

Recast of the Energy Taxation Directive (ETD)

UPEI, Europe's independent fuel suppliers, and FETSA, the Federation of European Tank Storage Associations, fully support the Commission's objective to update the Energy Taxation Directive (ETD), in line with the rest of the "Fit for 55" legislative package.

In our view, the current energy crisis further demonstrates the importance of a coherent framework for the taxation of energy products that will allow the uptake of clean, secure supplies. Together with other regulatory instruments, such a framework can help set the right incentives for the widespread penetration of low-carbon fuels and electricity in the European economy.

In other words, it has the potential to send a powerful price signal for alternative energy sources, supporting the demand created for the same energy products through other pieces of legislation, such as the Renewable Energy Directive.

Furthermore, we hope that a careful calibration of the recast of this Directive will ensure an up-to-date and stable framework in the long run, beyond the current turbulent context.

With these principles in mind, we would like to contribute to the ongoing legislative work on the ETD by making the following suggestions:

- **We welcome the new focus on the energy content of fuels, coupled with a ranking based on their environmental performance, replacing a purely volume-based approach.**

In line with this approach, **we regret the exclusion of electricity from a ranking based on environmental performance.** For the purposes of minimum rates, the Commission's proposal appears to imply that electricity from the grid is always green. On the contrary, minimum taxation rates for electricity should reflect the underlying source, taking into consideration the sources for power generation (i.e., renewable vs. conventional).

Similarly, **we are concerned about the unjustified treatment of sustainable food and feed crop biofuels/biogas that the Directive imposes.** As it stands in the Commission's proposal, their final minimum rates (i.e., after completion of transitional period) would be equal to that of conventional, fossil sources, ignoring their undeniable potential to decarbonise the energy mix.

To address this major shortcoming, we call for the ranking of these products to be coherent with that of sustainable biofuels, sustainable biogas, and low-carbon fuels.

- **We call for a more consistent implementation of the ETD at national level.** While respecting Member States' right to determine taxation rates, optional tax reductions and exemptions should be made mandatory, in order to avoid fragmentation that would generate barriers to the free movement of energy products, and thus protecting the **internal market**.

In particular, **mandatory tax exemptions for renewable fuels of non-biological origin and advanced sustainable biofuels** are essential to stimulate innovation and production, in line with the EU's climate objectives and targets for the penetration of low and carbon neutral fuels.

- The promotion of renewable energy sources should apply also in respect of **blended products**.

While welcoming Article 2(6), we find that **unless its application is further specified, it would risk creating additional administrative burden related to the invoicing of taxed fuels** (i.e., the application of the correct individual tax rate when leaving the refinery or tank storage facility).

In addressing this Article, we wish to preserve its potential to bring significant benefits thanks to the lower tax rates applicable to alternative fuels used in the blend.

Therefore, a solution could be to **differentiate between the fossil and renewable parts of a mixture** by implementing different tax rates based on usual blending ranges, instead of looking at each individual mixing ratio.

As a way forward, we call for the adoption of an implementing act by the Commission, allowing for broad stakeholder involvement in technical discussions, leading to a pragmatic implementation of this provision.

- In updating the Directive, keeping different treatments for certain sectors is still fit for purpose.
 - We welcome the possibility of applying targeted reductions to energy products used as **heating fuel and electricity, if used by households and vulnerable households**.
 - The review should also maintain the **mandatory tax exemption for energy products supplied for use as fuel for the purposes of navigation**.

The imposition of new fiscal costs on EU bunkering, while keeping non-EU bunkering off costs, will incentivise the bunkering of ships outside the EU. These operations are not significantly costly for ship operators and are logistically simple, given the proximity of ports from neighbouring non-EU countries.

Furthermore, this could entail a loss of competitiveness of EU ports, since they could lose bunkering volumes in their operations. As a consequence, fuelling conventional bunker fuels in non-EU ports could become attractive as a cost-containment issue for operators, resulting in direct environmental effect.

While supporting an exemption for bunkering fuels, **we welcome the inclusion of maritime transport in the revised EU ETS**. We are confident that through CO2 pricing, the new system will more adequately incentivize this sector's decarbonisation, without undermining our global competitiveness.

