







# **Energy Taxation Directive**

**Policy Review** 





# **Authors**

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# **Energy Taxation Directive**

# **Policy Review**

# Name/Type of the Legal Act or Policy

Energy Taxation Directive ("ETD")

<u>Council Directive 2003/96/EC</u> of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

# Amending Directives:

- <u>Directive 2004/74/EC</u> of 29 April 2004 amending Directive 2003/96/EC as regards the possibility for certain Member States to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation
- <u>Council Directive 2004/75/EC</u> of 29 April 2004 amending Directive 2003/96/RV as regards the possibility for Cyprus to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation

#### Related instruments

- Europe 2020 Strategy and adopted Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency,
- Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources.
- Directive 2009/29/EC amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community
- EU Strategy on Adaptation to Climate Change

Related instruments (instruments mentioning this instrument)

- Regulation (EU) No 1286/2013 of the European Parliament and of the Council of 11
  December 2013 establishing an action programme to improve the operation of taxation
  systems in the European Union for the period 2014–2020 (Fiscalis 2020) and repealing
  Decision No 1482/2007/EC
- Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories
  of aid compatible with the internal market in application of Art. 107 and 108 of the
  Treaty Text with EEA relevance

#### Further developments

Revision of the Directive in order to make it coherent with the EU Emissions Trading System (EU ETS), tackle the discrimination of the RES against conventional sources due, mainly to the fact that minimum rates are based on the volume of energy consumed [1], make it

<sup>1 &</sup>quot;...because they are taxed at the same rate as the energy source they are intended to replace (e.g. biodiesel is taxed the same as diesel etc). As this rate is based on volume, rather than energy content, products with lower energy content such as renewables carry a heavier tax burden compared to the fuels they are competing with."



coherent with climate change perspective in order to reduce CO2 emissions (as taxation is more favourable for certain fossil fuels than cleaner options) and to introduce CO2 component in order to prevent incoherent national policies CO<sub>2</sub> taxes (non applicable to RES) policies (and double taxation). After unsuccessful negotiations the proposal was withdrawn.

# **Entry into force**

31.10.2003

#### Departments/Units in charge

# <u>Directorate General for Taxation and Customs Union (DG TAXUD)</u>

Dir C — Indirect taxation and tax administration

2. Indirect taxes other than VAT

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### Common Implementation strategy (CIS processes)

Are there any Working Groups at EU level involved in the implementation of the act or policy? Please name them and briefly introduce the core role of the group. If relevant, you can copy the structure of the topics created for the Common Implementation Strategy (CIS) processes for this policy.

No evidence of a specific CIS Working Group. However, evidence of the participation of different working groups within the context of the first review and the amending proposal to the Directive: EUSD Group (Expert Group on Taxation and Savings), Working Party IV on Direct Taxation and Working Group on Administrative cooperation in the field of direct taxation.

# Administrative body handling implementation in MS

# National Ministries of Finance

Tax collection: Federal Public Service Finance (Belgium), relevant finance offices (Italy), Revenue Commissioners (Ireland); The tax rate/base and reliefs are set up by a central authority in the three cases.

# Main Objective

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



# Principles included in the legal text

Principle of tax neutrality; Environmental protection; Competitiveness; Flexibility; Subsidiarity

# Other objectives/Key concepts/key elements of the legislation

According to EC (2011): Main aim was to avoid competitive distortions in the energy sector within the Internal Market by providing a framework for the taxation of energy products. The Directive sets out common rules on what should be taxed, when and what exemptions are allowed. It establishes "minimum rates" (energy volume consumed based) are laid down for products used in heating, electricity and motor fuels.

According to the EUR-LEX Website, the Directive sets minimum rates of taxation for motor fuel, motor fuel for industrial or commercial use, heating fuel and electricity (energy products are not taxed when used as raw materials or for the purposes of chemical reduction or in electrolytic and metallurgical processes). The "levels of taxation" applied by the Member States cannot be lower than these minimum rates laid down in the Directive. Main aim of the Directive is to improve the operation of the internal market by reducing distortions in competition between mineral oils and other energy products, encouraging environmental protection by a more efficient use of energy (in order to reduce dependence on imported energy products) and by limiting greenhouse gas emissions.

