

FuelsEurope's views and amendments to the Energy Taxation Directive

Brussels, 26th June 2022

FuelsEurope, representing the European refining sector, supports the Green Deal's objectives for climate neutrality in 2050, and is eager to help create the essential policy framework to enabling the EU's decarbonisation that would need a holistic regulatory framework, effective policies and an industrial strategy to encourage and support industries to invest in a low carbon economy and consumers to adopt low-carbon technologies.

We believe that the decarbonisation of transport will be a precious opportunity for the EU economy to both **develop & deploy innovative renewable and low-carbon technologies in vehicles, airplanes, vessels and fuels, helping EU industries achieving world-leadership in this area.** With this perspective, FuelsEurope is ready to work with the EU Institutions to deliver the 2050 climate objectives in a sustainable, affordable and socially inclusive way. At the same time, the transition should carefully address the societal aspects deriving from the changes in employment pattern, skills requirements and inequalities between EU regions and sectors of society.

To contribute to the policy debate, we would like to address the following recommendations regarding the ETD directive:

- The Energy Taxation Directive recast can contribute to the **creation of a carbon price signal capable to further support the creation for business cases for investments in the production of low-carbon liquid fuels**, which will be key for EU energy resilience, ensuring an additional energy supply without being increasingly energy dependent.
- Furthermore, **we welcome the remodulation of the fuel taxation proposed, as it would be the enabler for the deployment of very low / zero taxation for sustainable alternative fuels and energies, while ensuring a level playing field.**
 - We are of the opinion that shift away from a purely volume-based to a combination of a ranking methodology linked to the environmental performance of the fuel would be beneficial, and we believe that this principle would provide a similar/ equivalent benefit as to a taxation that is primarily, or fully based on the emitted combustion CO₂.
- **We welcome a maximum mandatory tax exemption for the sustainable alternative fuels (10 years), calling for extension in case of issues with their availability.**
 - Any exemption period should be linked to the availability and the price competitiveness of sustainable alternative fuels. The revised ETD should envisage an extension of the exemption period in case the availability or competitiveness of the alternative fuels would be an issue.
 - We believe that in order to reduce any complicated argumentation **toward the application of State Aid Rules** mandatory exemption should be maximised, leading to a more harmonised implementation.
 - This would be necessary to avoid that certain exemptions for sustainable alternative fuels are mandatory in certain transport sectors, while in others are left to the discretion of Member States. Ideally, the exemption should be of 10 years for all Sustainable alternative fuels in all sectors, in particular for road transport fuels.
- **We ask for 3 years indexation periods, as yearly indexation of minimum rates will not incentivize the deployment of sustainable fuels**, which would not be coherent with the overall Fit for 55 objectives. The main driver of the revision of the ETD is to make this

directive aligned with the overall climate ambitions and, in that sense, the Directive can contribute by delivering incentives for the development and deployment of sustainable alternative fuels. We find that yearly indexation would merely seek to secure constant taxation income, irrespective of the climate ambitions and would represent an additional administrative burden. We would like to propose to envisage longer indexation intervals than yearly ones also in view of allowing Companies adapting their budget planning in view of higher Low carbon Liquid fuels deployment.

