

## POSITION PAPER

# on the revision of the Directive restructuring the Community framework for the taxation of energy products and electricity (Energy Taxation Directive)

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The German Association of Local Public Utilities (Verband kommunaler Unternehmen, VKU) represents more than 1 500 public utilities and local-economy companies in the sectors of energy, water/wastewater, waste management and telecommunications. With over 283 000 employees, approximately 123 billion euros of sales revenue were generated and more than 13 billion euros were invested in 2019. In the final customer segment, the VKU member companies have a large part of the market in the central supply and disposal sectors: electricity 62 percent, gas 67 percent, drinking water 91 percent, heating 79 percent, wastewater 45 percent. Every day, they dispose of 31 500 tonnes of waste and significantly contribute through separate collection to the fact that Germany has the highest recycling quota in the European Union, at 67 percent. More and more local companies are committing themselves to broadband development. 203 companies invest more than 700 million euros per year. For broadband development, 92 percent of the companies are counting on taking glass fibres right into the buildings. We keep Germany running – climate-neutral, efficient, sustainable. Our contribution to today and tomorrow: #Daseinsvorsorge. Our positions: 2030plus.vku.de.

**Verband kommunaler Unternehmen e.V.** · Invalidenstraße 91 · 10115 Berlin  
Phone +49 30 58580-0 · Fax +49 30 58580-100 · [info@vku.de](mailto:info@vku.de) · [www.vku.de](http://www.vku.de)

VKU agrees to a publication of the position statement.

If contact person details are included, please black them out before publication.

## VKU's key positions

VKU explicitly welcomes the significant revision of the Directive 2003/96/EC currently in force and shares the conclusion of the European Commission that the current Directive must be adjusted according to the provisions of the Green Deal. Achieving the intended goal of the Green Deal or the EU climate law requires the use of all sustainable, greenhouse-gas-neutral energies. This especially includes by-products that are unavoidable in waste and wastewater disposal. Taxing these products only increases the costs of the disposal and the energy gained and used from this disposal. This taxation would therefore be counter-productive to the EU goals.

In our opinion, the following changes to the legislation proposal of the European Commission are therefore necessary:

1. **No application of the Directive to sewage sludge, waste or sewage/landfill gases.** In VKU's view, the taxation of waste and sewage sludge remains a competence of the Member States. Furthermore, certain biogases (landfill/sewage gases) should also be removed from the scope of application of the Directive.
2. **Continued application of a reduced tax rate for operational use.** The removal of this provision would lead to considerable additional costs for companies and eventually to increasing consumer prices.

## VKU's positions in detail

### I. Clarification of the scope of the equivalence principle

#### **Recommendation:**

It must be made clear that the so-called equal levels principle in Article 5 no. 1 s. 1 only applies regarding tax rates within a table of Annex I, namely for minimum levels of taxation. Furthermore, it is to be made clear that Member States can determine the proportions between tax rates of their own accord as long as their national tax rates are above the minimum levels of taxation.

#### **Justification:**

For reasons of legal clarity, it should be explained in the recitals that the equal levels principle defined in Article 5 paragraph 1 no. 1 applies only when a Member State wishes to transfer the minimum levels of taxation prescribed in the Directive into national law. If a Member State collects higher tax rates on energy generation and electricity than the prescribed minimum levels of taxation, it is incumbent upon the sovereign decision capacity of the Member States to design the proportions between the various tax rates.

### II. Continued application of the reduced tax rate for operational use

**Recommendation:**

VKU requests to continue the application of reduced tax rates for operational use.

**Justification:**

According to Article 5 no. 4 of the Directive 2003/96/EC, the Member States have the possibility of taxing energy generation for business use with a reduced rate. Germany has implemented this so that only companies of the so-called production industry can benefit from this (see § 54 of the German Energy Tax Act, § 9b of the German Electricity Tax Act). The production industry only includes companies that are part of certain sections of the industrial sector classification due to their main activity and react therefore especially sensitively to the evolution of energy prices. If the possibility of unburdening these companies at least partially through reduced energy/electricity tax rates were to be removed in the future, these companies would have to bear considerable additional financial burdens.

**III. (Non-)Applicability of the Energy Taxation Directive to waste and sewage sludge and to biogas from wastewater disposal**

**Recommendation:**

We call for clarification in the recitals that sewage sludge and waste as well as biogas produced in wastewater disposal are not covered by the Energy Tax Directive and therefore fall under the regulatory competence of the Member States.

**Justification:**

The taxation of sewage sludge and waste is regulated differently between the different Member States. In Germany, municipal waste, sewage waste and other low-calory waste are exempt from energy taxation according to § 1b of the Energy Tax Regulation because determining the small amount of hydrocarbons contained in municipal waste would only lead to a disproportionate cost for the companies and the administration, according to the regulation justification. The same applies to sewage sludge and other low-calory waste and biogas. This argument can also be applied to the Energy Taxation Directive. Member States should therefore decide autonomously whether they want to burden their financial administration and companies with the additional bureaucratic and financial cost. Furthermore, it is questionable whether taxing the energy from waste and sewage sludge would make a significant contribution to CO<sub>2</sub> emission reduction.

In order to achieve the climate target, energy taxation must incentivise (steering effect) the usage of lower "fuel emissions". The person responsible for fuel use and thus fuel emissions must have the option of using fewer emissions or less emission-rich fuels.

This incentive or tax allowance is not available to the operator of a thermal plant to treat sewage sludge or the above-mentioned waste. In addition, sewage sludge from large sewage treatment plants in Germany must be treated thermally in the future. The sole main purpose of municipal waste incineration is the disposal of waste that is not of high recyclable value, whereby "high recyclable value" includes "without increasing pollutants

in products”, but not energy conversion and transformation. If this waste contains relevant amounts of carbon compounds and can be burnt, it may not be stored in landfills, instead it must be burnt. The provision of energy from the waste heat released during incineration is then to be conducted in order to make the thermal treatment as sustainable as possible. Neither the plant operator nor beforehand the waste collector or preparator have an influence on the composition of the waste. Public disposal companies are also legally obliged to ensure the disposal of certain categories of waste.

The inclusion of the waste mentioned above as well as sewage sludge and biogas in the Energy Taxation Directive would make the absolutely necessary and legally obligatory disposal considerably more expensive, without achieving any protection for the climate. It would lead to unjustified additional costs of billions of euros for the fee payers and especially for the medium-scale economy.

For the same justified reasons, the incineration of municipal waste (which by definition used to include sewage sludge) and hazardous waste was explicitly exempted from the EU emissions trade (see § 2 paragraph 1 in conjunction with Annex 1 Part 2 no. 1 to 6 of the German Greenhouse Gas Emissions Trading Law).

**For questions or comments, please contact:**

Baris Gök  
VKU Headquarter  
Policy Advisor  
Finance and Taxes  
Telephone: +49 30 58580-134  
E-Mail : [goek@vku.de](mailto:goek@vku.de)

Kai Pittelkow  
VKU Brussels Office  
Senior Policy Advisor  
EU energy and climate policy  
Telephone: +32 274 016 53  
E-Mail: [pittelkow@vku.de](mailto:pittelkow@vku.de)