



27 February 2024

Dear Member States' representatives,

Our organizations are monitoring with great concern the ongoing revision of the EU Energy Taxation Directive (ETD). We are following up on the letter that we addressed to you, on the same file, on 9 May 2023. Having in mind the latest Council Presidency compromise text of 6 February 2024, the **EU Biofuels Value Chain\*** and the **European Biogas Association** would like to reaffirm our position, as we observe that – unfortunately – our concerns have not been addressed in the text proposed by the Belgian Presidency. We would also like to share additional concerns on the ETD revision that are crucial for the EU biofuel sector as a whole.

1. **Minimum taxation rate (MTR) applied to sustainable (i.e. Renewable Energy Directive-compliant) crop-based biofuels and biogas.** As we highlighted in our previous letter, applying the same MTR to sustainable crop-based biofuels and biogas as well as to unsustainable ones and even to fossil fuels – even with a ten-year transition period where lower rates would apply to sustainable crop-based biofuels and biogas – is extremely problematic for the sector's legal certainty. Placing them in the same category (i.e. category 1 defined at page 9 of the Presidency text) as unsustainable biofuels and fossil fuels would imply that they have the same, or similar, environmental performances: this is in total contradiction with the RED, which explicitly acknowledges the contribution to decarbonization and, more broadly, the environmental performance of all biofuels and biogases complying with the strict sustainability criteria defined in the RED itself. Moreover, sustainable crop-based biofuels, such as renewable ethanol, biodiesel and biogas, are still by far the biggest contributors to today's decarbonisation of the European transport sector, and can immediately and cost-effectively reduce the EU's reliance on imported fossil fuels. Therefore, not providing them with the right fiscal incentives over fossil fuels and unsustainable biofuels would risk jeopardizing the EU's very own decarbonization and energy independence ambition.

In this context, please note that RED III continues the volume limitation of biofuels and biogas through the cap of 7% or 1.7% of final energy consumption with an authorisation for a national adjustment. The share of biofuels and biogas will decline anyway as a result of electrification. The appropriate definition of energy taxation for all kinds of sustainable biofuels and biogases would allow the focus to be placed on areas of application that are difficult or impossible to electrify (heavy goods transport, agriculture and construction). The prerequisite for machine manufacturers to grant approvals for operations with biofuels and biogases even after 2030 is the necessary reliability over time, which must also take into account the service life of the machines.

2. **Categorisation of non-crop biofuels and biogas.** The text creates a lot of regulatory uncertainty because – once again – of its misalignment with the RED.
  - "Category 2" at page 9 corresponds to the unclear and undefined category of "sustainable biofuels and biogas other than food and feed crop biofuels and biogas", whereas "category 3" includes "advanced sustainable biofuels, bioliquids and biogas".
  - To be noted: while the COM proposal defined "advanced" by a direct reference to the corresponding RED definition, the Presidency text defines (page 5) "advanced biofuels,

bioliquids and biogas” as those produced from feedstocks listed in Annex III, which is at page 51 and is basically a copy-paste of current Annex IX of the RED. The problem is that said Annex is meant to be regularly updated with the inclusion of new sustainable feedstocks. In fact, a revision is currently being finalized by the European Commission.

- Therefore, the fact that there is not anymore a dynamic reference to the RED is highly risky: the biofuels and biogas produced from feedstocks expected to be included in Annex IX in the ongoing Annex IX revision would end up being in category 2, with unjustified much higher taxation levels than category 3.
  - Member States may decide to avoid that and “include low-carbon fuels and sustainable biofuels and biogas other than food and feed crop biofuels and biogas into category 3”, but only for a 10-year transitional period: once again, this goes against regulatory certainty.
3. **Options to differentiate MTRs for blended products.** The only option that truly encourages higher blends of sustainable biofuels is option a. (at page 7), which was the initial Commission proposal: each component of the energy product to be taxed separately, regardless of the overall classification of the product. The two other proposed options should therefore be deleted: b. the tax rate to be determined based on the category of the main component of the energy product and c. Member States to assess the content of all or some energy products on an average basis.

**Based on the concerns identified above, we ask the Council to agree on the following modifications to the latest Presidency text:**

- **Category 3 should include all feedstocks included in RED Annex IX over time (through a direct reference to RED Annex IX in the ETD definition of “advanced”), whereas category 2 should be about all sustainable biofuels and biogas (crop-based and non-crop) not included in Annex IX. Category 1 would therefore only include fossil fuels and non-sustainable biofuels.**
- **The only option to be retained to differentiate minimum taxation rates for blended products should be option a. in the Presidency text, i.e. each component of the energy product to be taxed separately, regardless of the overall classification of the product. This would correspond to the initial Commission proposal.**

We hope that the arguments above stated are taken under consideration in the upcoming discussions on the ETD in the meeting of the Working Party on Tax Questions of 29 February 2024. We are fully available to provide further arguments if you deem it necessary.

Sincerely,

The Members of the EU Biofuels Value Chain\* and the European Biogas Association

\* The EU Biofuels Value Chain represent all actors from farming to biofuels production:

- **CEFS** – represents EU beet sugar manufacturers;
- **CEPM** – represents the maize chain: corn, maize silage, maize seed, and sweet corn;
- **C.I.B.E.** – represents the European sugar beet growers;
- **Copa and Cogeca** – represent European farmers and agri-cooperatives;
- **European Biodiesel Board (EBB)** – represents the European biodiesel industry;
- **European renewable ethanol association (ePURE)** represents the European renewable ethanol producers;
- **FEDIOL** – represents the interests of the European vegetable oil and protein meal industry.