- The current energy market situation, and its worsening since Russia's invasion of Ukraine, has highlighted the **crucial role of LNG in ensuring a reliable energy supply in Europe**.

Currently, LNG is not included under EMCS (Excise Movement and Control System). As a consequence, Member States apply very different regulations in respect of transportation and storage of LNG. We believe that this **non-harmonised treatment of LNG represents a significant obstacle to the development of a European LNG infrastructure and to LNG trade within the EU**.

As stated in Recital 30 of the draft Directive, the inclusion of selected energy products to the control and movement provisions of Council Directive 2008/118/EC aims to ensure a "unified and standardised treatments of those products".

Therefore, **Article 21 of the ETD should be amendment so that LNG can be included in the list of products covered by EMCS**.

We invite Member States to take the above comments into consideration when they discuss the Commission's proposal. In order to contribute to future debates, UPEI and FETSA have also taken the liberty of drawing up some specific proposals for amendments to the Directive, which are listed in the Annex to this document.

About UPEI

[UPEI](#) represents nearly 2,000 European importers and wholesale/retail distributors of energy for the transport and heating sectors, supplying Europe's customers independently of the major energy producers.

They are the interface between producers and consumers, using their own infrastructure and flexibility to supply existing demand for conventional and renewable liquid fuels, as well as non-liquid alternatives as part of the energy transition. They cover more than a third of Europe's current demand. The organisation brings together national associations and suppliers across Europe.

Independent fuel suppliers bring competition to Europe's energy market and are able to respond rapidly to changes affecting supply, contributing to security on a local, national and regional level. They have developed and maintain a comprehensive infrastructure for the sourcing, storage and distribution of transport and heating fuels, with a commitment to delivering a high-quality service to all consumers, including those in remote areas.

About FETSA

Members of [FETSA](#) are businesses engaged in bulk storage and energy infrastructure across Europe. Bulk liquid and liquified gas terminals are present in ports, airports, logistics platforms and along rivers, canals and pipelines. In total FETSA represents 141 companies operating 743 terminals across Europe.

These tank storage terminals provide an essential interface between sea, road, rail, inland waterways and pipeline logistics. They are critical links in the supply chain for energy carriers, chemicals, animal feeds and fats, oils and other substances, helping to balance out supply and demand and ensure companies and consumers have access to these products.

Many tank storage terminals are designated as Critical National Infrastructure by the EU and national governments due to their importance in providing energy to society. The storage capacity represented by FETSA also includes strategic reserves held for emergencies (such as NATO stocks and IEA mandated reserves) and supply disruptions.

Annex – suggested amendments to the ETD proposal

Amendment 1 – Recital 23

Commission proposal	Amendment suggestion
<p>(23) Fuel used for waterborne navigation, including fishing, should also be taxed, and the Member States party to international agreements providing for the exemption of that fuel, have to, by the date of the application of this Directive, ensure they eliminate the incompatibilities. It is necessary to allow for a different level of taxation to be applied to the use of energy products and electricity for intra-EU waterborne regular service navigation, fishing and freight transport and their respective at berth activities. Considering the specificity of those uses, the minimum levels of taxation should be lower than the ones applicable to general motor fuel use. In order to provide an incentive to the use of sustainable alternative fuels and electricity, such fuels and electricity should be exempted from taxation for ten years. Energy products and electricity used for the remaining intra-EU waterborne navigation should be subject to the standard levels of taxation applicable to motor fuels and electricity in the Member States.</p>	<p>(23) Fuel used for waterborne navigation, including fishing, should also be taxed, and the Member States party to international agreements providing for the exemption of that fuel, have to, by the date of the application of this Directive, ensure they eliminate the incompatibilities. It is necessary to allow for a different level of taxation to be applied to the use of energy products and electricity for intra-EU waterborne regular service navigation, fishing and freight transport and their respective at berth activities. Considering the specificity of those uses, the minimum levels of taxation should be lower than the ones applicable to general motor fuel use. In order to provide an incentive to the use of sustainable alternative fuels and electricity, such fuels and electricity should be exempted from taxation for ten years. Energy products and electricity used for the remaining intra-EU waterborne navigation should be subject to the standard levels of taxation applicable to motor fuels and electricity in the Member States.</p> <p><i>Fuel used for waterborne navigation, including fishing, should be exempted from the taxation provided that the vessel concerned is subject to the EU Emission Trading System under Directive [reference to ETS Directive].</i></p> <p><i>Since the cumulative application of both instruments would not allow emission reductions beyond those attained, overall, through the emission trading scheme alone, but on the contrary would cause carbon leakage by bunkering of fossil energy products outside the European Community waters, taxation must not apply to fuel consumption in vessels subject to the EU ETS.</i></p>

