

~~Transitional periods and arrangements may be required in order to allow Member States to smoothly adapt to the new levels of taxation, thus limiting possible negative side effects.~~

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↓ 2003/96/EC recital 31

⇒ new

- (29) ⇒ In view of the financial, economic and environmental effects on each Member State, such as the need of electrification of the transport sector, ⇐ ~~it~~ it is necessary to provide for a procedure authorising the introduction by Member States, for a set period, of other exemptions or reduced levels of taxation. ⇒ For reasons of protection of environment and human health, including the reduction of air pollution, it is

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<sup>35</sup> OJ L 76, 23.3.1992, p. 1. Directive as last amended by Directive 2000/47/EC (OJ L 193, 29.7.2000, p. 73).

<sup>36</sup> OJ L 316, 31.10.1992, p. 21.

necessary to provide for a procedure authorising the introduction by Member States, for a set period, of specific increased rates. Such authorisation, following a justified request by Member States and on a proposal from the Commission, should be adopted by means of a Council implementing decision in accordance with Article 291 of the TFEU. ~~Such exemptions or reductions~~ measures should be under regular review.

↓ new

(30) The list of energy products subject to the control and movement provisions of Council Directive 2008/118/EC<sup>37</sup> 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.

(31) In order to ensure free movement whilst 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.

↓ 2003/96/EC recital 32 (adapted)

(32) Provision should be made for the Member States to notify the Commission of certain national measures. Such notification does not release Member States from the obligation, laid down in Article ~~88~~ 108 (3) of the ~~Treaty~~ TFEU, to notify certain national measures. This Directive ~~does~~ should not prejudice the outcome of any future State aid procedure that may be undertaken in accordance with Articles ~~87~~ 107 and ~~88~~ 108 of the ~~Treaty~~ TFEU.

↓ 2003/96/EC recital 33

(33) The scope of ~~Directive 92/12/EEC~~ Directive 2008/118/EC should, where appropriate, be extended to the products and indirect taxes covered by this Directive.

↓ new

(34) 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 2008/118/EC 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 Council<sup>38</sup>.

<sup>37</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).

<sup>38</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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↓ 2003/96/EC recital 34 (adapted)

~~The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>39</sup>.~~

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↓ new

- (35) Reference should be made to the version presently applicable of the Combined Nomenclature. In order to ensure that the references to Combined Nomenclature (CN) codes in this Directive are updated whenever necessary, and that the minimum rates of taxation reflect prices evolution, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of updating the reference to those CN codes, and in respect of updating the minimum tax rates based on yearly variations of the consumer price index. 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-Making. 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 their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (36) Every five years and for the first time five years after the entry into force of this Directive, 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. 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.
- (37) 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.
- (38) 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 the Directives set out in Annex II, Part B,

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<sup>39</sup> [OJL 184, 17.7.1999, p. 23](#)

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↓ 2003/96/EC

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

1. Member States shall impose taxation on energy products and electricity in accordance with this Directive.

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↓ new

2. For the purposes of this Directive, taxation shall be calculated in EUR/Gigajoules on the basis of net calorific value of the energy products and electricity as set out in Annex IV to Directive 2012/27/EU, converted in Gigajoules. In the case of products derived from biomass the reference values shall be those set out in Annex III to Directive (EU) 2018/2001, converted in Gigajoules.

Where Directive 2012/27/EU or Directive (EU) 2018/2001, as the case may be, do not contain a net calorific value for the product concerned, Member States shall refer to relevant available information on its net calorific value.

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↓ 2003/96/EC  
⇒ new

*Article 2*

1. For the purposes of this Directive, the term ‘energy products’ shall apply to products:
- (a) falling within CN codes 1507 to 1518, if these are intended for use as heating fuel or motor fuel;
  - (b) falling within CN codes ⇒ 2207, 2208 90 91 and 2208 90 99 if these are intended for use as heating fuel or motor fuel and are exempted from the harmonized excise duty on alcohol and alcoholic beverages in accordance with Article 27(1), points (a) or (b), of Directive 92/83/EC<sup>40</sup> ⇐ ~~2701, 2702 and 2704 to 2715~~;
  - (c) falling within CN codes ⇒ 2701 to 2715 ⇐ ~~2901 and 2902~~;
  - (d) falling within CN code ⇒ 2804 10 ⇐ ~~2905 1100, which are not of synthetic origin~~, if these are intended for use as heating fuel or motor fuel;
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↓ new

- (e) falling within CN code 2814, if these are intended for use as motor fuel;

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<sup>40</sup> Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages (OJ L 316, 31.10.1992, p. 21)

↓ 2003/96/EC (adapted)

⇒ new

(ef) falling within CN code ~~3402~~ ⇒ 2901 and 2902 ⇐ ;

(fg) falling within CN code ~~3811~~ ⇒ 2905 11 00, which are not of synthetic origin, if these are intended for use as heating fuel or motor fuel ⇐ ;

(gh) falling within CN code ~~3817~~ ⇒ 2909 19 10 and 2909 19 90, the latter if intended for use as heating fuel or motor fuel ⇐ ;

(hi) falling within CN codes ⇒ 3403; ⇐ ~~38249986, 38249992 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 38249993, 38249996 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 38260010 and 38260090 if these are intended for use as heating fuel or motor fuel.~~

↓ new

(j) falling within CN code 3811;

(k) falling within CN code 3814, if these are intended for use as heating fuel or motor fuel;

(l) falling within CN code 3817;

(m) falling within CN code 3823 19, if these are intended for use as heating fuel or motor fuel;

(n) falling within CN codes 3824 99 86, 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93, 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90 if these are intended for use as heating fuel or motor fuel;

(o) falling within CN codes 4401 and 4402, if these are intended for use as heating fuel in installations with a total rated thermal input equal to or exceeding 5 MW.

↓ 2003/96/EC (adapted)

⇒ new

2. This Directive shall also apply to:

Electricity falling within CN code 2716.

3. When intended for use, offered for sale or used as motor fuel or heating fuel, energy products other than those for which a minimum level ~~is~~ of taxation ~~is~~ are specified in this Directive shall be taxed according to use, at the rate for the equivalent heating fuel or motor fuel.

~~In addition to the taxable products listed in paragraph 1, any product intended for use, offered for sale or used as motor fuel, or as an additive or extender in motor fuels, shall be taxed at the rate for the equivalent motor fuel.~~



~~In addition to the taxable products listed in paragraph 1, any other hydrocarbon, except for peat, intended for use, offered for sale or used for heating purposes shall be taxed at the rate for the equivalent energy product.~~

↓ new

Products other than energy products, if intended for use, offered for sale or used as motor fuel shall be taxed at the rate for the equivalent motor fuel.

Additives and extenders to motor fuels, other than water, shall be taxed at the rate for the equivalent motor fuel.

Hydrocarbons other than those listed in paragraph 1 and intended for use, offered for sale or used for heating purposes shall be taxed at the rate for the equivalent energy product.

↓ 2003/96/EC

~~4. This Directive shall not apply to:~~

~~(a) output taxation of heat and the taxation of products falling within CN codes 4401 and 4402;~~

~~(b) the following uses of energy products and electricity:~~

~~energy products used for purposes other than as motor fuels or as heating fuels,~~

~~dual use of energy products~~

~~An energy product has a dual use when it is used both as heating fuel and for purposes other than as motor fuel and heating fuel. The use of energy products for chemical reduction and in electrolytic and metallurgical processes shall be regarded as dual use,~~

~~electricity used principally for the purposes of chemical reduction and in electrolytic and metallurgical processes,~~

~~electricity, when it accounts for more than 50 % of the cost of a product. 'Cost of a product' shall mean the addition of total purchases of goods and services plus personnel costs plus the consumption of fixed capital, at the level of the business, as defined in Article 11. This cost is calculated per unit on average. 'Cost of electricity' shall mean the actual purchase value of electricity or the cost of production of electricity if it is generated in the business,~~

~~mineralogical processes~~

~~'Mineralogical processes' shall mean the processes classified in the NACE nomenclature under code DI 26 'manufacture of other non-metallic mineral products' in Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community<sup>41</sup>;~~

~~However, Article 20 shall apply to these energy products.~~

~~5. References in this Directive to codes of the combined nomenclature shall be to those of Commission Regulation (EC) No 2031/2001 of 6 August 2001, amending Annex I to~~

<sup>41</sup> OJ L 293, 24.10.1990, p. 1. Regulation as last amended by Commission Regulation (EC) No 29/2002 (OJ L 6, 10.1.2002, p. 3).

~~Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff<sup>42</sup>.~~

~~A Decision to update the codes of the combined nomenclature for the products referred to in this Directive shall be taken once every year in accordance with the procedure laid down in Article 27. The Decision must not result in any changes in the minimum tax rates applied in this Directive or to the addition or removal of any energy products and electricity.~~

↓ new

4. Taxable products, referred to in paragraphs 1 and 3, produced or derived from biomass are subject under fiscal control to the specific levels of taxation set out for those products in accordance with this Directive, provided that they fulfil either of following criteria:

- a) the sustainability and greenhouse gas saving criteria set out in Article 29 of Directive (EU) 2018/2001, excluding high indirect land-use change-risk products set out in Article 26(2) of that Directive;
- b) are produced from the feedstock listed in Annex IX of Directive (EU) 2018/2001.

