

13. A taxonomy of environmentally sustainable activities to orient Covid-19 tax measures to environmental objectives

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1. INTRODUCTION

In 2018, the European Commission presented a plan for sustainable finance aiming at reorienting capital flows towards sustainable activities.² Among other measures, the Commission announced the development of a Taxonomy for sustainable economic activities. The Taxonomy and delegated acts will list such activities and provide minimum environmental standards for each of them.

In December 2019, the European Commission's chairwoman introduced a new strategic plan for the European Union ('The European Green Deal'),³ aiming at reaching climate neutrality in 2050 by, that is, creating a European sustainable investment fund, revising the Energy Taxation Directive⁴ ('ETD') and promoting a circular economy. In recent years and after two missed attempts for the Commission to revise the ETD, voices have been raised against the current provisions. To its credit, the ETD was drafted long before climate impact caused by the use of fossil energy was the main concern. The same point might be made for state aid regulation and value added tax (VAT), where completing the internal market and avoiding any hostile competition between member states were higher on the preoccupations list than environmental concerns at the time of their adoption.

Since the rapid outbreak of Covid-19 throughout the world, governments are facing requests from weakened sectors to benefit from public financial support.⁵ The temptation is then high for governments to support economic activities with subsidies and tax incentives. However, not all activities are carbon-neutral or climate friendly: funding them might lead to supporting fossil energy and going against the international commitment under the Paris

agreement and the main objective of the Green Deal. And Covid-19 has also shown that air pollution is directly linked to economic activity.⁶

The aim of this chapter is to investigate the opportunity and the pertinence to refer to a Taxonomy for selecting the beneficiaries of tax measures and subsidies. On the one hand, the selection of activities that contribute to one or several of the six objectives included in the Taxonomy will foster energy transition and environment protection; on the other, it will provide a unified definition of environmental activities for tax purposes and help to safeguard a fair competition across Europe when it comes to protecting the environment and tackling climate change.

In this chapter, we discuss the potential use of the Taxonomy for establishing a common standard for preferential regimes for both state aids in the field of energy or environment and energy taxation. The first section presents the Taxonomy destined originally to financial sector regulation and the economic activities listed within. The second section is then dedicated to the evaluation of the current regime and the numerous exemptions and preferential regimes included in the ETD and VAT directive. It also assesses the State Aid legal framework and Section 7 of the General Block Exemption Regulation (GBER) which is dedicated to environmental aids. Finally, the last section is an attempt to bring coherence with the Taxonomy into the energy taxation legal framework.

2. THE TAXONOMY OF SUSTAINABLE ACTIVITIES FOR FINANCIAL PRODUCTS

In 2018, the European Commission adopted a new plan for financing a sustainable growth,⁷ where the reorientation of private and public funds to sustainable economic activities is identified as a key element for a transition to a greener economy. As part of this plan, three regulations were adopted by the Council and the Parliament: (1) the Benchmark regulation,⁸ (2) Disclosure regulation⁹ and finally (3) the Taxonomy.¹⁰ The Benchmark regulation intends to include some sustainable dimensions in financial benchmarks, that is, making it mandatory for providers to offer a reference benchmark in line with the EU climate objective. The Disclosure regulation, interestingly, requires financial market participants and financial advisers to publish pre-contractual and periodical information about the sustainability of their activities and the products they proposed. Among other information, it imposes on the manufacturer of a financial product or to the investee company itself the publication of the percentage of sustainable activities falling within the Taxonomy criteria. Finally, the Taxonomy builds up a harmonised database of environmentally sustainable activities. For this purpose, the Commission will develop screening criteria demarcating sustainable activities from others.

According to the Taxonomy, an environmentally sustainable activity is:¹¹

1. An activity contributing substantially to one or several of the six environmental objectives: (a) climate change mitigation; (b) climate change adaptation; (c) the sustainable use and protection of water and marine resources; (d) the transition to a circular economy; (e) pollution prevention and control; (f) the protection and the restoration of biodiversity and ecosystems;
2. An activity that does not harm any other objective;
3. An activity which is carried out in compliance with minimum safeguards identified in the regulation; and
4. An activity that meets the screening criteria specific to a certain area of business.

It is worth noting that the criteria should be assessed in a cumulative way, meaning that an activity will only be considered as sustainable if the four conditions are met.

The potential contribution of an activity to one of the six objectives is described in more detail in the Taxonomy provisions.¹² For instance, article 10 describes an economic activity that contributes substantially to the objective ‘climate change mitigation’ as follows:

An activity contributes substantially to the stabilisation of greenhouse gas concentrations in the atmosphere at a level which prevents dangerous anthropogenic interference with the climate system consistent with the long-term temperature goal of the Paris Agreement through the avoidance or reduction of greenhouse gas emissions or the increase of greenhouse gas removals, including through process innovations or product innovations.¹³

Then the same article lists different activities regarded as serving the objective such (1) generating, transmitting, storing, distributing or using renewable energy in line with Directive (EU) 2018/2001, including through using innovative technology with a potential for significant future savings or through necessary reinforcement or extension of the grid; (2) improving energy efficiency, except for power generation activities; or (3) increasing clean or climate-neutral mobility.

