

Proposal for a Council Directive restructuring the Union Framework for the taxation of energy products and electricity (recast)

Eurelectric amendments

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

Dépôt légal: D/2021/12.105/61

Key Messages

- Eurelectric welcomes the proposed switch to energy content-based taxation, specifically, the proposal which **ranks electricity among the lowest taxed energies**, recognising its important contribution to the European Green Deal and the decarbonisation of the economy).
- Eurelectric supports the possibility for Member States to **apply taxation which is lower than the proposed minima for less pollutant energy products**, like renewable and carbon-neutral electricity. We believe this possibility should be incentivised in the Renewable Energy Directive to support RES-based electrification.
- Eurelectric supports the exemption for electricity and energy products used to produce electricity and electricity used to maintain the ability to produce electricity, however, clarification is needed on **situations where Member States, under individual derogations, may tax these products** for reasons of environmental policy (for instance, this derogation should never apply for renewable and carbon-neutral sources).
- While recognising that the ETD covers only excise duty, Eurelectric believes that the Council should consider a broader and more holistic approach to the energy taxation framework. This would translate into including in the revised ETD the rules on the Member States' own initiatives covering **other fiscal and para-fiscal charges** related to the overall activities within the electricity value chain and that contradict the energy and climate goals and hamper electrification.
- Eurelectric calls on the Commission to add **an explicit provision on self-consumption** since the proposed changes in the ETD only exempt "small producers." The lack of a proper definition for small producers may lead to different frameworks and rules across the Member States and may create a barrier for the adoption of a more decentralized, renewables-based ecosystem. Self-consumption should be exempted at least up to a certain threshold, for instance for small self-consumption which can be clearly defined (home PV, for example).
- Eurelectric supports the **same rule of exemption for energy products used to produce electricity** being applied to renewable and carbon-neutral electricity used by electrolyzers to generate renewable and low carbon hydrogen.
- Eurelectric welcomes the amendments to avoid double taxation of storage and provides suggested definitions for *redistributors* and *electricity storage* to provide clarity on who the responsible party is for the tax and exempting storage within self-consumption.
- For the proposed taxation rates, Eurelectric questions the proposed transitional period of 10 years applied, for instance, to the use of the 2/3 reference rate to natural gas, LPG and hydrogen of fossil origin. It does not strengthen the achievement of the Fit for 55 objectives within this decade and should not be extended any further. At the same time, it does not take into account the contribution of electrolytic hydrogen and derived fuels to the decarbonisation of hard-to-abate sectors like industry and heavy-duty transport since the increase of taxation is not consistent with the fact that the electricity mix will further decarbonise.
- Eurelectric welcomes the proposed review and gradual phase out of existing exemptions for aviation and maritime fuels to encourage the switch to cleaner transportation when economically feasible.

Amendment Proposals

Text proposed by Commission

Amendment proposal by Eurelectric

Amendment 1

Recital 3

Original text

(3) ~~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.~~ 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’. 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.

Original text +amendments

(3) ~~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.~~ 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’. 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. **Beyond excise duties, a notable part of the energy invoices is made of different fiscal and para-fiscal charges and levies. In addition to a reform of the energy taxation treated by the present directive, a review of all the other taxes and levies should be done to ensure that they also contribute to the European climate and energy policy targets.** The contribution of energy taxation to those objectives has been endorsed by the Council

Justification

While recognising that the ETD covers only excise duty, Eurelectric believes that the Council should consider a broader and more holistic approach to the energy taxation framework. This would translate into including in the revised ETD the rules on the Member States' own initiatives **covering other fiscal and para-fiscal charges** related to the overall activities within the electricity value chain and that contradict the energy and climate goals and hamper electrification. The ETD should set the principles and guidelines towards a more efficient energy taxation in the EU towards an effective single energy market to accomplish the ambitious goals and commitments for decarbonise the economy. Various charges and levies take up an even more significant share in the energy price in comparison to the taxes. Ultimately, this situation negatively impacts the electricity prices and goes against the push for electrification as foreseen by the proposed lowest taxation rate. It also contradicts the efforts towards higher flexibility of the electricity system, since as a result wholesale price cannot be properly reflected in the retail electricity prices.

Text proposed by Commission

Amendment proposal by Eurelectric

Amendment 2

Recital 4

Original text

(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.