For the purposes of this Directive the definitions in Article 2 points (24), for ‘biomass’, (28), for ‘biogas’, (32), for ‘bioliquids’, (33), for ‘biofuels’ and (34), for ‘advanced biofuels’, of Directive (EU) 2018/2001 shall apply.

For the purposes of this Directive, ‘advanced’ biogas, bioliquids and products falling within CN codes 4401 and 4402 shall mean products produced from the feedstock listed in part A of Annex IX to Directive (EU) 2018/2001. Biofuels, biogas and bioliquids produced from the feedstock listed in part B of Annex IX to that Directive shall be considered equivalent to advanced products.

5. Taxable products, referred to in paragraphs 1 and 3, falling within the definition of ‘renewable fuels of non-biological origin’ or ‘low-carbon fuels’, may be subject under fiscal control to the specific levels of taxation set out for those products in accordance with this Directive, where:

- a) ‘renewable fuels of non-biological origin’, shall mean fuels other than biofuels, bioliquids or biogas, the energy content of which is derived from renewable sources other than biomass;
- b) ‘low-carbon fuels’ shall mean 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, which meet the technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change mitigation according to Article 10 of Regulation (EU) 2020/852 of the European Parliament and of the Council<sup>43</sup> and Annex I to Delegated Regulation (EU) [...]/<sup>44</sup>. ‘Recycled Carbon

<sup>42</sup> ~~OJ L 279, 23.10.2001, p. 1.~~

<sup>43</sup> 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 (OJ L 198, 22.6.2020, p. 13)

<sup>44</sup> Commission Delegated Regulation (EU) [...]/<sup>44</sup> 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, C/2021/2800 final (OJ [...], p.[...]).

Fuels', as defined by Article 2(35) of Directive (EU) 2018/2001, shall be included in this category.

6. Where part of a taxable product consists of one or more products referred to in the previous paragraphs, taxation of those parts shall be determined accordingly based on this Directive, independently from the CN code under which the product falls as a whole.

7. For the purposes of paragraph 1, points (a), (b), (d), (e), (g), (h), (k), (m), (n) and (o) of this Article, and of Article 21(1), points (a), (b), (h), (i), (l), (m) and (n), 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 products as heating fuel or motor fuel. Products referred to in paragraph 1, point (a) of this Article and Article 21(1), point (a) shall not be considered to be intended for use as heating fuel or motor fuel if they are supplied to a producer of goods referred to in paragraph 1, point (n) of this Article and Article 21(1), point (n).

8. References in this Directive to codes of the Combined Nomenclature shall be understood as references to the codes of Combined Nomenclature in Council Regulation (EEC) No 2658/87<sup>45</sup> as amended by Commission Implementing Regulation (EU) 2020/1577<sup>46</sup>.

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

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

↓ 2003/96/EC

### ~~Article 3~~

~~References in Directive 92/12/EEC to 'mineral oils' and 'excise duty', insofar as it applies to mineral oils, shall be interpreted as covering all energy products, electricity and national indirect taxes referred to respectively in Articles 2 and 4(2) of this Directive.~~

↓ new

### Article 3

1. This Directive shall not apply to the following:

(a) output taxation of heat;

<sup>45</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

<sup>46</sup> Commission Implementing Regulation (EU) 2020/1577 of 21 September 2020 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 361, 30.10.2020, p. 1).

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

— energy products used for purposes other than as motor fuels or as heating fuels,

— dual use of energy products

An energy product has a dual use when it is used both as heating fuel and for purposes other than as motor fuel and heating fuel. The use of energy products for chemical reduction and in electrolytic and metallurgical processes, when energy products are used directly in or to provide a direct energy input to the process, or their consumption is connected to the process, shall be regarded as dual use,

— electricity used principally for the purposes of chemical reduction and in electrolytic and metallurgical processes, when electricity is used directly in or to provide a direct energy input to the process, or its consumption is connected to the process,

2. Article 21 shall apply to energy products used as provided for in paragraph 1, point (b) of this Article.

↓ 2003/96/EC

#### Article 4

1. The levels of taxation which Member States shall apply to the energy products and electricity listed in Article 2 may not be less than the minimum levels of taxation prescribed by this Directive.

2. For the purpose of this Directive ‘level of taxation’ is the total charge levied in respect of all indirect taxes (except VAT) calculated directly or indirectly on the quantity of energy products and electricity at the time of release for consumption.

#### ~~Article 5~~

~~Provided that they respect the minimum levels of taxation prescribed by this Directive and that they are compatible with Community law, differentiated rates of taxation may be applied by Member States, under fiscal control, in the following cases:~~

~~— when the differentiated rates are directly linked to product quality;~~

~~— when the differentiated rates depend on quantitative consumption levels for electricity and energy products used for heating purposes;~~

~~— for the following uses: local public passenger transport (including taxis), waste collection, armed forces and public administration, disabled people, ambulances;~~

~~— between business and non-business use, for energy products and electricity referred to in Articles 9 and 10.~~

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↓ new

### Article 5

1. Member States shall ensure that where equal minimum levels of taxation are laid down in Annex I in relation to a given use, equal levels of taxation are fixed for products put to that use. Member States shall 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 use.

For the purposes of the first subparagraph, each use for which a minimum level of taxation is identified, respectively, in Tables A, B and C of Annex I shall be considered to be a single use, unless otherwise specified in this Directive.

For the purposes of ranking mentioned in the first subparagraph, electricity shall be considered together with other motor fuels and heating fuels indicated in Tables B and C of Annex I, except when Member States apply a specific level of taxation to electricity used to charge electric vehicles, in which case electricity shall be considered together with motor fuels indicated in Table A of Annex I, unless otherwise specified in this Directive.

For the purposes of the third subparagraph of this paragraph, ‘electric vehicle’ shall mean an electric vehicle as defined in Article 2, point (2) of Directive 2014/94/EU of the European Parliament and of the Council<sup>47</sup>.

2. The minimum levels of taxation laid down in this Directive shall be adapted every year starting from 1 January 2024 to take account of the changes in the harmonised index of consumer prices excluding energy and unprocessed food as published by Eurostat. The minimum levels shall be adapted automatically, by increasing or decreasing the base amount in euro by the percentage change in that index over the preceding calendar year.

The Commission is empowered to adopt delegated acts in accordance with Article 29 to amend the minimum levels of taxation as referred to in the first subparagraph.

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↓ 2003/96/EC (adapted)  
⇒ new

### Article 6

Member States shall be free to give effect to the exemptions or reductions in the level of taxation prescribed by this Directive either:

- (a) directly,
  - (b) by means of a differentiated rate,
- or
- (c) by refunding all or part of the amount of taxation.

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<sup>47</sup> Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1).

## Article 7

~~1.~~ As from 1 January ~~2004 and from 1 January 2010~~ ⇨ 2023 ⇐, the minimum levels of taxation applicable to motor fuels shall be fixed as set out in ~~Table A of Annex I~~ ~~Table A~~.

⇩ new

Without prejudice to Article 5(2), when a transitional period is applicable as provided for in Table A of Annex I, the increase in the minimum levels of taxation shall be fixed at one tenth per year until 1 January 2033. For low-carbon fuels, the minimum level of taxation set for the first year of the transitional period shall apply until 1 January 2033.

⇩ 2003/96/EC (adapted)  
⇨ new

~~Not later than 1 January 2012, the Council, acting unanimously after consulting the European Parliament, shall, on the basis of a report and a proposal from the Commission, decide upon the minimum levels of taxation applicable to gas oil for a further period beginning on 1 January 2013.~~

~~2. Member States may differentiate between commercial and non-commercial use of gas oil used as propellant, provided that the Community minimum levels are observed and the rate for commercial gas oil used as propellant does not fall below the national level of taxation in force on 1 January 2003, notwithstanding any derogations for this use laid down in this Directive.~~

~~3. 'Commercial gas oil used as propellant' shall mean gas oil used as propellant for the following purposes:~~

~~(a) the carriage of goods for hire or reward, or on own account, by motor vehicles or articulated vehicle combinations intended exclusively for the carriage of goods by road and with a maximum permissible gross laden weight of not less than 7,5 tonnes;~~

~~(b) the carriage of passengers, whether by regular or occasional service, by a motor vehicle of category M2 or category M3, as defined in Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type approval of motor vehicles and their trailers<sup>48</sup>;~~

~~4. Notwithstanding paragraph 2, Member States which introduce a system of road user charges for motor vehicles or articulated vehicle combinations intended exclusively for the carriage of goods by road may apply a reduced rate on gas oil used by such vehicles, that goes below the national level of taxation in force on 1 January 2003, as long as the overall tax burden remains broadly equivalent, provided that the Community minimum levels are observed and that the national level of taxation in force on 1 January 2003 for gas oil used as propellant is at least twice as high as the minimum level of taxation applicable on 1 January 2004.~~

<sup>48</sup> ~~OJL 42, 23.2.1970, p. 1~~

## Article 8

1. As from 1 January ~~2004~~ ⇒ 2023 ⇐, notwithstanding Article 7, the minimum levels of taxation applicable to products used as motor fuel for the purposes set out in paragraph 2 of this Article shall be fixed as set out in Table B of Annex I ~~Table B~~.