Amendment 2 – Recital 24

Commission proposal	Amendment suggestion
(24) For extra-EU air navigation, without prejudice to international obligations, and for extra-EU waterborne navigation, including fishing, Member States may exempt or apply the same levels of intra-EU taxation, according to the type of activity.	(24) For extra-EU air navigation, without prejudice to international obligations, and for extra-EU waterborne navigation , including fishing, Member States may exempt or apply the same levels of intra-EU taxation, according to the type of activity.

Amendment 3 - Article 2(6)

Commission proposal	Amendment suggestion
6. Where part of a taxable product consists of one or more products referred to in the previous paragraphs, taxation of those parts shall be determined accordingly based on this Directive, independently from the CN code under which the product falls as a whole.	6. Where part of a taxable product consists of one or more products referred to in the previous paragraphs, taxation of those parts shall be determined accordingly based on this Directive, independently from the CN code under which the product falls as a whole. <i>The Commission shall be empowered to adopt an implementing act specifying the methodology to determine the taxation of blended products.</i> <i>Such methodology should ensure that the benefits from lower tax rates applicable to sustainable energy products are preserved, while minimizing the administrative burden on the entities concerned by this paragraph.</i>

Amendment 4 – Article 11(2)

Commission proposal	Amendment suggestion
1. Member States may express their national levels of taxation in units other than that specified in Articles 7 to 10 provided that the corresponding levels of taxation, following conversion into those units, are not below the minimum levels specified in this Directive. 2. When volume units are applied, the volume shall be measured at a temperature of 15° C.	1. Member States may express their national levels of taxation in units other than that specified in Articles 7 to 10 provided that the corresponding levels of taxation, following conversion into those units, are not below the minimum levels specified in this Directive. 2. When volume units are applied, the volume shall be measured at a temperature of 15° C. <i>When weight units are applied, the weight shall be measured in kilograms.</i>
Justification: Amendment needed for clarification purposes.	

Amendment 5 - Article 13(3) - New

Commission proposal	Amendment suggestion
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	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 renewable electricity over a transitional period of ten years.
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Amendment 6 – Article 15

Commission proposal	Amendment suggestion
<p>1. Without prejudice to Article 5, Member states shall apply, as a single use, under fiscal control not less than minimum levels of taxation as set out in Tables B and D of Annex I to energy products supplied for use as fuel to vessels, and to electricity used directly for charging electric vessels, for the purposes of intra-EU waterborne regular service navigation, fishing and freight transport.</p> <p>For the purposes of the first subparagraph, electricity shall be ranked among motor fuels indicated in Table B of Annex I.</p> <p>Over a transitional period of ten years, minimum rates of zero shall apply to sustainable biofuels and biogas, low-carbon-fuels, renewable fuels of non-biological origin, advanced sustainable biofuels and biogas and electricity.</p> <p>For the purposes of this Article, ‘intra-EU waterborne navigation’ shall mean navigation between two ports located in the Union, including domestic navigation.</p> <p>For the purposes of this Article, ‘regular service’ shall mean a series of ro-ro passenger ship or high-speed passenger craft crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either: according to a published timetable or with crossings so regular or frequent that they constitute a recognisable systematic series.</p> <p>For the purposes of this Article, ‘freight transport’ shall mean a scheduled or non-scheduled service performed by vessel carrying revenue loads other than revenue passengers, excluding voyages carrying one or more revenue passengers and voyages listed in published timetables as open to passengers.</p>	<p>1. Without prejudice to Article 5, Member states shall apply, as a single use, under fiscal control not less than minimum levels of taxation as set out in Tables B and D of Annex I to energy products supplied for use as fuel to vessels, and to electricity used directly for charging electric vessels, for the purposes of intra-EU waterborne regular service navigation, fishing and freight transport.</p> <p>For the purposes of the first subparagraph, electricity shall be ranked among motor fuels indicated in Table B of Annex I.</p> <p>Over a transitional period of ten years, minimum rates of zero shall apply to sustainable biofuels and biogas, low carbon fuels, renewable fuels of non-biological origin, advanced sustainable biofuels and biogas and electricity.</p> <p>For the purposes of this Article, ‘intra-EU waterborne navigation’ shall mean navigation between two ports located in the Union, including domestic navigation.</p> <p>For the purposes of this Article, ‘regular service’ shall mean a series of ro-ro passenger ship or high-speed passenger craft crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either: according to a published timetable or with crossings so regular or frequent that they constitute a recognisable systematic series.</p> <p>For the purposes of this Article, ‘freight transport’ shall mean a scheduled or non-scheduled service performed by vessel carrying revenue loads other than revenue passengers, excluding voyages carrying one or more revenue passengers and voyages listed in published timetables as open to passengers.</p>