Energy products subject of the Directive are:

- Motor fuels (non industrial/commercial: Annex I, Table A): leaded petrol (CN codes 2710 11 31, 2710 11 51 and 2710 11 59, unleaded petrol (CN codes 2710 11 31, 2710 11 41, 2710 11 45 and 2710 11 49, gas oil (CN codes 2710 19 41 to 2710 19 49), kerosene (CN codes 2710 19 21 and 2710 19 25), LPG (CN codes 2711 12 11 to 2711 19 00), natural gas (CN codes 2711 11 00 and 2711 21 00)
- Motor fuels for industrial and commercial purposes (Annex I, Table B): gas oil (CN codes 2710 19 41 to 2710 19 49), kerosene (CN codes 2710 19 21 and 2710 19 25), LPG (CN codes 2711 12 11 to 2711 19 00), natural gas (CN codes 2711 11 00 and 2711 21 00)
- Heating fuels: Gas oil (CN codes 2710 19 41 to 2710 19 49), heavy fuel oil (CN codes 2710 19 61 to 2710 19 69), kerosene (CN codes 2710 19 21 and 2710 19 25), LPG (CN codes 2711 12 11 to 2711 19 00), natural gas (CN codes 2711 11 00 and 2711 21 00) coal and coke (CN codes 2701, 2702 and 2704)
- Electricity (Electricity (CN code 2716)

Industrial and commercial uses considered under the framework of the Directive (Art-8.2) are: agricultural, horticultural or aquaculture works, and in forestry; stationary motors; plant and machinery used in construction, civil engineering and public works; vehicles intended for use off the public roadway or which have not been granted authorisation for use mainly on the public roadway.

#### Terminology



Energy products (Art. 2) subject to the Directive: products failing within CN codes: 1507 to 1518 (if intended for use as heating fuel or motor fuel; 2701, 2702 and 2704 to 2715; 2901 and 2902; 2905 11 00 (which are not of synthetic origin if intended for use as heating fuel or motor fuel; 3403; 3811; 3817; 3824 90 99 (if intended for use as heating fuel or motor fuel).

*Electricity* (Art. 3): failing within CN code 2716.

Levels of taxation (Art. 4): 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.

Mineralogical processes (Art. 4): 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(6).

Motor fuels (Art. 7/Annex I): leaded petrol (CN codes 27101131, 27101151 and 27101159); unleaded petrol (CN codes 27101131, 27101141, 27101145 and 27101149); gas oil (CN codes 27101941 to 27101949); kerosene (CN codes 27101921 and 27101925); LPG (CN codes 27111211 to 27111900); Natural gas (CN codes 27111100 and 27112100)

Commercial gas oil used as propellant (Art. 7): 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.

Industrial and commercial purposes (Art. 8): (a) agricultural, horticultural or piscicultural 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.

Heating fuels (Art. 9 / Annex I, Table C): Gas oil (CN codes 27101941 to 27101949); heavy fuel oil (CN codes 27101961 to 27101969), kerosene (CN codes 27101921 and 27101925); LPG (CN codes 27111211 to 27111900); Natural gas (CN codes 27111100 and 27112100); coal and coke (CN codes 2701, 2702 and 2704); electricity (CN code 2716).

Business use (Art. 11): 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.

Biomass (Art. 16): 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.



Energy-intensive business (Art. 17): business entity, as referred to in Art. 11, 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

Production value (Art. 17): 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.

Purchases of energy products and electricity (Art. 17): 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 Art. 8(2)(b) and (c) are included. All taxes are included, except deductible VAT.

Value added (Art. 17): total turnover liable to VAT including export sales minus the total purchases liable to VAT including imports

Standard tanks and Special container (Art. 24): 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;

#### Derogations

According to Art. 18.1 Member States are authorised (by way of derogation) to continue to apply the reductions in the levels of taxation or exemptions (by specific energy product) as set out in Annex II (expiring on 31.12.2006 or as specifically determined in Annex II for each specific country). Art. 18.2 specifies that countries with Member States with difficulties in implementing the new minimum levels of taxation are allowed a transitional period (until 1.1.2007).

Art. 15 indicates that Member States can also apply under fiscal control total or partial exemptions or reductions in the level of taxation of the following products: (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 the following origins: solar, wind, wave, tidal or geothermal, hydroelectric installations, biomass or from biomass produced products, methane emitted by abandoned coalmines, fuel cells. (c) energy products and electricity used for combined heat and power generation; (d) electricity produced from combined heat and power generation (if combined generators are environmentally friendly). (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 (deadline 2010 or until the national share of natural gas in final energy consumption reaches 25%. 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); (h) electricity, natural gas, coal and solid fuels used by households and/or by organisations recognised as charitable by the Member State concerned; (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; (I) products falling within CN code 2705 used for heating purposes.