↓ new

Without prejudice to Article 5(2), when a transitional period is applicable as provided for in Table B of Annex I, the increase in the minimum levels of taxation shall be fixed at one tenth per year until 1 January 2033. For low-carbon fuels, the minimum level of taxation set for the first year of the transitional period shall apply until 1 January 2033.

↓ 2003/96/EC (adapted)  
⇒ new

2. ~~This Article~~ Paragraph 1 shall apply to the following ~~industrial and commercial~~ purposes:

- (a) agricultural, horticultural or ~~piscicultural~~ aquaculture works, and in forestry;
- (b) stationary motors;
- (c) plant and machinery used in construction, civil engineering and public works;
- (d) vehicles intended for use off the public roadway or which have not been granted authorisation for use mainly on the public roadway.

## Article 9

~~1.~~ As from 1 January ~~2004~~ ⇒ 2023 ⇐, the minimum levels of taxation applicable to heating fuels shall be fixed as set out in Table C of Annex I ~~Table C~~.

↓ new

Without prejudice to Article 5(2), when a transitional period is applicable as provided for in Table C of Annex I, the increase in the minimum levels of taxation shall be fixed at one tenth per year until 1 January 2033. For low-carbon fuels, the minimum level of taxation set for the first year of the transitional period shall apply until 1 January 2033.

↓ 2003/96/EC (adapted)  
⇒ new

~~2. Member States, which on 1 January 2003 are authorised to apply a monitoring charge for heating gas oil, may continue to apply a reduced rate of EUR 10 per 1000 litres for that product. This authorisation shall be repealed on 1 January 2007 if the Council, acting unanimously on the basis of a report and a proposal from the Commission, so decides, having noted that the level of the reduced rate is too low to avoid problems of trade distortion between the Member States.~~

## Article 10

~~1.~~ As from 1 January ~~2004~~ ⇒ 2023 ⇐, the minimum levels of taxation applicable to electricity shall be fixed as set out in ~~☒~~ Table D of ~~☒~~ Annex I ~~Table C~~.

~~2.~~ Above the minimum levels of taxation referred to in paragraph 1, Member States will have the option of determining the applicable tax base provided that they respect Directive 92/12/EEC.

## Article 11

~~1.~~ In this Directive, 'business use' shall mean the use by a business entity, identified in accordance with paragraph 2, which independently carries out, in any place, the supply of goods and services, whatever the purpose or results of such economic activities.

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

States, regional and local government authorities and other bodies governed by public law shall not be considered as business entities in respect of the activities or transactions in which they engage as public authorities. However, when they engage in such activities or transactions, they shall be considered as a business in respect of these activities or transactions where treatment as non-business would lead to significant distortions of competition.

~~2.~~ With respect to this Directive, the business entity cannot be considered as smaller than a part of an enterprise or a legal body that from an organisational point of view constitutes an independent business, that is to say an entity capable of functioning by its own means.

~~3.~~ Where mixed use takes place, 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.

~~4.~~ Member States may limit the scope of the reduced level of taxation for business use.

## Article ~~12~~11

1. Member States may express their national levels of taxation in units other than ~~those~~ ~~☒~~ that ~~☒~~ specified in Articles 7 to 10 provided that the corresponding levels of taxation, following conversion into those units, are not below the minimum levels specified in this Directive.

~~2.~~ For energy products specified in Articles 7, 8 and 9, with levels of taxation based on volumes, ⇒ When volume units are applied, ⇐ the volume shall be measured at a temperature of 15° C.

## Article ~~13~~12

1. For Member States that have not adopted the euro, the value of the euro in national currencies to be applied to the value of the levels of taxation shall be fixed once a year. The rates to be applied shall be those obtaining on the first working day of October and published in the *Official Journal of the European Union* and shall have effect from 1 January of the following calendar year.

2. Member States may maintain the amounts of taxation in force at the time of the annual adjustment provided for in paragraph 1 if the conversion of the amounts of the level of



taxation expressed in euro would result in an increase of less than 5 % or EUR 5, whichever is the lower amount, in the level of taxation expressed in national currency.

↓ new

#### Article 13

1. Member States shall exempt from taxation under fiscal control energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity.

2. By derogation from paragraph 1, Member States may, for reasons of environmental policy, subject the products referred to in paragraph 1 to taxation without having to respect the minimum levels of taxation laid down in this Directive. In such case, the taxation of those products shall replicate the ranking between the minimum levels of taxation as laid down in Annex I and shall not be taken into account for the purposes of satisfying the minimum level of taxation on electricity laid down in Article 10.

↓ 2003/96/EC

#### Article 14

~~1. In addition to the general provisions set out in Directive 92/12/EEC on exempt uses of taxable products, and without prejudice to other Community provisions, Member States shall exempt the following from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:~~

~~(a) energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity. However, Member States may, for reasons of environmental policy, subject these products to taxation without having to respect the minimum levels of taxation laid down in this Directive. In such case, the taxation of these products shall not be taken into account for the purpose of satisfying the minimum level of taxation on electricity laid down in Article 10;~~

~~(b) energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure flying;~~

~~For the purposes of this Directive 'private pleasure flying' shall mean the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.~~

~~Member States may limit the scope of this exemption to supplies of jet fuel (CN code 27101921);~~

~~(c) energy products supplied for use as fuel for the purposes of navigation within Community waters (including fishing), other than private pleasure craft, and electricity produced on board a craft.~~

~~For the purposes of this Directive 'private pleasure craft' shall mean any craft used by its owner or the natural or legal person who enjoys its use either through hire or~~

~~through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.~~

~~2. Member States may limit the scope of the exemptions provided for in paragraph 1(b) and (c) to international and intra-Community 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(b) and (c). In such cases, Member States may apply a level of taxation below the minimum level set out in this Directive.~~

↓ new

#### *Article 14*

1. Without prejudice to international obligations and to Article 5 of this Directive, as applicable as a single use to intra-EU air navigation of flights other than business and pleasure flights, Member states shall apply under fiscal control not less than the minimum levels of taxation prescribed in this Directive to energy products supplied for use as fuel to aircrafts, and to electricity used directly for charging electric aircrafts, for the purposes of intra-EU air navigation of those flights.

For the purposes of the first subparagraph, electricity shall be ranked among motor fuels indicated in Table A of Annex I.

The minimum levels of taxation referred to in the first subparagraph shall start from zero and increase each year by one tenth of the final minimum rates, set out in Tables A and D of Annex I, over a transitional period of ten years. A minimum rate of zero shall apply to sustainable biofuels and biogas, low-carbon fuels, renewable fuels of non-biological origin, advanced sustainable biofuels and biogas, and electricity over that transitional period of ten years.

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

For the purposes of this Article, ‘business aviation’ shall mean the operation or use of aircraft by companies or individuals for the carriage of passengers or goods as an aid to the conduct of their business, flown for purposes generally considered not for public hire and piloted by individuals having, at the minimum, a valid commercial pilot license with an instrument rating.

For the purposes of this Article, ‘pleasure flights’ shall mean the use of an aircraft for personal or recreational purposes not associated with a business or professional use.

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

By derogation from the first subparagraph of this paragraph, Member states may apply the same level of taxation laid down in paragraph 1 to cargo-only domestic flights referred to in the first subparagraph of this paragraph.

Where a Member State has entered into an agreement with one or several Member States, it may also apply the same level of taxation laid down in paragraph 1 to intra-EU air navigation of cargo-only flights mentioned in the first subparagraph.

For the purposes of this paragraph, ‘cargo-only flight’ shall mean a scheduled or non-scheduled air service performed by aircraft carrying revenue loads other than revenue passengers, excluding flights carrying one or more revenue passengers and flights listed in published timetables as open to passengers.

3. Without prejudice to international obligations, Member States may exempt or apply the same levels of taxation applied for intra-EU air navigation to extra-EU air navigation according to the type of flight.

4. Motor fuels used in the field of the manufacture, development, testing and maintenance of aircraft shall be subject to the level of taxation provided for in paragraph 1.

5. Member States may apply under fiscal control total or partial exemptions to electricity supplied to stationary aircrafts.

For the purposes of the first subparagraph, ‘electricity supply to stationary aircraft’ shall mean the supply of electricity through a standardised fixed or mobile interface to aircraft when stationed at the gate or at an airport outfield position.

#### *Article 15*

1. Without prejudice to Article 5, Member states shall apply, as a single use, under fiscal control not less than minimum levels of taxation as set out in Tables B and D of Annex I to energy products supplied for use as fuel to vessels, and to electricity used directly for charging electric vessels, for the purposes of intra-EU waterborne regular service navigation, fishing and freight transport.

For the purposes of the first subparagraph, electricity shall be ranked among motor fuels indicated in Table B of Annex I.

Over a transitional period of ten years, minimum rates of zero shall apply to sustainable biofuels and biogas, low-carbon-fuels, renewable fuels of non-biological origin, advanced sustainable biofuels and biogas and electricity.

