

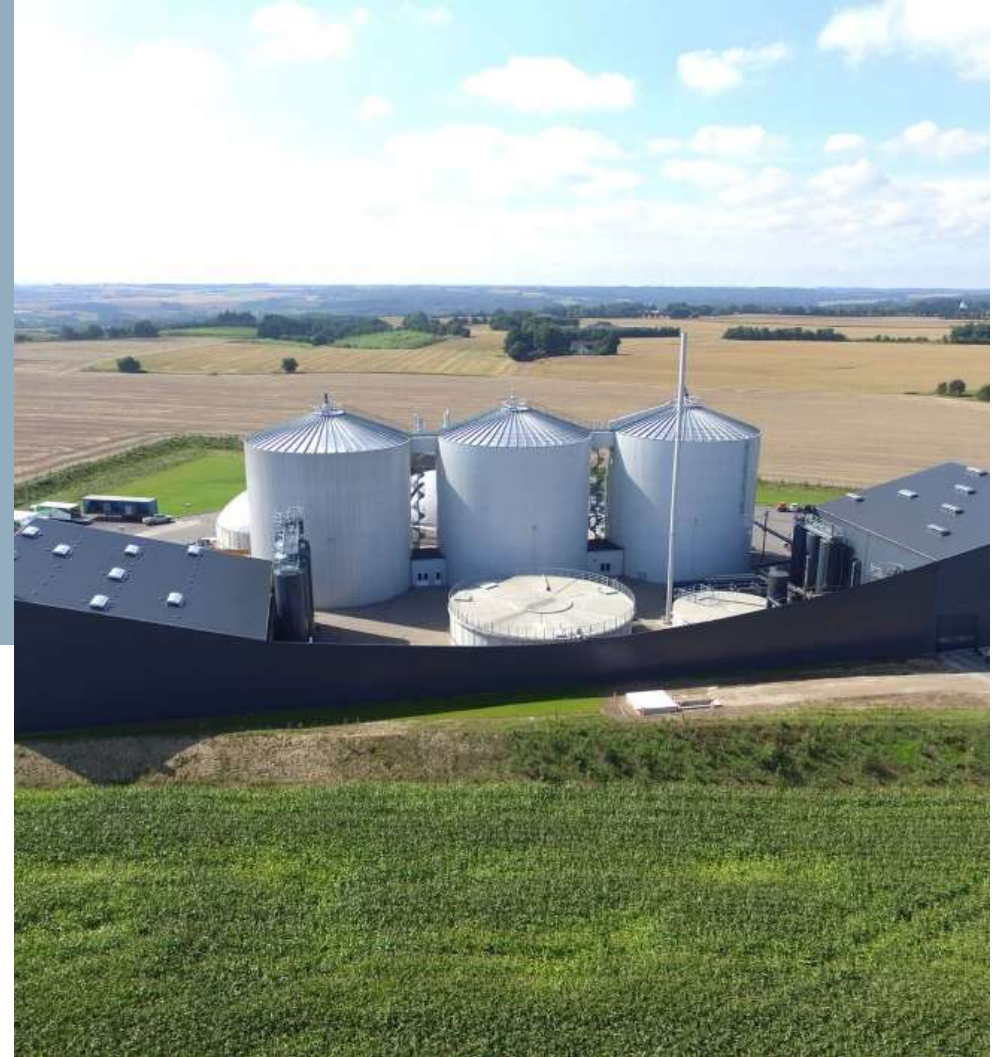
Energy Taxation on biogas - now and in the future

Bettina Mikkelsen

bm@hulgaardadvokater.dk

+ 45 42 13 42 44

hulgaard advokater



Topics

Introduction



The current Energy Taxation Directive
– a framework for Energy Taxation in the EU



The special Refinery rule (art. 21, 3)