Art. 16 indicates that Member States can also apply exemption or reduced rate taxation on taxable products in Art. 2 (see previous section) if they are made of/contain ore/more of certain products: CN codes 1507 to 1518; 3824 90 55 and 3824 90 80 to 3824 90 99 for their components produced from biomass; 2207 20 00 and 2905 11 00 which are not of synthetic origin: products produced from biomass, including products falling within CN codes 4401 and 4402.

# Types of management measures

Which are the types of measures considered and selected for the achievement of the objectives? Are there any impact assessments of their possible performance? Please give us your expert opinion and include web links.

- Fiscal arrangements.
- Establishment of differentiated rates of taxation (but fulfilling the minimum levels of taxation set up by the Directive) on the basis of product quality; quantitative consumption levels for electricity and energy products used for heating purposes; on type of use (local public passenger transport -including taxis-, waste collection, armed forces and public administration, disabled people, ambulances; commercial and non-commercial use).
- Establishment of specific (total/partial) exemptions or reduced levels of taxation and transitional periods.
- Establishment of "levels of taxation" (that may not be lower than the minimum rates established in the Directive).
- 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;
- Establishment on a national definition 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.

#### Spatial coverage

The whole territory of the Member State.

Reporting units - what are the specific transposition requirements



#### Member State

## Management unit

Member State territory: certain energy products (see epigraph 3.3.)

# Key planning steps

- According to Art. 28 of the Directive Member States must adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive not later than 31 December 2003, and that they must inform the Commission thereof immediately.
- Provisions (with the exception of except of provisions laid down in Art. 16 and 18(1), which to be applied by the Member States from 1 January 2003) are to be applied from 1 January 2004.
- Member States shall communicate to the Commission the schedule of tax reductions or exemptions applied in accordance with Art. 16 by 31 December 2004 and every 12 months thereafter.
- Member States shall inform the Commission of the levels of taxation which they apply to the products listed in Art. 2 (energy products subject to the application of the Directive): on 1 January each year and following each change in national law.

# **Timelines**

#### Directive 2003/96/EC

- Entry into force: 31.10.2003
- Transposition in Member States (deadline): 31.12.2003
- Minimum levels of taxation applicable to motor fuels (according to Annex I, Table A): as from 1.1.2004 and from 1.1.2010
- Minimum levels of taxation applicable to gas oil January 2013 onwards set up: 11.2012 (deadline, Council).
- Minimum levels of taxation applicable to motor fuels for industrial and commercial purposes (according to Annex I, Table B): as from 1.1.2004
- Minimum levels of taxation applicable to heating fuels (according to Annex I, Table C): as from 1.1.2004
- Minimum levels of taxation applicable to electricity (according to Annex I, Table C): as from
- Transitional period for Member States with difficulties in implementing minimum taxation levels: 1.1.2007 (deadline)
- Reductions in level of taxation or exemption or further transitional periods: specific per Member State (and per fuel type).



- Commission report to the Council on the fiscal, economic, agricultural, energy, industrial and environmental aspects of the reductions granted according to Art. 16: 31.12.2009 (deadline).
- Review by the Council of the exemptions and reductions and the minimum levels of taxation established in the Directive: periodically (on the basis of a report from the Commission).

Directives: Directive 2004/74/EC Amending and Directive 2004/75/EC

- Entry into force: 01.05.2004
- Transposition in Member States (deadline): 01.05.2004

# Integration/coordination issues with other related pieces of legislation

# Mentioned legal instruments in the Directive

- Treaty establishing the European Community
- Kyoto Protocol to the United Nations Framework Convention on Climate Change,
- 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
- 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
- ▶ 1999/468/EC: Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.
- Commission Regulation (EC) No 2031/2001 of 6 August 2001, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

# Coordination issues with the EU Biodiversity Strategy

Measures/aspects mentioned in next section could have direct/indirect effect on targets 1 (Fully implement the Birds and Habitats Directives), 2 (Maintain and restore ecosystems and their services) and 3 (Increase the contribution of agriculture and forestry to biodiversity).

#### Relevance to ecosystems/habitats?

No specific mention to ecosystems/habitat in the legal text

- Art. 16, lays down that Member States may apply a reduced rate of taxation under fiscal control on the taxable products referred to in Art. 2 where such products contain water (CN codes 2201 and 28510010).
- Art. 15.3 sets up that 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. These human activities can be fostered thus enhancing the pressures on aquatic ecosystems.