Original text +amendments

(4) Environmental taxation can be a cost-effective mean for Member States to achieve the targeted reductions of greenhouse gasses, **namely, by providing the right incentives for the direct (and indirect) electrification of the economy.** The proper functioning of the internal market requires common rules on that taxation.

Justification

It is of great importance to rebalance the weight of all fiscal and para-fiscal charges between

electricity and other fossil fuel-based energy carriers in order to incentivise the decarbonisation of the economy through direct and indirect electrification needed for achieving the EU climate neutrality goal by 2050.

Text proposed by Commission

Amendment proposal by Eurelectric

Amendment 3

Recital 12

Original text

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

Original text +**amendments**

(12) In order to ensure a smooth implementation of certain provisions relating to some products or uses, a transitional period of application is needed **which cannot extend beyond ten (10) years for fossil fuels.**

Justification

The transitional period of 10 years applied, for instance, to the use of the 2/3 reference rate to natural gas, LPG and hydrogen of fossil origin is questionable. With regard to the existing fossil fuels, it does not necessarily strengthen the achievement of the Fit for 55 objectives within this decade. At the same time, it does not take into account the contribution of electrolytic hydrogen and derived fuels to the decarbonisation of hard-to-abate sectors like industry and heavy-duty transport since the increase of taxation is not consistent with the fact that the electricity mix will further decarbonise. For fossil fuels, it is imperative to not prolong this transitional period beyond the proposed 10 year period.

Text proposed by Commission

Amendment proposal by Eurelectric

Amendment 4

Article 1, Paragraph 1

Original text

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

Original text +amendments

1. Member States shall impose taxation on energy products and electricity in accordance with this Directive, **ensuring that it is applicable to final consumption only.**

Justification

Overall, the ETD should adhere to the principle that electricity should avoid double taxation and any overlap with EU ETS. Electricity should be taxed at time of output (final use) and not input (generation).

Text proposed by Commission

Amendment proposal by Eurelectric

Amendment 5

Article 2, proposed paragraphs 9 and 10

Original text

[none]

Original text +amendments

9. Redistributor of electricity is defined as an entity which uses electricity for the purpose of later reinjecting into the grid, but not as a final end user.

10. Electricity storage means energy storage as defined in article 2(59) of Directive (EU) 2019/944.

Justification

Eurelectric welcomes the new Article 22.4 that prevents double taxation in energy storage. However, clarification is required on the role of redistributors. We propose the above definition be added to Article 2 to provide such clarity.

Moreover, we feel that clarification is needed on electricity storage, so we have proposed the above definition to be included in Article 2.

Text proposed by Commission

Amendment proposal by Eurelectric

Amendment 6

Article 4, paragraph 1

Original text

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.

Original text +amendments

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.

Member States are recommended to review in their National Energy and Climate Plans (as defined in Regulation (EU) 2018/1999) the total weight of the levels of taxation on energy products and electricity (including other fiscal and parafiscal charges and levies) and determine whether these measures effectively contribute to their energy and climate policies.

Justification

While recognising that the ETD covers only excise duty, Eurelectric believes that the Commission should consider a broader and more holistic approach to the energy taxation framework. This would translate into including in the revised ETD the rules on the Member States' own initiatives covering other fiscal and para-fiscal charges related to the overall activities within the electricity value chain and that contradict the energy and climate goals and hamper electrification. The ETD should set the principles and guidelines towards a more efficient energy taxation in the EU towards an effective single energy market to accomplish the ambitious goals and commitments for decarbonise the economy. Various charges and levies take up an even more significant share in the energy price in comparison to the taxes. Ultimately, this situation negatively impacts the electricity prices and goes against the push for electrification as foreseen by the proposed lowest taxation rate. It also contradicts the efforts towards higher flexibility of the electricity system, since as a result wholesale price cannot be properly reflected in the retail electricity prices.

Amendment 7

Article 5, paragraph 2

Text proposed by Commission

Amendment proposal by Eurelectric

Original text

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.

Original text +amendments

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 as soon as the variation is meaningful. 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 change.

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.

Justification

To maintain the significance of the lowest tax rate, unnecessary burden should be avoided, and the indexation rules for the minimum rate should be applied automatically as soon they have a significant impact (i.e., not necessarily on a yearly basis but rather based on a relevant threshold article). This would partially alleviate the administrative burden that goes against the objectives of the EU Green Deal and the Fit for 55 Package. Regarding specific value for meaningful variation, this needs to be discussed among Member States, there was no conclusion from the Eurelectric side on this. Alternatively, it could be specified by the Commission in the delegated act. Regarding specific value for meaningful variation, this needs to be discussed among Member States; there was no conclusion from the Eurelectric side on this. Alternatively, it could be specified by the Commission in the delegated act.

