

RECOMMENDATIONS

Energy Taxation Directive

15 November 2021

The revision of the Energy Taxation Directive should quickly send a strong and consistent price signal for renewable gases

Reforming of the Energy Taxation Directive is essential to set up a European framework conducive to the fast uptake of renewable energies by European citizens, businesses and the public sector. **A successful reform will provide strong positive price signals** to shift to renewable energies, **especially renewable gases, such as biomethane**.

By 2050, EU's domestic biomethane supply of biomethane can alone serve 40% of the future gas consumption.

Based on the proposal published by the European Commission in July 2021, the European Biogas Association wishes to put forward the **following recommendations to the European Parliament and the Member States**:

1. Set a level playing field in minimum taxation levels reflecting environmental performance of fuels and of electricity sources
2. Use categories of biogases, biofuels and RFNBOs that are based on the Renewable Energy Directive 2018/2001 and taxation minima consistent with their sustainability requirements
3. Give biohydrogen the lowest minimum taxation level, like for hydrogen of non-biological origin (RFNBO)
4. Ensure that Member States can still exempt sustainable renewable fuels from excise duty
5. Strive to agree on a new ETD because this revision is essential to send a positive price signal for renewable gases
6. Clarify the possibilities for Member States to adapt the structure of minimum tax levels

1. Set a level playing field in minimum taxation levels reflecting environmental performance of fuels and of electricity sources

Some minimum taxation levels that are proposed are not consistent with the expressed goal to ground the taxation structure in **environmental performance** of fuels and electricity:

- a. **"Sustainable food and feed crop biogas" in 2033 is taxed at the same level as fossil fuels.**
 - DG Taxation may have mixed energy crops triggering land-use change with food and feed crops grown sustainably with no land-use impact.
 - Biogas produced from sustainably grown food and feed crops has a lower climate impact than fossil fuels. This is ensured by the sustainability and GHG emissions savings criteria fixed in the Renewable Energy Directive 2018/2001 ("RED II").
 - Recital (91) of the RED II upholds that *"Feedstock which has low indirect land-use change impacts when used for biofuels, should be promoted for its contribution to the decarbonisation of the economy"*.
- b. **Electricity is taxed at the lowest level whatever its source and the GHG emissions of its production. Electricity generated by fossil fuels would have a minimum taxation level 35 times less than the sustainable biogas in 2023 and 71 less than fossil fuels.**
- c. **The minimum taxation level of "renewable fuels of non-biological origin" (RNFBO) is not associated with GHG emissions savings criteria.**

The definition of RNFBO should refer to the definition of RNFBOs in the RED II and to the GHG emission savings requirements for these fuels included in the RED II¹, just like a similar reference is made for biofuels and biogas, to ensure fair competitive conditions in the market.

Proposed minimum taxation levels applicable to motor fuels and electricity for transport²

EUR/GJ	As of 2023	As of 2033
Petrol/Gasoil/Kerosene	10.75	10.75
Sustainable food and feed crop biogas	5.38	10.75
Sustainable biogas	5.38	5.38
Advanced sustainable biogas	0.15	0.15
Electricity (whatever its source)	0.15	0.15
RNFBO (not tied to a carbon performance level)	0.15	0.15

A sustainable biogas taxed 36 times more and 71 more than fossil electricity, in 2023 and 2033 respectively

Proposed minimum taxation levels applicable to motor fuels and electricity for specific sectors (Article 8) as well as to heating fuels and electricity for heating (Article 9)³

EUR/GJ	As of 2023	As of 2033
Gas oil	0.9	0.9
Sustainable food and feed crop biogas	0.45	0.9
Sustainable biogas	0.45	0.45
Advanced sustainable biogas	0.15	0.15
Electricity (whatever its source)	0.15	0.15
RNFBO (not tied to a carbon performance level)	0.15	0.15

A sustainable biogas taxed as much as fossil fuels in 2033

¹ Article 29a in the proposal of revision published by the European Commission, COM(2021) 557 final.

² Extract from Tables A and D – Annex I of the proposal.

³ Extract from Tables B, C and D – Annex I of the proposal.

This is opposite to the accelerated phase-out of fossil fuels required to achieve the EU climate objectives. This should be corrected in the negotiations among Member States.