For the purposes of this Article, ‘intra-EU waterborne navigation’ shall mean navigation between two ports located in the Union, including domestic navigation.

For the purposes of this Article, ‘regular service’ shall mean a series of ro-ro passenger ship or high-speed passenger craft crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either: according to a published timetable or with crossings so regular or frequent that they constitute a recognisable systematic series.

For the purposes of this Article, ‘freight transport’ shall mean a scheduled or non-scheduled service performed by vessel carrying revenue loads other than revenue passengers, excluding voyages carrying one or more revenue passengers and voyages listed in published timetables as open to passengers.

2. Member states may exempt or apply the same levels of taxation applied for intra-EU waterborne navigation to extra-EU waterborne navigation according to the type of activity.

3. Member States shall subject to taxation laid down in the first paragraph motor fuels and electricity used in the field of the manufacture, development, testing and maintenance of vessels, and motor fuels and electricity used for dredging operations in navigable waterways and in ports.

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

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

↓ 2003/96/EC (adapted)  
⇒ new

*Article ~~15~~16*

~~1.~~ Without prejudice to other ~~Community~~  Union  provisions, Member States may apply under fiscal control ~~total or partial~~ exemptions or reductions in the level of taxation to:

- (a) taxable products used under fiscal control 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:
  - of solar, wind, wave, tidal or geothermal origin;
  - of hydraulic origin produced in hydroelectric installations;
  - generated from  sustainable  biomass or from products produced from  sustainable  biomass;
  - generated from methane emitted by abandoned coalmines;
  - generated from fuel cells;

↓ new

Member States may also refund to the producer some or all of the amount of tax paid by the consumer on electricity produced from products specified in this paragraph.

↓ 2003/96/EC  
⇒ new

~~(e) energy products and electricity used for combined heat and power generation;~~

~~(~~e~~c)~~ electricity produced from combined heat and power generation, provided that  cogeneration by  the combined generators ~~are environmentally friendly~~  is high-efficiency cogeneration as defined in Article 2, point (34), of Directive 2012/27/EU.  Member States may apply national definitions of ‘environmentally friendly’ (or high efficiency) cogeneration production until the Council, on the basis of a report and a proposal from the Commission, unanimously adopts a common definition;

↓ new

(d) renewable fuels of non-biological origin, advanced sustainable biofuels, bioliquids, biogas and advanced sustainable products falling within CN codes 4401 and 4402;

(e) products falling within CN code 2705 used for heating purposes.

~~(e) energy products and electricity used for the carriage of goods and passengers by rail, metro, tram and trolley bus;~~

~~(f) energy products supplied for use as fuel for navigation on inland waterways (including fishing) other than in private pleasure craft, and electricity produced on board a craft;~~

~~(g) natural gas in Member States in which the share of natural gas in final energy consumption was less than 15 % in 2000;~~

~~The total or partial exemptions or reductions may apply for a maximum period of ten years after the entry into force of this Directive or until the national share of natural gas in final energy consumption reaches 25 %, whichever is the sooner. However, as soon as the national share of natural gas in final energy consumption reaches 20 %, the Member States concerned shall apply a strictly positive level of taxation, which shall increase on a yearly basis in order to reach at least the minimum rate at the end of the period referred to above.~~

~~The United Kingdom of Great Britain and Northern Ireland may apply the total or partial exemptions or reductions for natural gas separately for Northern Ireland;~~

~~(h) electricity, natural gas, coal and solid fuels used by households and/or by organisations recognised as charitable by the Member State concerned. In the case of such charitable organisations, Member States may confine the exemption or reduction to use for the purpose of non-business activities. Where mixed use takes place, taxation shall apply in proportion to each type of use. If a use is insignificant, it may be treated as nil;~~

~~(i) natural gas and LPG used as propellants;~~

~~(j) motor fuels used in the field of the manufacture, development, testing and maintenance of aircraft and ships;~~

~~(k) motor fuels used for dredging operations in navigable waterways and in ports;~~

~~(l) products falling within CN code 2705 used for heating purposes.~~

~~2. Member States may also refund to the producer some or all of the amount of tax paid by the consumer on electricity produced from products specified in paragraph 1(b).~~

~~3. Member States may apply a level of taxation down to zero to energy products and electricity used for agricultural, horticultural or piscicultural works, and in forestry.~~

~~On the basis of a proposal from the Commission, the Council shall before 1 January 2008 examine if the possibility of applying a level of taxation down to zero shall be repealed.~~

#### *Article 16*

~~1. Member States may, without prejudice to paragraph 5, apply an exemption or a reduced rate of taxation under fiscal control on the taxable products referred to in Article 2 where such products are made up of, or contain, one or more of the following products:~~

~~products falling within CN codes 1507 to 1518;~~

~~products falling within CN codes 38249955 and 38249980, 38249985, 38249986, 38249992 (excluding anti-rust preparations containing amines as active constituents~~

~~and inorganic composite solvents and thinners for varnishes and similar products), 38249993, 38249996 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 38260010 and 38260090 for their components produced from biomass;~~

~~products falling within CN codes 22072000 and 29051100 which are not of synthetic origin;~~

~~products produced from biomass, including products falling within CN codes 4401 and 4402.~~

~~Member States may also apply a reduced rate of taxation under fiscal control on the taxable products referred to in Article 2 where such products contain water (CN codes 2201 and 28539010).~~

~~'Biomass' shall mean the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste.~~

~~2. The exemption or reduction in taxation resulting from the application of the reduced rate laid down in paragraph 1 may not be greater than the amount of taxation payable on the volume of the products referred to in paragraph 1 present in the products eligible for the reduction.~~

~~The levels of taxation applied by Member States on the products made up of or containing the products referred to in paragraph 1 may be lower than the minimum levels specified in Article 4.~~

~~3. The exemption or reduction in taxation applied by Member States shall be adjusted to take account of changes in raw material prices to avoid over-compensating for the extra costs involved in the manufacture of the products referred to in paragraph 1.~~

~~4. Until 31 December 2003, Member States may exempt or continue to exempt products solely or almost solely made up of the products referred to in paragraph 1.~~

~~5. The exemption or reduction provided for the products referred to in paragraph 1 may be granted under a multiannual programme by means of an authorisation issued by an administrative authority to an economic operator for more than one calendar year. The exemption or reduction authorised may not be applied for a period of more than six consecutive years. This period may be renewed.~~

~~As part of a multiannual programme authorised by an administrative authority prior to 31 December 2012, Member States may apply the exemption or reduction under paragraph 1 after 31 December 2012 and until the end of the multiannual programme. The period may not be renewed.~~

~~6. Should Member States be required by Community law to comply with legally binding obligations to place on their markets a minimum proportion of the products referred to in paragraph 1, paragraphs 1 to 5 shall cease to apply as from the date when such obligations become binding on the Member States.~~

~~7. Member States shall communicate to the Commission the schedule of tax reductions or exemptions applied in accordance with this Article by 31 December 2004 and every 12 months thereafter.~~

~~8. No later than 31 December 2009, the Commission shall report to the Council on the fiscal, economic, agricultural, energy, industrial and environmental aspects of the reductions granted in accordance with this Article.~~

↓ new

### Article 17

Without prejudice to Article 5, as applicable as single uses, Member States may apply under fiscal control:

(a) reductions in the level of taxation, which shall not go below the minima as set out in Table C and D of Annex I, to energy products and electricity used for combined heat and power generation, without prejudice to Article 13;

(b) reductions in the level of taxation, which shall not go below the minima as set out in Table B and D of Annex I, to energy products and electricity used for the carriage of goods and passengers by rail, metro, tram and trolley bus, and for local public passenger transport, waste collection, armed forces and public administration, disabled people and ambulances;

For the purposes of point (b), electricity shall be ranked among motor fuels indicated in Annex I Table B;

(c) reductions in the level of taxation, which shall not go below the minima as set out in Table C and D of Annex I, to energy products used as heating fuel and electricity if used by households and/or by organisations recognised as charitable by the Member State concerned. In the case of such charitable organisations, Member States shall confine the reduction to use for the purpose of non-business activities. Where mixed use takes place, taxation shall apply in proportion to each type of use. If a use is insignificant, it may be treated as nil.

For the purposes of point (c), the minimum levels of taxation as set out in Tables C and D of Annex I shall start from zero and increase over a transitional period of ten years by one tenth of the final minimum rates in each year.

For the purposes of point (c), energy products and electricity used by households recognised as vulnerable may be exempt for a maximum period of ten years after the entry into force of this Directive. For the purposes of this paragraph, 'vulnerable households' shall mean households significantly affected by the impacts of this Directive which, for the purpose of this Directive, means that they are below the 'at risk of poverty' threshold, defined as 60% of the national median equivalised disposable income.

(d) reductions in the level of taxation, which shall not go below the minima as set out in Table C and D of Annex I to energy products used for heating purposes and to electricity, used for agricultural, horticultural or aquaculture works, and in forestry.