- We believe, that due to energy prices increase, the **natural gas taxation for industrial heating purposes would have tremendous impact on the price of final energy product**, therefore, we ask for a lower taxation on the basis on its use and a possible phasing-in period in order to adapt the taxation to the ETD environmental objectives.
- **We call for an implementing act in order to adopt the provisions outlined in Art. 2(6)**
 - We welcome the new provision, which describes a system where the taxation on a product, consisting of a mixture of one or more products, will be based on each component, based on the applicable rates and independently from the CN code under which the product falls as a whole.
 - We find that it will provide a **concrete incentive to the production of low carbon fuels**, but we warn the regulators about the practical shortcomings which may have huge consequences in terms of managing tax declaration practically (e.g., the accounting will require an approved methodology, such as a mass balance approach for example). We acknowledge that article 2(6) would create additional administrative burdens related to the tax declaration, but we are of the opinion this would be the only way to benefit from the tax rates attributed to alternative fuels or energies used in the blend. **This is the reason why we are calling for an Implementing Act**, which will allow stakeholders to participate in the technical discussions leading to a pragmatic and practical implementation of the provision.
- **Not all lubricants should be included in the control and movement provisions, in particular under the EMCS (Excise Movement and Control System) and the extension of the scope should target products subject to fraud (light lubricants).**
 - We understand that the inclusion of all lubricants aims at tackling the risk of tax fraud where a product is designed so that it may be classified under a CN code for lubricants (and thus moved outside of the excise control) and then be sold for use as motor fuel (avoiding taxation); at the same time, only “light” lubricants could substitute motor fuels. Including all lubricants irrespective of the fact whether they can or cannot be used as fuels would have unintended and punitive effect on the lubricants value chain, increasing tremendously the costs for those putting lubricants on the market.
 - This is the reason why we call for a targeted measure, focusing only on where there is a risk of fraud. Such an approach would not burden producers and traders of products that are not fit for use as fuels, while offer a more focused tool to combat fraud.
- **Article 2.7 of the proposed revised ETD, refers to a new obligation by indicating that suppliers should be ‘reasonably aware’** of the intended use of the products sold. This concept is not defined and could lead to considerable dispute on what needs to be understood under ‘reasonably aware’. We therefore recommend to reword article 2.7 such that any reference to ‘reasonably aware’ is avoided.

FuelsEurope is ready to work with the EU to contribute to the decarbonisation of the mobility sector in a sustainable, affordable and social inclusive way.

Amendment proposals

Commission Proposal	FuelsEurope Amendment
Taxation of a product consisting of a mixture	
Article 2 (6)	Article 2 (6)<i>a</i> – new
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.	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. <i>Where the Regulation referred to in the sixth subparagraph the Commission is empowered to adopt implementing acts in accordance with Article 29.</i>
<i>Justification</i>	
We welcome Article 2(6), but we find that – without provision detailing its application – it would risk to create additional administrative burden related to the tax declaration. At the same time, we believe this provision is key to benefit from the lower tax rates attributed to lower taxed alternative fuels or energies used in the blend. Therefore, we call for an implementing act in view of collaborating with regulators and helping detailing the provision, making it workable at the tax administration level.	
Commission Proposal	FuelsEurope Amendment
Need for an implementing act on the application of article 2(6)	
Article 29	Article 29
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article. 2. The power to adopt the delegated acts referred to in Article 2(8) and Article 5(2) shall be conferred on the Commission for an indeterminate period of time from 1 January 2023.	1. The power to adopt <i>implementing and</i> delegated acts is conferred on the Commission subject to the conditions laid down in this Article. 2. The power to adopt the <i>implementing and</i> delegated acts referred to in <i>Article 2(6)</i> , Article 2(8) and Article 5(2) shall be conferred on the Commission for an indeterminate period of time from 1 January 2023.

<p>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 <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p> <p>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-Making⁵².</p> <p>5. As soon as it adopts a delegated act, the Commission shall notify it to the Council.</p> <p>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.</p> <p>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.</p>	<p>3. The delegation of power referred to in Article 2 (6), 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 <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p> <p>4. Before adopting implementing or 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.</p> <p>5. As soon as it adopts an implementing or a delegated act, the Commission shall notify it to the Council.</p> <p>6. An implementing act pursuant to article 2(6) and 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.</p> <p>7. The European Parliament shall be informed of the adoption of implementing and delegated acts by the Commission, of any objection formulated to them, or of the revocation of the delegation of powers by the Council.</p>
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Justification

The proposed amendment is consistent with the amendment to article 2(6) that requires the Commission a develop a EU common and harmonized methodology to apply the provisions described in article 2(6).

The methodology shall consider the specificities of the different energy vectors covered by the proposed directive while minimizing the administrative burden on the entities concerned by the article 2(6).