- There is an indirect link between CO<sub>2</sub> emissions, climate change and the impact of it on aquatic systems.
- Under the current framework of the Directive, certain fossil fuels are taxed more favourably than cleaner competitors. A review of the Directive creating a more supportive framework for renewable energy (e.g. hydro, biofuels) could increase the pressure on aquatic systems.

#### **Drivers**

Word 'drivers' is not specifically mentioned in the Directive. Drivers which the legal act/policy address: Transport, industry, commerce and agriculture. Minimum levels of taxation set up in the Directive are referred to litres, kg, gigajoule gross calorific value and MWh of fuel consumed.

#### **Pressures**

Word 'pressure' is not specifically mentioned in the Directive. According to EUR-LEX, the main aim of the Directive is to improve the operation of the internal market by reducing distortions in competition between mineral oils and other energy products, encouraging environmental protection by a more efficient use of energy (in order to reduce dependence on imported energy products) and by limiting greenhouse gas emissions. However, the revision of the Directive (see 2011 Commission proposal review) showed limitations of the Directive in this sense.

#### Assessment of Environmental State

No info on indicators.

# **Assessment of Status**

The environmental status is not addressed in the Directive. No info on indicators.

#### Data

Excise Duty Tables: excise duty tables with updated information on excise duties rates applicable by products and by Member State and excise duty tables with receipts (revenues) from taxes on consumption of energy products and electricity. CIRCAB archive contains historic tables.

#### Funding

Aid in the form of reductions in environmental taxes [2]. The Directive authorises the Member States to grant tax advantages to businesses taking special measures to reduce their

<sup>&</sup>lt;sup>2</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevance. Article 44: "1. Aid schemes in the form of reductions in



emissions, enabling EU countries to refund, fully or in part, taxes paid by businesses that have invested in the rationalisation of their energy use (as much as 100 % for energy intensive businesses, and up to 50 % for other businesses) (see, EUR-LEX Website).

environmental taxes fulfilling the conditions of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall b exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled; 2. The beneficiaries of the tax reduction shall be selected on the basis of transparent and objective criteria and shall pay at least the respective minimum level of taxation set by Directive 2003/96/EC; 3. Aid schemes in the form of tax reductions shall be based on a reduction of the applicable environmental tax rate or on the payment of a fixed compensation amount or on a combination of these mechanisms; 4. Aid shall not be granted for biofuels which are subject to a supply or blending obligation."



# **About AQUACROSS**

Knowledge, Assessment, and Management for AQUAtic Biodiversity and Ecosystem Services aCROSS EU policies (AQUACROSS) aims to support EU efforts to protect aquatic biodiversity and ensure the provision of aquatic ecosystem services. Funded by Europe's Horizon 2020 research programme, AQUACROSS seeks to advance knowledge and application of ecosystem-based management (EBM) for aquatic ecosystems to support the timely achievement of the EU 2020 Biodiversity Strategy targets.

Aquatic ecosystems are rich in biodiversity and home to a diverse array of species and habitats, providing numerous economic and societal benefits to Europe. Many of these valuable ecosystems are at risk of being irreversibly damaged by human activities and pressures, including pollution, contamination, invasive species, overfishing and climate change. These pressures threaten the sustainability of these ecosystems, their provision of ecosystem services and ultimately human well-being.

AQUACROSS responds to pressing societal and economic needs, tackling policy challenges from an integrated perspective and adding value to the use of available knowledge. Through advancing science and knowledge; connecting science, policy and business; and supporting the achievement of EU and international biodiversity targets, AQUACROSS aims to improve ecosystembased management of aquatic ecosystems across Europe.

The project consortium is made up of sixteen partners from across Europe and led by Ecologic Institute in Berlin, Germany.



### **AQUACROSS PARTNERS**

**Ecologic Institute (ECOLOGIC) | Germany** 

Leibniz Institute of Freshwater Ecology and Inland

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**Intergovernmental Oceanographic Commission** 

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**Cultural Organization (IOC-UNESCO) | France** 

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**ACTeon – Innovation, Policy, Environment** 

(ACTeon) | France

**University of Liverpool (ULIV) | United Kingdom** 

**University College Cork, National University** 

of Ireland (UCC) | Ireland

**Royal Belgian Institute of Natural Sciences** 

(RBINS) | Belgium

Stockholm University, Stockholm Resilience

Centre (SU-SRC) | Sweden

Danube Delta National Institute for Research

& Development (INCDDD) | Romania

**Eawag - Swiss Federal Institute of Aquatic** 

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International Union for Conservation of Nature

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**BC3 Basque Centre for Climate Change** 

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