Revision of the Energy Taxation Directive
– a part of the European Green Deal

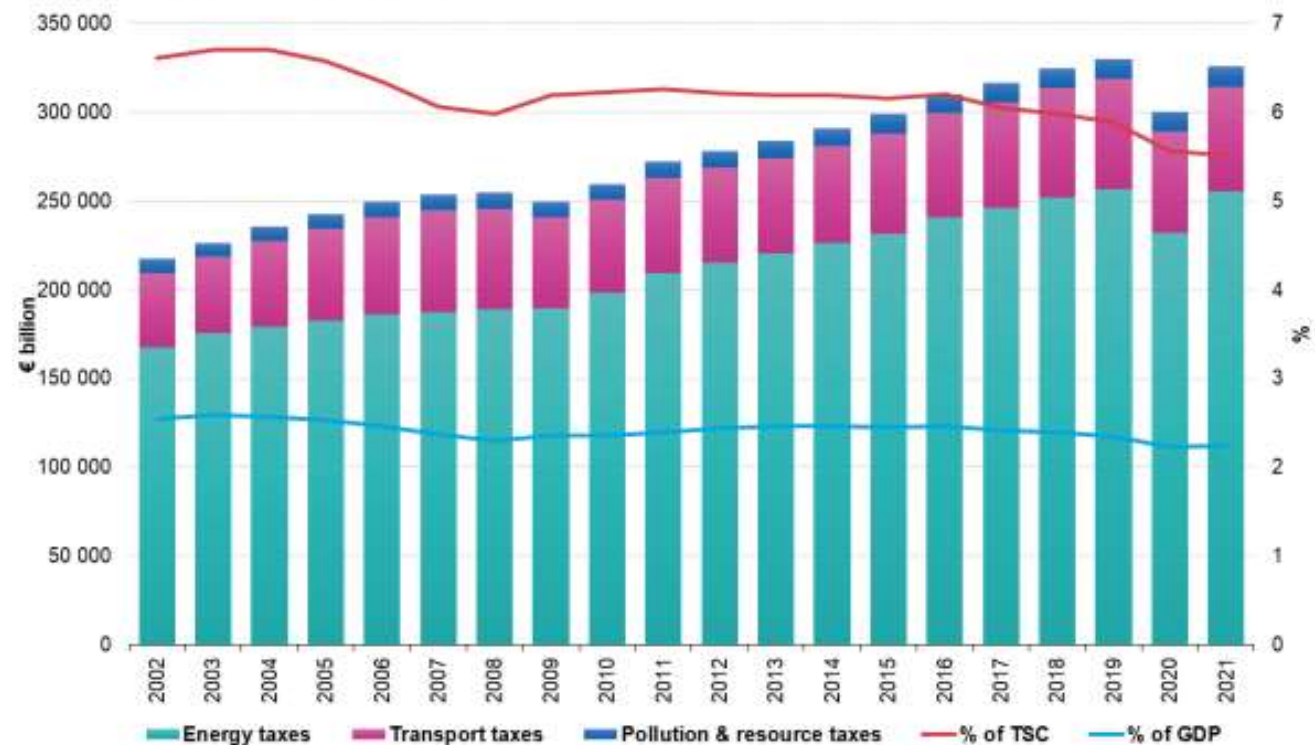
Introduction

Energy Taxes in the EU

“Taxes on energy in the EU accounted for more than three-quarters of the total revenues from environmental taxes (78% of the total) in 2021, well ahead of taxes on transport (18%) and pollution and resources (3.6%)”

Source: Eurostat

Environmental tax revenue by type and total environmental taxes as share of TSC and GDP, EU, 2002-2021
(€ billion and % TSC and % GDP)



Source: Eurostat (online data codes: env_ac_tax, gov_10a_taxag)

Left side scale: Environmental tax revenue by type, € billion.
Right side scale: Total environmental taxes as share of TSC and GDP, %.
The shares of GDP and TSC are calculated using the national tax data from October 2021.

eurostat

The current Energy Taxation Directive (1)

A framework for Energy Taxation in the EU

Why is a framework for Energy Taxation implemented in the EU?