	<p>1. Without prejudice to Article 5, Member States shall exempt, under fiscal control, energy products supplied for use as fuel to vessels and electricity used directly for charging electric vessels as long as the vessel is subject to the EU ETS [reference to the ETS Directive].</p> <p>The Commission shall examine the effectiveness of this measure five years after this Directive comes into force and proceed in accordance to Article 20 (3), if necessary.</p>
<p>2. Member states may exempt or apply the same levels of taxation applied for intra-EU waterborne navigation to extra-EU waterborne navigation according to the type of activity.</p>	<p>2. Member states may exempt or apply the same levels of taxation applied for intra-EU waterborne navigation to extra-EU waterborne navigation according to the type of activity.</p>
<p>3. Member States shall subject to taxation laid down in the first paragraph motor fuels and electricity used in the field of the manufacture, development, testing and maintenance of vessels, and motor fuels and electricity used for dredging operations in navigable waterways and in ports.</p>	<p>3. Member States shall subject to taxation laid down in the first paragraph motor fuels and electricity used in the field of the manufacture, development, testing and maintenance of vessels, and motor fuels and electricity used for dredging operations in navigable waterways and in ports.</p> <p>2. Without prejudice to Article 5, Member States shall apply, as a single use, under fiscal control not less than minimum levels of taxation as set out in Tables B and D of Annex I to energy products and electricity used in the field of the manufacture, development, testing and maintenance of vessels, and motor fuels and electricity used for dredging operations in navigable waterways and in ports.</p> <p>Over a transitional period of not less than ten years, minimum rates of zero shall apply to sustainable biofuels and biogas, low-carbon fuels, renewable fuels of non-biological origin, advances sustainable biofuels and biogas and electricity.</p>

Amendment 7 - Article 21

Commission proposal	Amendment suggestion
<p>1. Only the following energy products shall be subject to the control and movement provisions of Directive 2008/118/EC:</p> <p>(e) products falling within CN codes 2711 (except 2711 11, 2711 21 and 2711 29)</p>	<p>1. Only the following energy products shall be subject to the control and movement provisions of Directive 2008/118/EC:</p> <p>(e) products falling within CN codes 2711 (except 2711 11, 2711 21 and 2711 29).</p>

Commission proposal	Amendment suggestion
<p>1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.</p> <p>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.</p> <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 Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</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 Making.</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>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.</p> <p>2. The power to adopt <i>implementing and</i> the delegated acts referred to in Article 2(6), Article 2(8) and Article 5(2) shall be conferred on the Commission for an indeterminate period of time from 1 January 2023.</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 Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p> <p>4. Before adopting <i>an implementing or</i> a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making.</p> <p>5. As soon as it adopts <i>an implementing or</i> a delegated act, the Commission shall notify it to the Council.</p> <p>6. An implementing act adopted pursuant to Article 2(6) and 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 <i>implementing and</i> delegated acts by the Commission, of any objection formulated to them, or of the revocation of the delegation of powers by the Council.</p>