↓ 2003/96/EC (adapted)  
⇒ new

### Article ~~17~~18

~~1. Provided the minimum levels of taxation prescribed in this Directive are respected on average for each business,~~ ⇒ Without prejudice to Article 5, as applicable as a single use, ⇐ Member States may apply tax reductions ⇒ , which shall not go below the relevant minima as set out in Tables B, C and D of Annex I ⇐ on the consumption of energy products used for heating purposes or for the purposes of Article 8(2) ☒ , points ☒ (b) and (c), and on electricity in the following cases:

(a) in favour of energy-intensive business

An 'energy-intensive business' shall mean a business entity, as referred to in Article 19, where either the purchases of energy products and electricity amount to at least 3,0 % of the production value or the national energy tax payable amounts to at least 0,5 % of the added value. ~~Within this definition, Member States may apply more restrictive concepts, including sales value, process and sector definitions.~~

'Purchases of energy products and electricity' shall mean the actual cost of energy purchased or generated within the business. Only electricity, heat and energy products that are used for heating purposes or for the purposes of Article 8(2)(b) and (c) are included. All taxes are included, except deductible VAT.

'Production value' shall mean turnover, including subsidies directly linked to the price of the product, plus or minus the changes in stocks of finished products, work in progress and goods and services purchased for resale, minus the purchases of goods and services for resale.

~~'Value added'~~  Added value  shall mean the total turnover liable to VAT including export sales minus the total purchases liable to VAT including imports.

↓ 2003/96/EC  
⇒ new

~~Member States, which currently apply national energy tax systems in which energy-intensive businesses are defined according to criteria other than energy costs in comparison with production value and national energy tax payable in comparison with value added, shall be allowed a transitional period until no later than 1 January 2007 to adapt to the definition set out in point (a) first subparagraph;~~

(b) where agreements are concluded with ~~undertakings~~ ⇒ business entities as referred to in Article 19 ⇐ or associations of ~~undertakings~~ ⇒ such business entities ⇐, or where tradable permit schemes or equivalent ~~arrangements~~ ⇒ measures ⇐ are implemented, as far as they lead to the achievement of environmental protection objectives or to improvements in energy efficiency.

↓ new

For the purposes of the first paragraph, 'tradable permit schemes' shall mean tradable permit schemes other than the Union scheme within the meaning of Directive 2003/87/EC of the European Parliament and of the Council <sup>49</sup>.

↓ 2003/96/EC

~~2. Notwithstanding Article 4(1), Member States may apply a level of taxation down to zero to energy products and electricity as defined in Article 2, when used by energy-intensive businesses as defined in paragraph 1 of this Article.~~

<sup>49</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).



~~3. Notwithstanding Article 4(1), Member States may apply a level of taxation down to 50 % of the minimum levels in this Directive to energy products and electricity as defined in Article 2, when used by business entities as defined in Article 11, which are not energy-intensive as defined in paragraph 1 of this Article.~~

~~4. Businesses that benefit from the possibilities referred to in paragraphs 2 and 3 shall enter into the agreements, tradable permit schemes or equivalent arrangements as referred to in paragraph 1(b). The agreements, tradable permit schemes or equivalent arrangements must lead to the achievement of environmental objectives or increased energy efficiency, broadly equivalent to what would have been achieved if the standard Community minimum rates had been observed.~~

#### ~~Article 18~~

~~1. By way of derogation from the provisions of the present Directive, the Member States specified in Annex II are authorised to continue to apply the reductions in the levels of taxation or the exemptions set out in that Annex.~~

~~Subject to a prior review by the Council, on the basis of a proposal from the Commission, this authorisation shall expire on 31 December 2006 or on the date specified in Annex II.~~

~~2. Notwithstanding the periods set out in paragraphs 3 to 13 and provided that this does not significantly distort competition, Member States with difficulties in implementing the new minimum levels of taxation will be allowed a transitional period of until 1 January 2007, particularly in order to avoid jeopardising price stability.~~

~~3. The Kingdom of Spain may apply a transitional period until 1 January 2007 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 and until 1 January 2012 to reach EUR 330. Until 31 December 2009, it may furthermore apply a special reduced rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 287 per 1000 l and that the national levels of taxation in force on 1 January 2003 are not reduced. From 1 January 2010 until 1 January 2012, it may apply a differentiated rate on commercial use of gas oil used as propellant, provided that it does not result in taxation at below EUR 302 per 1000 l and that the national levels of taxation in force on 1 January 2010 are not reduced. The special reduced rate on commercial use of gas oil used as propellant may also be applied for taxis until 1 January 2012. With respect to Article 7(3)(a), it may apply, until 1 January 2008, a maximum permissible gross laden weight of not less than 3,5 tonnes in the definition of commercial purposes.~~

~~4. The Republic of Austria may apply a transitional period until 1 January 2007 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 and until 1 January 2012 to reach EUR 330. Until 31 December 2009, it may furthermore apply a special reduced rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 287 per 1000 l and that the national levels of taxation in force on 1 January 2003 are not reduced. From 1 January 2010 until 1 January 2012, it may apply a differentiated rate on commercial use of gas oil used as propellant, provided that it does not result in taxation at below EUR 302 per 1000 l and that the national levels of taxation in force on 1 January 2010 are not reduced.~~

~~5. The Kingdom of Belgium may apply a transitional period until 1 January 2007 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 and until 1 January 2012 to reach EUR 330. Until 31 December 2009, it may furthermore apply a special reduced rate on commercial use of gas oil used as propellant,~~

~~provided that this does not result in taxation at below EUR 287 per 1000 l and that the national levels of taxation in force on 1 January 2003 are not reduced. From 1 January 2010 until 1 January 2012, it may apply a differentiated rate on commercial use of gas oil used as propellant, provided that it does not result in taxation at below EUR 302 per 1000 l and that the national levels of taxation in force on 1 January 2010 are not reduced.~~

~~6. The Grand Duchy of Luxembourg may apply a transitional period until 1 January 2009 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 and until 1 January 2012 to reach EUR 330. Until 31 December 2009, it may furthermore apply a special reduced rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 272 per 1000 l and that the national levels of taxation in force on 1 January 2003 are not reduced. From 1 January 2010 until 1 January 2012, it may apply a differentiated rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 302 per 1000 l and that the national levels of taxation in force on 1 January 2010 are not reduced.~~

~~7. 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 these regions.~~

~~The Portuguese Republic may apply a transitional period until 1 January 2009 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 and until 1 January 2012 to reach EUR 330. Until 31 December 2009, it may furthermore apply a differentiated rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 272 per 1000 l and that the national levels of taxation in force on 1 January 2003 are not reduced. From 1 January 2010 until 1 January 2012, it may apply a differentiated rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 302 per 1000 l and that the national levels of taxation in force on 1 January 2010 are not reduced. The differentiated rate on commercial use of gas oil used as propellant may also be applied for taxis until 1 January 2012. With respect to Article 7(3)(a) it may apply, until 1 January 2008, a maximum permissible gross laden weight of not less than 3,5 tonnes in the definition of commercial purposes.~~

~~The Portuguese Republic may apply total or partial exemptions in the level of taxation of electricity until 1 January 2010.~~

~~8. The Hellenic Republic may apply levels of taxation up to EUR 22 per 1000 l lower than the minimum rates laid down in this Directive on gas oil used as propellant and on petrol consumed in the departments of Lesbos, Chios, Samos, the Dodecanese and the Cyclades and on the following islands in the Aegean: Thasos, North Sporades, Samothrace and Skiros.~~

~~The Hellenic Republic may apply a transitional period until 1 January 2010 to convert its current input electricity taxation system into an output taxation system and to reach the new minimum level of taxation for petrol.~~

~~The Hellenic Republic may apply a transitional period until 1 January 2010 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 per 1000 l and until 1 January 2012 to reach EUR 330. Until 31 December 2009 it may furthermore apply a differentiated rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 264 per 1000 l and that the national levels of taxation in force on 1 January 2003 are not reduced. From 1 January 2010 until 1 January 2012, it may apply a differentiated rate on commercial use of gas oil used as~~

~~propellant, provided that this does not result in taxation at below EUR 302 per 1000 l and that the national levels of taxation in force on 1 January 2010 are not reduced. The differentiated rate on commercial use of gas oil used as propellant may also be applied for taxis until 1 January 2012. With respect to Article 7(3)(a) it may apply, until 1 January 2008, a maximum permissible gross laden weight of not less than 3,5 tonnes in the definition of commercial purposes.~~

~~9. — Ireland may apply total or partial exemptions or reductions in the level of taxation of electricity until 1 January 2008.~~

~~10. — The French Republic may apply total or partial exemptions or reductions for energy products and electricity used by the State, regional and local government authorities or other bodies governed by public law, in respect of the activities or transactions in which they engage as public authorities until 1 January 2009.~~

~~The French Republic may apply a transitional period until 1 January 2009 to adapt its current electricity taxation system to the provisions set out in this Directive. During this period, the global average level of the current local electricity taxation is to be taken into account to assess whether the minimum rates set out in this Directive are respected.~~

~~11. — The Italian Republic may apply, until 1 January 2008, a maximum permissible gross laden weight of not less than 3,5 tonnes in the definition of commercial purposes as given in Article 7(3)(a).~~

~~12. — The Federal Republic of Germany may apply, until 1 January 2008, a maximum permissible gross laden weight of 12 tonnes in the definition of commercial purposes as given in Article 7(3)(a).~~

~~13. — The Kingdom of the Netherlands may apply, until 1 January 2008, a maximum permissible gross laden weight of 12 tonnes in the definition of commercial purposes as given in Article 7(3)(a).~~

~~14. — Within the transitional periods established, Member States shall progressively reduce their respective gaps with respect to the new minimum levels of taxation. However, when the difference between the national level and the minimum level does not exceed 3 % of that minimum level, the Member State concerned may wait until the end of the period to adjust its national level.~~

↓ new

### *Article 19*

1. For the purposes of Article 18, ‘business entity’ shall mean an entity, identified in accordance with paragraph 2 of this Article, which independently carries out, in any place, the supply of goods and services, whatever is the purpose or results of such economic activities.