Unclear formulation ‘reasonably aware’	
Article 2(7)	Article 2(7)
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).	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).
<i>Justification</i>	
<p><i>Article 2.7 of the proposed revised ETD refers to a kind of new obligation by indicating that suppliers should be ‘reasonably aware’ of the intended use of the products sold. This concept is not defined and could lead to considerable dispute on what needs to be understood under ‘reasonably aware’. We therefore recommend to reword article 2.7 such that any reference to ‘reasonably aware’ is avoided.</i></p> <p><i>The justification provided by the article is deemed as legally unclear, and putting an unnecessary burden on the supplier. Furthermore, the supplier does not have the responsibility nor the resources to monitor what the customer intends to do with the provided product.</i></p>	
Commission Proposal	FuelsEurope Amendment
Need of longer indexation periods	
Article 5(2)	Article 5(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 minimum levels of taxation laid down in this Directive shall be adapted every 3 years 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 average over the last 3 preceding calendar years.
<p style="text-align: center;"><i>Justification</i></p> <p><i>We are of the opinion that indexation should be supported, but should be applied using longer indexation intervals. For instance, we believe that 5 years adaptation to indexation, instead of annually will supports and increases potential for business cases.</i></p> <p><i>We are of the opinion the yearly indexation of minimum rates of consumer prices is not coherent with the overall Fit for 55 objectives. The main driver of the revision of the ETD is to make this directive aligned with the overall climate ambitions. In that sense the ETD can contribute by delivering incentives for the development and deployment of sustainable alternative fuels. A yearly indexation is merely seeking to secure constant income from taxation, irrespective of the climate ambitions. We would propose longer indexation periods with a revision every five years (Art. 31) should be sufficient to adopt the rates.</i></p>	
Commission Proposal	FuelsEurope Amendment
Road transport (maximum mandatory exemptions)	
	<p style="text-align: center;">Article 13 paragraph 3 - NEW</p> <p><i>3. 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.</i></p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>The exemption periods should be made conditional on the availability and price competitiveness of the alternative fuels and any provision should be included in order to allow extension of the exemption period.</i></p> <p><i>FuelsEurope is calling for coherency in relation to tax exemption of sustainable renewable fuels for road transport which is currently conditional to Member State decision; on the other hand, Low-carbon fuels, RFNBO and advanced biofuels are exempted over 10 years for aviation and maritime ('shall' applies). In order to boost the production of alternative fuels and electricity the ETD should foresee a mandatory exemption to all sectors.</i></p> <p><i>The ETD must amplify mandatory tax exemptions as optional tax exemptions are subject to state aid law, which may create uncertainties, burdens for companies and may lead to double taxation. Companies need security and globally competitive energy prices.</i></p>	

Commission Proposal			FuelsEurope Amendment		
Taxation of natural gas for industrial heating purposes					
Annex I table C			Annex I table C		
	Start of transitional period (01.01.2023)	Final rate after completion of transitional period (01.01.2033) before indexation		Start of transitional period (01.01.2023)	Final rate after completion of transitional period (01.01.2033) before indexation
Natural gas	0.6	0.9	Natural gas	0.6 0.15	0.9
<i>Justification</i>					
<p>FuelsEurope believe that Natural gas is a key feedstock used for the refining transformation processes. The minimum tax rate as set out in table c/ heating fuels should therefore start with the 2003 level, especially in combination with the proposed deletion of a different approach between business and non-business use, followed by a phasing in period in order to reach the minima proposed by the current Commission proposal. Otherwise this would lead to an increase of natural gas taxation for business use by 400% compared to the current ETD (2003). The phasing-in period will give users the opportunity to change to alternatives such as hydrogen which are not available yet.</p>					

FuelsEurope, the voice of the European petroleum refining industry.

FuelsEurope represents with the EU institutions the interest of 40 companies operating refineries in the EU. Members account for almost 100% of EU petroleum refining capacity and more than 75% of EU motor fuel retail sales.

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