2. Use categories of biogases, biofuels and RFNBOs that are based on the Renewable Energy Directive 2018/2001 and tax minima consistent with their sustainability requirements

Four biogas types are present in the proposal⁴ and definitions are neither clear, nor consistent with the Renewable Energy Directive 2018/2001 ("RED II"). **Such proposal would bring legal confusion.**

The RED II introduces sustainability and GHG emission saving criteria (Article 29) that biogas production has to comply with in order to be counted towards renewable targets, be eligible for support, etc. The RED II thus distinguishes primarily between biogas which is compliant with these criteria ("sustainable biogas") and non-compliant biogas. **The distinction between "sustainable food and feed crop biogas" and "sustainable [but not advanced] biogas" proposed by the Commission is therefore irrelevant.**

3. Give hydrogen of renewable biological origin (biohydrogen) the lowest minimum taxation level, like for hydrogen of non-biological origin (RFNBO)

Biohydrogen can be made from biogas or through gasification of biomass. While production pathways require more development and testing, this renewable energy can be a part of the renewable gas mix. **In the medium and long-term, it can meet local needs of industries and transportation** in areas that remain away from the future hydrogen backbone transmission infrastructure. It can meet the GHG emission savings required by the RED II while having no direct GHG emissions.

It is legitimate, therefore, to treat it the same way as hydrogen of non-biological origin (RFNBO). **We recommend setting a level playing field for all sources of green hydrogen**, including biohydrogen from sustainable biomass. The legislators should coordinate their reform of the ETD and the RED II to ensure this integration in a legally consistent manner.

4. Ensure that Member States can still exempt sustainable renewable fuels from excise duty

Some Member States have implemented **tax exemptions for biomethane and biogas**. Such measures are **strong incentives for the consumption of biomethane**, for the purpose of decarbonising end-uses faster (whether it is transport, industry or heating in buildings) and supporting a circular management of waste and residues.

We recommend having tax exemptions of Article 16 applicable to biogas compliant with sustainability requirements of the RED II, and not just to "advanced biogas" (i.e. biogas made from feedstocks of Annex IX – Part A of the RED II), and to all end-uses of biogas.

The ETD should give Member States flexibility to implement tax reductions or exemption for renewable energies, knowing the State Aid Rules⁵ already regulate this kind of measures to ensure they are compatible with the internal market. For instance, Member States should be allowed to grant tax exemption or a tax reduction for a specific end-use sector or specific categories of households, provided it is compatible with State Aid Rules.

Overall these provisions will provide Member States with **a critical tool to achieve their energy transition.**

⁴ "Non-sustainable biogas", "sustainable food and feed crop biogas", sustainable not advanced biogas and "advanced sustainable biogas".

⁵ The General Block Exemption Regulation (to be revised soon) and the upcoming revised State Aid Guidelines for energy and environment (CEEAG).

5. Strive to agree on a new ETD because this revision is essential for a positive price signal for renewable gases such as biogas

Under the current ETD, sustainable biogas is taxed at the same level as natural gas unless the Member State decides a tax reduction or exemption. **To match taxation with environmental performance, it is urgent to revise minimum taxation levels applicable to biogas.**

The on-going negotiations among Member States are an opportunity to set up urgently a taxation framework that reflects climate performance of renewable fuels and that will **lead to a faster substitution of natural gas by renewable gases.**

We urge Members States to agree without delay on a new ETD because the text is essential for a positive price signal for renewable gases such as biogas.

6. Clarify the possibilities for Member States to adapt the structure of minimum tax levels

The proposal of the Commission is ambiguous about the extent to which Member States can adapt the structure of minimum tax levels. This should be clarified.

- a. Should Member States only *respect the ranking structure?* In this case, all fuels within a rank should keep the same minimum and should always be lower than the previous rank and higher than the following rank.
- In this case, the distances between the taxation levels of different categories are not to be strictly observed.
- b. Or should they also *keep the relations between the different ranks?* This would mean:
- fuels of rank 2 should always be $\frac{2}{3}$ of fuels of rank 1;
 - fuels of rank 3 should always be $\frac{1}{2}$ of fuels of rank 1
 - the distances between the taxation levels of different categories should be strictly observed

Contact

Anthony Lorin – Policy Officer lorin@europeanbiogas.eu

About the EBA

The **European Biogas Association** is the voice of renewable gas in Europe since 2009. EBA advocates the recognition of biomethane and other renewable gases as sustainable, on demand and flexible energy sources that provide multiple knock-on socio-economic and environmental benefits. Supported by its members, EBA is committed to work with European institutions, industry, agricultural partners, NGOs and academia to develop policies which can enable the large-scale deployment of renewable gases and organic fertilisers throughout Europe, supported by transparent, well-established sustainability certification bodies to ensure that sustainability remains at the core of the industry. The association counts today on a well-established network of over 200 national organisations, scientific institutes, and companies from Europe and beyond.