- To secure a proper functioning of the internal market
- To secure the achievement of the objectives of other Community policies

The framework for Energy Taxation in the EU includes:

- Minimum levels of taxation for most energy products, including electricity, natural gas and coal
- Common definitions which all Member States must implement in the national legislation, e.g. the definition of *"level of taxation"*
- Definition of energy consumption, by which Member States must implement exemption, and the opportunity to implement exemptions or reductions, when in compliance with the Directive

The current Energy Taxation Directive (2)

A framework for Energy Taxation in the EU

What is covered by the Energy Taxation Directive?

- *Art. 1: "Member States shall impose taxation on energy products and electricity in accordance with this Directive."*
- Energy products are defined in art. 2 by CN codes
- Biogas (CN code 2711 29 00) is covered by the Energy Taxation Directive

Taxation of biogas in Denmark

- Two different rates, depending on the classification of biogas
 - Taxed as biogas with a low tax rate, when delivered directly from producer to consumer
 - Taxed as natural gas with a high tax rate, when delivered from producer to consumer via the natural gas system

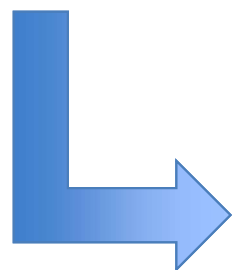
The current Energy Taxation Directive (3)

A framework for Energy Taxation in the EU

Tax rates in Denmark (2023)

Euro per Nm³	Energy tax	CO₂ tax	Total
Biogas	0.013	0.000	0.013
Natural gas	0.340	0.055	0.396

Conversion from the tax per Nm³ to tax pr. GJ



Euro per GJ	Energy tax	CO₂ tax	Total
Biogas	0.566	0.000	0.566
<i>After exemption</i>	<i>0.283</i>	<i>0.000</i>	<i>0.283</i>
Natural gas	8.598	1.393	9.991
<i>After exemption</i>	<i>1.172</i>	<i>1.393</i>	<i>2.565</i>

The current Energy Taxation Directive (4)

A framework for Energy Taxation in the EU

Taxation of biogas in other EU countries

- I expect this to be different from the taxation in Denmark
- E.g., Sweden:
 - Taxation based on the physical composition of the energy medium, in accordance with art. 16,1:

“Member States may, without prejudice to paragraph 5, apply an exemption or a reduced rate of taxation under fiscal control on the taxable products referred to in Article 2 where such products are made up of, or contain, one or more of the following products:

...products produced from biomass, including products falling within CN codes 4401 and 4402.
 - Exemption of energy tax on biogas is implemented

The special Refinery rule (1)

Art. 21, 3

Consumption of energy product for the production of the same energy product

- Part 1:

*“The consumption of energy products within the curtilage of an establishment producing energy products **shall** not be considered as a chargeable event giving rise to taxation, if the consumption consist of energy products produced within the curtilage of the establishment.”*



This means, that Member States must implement a tax exemption,
when e.g.:

- Natural gas is used to produce natural gas
- Mineral oil products are used to produce mineral oil products

The special Refinery rule (2)

Art. 21, 3

Consumption of energy product for the production of the same energy product

- Part 2:

*"Member States **may also** consider the consumption of electricity and other energy products not produced within the curtilage of such an establishment and the consumption of energy products and electricity within the curtilage of an establishment producing fuels to be used for generation of electricity as not giving rise to a chargeable event."*



This means, that Member States can also implement a tax exemption on other energy products, e.g. natural gas used to produce mineral oil products

The special Refinery rule (3)

Art. 21, 3

Pending case in Denmark

- Denmark has only implemented the mandatory part of art. 21, 3
- We are involved in a case in Denmark, in which we argue that the special Refinery rule shall apply for a biogas plant, consumption of natural gas
- The Danish Tax Authorities do not agree with us, as the biogas plant uses natural gas from the natural gas grid. According to the Danish Tax Authorities, natural gas and biogas are not considered to be the same energy product
- However, both natural gas and biogas are CH₄ and therefore in a chemical sense the same energy product
- Furthermore, the biogas is delivered to the natural gas grid after the biogas upgrading plant (for removal of CO₂), and the physical quantity of biogas exceeds the physical quantity of natural gas in the local part of the natural gas system

The special Refinery rule (4)

Art. 21, 3

Why is the Refinery rule implemented?