Text proposed by Commission

Amendment proposal by Eurelectric

Amendment 8

Article 7, paragraph 1

Original text

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**.

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.

~~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.~~

Original text +amendments

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.

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. **For fossil fuels, the transitional period shall not extend beyond 10 years.**

~~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.~~

Justification

The transitional period of 10 years applied, for instance, to the use of the 2/3 reference rate to natural gas, LPG and hydrogen of fossil origin is questionable. With regard to the existing fossil

fuels, it does not necessarily strengthen the achievement of the Fit for 55 objectives within this decade. At the same time, it does not take into account the contribution of electrolytic hydrogen and derived fuels to the decarbonisation of hard-to-abate sectors like industry and heavy-duty transport since the increase of taxation is not consistent with the fact that the electricity mix will further decarbonise. For a clear fossil fuel phase out, it is imperative to cap the transitional period to further incentivise the transition to low- and no-carbon fuels.

Text proposed by Commission

Amendment proposal by Eurelectric

Amendment 9

Article 8, paragraph 1

Original text

1. As from 1 January **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**.

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.

Original text +**amendments**

1. As from 1 January 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.

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. **For fossil fuels, the transitional period shall not extend beyond 10 years.**

Justification

The transitional period of 10 years applied, for instance, to the use of the 2/3 reference rate to natural gas, LPG and hydrogen of fossil origin is questionable. With regard to the existing fossil fuels, it does not necessarily strengthen the achievement of the Fit for 55 objectives within this decade. At the same time, it does not take into account the contribution of electrolytic hydrogen and derived fuels to the decarbonisation of hard-to-abate sectors like industry and heavy-duty transport since the increase of taxation is not consistent with the fact that the electricity mix will further decarbonise. For a clear fossil fuel phase out, it is imperative to cap the transitional period to further incentivise the transition to low- and no-carbon fuels.

Amendment 10

Article 9, paragraph 1

Original text

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

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.

Original text +amendments

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

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. **For fossil fuels, the transitional period shall not extend beyond 10 years.**

Justification

The transitional period of 10 years applied, for instance, to the use of the 2/3 reference rate to natural gas, LPG and hydrogen of fossil origin is questionable. With regard to the existing fossil fuels, it does not necessarily strengthen the achievement of the Fit for 55 objectives within this decade. At the same time, it does not take into account the contribution of electrolytic hydrogen and derived fuels to the decarbonisation of hard-to-abate sectors like industry and heavy-duty transport since the increase of taxation is not consistent with the fact that the electricity mix will further decarbonise. For a clear fossil fuel phase out, it is imperative to cap the transitional period to further incentivise the transition to low- and no-carbon fuels.

Amendment 11

Article 13, paragraph 2 and proposed paragraph 3

Original text

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.

Original text +**amendments**

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. **In such case, the Member State shall inform the commission of this derogation and the Commission shall publish a regularly updated list of derogations.”**

3. The exemption foreseen in paragraph 1 shall also apply to low-carbon electricity used by electrolyzers to produce hydrogen.

Justification

Eurelectric supports the exemption for electricity and energy products used to produce electricity and electricity used to maintain the ability to produce electricity, however clarification is needed on the situations where the Member States' individual derogations cannot be applied for reasons of environmental policy (for instance for renewable and carbon-neutral electricity). The Member States should be required to justify any derogations under a very clearly defined framework.

The exemption on the electricity used to produce low-carbon hydrogen results from the principle of avoiding double taxation and to tax the output rather than the input, and regarding the consideration of climate performance as low-carbon hydrogen is expected to play a key role to decarbonise certain uses for which direct electrification may not (at least yet) be the most viable option (eg. high temperature processes in industrial uses, or some types of transport such as heavy duty long-haul).

Text proposed by Commission

Amendment proposal by Eurelectric

Amendment 12

Article 16, paragraph 1

Original text

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

- (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;

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.