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

States, regional and local government authorities and other bodies governed by public law shall not be considered as business entities in respect of the activities or transactions in which they engage as public authorities. However, when they engage in such activities or transactions, they shall be considered as a business entities in respect of those activities or transactions where treatment as non-business entities would lead to significant distortions of competition.

2. For the purposes of paragraph 1, the business entity cannot be considered as smaller than a part of an enterprise or a legal body that from an organisational point of view constitutes an independent business, that is to say an entity capable of functioning by its own means.

↓ 2004/74/EC Art. 1.2 amended  
by Corrigendum, OJ L 195,  
2.6.2004, p. 26

~~Article 18a~~

~~1. By way of derogation from the provisions of the present Directive, the Member States specified in Annex III are authorised to apply the reductions in the levels of taxation or the exemptions set out in that Annex.~~

~~Subject to a prior review by the Council, on the basis of a proposal from the Commission, this authorisation shall expire on 31 December 2006 or on the date specified in Annex III.~~

~~2. Notwithstanding the periods set out in paragraphs 3 to 11 and provided that this does not significantly distort competition, Member States with difficulties in implementing the new minimum levels of taxation shall be allowed a transitional period until 1 January 2007, particularly in order to avoid jeopardising price stability.~~

~~3. The Czech Republic may apply total or partial exemptions or reductions in the level of taxation of electricity, solid fuels and natural gas until 1 January 2008.~~

~~4. The Republic of Estonia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 330 per 1000 l. However, the level of taxation on gas oil used as propellant shall be no less than EUR 245 per 1000 l as from 1 May 2004.~~

~~The Republic of Estonia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l. However, the level of taxation on unleaded petrol shall be no less than EUR 287 per 1000 l as from 1 May 2004.~~

~~The Republic of Estonia may apply a total exemption from taxation of oil shale until 1 January 2009. Until 1 January 2013, it may furthermore apply a reduced rate in the level of taxation of oil shale, provided that it does not result in taxation at below 50 % of the relevant Community minimum rate as from 1 January 2011.~~

~~The Republic of Estonia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on shale oil used for district heating purposes to the minimum level of taxation.~~

~~The Republic of Estonia may apply a transitional period until 1 January 2010 to convert its current input electricity taxation system into an output electricity taxation system.~~

~~5. The Republic of Latvia may apply a transitional period until 1 January 2011 to adjust its national level of taxation on gas oil and kerosene used as propellant to the new minimum level of EUR 302 per 1000 l and until 1 January 2013 to reach EUR 330. However, the level of taxation on gas oil and kerosene shall be no less than EUR 245 per 1000 l as from 1 May 2004 and no less than EUR 274 per 1000 l as from 1 January 2008.~~

~~The Republic of Latvia may apply a transitional period until 1 January 2011 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of~~

~~EUR 359 per 1000 l. However, the level of taxation on unleaded petrol cannot be less than EUR 287 per 1000 l as from 1 May 2004 and no less than EUR 323 per 1000 l as from 1 January 2008.~~

~~The Republic of Latvia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on heavy fuel oil used for district heating purposes to the minimum level of taxation.~~

~~The Republic of Latvia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity to the relevant minimum levels of taxation. However, the level of taxation on electricity shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.~~

~~The Republic of Latvia may apply a transitional period until 1 January 2009 to adjust its national level of taxation on coal and coke to the relevant minimum levels of taxation. However, the level of taxation on coal and coke shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.~~

~~6. The Republic of Lithuania may apply a transitional period until 1 January 2011 to adjust its national level of taxation on gas oil and kerosene used as propellant to the new minimum level of EUR 302 per 1000 l and until 1 January 2013 to reach EUR 330. However, the level of taxation on gas oil and kerosene shall be no less than EUR 245 per 1000 l as from 1 May 2004 and no less than EUR 274 per 1000 l as from 1 January 2008.~~

~~The Republic of Lithuania may apply a transitional period until 1 January 2011 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l. However, the level of taxation on unleaded petrol shall be no less than EUR 287 per 1000 l as from 1 May 2004 and no less than EUR 323 per 1000 l as from 1 January 2008.~~

~~7. The Republic of Hungary may apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity, natural gas, coal and coke, used for district heating purposes, to the relevant minimum levels of taxation.~~

~~8. The Republic of Malta may apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity. However, the levels of taxation on electricity shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.~~

~~The Republic of Malta may apply a transitional period until 1 January 2010 to adjust its national level of taxation on gas oil and kerosene used as propellant to the minimum levels of EUR 330 per 1000 l. However, the levels of taxation on gas oil and kerosene used as propellant shall be no less than EUR 245 per 1000 l as from 1 May 2004.~~

~~The Republic of Malta may apply a transitional period until 1 January 2010 to adjust its national level of taxation on unleaded petrol and leaded petrol used as propellant to the relevant minimum levels of taxation. However, the levels of taxation on unleaded petrol and leaded petrol shall be no less than EUR 287 per 1000 l and EUR 337 per 1000 l respectively as from 1 May 2004.~~

~~The Republic of Malta may apply a transitional period until 1 January 2010 to adjust its national level of taxation on natural gas used as heating fuel to the relevant minimum levels of taxation. However, the effective tax rates applied to natural gas shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.~~

~~The Republic of Malta may apply a transitional period until 1 January 2009 to adjust its national level of taxation on solid fuel to the relevant minimum levels of taxation. However,~~

~~the effective tax rates applied to the energy products concerned shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.~~

~~9. The Republic of Poland may apply a transitional period until 1 January 2009 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l. However, the level of taxation on unleaded petrol shall be no less than EUR 287 per 1000 l as from 1 May 2004.~~

~~The Republic of Poland may apply a transitional period until 1 January 2010 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 per 1000 l and until 1 January 2012 to reach EUR 330. However, the level of taxation on gas oil shall be no less than EUR 245 per 1000 l as from 1 May 2004 and no less than EUR 274 per 1000 l as from 1 January 2008.~~

~~The Republic of Poland may apply a transitional period until 1 January 2008 to adjust its national level of taxation on heavy fuel oil to the new minimum level of EUR 15 per 1000 kg. However, the level of taxation on heavy fuel oil shall be no less than EUR 13 per 1000 kg as from 1 May 2004.~~

~~The Republic of Poland may apply a transitional period until 1 January 2012 to adjust its national level of taxation on coal and coke used for district heating to the relevant minimum level of taxation.~~

~~The Republic of Poland may apply a transitional period until 1 January 2012 to adjust its national level of taxation on coal and coke used for heating purposes other than district heating to the relevant minimum levels of taxation.~~

~~The Republic of Poland may, until 1 January 2008, apply total or partial exemptions or reductions for gas oil used as heating fuel by schools, nursery schools and other public utilities, in respect of the activities or transactions in which they engage as public authorities.~~

~~The Republic of Poland may apply a transitional period until 1 January 2006 to align its electricity taxation system with the Community framework.~~

~~10. The Republic of Slovenia may apply, under fiscal control, total or partial exemption from or reduction in the level of taxation to natural gas. The total or partial exemption or reduction may apply until May 2014 or until the national share of natural gas in final energy consumption reaches 25 %, whichever is the sooner. However, as soon as the national share of natural gas in final energy consumption reaches 20 %, it shall apply a strictly positive level of taxation, which shall increase on a yearly basis in order to reach at least the minimum rate at the end of the period referred to above.~~

~~11. The Slovak Republic may apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity and natural gas used as heating fuel to the relevant minimum levels of taxation. However, the level of taxation on electricity and natural gas used as heating fuel shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.~~

~~The Slovak Republic may apply a transitional period until 1 January 2009 to adjust its national level of taxation on solid fuels to the relevant minimum levels of taxation. However, the level of taxation on solid fuels shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.~~

~~12. Within the transitional periods established, Member States shall progressively reduce their respective gaps with regard to the new minimum levels of taxation. However, where the difference between the national level and the minimum level does not exceed 3 % of that~~

~~minimum level, the Member State concerned may wait until the end of the period to adjust its national level.~~

↓ 2004/75/EC Art. 1.1 amended  
by Corrigendum, OJ L 195,  
2.6.2004, p. 31

#### ~~Article 18b~~

~~1. Notwithstanding the periods set out in paragraph 2 and provided that this does not significantly distort competition, Member States with difficulties in implementing the new minimum levels of taxation shall be allowed a transitional period until 1 January 2007, particularly in order to avoid jeopardising price stability.~~