- As all other rules in the Energy Taxation Directive → to avoid distortion of competition and to secure a proper functioning of the internal market

Consequences of the Danish Tax Authorities' interpretation

- Potentially a different interpretation of the rule and classification of energy products compared to other Member States



Level playing field?

Revision of the Energy Taxation Directive (1)

A part of the European Green Deal

- A proposal for a revision of the Energy Taxation Directive was adopted by the Commission on 14 July 2021
- The new proposal aims to:
 - Align the taxation of energy products with EU energy and climate policies
 - Promote clean technologies
 - Remove outdated exemptions and reduced rates that currently encourage the use of fossil fuels



Revision of the Energy Taxation Directive (2)

A part of the European Green Deal

Making energy taxation greener

Taxation can help reach climate and environment objectives by encouraging a switch to cleaner energy and greener industry.

The EU's energy taxation framework was last updated in 2003. It is out of step with the Green Deal and poses problems for the EU's Internal Market.

We need to steer the transition away from fossil fuels towards cleaner energy and more environmentally friendly consumer choices.

Revision of the Energy Taxation Directive (3)

A part of the European Green Deal

The main changes in the revised Directive

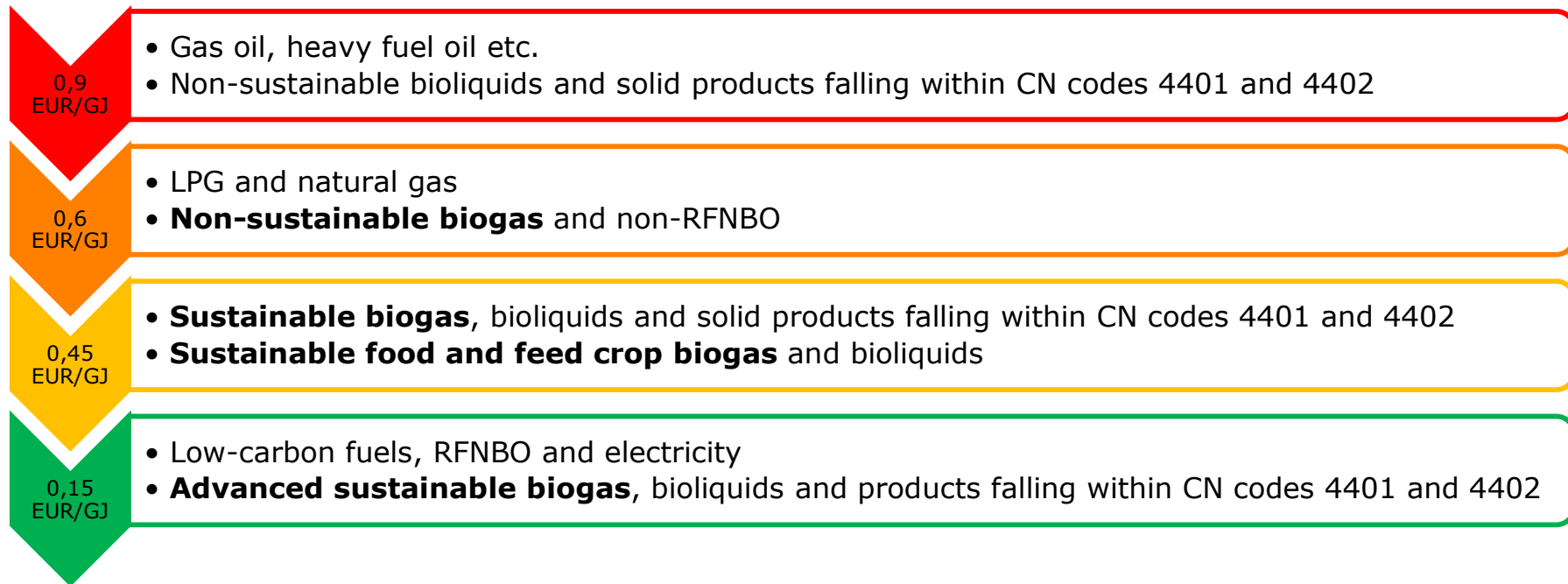
- Taxation according to energy content and environmental performance rather than volume
 - ensure that the environmental impact of individual fuels is better reflected, helping businesses and consumers to make cleaner, more climate-friendly choices
- Simplified categorization of energy products
 - ensure that fuels most harmful to the environment are taxed the most
- Energy products grouped and ranked according to their environmental performance
 - ensure higher minimum rates on energy products with the most negative impact on the environment
- Phasing out exemptions for certain products and home heating, and minimization of exemptions for fuels for intra-EU air transport, maritime transport and fishing