- ~~(c) energy products and electricity used for combined heat and power generation;~~
- ~~(d) 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;~~
- (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

Original text +amendments

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

- (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;

– generated by low-carbon, renewable or carbon-neutral sources of electricity.
~~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.~~

- ~~(c) energy products and electricity used for combined heat and power generation;~~
- ~~(d) 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;~~
- (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,

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.~~

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.~~

Justification

Maintaining the provision on the possibility for the Member State to apply taxation that is lower than the proposed minima for less pollutant energy products, for instance renewable and carbon-neutral electricity, is also supported by our association.

Eurelectric disagrees with “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” because we view it as a hidden subsidy.

Text proposed by Commission

Amendment proposal by Eurelectric

Amendment 13

Article 17

Original text

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

Original text +**amendments**

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.

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' must be understood as defined in Art.28.1 of directive 2019/944. This exemption should be put in place only if national social policies appear to be insufficient to tackle vulnerability of end users, and as part of a national strategy against energy poverty and vulnerability, with a clear definition of the concepts by the Member States, according with the directive 2019/944.** ~~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.

Justification

Eurelectric would like to draw the attention to the inconsistency and risk of including an EU-wide definition of vulnerable households in the ETD since it is covered by the Internal Market for Electricity Directive (Directive (EU) 2019/944, Art.28.1), which is already being implemented in Member States. This legislative act provides the principles for such a definition and sets the responsibility of the Member States to properly define vulnerable consumers

Tax exemptions for vulnerable households is only one tool among others to reach the goal of

alleviating the bills burden, and the Member States should ultimately retain the choice of the tools they might decide to use. Monitoring the justification for such vulnerability should not bring an additional burden for the operators. Energy poverty and vulnerable households should rather be treated by national measures and social policies rather than energy taxation exemptions. Specific exemptions for these categories of consumers are not fully in line with intentions to decrease the number of exemptions within the ETD.

Text proposed by Commission

Amendment proposal by Eurelectric

Amendment 14

Article 22, Paragraph 4

Original text

4. For the purpose of applying Articles 2 and 7 of 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.

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

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.

Original text +amendments

4. For the purpose of applying Articles 2 and 7 of Directive 2008/118/EC, electricity, and natural gas and hydrogen shall be subject to taxation and shall become chargeable at the time of supply collection 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. In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.

For the purposes of the first subparagraph, electricity storage facilities and transformers of electricity ~~may~~ shall be considered as redistributors **only** when they supply electricity **for final consumption**. Otherwise, they should be considered under the scope of Art. 13.1 to be exempted as equivalent to a generator.

Notwithstanding Article 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 purposes of applying Articles 2 and 7 of Directive 2008/118/EC, coal, coke, 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.

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, if trespassing the threshold defined in the following paragraph, is regarded as a distributor.

Notwithstanding Article 13, Member States shall ~~may~~ exempt consumption from self-production for small producers of renewable electricity. **Small producer is a producer whose capacity remains below the threshold defined by the Commission by an implementing act.** ~~provided that they tax the energy products used for the production of that electricity.~~

For the purposes of applying Articles 2 and 7 of Directive 2008/118/EC, coal, coke, 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.

Justification

Even though the provision of Art. 22(4) stating that “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” was originally included in the text of the Directive, Eurelectric’s position is that in parallel with the VAT system, these taxes should be applicable at the time of collection and not at the time of delivery of the energy by the supplier. The Directive should address these issues to avoid the exposure of energy suppliers to the risk of bad debt. Unfortunately, the ETD does not foresee the possibility of suppliers to recover the tax applicable to the electricity and natural gas in bad debt invoices. Suppliers should not bear the tax responsibility for bad debt, thus the ETD should provide for a rule, such as the one in the VAT Directive allowing for the tax recovery (Art. 90 of the Directive 2006/112/CE).

Stored or transformed electricity is not consumed: only the use by the final consumer should be taxed.

The proposal would also benefit from an explicit provision on self-consumption since the provisions of the current ETD version may create a barrier for the adoption of a more decentralised RES based ecosystem. Self-consumption should be exempted at least up to a certain threshold, for instance for small self-consumption that should be clearly defined (home PV, for example). The threshold, however, should not distort competition within the electricity market and should be in line with Electricity Market Regulation.

The possibility for the Member States to exempt small producers does not provide for a definition of a small producer, which might lead to a proliferation of different frameworks and rules across the Member States. In case of maintaining the exemption for small producers, a clear definition should be included, at least by providing a reference in the implementing acts.

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability



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