~~2. The Republic of Cyprus may apply a transitional period until 1 January 2008 to adjust its national level of taxation on gas oil and kerosene used as propellant to the new minimum level of EUR 302 per 1000 l and until 1 January 2010 to reach EUR 330. However, the level of taxation on gas oil and kerosene used as propellant shall be not less than EUR 245 per 1000 l as from 1 May 2004.~~

~~The Republic of Cyprus may apply a transitional period until 1 January 2010 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l. However, the level of taxation on unleaded petrol shall be not less than EUR 287 per 1000 l as from 1 May 2004.~~

~~3. Within the transitional periods established, Member States shall progressively reduce their respective gaps with respect to the new minimum levels of taxation. However, where the difference between the national level and the minimum level does not exceed 3 % of that minimum level, the Member State concerned may wait until the end of the period to adjust its national level.~~

↓ 2003/96/EC (adapted)  
⇒ new

#### ~~Article 1920~~

1. In addition to the provisions set out in the previous Articles, in particular in Articles ~~5~~ 14, 15, ~~16~~, 17 and ~~18~~, the Council, acting unanimously on a proposal from the Commission, may ~~authorise~~ adopt implementing acts, ~~authorising~~ any Member State to introduce further exemptions or reductions for specific policy considerations. ~~Where it is necessary, for reasons of protection of environment and human health, including the reduction of air pollution, the Council, acting unanimously on a proposal from the Commission, may adopt implementing acts, authorising any Member State to introduce specific increased rates derogating from the ranking between the minimum levels of taxation as laid down in Annex I.~~

A Member State wishing to introduce ~~such a~~ those ~~measure~~ s shall inform the Commission accordingly and shall also provide the Commission with all relevant and necessary information.

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

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

2. The authorisations referred to in paragraph 1 shall be granted for a maximum period of 6 years, with the possibility of renewal in accordance with the procedure set out in paragraph 1.

3. If the Commission considers that the ~~exemptions or reductions~~  measures  provided for in paragraph 1 are no longer sustainable, particularly in terms of fair competition or distortion of the operation of the internal market, or in terms of ~~Community~~  Union  policy in the areas of health, protection of the environment, energy and transport, it shall submit appropriate proposals to the Council. The Council shall take a unanimous decision on these proposals.

#### Article ~~20~~21

1. Only the following energy products shall be subject to the control and movement provisions of ~~Directive 92/12/EEC~~ Directive 2008/118/EC:

(a) products falling within CN codes 1507 to 1518, if these are intended for use as heating fuel or motor fuel;

new

(b) products falling within CN codes 2207, 2208 90 91 and 2208 90 99 if these are intended for use as heating fuel or motor fuel and are exempted from the harmonized excise duty on alcohol and alcoholic beverages in accordance with Article 27(1)(a) or (b) of Directive 92/83/EC<sup>50</sup>;

2003/96/EC  
 <sub>1</sub> 2018/552 Art. 1.3(a)  
 <sub>2</sub> 2018/552 Art. 1.3(b)  
 <sub>3</sub> 2018/552 Art. 1.3(c)  
 <sub>4</sub> 2018/552 Art. 1.3(d)  
 new

~~(bc)~~ products falling within CN codes 2707 10, 2707 20, 2707 30 and 2707 50;

~~(ed)~~ products falling within CN codes  <sub>1</sub> 2710 12 to 2710 19 68  and 2710 19 71 to 2710 19 99  and 2710 20 to 2710 20 39 and 2710 20 90 (only for products of which less than 90 % by volume (including losses) distils at 210 °C and 65 % or more by volume (including losses) distils at 250 °C by the ISO 3405 method (equivalent to the ASTM D 86 method)) . However, for products falling within CN codes  <sub>2</sub> 2710 12 21 ,  <sub>3</sub> 2710 12 25  and  <sub>4</sub> 2710 19 29 and 2710 20 90

<sup>50</sup> Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages (OJ L 316, 31.10.1992, p. 21)



(only for products of which less than 90 % by volume (including losses) distils at 210 °C and 65 % or more by volume (including losses) distils at 250 °C by the ISO 3405 method (equivalent to the ASTM D 86 method)) ~~←~~, ~~⇒~~ and 2710 19 71 to 2710 19 99, ~~⇐~~ the control and movement provisions shall only apply to bulk commercial movements;

~~(de)~~ products falling within CN codes 2711 (except 2711 11, 2711 21 and 2711 29);

~~(ef)~~ products falling within CN code 2901 10;

~~(fg)~~ products falling within CN codes 2902 20, 2902 30, 2902 41, 2902 42, 2902 43 and 2902 44;

~~(gh)~~ products falling within CN code 2905 11 00, which are not of synthetic origin, if these are intended for use as heating fuel or motor fuel;

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↓ new

(i) products falling within CN codes 2909 19 10 and 2909 19 90, the latter if intended for use as heating fuel or motor fuel;

(j) products falling within CN codes 3403. The control and movement provisions shall only apply to bulk commercial movements;

(k) products falling within CN codes 3811;

(l) products falling within CN codes 3814, if these are intended for use as heating fuel or motor fuel. The control and movement provisions shall only apply to bulk commercial movements;

(m) products falling within CN codes 3823 19, if these are intended for use as heating fuel or motor fuel.

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↓ 2003/96/EC

~~(nn)~~ products falling within CN codes 3824 99 86, 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93, 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90 if these are intended for use as heating fuel or motor fuel;

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↓ new

For the purposes of paragraph 1, 'bulk commercial movement' shall mean unpackaged product transported in containers that are either an integral part of the means of transport (such as road tank, wagons, railway tank wagons, tanker vessels), or in ISO-tanks. The term shall also include unpackaged product transported in other containers exceeding 210 litres 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 advise the Commission forthwith. This provision shall also apply for electricity. The Commission shall transmit the communication to the other Member States within one month of receipt. ⇒ Within two months of that communication, the Member States shall communicate to the Commission their views regarding the detected practice of evasion, avoidance or abuse concerning those energy products and electricity. Based on the views received from the Member States, and in case there is a risk for the proper functioning of the internal market or for the environment, the Commission shall adopt implementing acts ⇐ ~~A Decision as to~~ ⇒ determine that ⇐ ~~whether the products in question should be made subject to~~ the control and movement provisions of ~~Directive 92/12/EEC~~ Directive 2008/118/EC ⇒ are to apply to the products concerned. Those implementing acts shall be adopted ⇐ ~~shall then be taken~~ in accordance with the ☒ examination ☒ procedure ~~laid down~~ ☒ referred to ☒ in Article 28(2).

3. Member States may, pursuant to bilateral arrangements, dispense with some or all of the control measures set out in ~~Directive 92/12/EEC~~ Directive 2008/118/EC in respect of some or all of the products referred to in paragraph 1 ☒ of this Article ☒, insofar as they are not covered by Articles 7, 8 and ~~to~~ 9 of this Directive. Such arrangements shall not affect Member States which are not party to them. All such bilateral arrangements shall be notified to the Commission, which shall inform the other Member States.

#### Article ~~21~~22

1. In addition to the general provisions defining the chargeable event and the provisions for payment set out in ~~Directive 92/12/EEC~~ Directive 2008/118/EC, the amount of taxation on energy products shall also become due on the occurrence of one of the chargeable events mentioned in Article 2(3) ☒ of this Directive ☒.

~~2. For the purpose of this Directive, the word 'production' in Article 4(e) and 5(1) of Directive 92/12/EEC shall be deemed to include 'extraction', when appropriate.~~

~~32.~~ The consumption of energy products within the curtilage of an establishment producing energy products shall not be considered as a chargeable event giving rise to taxation, if the consumption consist of energy products produced within the curtilage of the establishment. Member States may also consider the consumption of electricity and other energy products not produced within the curtilage of such an establishment and the consumption of energy products and electricity within the curtilage of an establishment producing fuels to be used for generation of electricity as not giving rise to a chargeable event. Where the consumption is for purposes not related to the production of energy products and in particular for the propulsion of vehicles, this shall be considered a chargeable event, giving rise to taxation.

~~43.~~ Member States may also provide that taxation on energy products and electricity shall become due when it is established that a final use condition laid down in national rules for the purpose of a reduced level of taxation or exemption is not, or is no longer, fulfilled.

~~54.~~ For the purpose of applying Articles ~~52~~ and ~~67~~ of ~~Directive 92/12/EEC~~ Directive 2008/118/EC, electricity, ~~and~~ natural gas ⇒ and hydrogen ⇐ shall be subject to taxation and shall become chargeable at the time of supply by the distributor or redistributor. Where the

delivery to consumption takes place in a Member State where the distributor or redistributor is not established, the tax of the Member States of delivery shall be chargeable to a company that has to be registered in the Member State of delivery. Tax shall in all cases be levied and collected according to procedures laid down by each Member State.

↓ new

For the purposes of the first subparagraph, electricity storage facilities and transformers of electricity may be considered as redistributors when they supply electricity.