Revision of the Energy Taxation Directive (4)

A part of the European Green Deal

The revised Directive's impact on biogas

- Energy products grouped and ranked, first in 4 groups for a transitional period

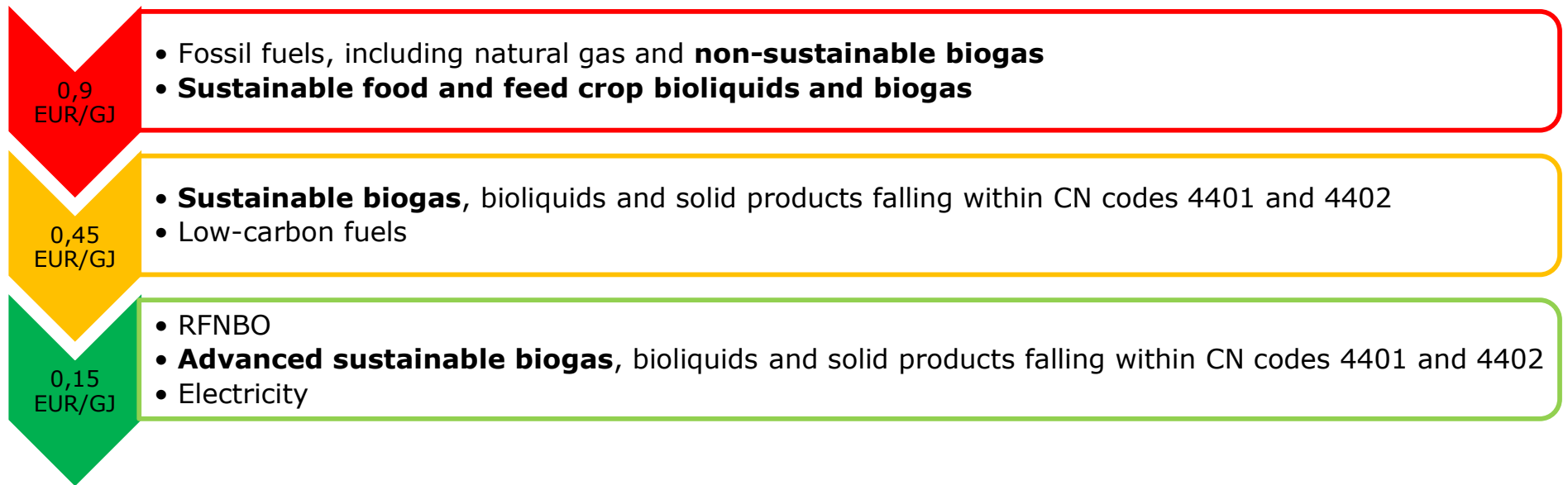


Revision of the Energy Taxation Directive (4)

A part of the European Green Deal

The revised Directive's impact on biogas

- Energy products grouped and ranked in 3 groups after a transitional period



Interaction and perspectives

...between Energy Taxation Directive and other climate legislation