↓ 2003/96/EC (adapted)  
⇒ new

Notwithstanding the first subparagraph, Member States have the right to determine the chargeable event, in the case where there are no connections between their gas pipe lines and those of other Member States.

An entity producing electricity for its own use is regarded as a distributor. Notwithstanding Article ~~14(1)(a)~~ 13, Member States may exempt small producers of electricity provided that they tax the energy products used for the production of that electricity.

For the purpose of applying Articles 52 and 67 of ~~Directive 92/12/EEC~~ Directive 2008/118/EC, coal, coke, ~~and~~ lignite and products falling within CN codes 2703, 4401 and 4402 shall be subject to taxation and shall become chargeable at the time of delivery by companies, which have to be registered for that purpose by the relevant authorities. Those authorities may allow the producer, trader, importer or fiscal representative to substitute the registered company for the fiscal obligations imposed upon it. Tax shall be levied and collected according to procedures laid down by each Member State.

65. Member States need not treat as ‘production of energy products’:

- (a) operations during which small quantities of energy products are obtained incidentally;
- (b) operations by which the user of an energy product makes its reuse possible in his own undertaking provided that the taxation already paid on such product is not less than the taxation which would be due if the reused energy product were again to be liable to taxation;
- (c) an operation consisting of mixing, outside a production establishment or a tax warehouse, energy products with other energy products or other materials, provided that:
  - (i) taxation on the components has been paid previously; and
  - (ii) the amount paid is not less than the amount of the tax which would be chargeable on the mixture.

The condition under (i) shall not apply where the mixture is exempted for a specific use.

#### *Article ~~22~~23*

When 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 ~~2324~~

Member States may refund the amounts of taxation already paid on contaminated or accidentally mixed energy products sent back to a tax warehouse for recycling.

Article ~~2425~~

1. Energy products released for consumption in a Member State, contained in the standard tanks of commercial motor vehicles and intended to be used as fuel by those same vehicles, as well as in special containers, and intended to be used for the operation, during the course of transport, of the systems equipping those same containers shall not be subject to taxation in any other Member State.

2. For the purposes of this Article, 'standard tanks' shall mean:

~~the tanks permanently fixed by the manufacturer to all motor vehicles of the same type as the vehicle in question and whose permanent fitting enables fuel to be used directly, both the purpose of propulsion and, where appropriate, for the operation, during transport, of refrigeration systems and other systems. 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 shall also be considered to be standard tanks;~~

~~the tanks permanently fixed by the manufacturer to all containers of the same type as the container in question 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.~~

~~'Special container' shall mean any container fitted with specially designed apparatus for refrigeration systems, oxygenation systems, thermal insulation systems or other systems.~~

↓ new

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

(b) the tanks permanently fixed to a special container by the manufacturer or a third party which, according to the registration documents of the container, comply with the applicable technical and security requirements, and whose permanent fitting enables fuel to be used directly for the operation, during transport, of the refrigeration systems and other systems with which special containers are equipped.

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

*Article ~~25~~26*

1. Member States shall inform the Commission of the levels of taxation which they apply to the products listed in Article 2 on 1 January each year and following each change in national law ⇒ as well as the related volumes ⇐ .
2. Where the levels of taxation applied by the Member States are expressed in units of measurement other than ~~those~~ ☒ that ☒ specified for each product in Articles 7 to 10, Member States shall also notify the corresponding levels of taxation following conversion into these units.

*Article ~~26~~27*

1. Member States shall inform the Commission of measures taken pursuant to Articles ☒ 13 to 18 ☒ ~~5, 14(2), 15, and 17~~.
2. Measures such as tax exemptions, tax reductions, tax differentiation and tax refunds within the meaning of this Directive might constitute State aid and in those cases have to be notified to the Commission pursuant to Article ~~88~~ ☒ 108 ☒ (3) of the Treaty ☒ on the Functioning of the European Union ☒.

Information provided to the Commission on the basis of this Directive does not free Member States from the notification obligation pursuant to Article ~~88~~ ☒ 108 ☒(3) of the Treaty ☒ on the Functioning of the European Union ☒.

~~3. The obligation to inform the Commission pursuant to paragraph 1 of measures taken pursuant to Article 5 does not free Member States from any notification obligations pursuant to Directive 83/189/EEC.~~

*Article ~~27~~28*

1. The Commission shall be assisted by the Committee on Excise Duties set up by Article ~~24(1)43 of Directive 92/12/EEC~~ Directive 2008/118/EC. ⇒ That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. ⇐

2. Where reference is made to this paragraph, Article 5 ~~and 7 of Decision 1999/468/EC~~ of Regulation (EU) 182/2011<sup>51</sup> shall apply.

~~The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.~~

- ~~3. The Committee shall adopt its Rules of Procedure.~~

*Article 29*

<sup>51</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13)

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(8) and Article 5(2) shall be conferred on the Commission for an indeterminate period of time from 1 January 2023.
3. The delegation of power referred to in Article 2(8) and Article 5(2) may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>52</sup>.
5. As soon as it adopts a delegated act, the Commission shall notify it to the Council.
6. A delegated act adopted pursuant to Article 2(8) and Article 5(2) 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 have informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.
7. The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, or of the revocation of the delegation of powers by the Council.

↓ 2003/96/EC (adapted)  
⇒ new

#### Article ~~28~~30

1. Member States shall adopt and publish ~~the laws,~~ ☒ by ☒ ⇒ [31 December 2022] ⇐, ☒ the laws, ☒ regulations and administrative provisions necessary to comply ☒ with Article 1(2), Article 2(1), points (b) to (o), Article 2(3), second, third and fourth subparagraphs, Article 2(4) to (8), Article 3, Article 5, Article 7, Article 8(1), Article 9(1), Article 13, Articles 14 and 15, Article 16, point (b), last sentence, Article 16, point (c), (d) and (e), Article 17, Article 18, Article 19, Article 21(1), point (b), Article 21(1), point (d), Article 21(1), points (i) to (m), Article 21(1), second subparagraph, Article 21(2), Article 22 (1), Article 22(4), Article 25(2), Article 26(1), Article 28, Article 29, Article 30, Article 31 and Annex I ☒ ~~this Directive not later than 31 December 2003~~. They shall ~~forthwith inform the Commission thereof~~ ☒ immediately communicate the text of those measures to the Commission ☒.

~~2~~ They shall apply ~~these provisions~~ ☒ those measures ☒ from ⇒ [1 January 2023] ⇐ ~~± January 2004, except the provisions laid down in Articles 16 and 18(1), which may be applied by the Member States from 1 January 2003.~~

~~3~~ When Member States adopt ~~these~~ ☒ 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,

<sup>52</sup> OJ L 123, 12.5.2016, p. 1.

regulations and administrative provisions to the Directive(s) repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated  ~~The methods of making such reference shall be laid down by the Member States.~~

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

#### ~~Article 29~~

~~The Council, acting on the basis of a report and, where appropriate, a proposal from the Commission, shall periodically examine the exemptions and reductions and the minimum levels of taxation laid down in this Directive and, acting unanimously after consulting the European Parliament, shall adopt the necessary measures. The report by the Commission and the consideration by the Council shall take into account the proper functioning of the internal market, the real value of the minimum levels of taxation and the wider objectives of the Treaty.~~

↓ new

#### Article 31

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

The report by the Commission shall, inter alia, examine the minimum levels of taxation, the impact of innovation and technological developments, in particular as regards energy efficiency, the use of electricity in transport and the justification for the exemptions, reductions and differentiations laid down in this Directive. The report shall take into account the proper functioning of the internal market, environmental and social considerations, the real value of the minimum levels of taxation and the relevant wider objectives of the Treaties.

↓ 2003/96/EC (adapted)  
⇒ new

#### Article ~~30~~32

~~Notwithstanding Article 28(2), Directives~~  2003/96/EC  ~~92/81/EEC and 92/82/EEC~~  as amended by the acts listed in Annex II, Part A,  shall be  is  repealed  with effect  as from  1 January 2023  ~~31 December 2003,~~  without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the dates of application of the Directives set out in Annex II, Part B  .

↓ 2004/75/EC Art. 1.2 amended  
by Corrigendum, OJ L 195,  
2.6.2004, p. 31 (adapted)

References to the repealed directives shall be construed as references to this Directive  and shall be read in accordance with the correlation table in Annex III  .

*Article ~~31~~33*

This Directive shall enter into force on the ☒ twentieth ☒ day ☒ following that ☒ of its publication in the *Official Journal of the European Union*.

☒ Article 1(1), Article 2(1), point (a), Article 2(2), Article 2(3), first subparagraph, Article 4, Article 6, Article 8(2), Article 10, Article 11, Article 12, Article 16, point (a), Article 16, point (b), Article 20, Article 21(1), point (a), Article 21(1), point (c), Article 21(1), points (e) to (h), Article 21(1), point (n), Article 21(3), Article 22(2) and (3), Article 22(5), Article 23, Article 24, Article 25(1), Article 26(2), and Article 27, which are unchanged by comparison with the repealed Directive, shall apply from 1 January 2023. ☒

*Article ~~32~~34*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*