For the development of screening criteria, expertise from European experts was gathered to develop a methodology to assess the impact of economic activities on climate change and on the environment. This scientific input makes the Taxonomy rather an environmental regulation than a financial one. Two different reports were published by the group of environment experts,¹⁴ listing proposals of screening criteria for more than 140 economic activities, but only for two objectives linked with climate change. Ten major areas of the

economy are covered: Forestry; Agriculture; Manufacturing; Electricity, gas, steam and air conditioning supply; Water, sewerage, waste and remediation; Transportation and storage; Information and communications; Construction and real estate activities; Financial and insurance activities; and Professional, scientific and technical activities.

For every activity, screening criteria provide a precise estimation of the figures to meet by market operators to fulfil the objective. Furthermore, specific conditions are included to enact the do-not-significantly-harm principle and the minimum safeguards. For car manufacturing – an example of a key activity sector for decarbonising the economy – screening criteria might be summarised as follows:

- To be considered as contributing substantially to mitigate climate change, the tailpipe emissions shall be limited to a maximum of 50g CO₂/km under the World harmonised Light-duty vehicles Test Procedure (WLTP) protocol until 2025. From 2026 onwards, emissions of CO₂ will be further limited to 0g CO₂/km;
- To comply with the do-not-significantly-harm principle, the following requirements shall be met:
 - Direct emissions to air from exhaust gases of internal combustion engines; for this specific criterion, it is interesting to note that the Taxonomy requirements go further than the current thresholds under Euro 6 norm,¹⁵ imposing an additional effort of 10%;
 - Indirect emissions to air from the production of fuels and energy carriers;
 - Waste generation, with the application of the strengthened levels of recycling of the ‘end-of-life of vehicles directive’;¹⁶
 - Recycling of materials, in view of creating a circular economy;
 - Noise, as one of the parameters to evaluate tyres. With a special focus on tyres, the report proposed to go beyond tyre labelling regulation¹⁷ requirements by adding an indicator on the abrasion.
 - Road safety, as all vehicles coming from the factory should be compliant with Regulation No 661/2009 which establishes standards for releasing a vehicle on the European roads.

From a legal perspective, it is interesting to note that the scope is not limited to vehicles intended to be driven within the European Union but is also applicable when European factories manufacture cars and light commercial trucks for foreign markets. In this respect, the effort to be considered as an environmentally sustainable activity for financial purposes has to be assessed at the level of the company. As we will discuss later in this chapter, it means that

taxes levied at the production level rather than at the consumption level match particularly well with a potential application of the Taxonomy.

In general, the Taxonomy works as an aggregator of all environmental and climate concerns relating specially to a certain activity. In economic words, screening criteria are trying to encompass and mitigate all negative externalities caused by the economic activity in addition to its contribution to one or several environmental objectives.

3. THE CURRENT PORTFOLIO OF EXEMPTIONS AND PREFERENTIAL TAX REGIMES IN THE FIELD OF ENVIRONMENTAL AND ENERGY TAXATION

a. Exceptions and Preferential Regimes within the Energy Taxation Directive¹⁸

Before listing product exemptions and rate reductions of the ETD, it is important to recall that its first aim was not environmental. The ETD was adopted in the 1990s to avoid distortions of competition in the internal market and cover all excise levies. Per design, as every excise duty, it regulates production taxes. Due to this age, the current provisions of the ETD are dated and do not reflect the ambitious EU objectives in greenhouse gas (GHG) emissions reduction and protection of the environment.

The ETD does not create a specific tax but only imposes a certain level of taxation to a selection of energy products.¹⁹ Therefore, excise rates might be different depending on the member states where it is levied. Certain member states, such as France or Sweden, use several taxes to reach the minimum level of taxation imposed by the ETD.²⁰ For others, a specific levy was included in their tax system and is specifically designed for energy. For instance, the Irish tax on mineral oils is proportional to the carbon content to a certain extent since the revision of the Mineral Oil Tax bill.²¹

As long as the minimum levels of taxation included in the ETD are met, member states remain free to discriminate products based on their quality, the quantity produced, the usage or the business character of the consumption.²² For instance, several member states decided to discriminate rates between low and high sulphur content gasoil used as propellant or as heating fuel.²³ Some others, such as Austria or Denmark, decided to grant a favourable rate for gasoil with a minimum content of biofuel. More originally, Hungary raises upwards its level of taxation when the price of crude oil is less than 50 USD per barrel.

By design, the ETD includes also several exemptions and preferential regimes, authorising member states to tax at different rates the same energy

product. Some exceptions were purely transitional or are applicable only to very limited areas of member states' territories.²⁴ However, some other provisions which are not limited in time or to some territories are still in application. For instance, certain usages can justify a reduced rate, independently of their actual impact on the environment. It results in the fact that a similar product might be taxed differently according to its use, and that also for a similar use, the price paid is different depending on the member state or depending on the carbon nature of the product. Consequently, several scholars and the Commission itself pointed out that the current minimum levels of taxation imposed by the directive do not reflect their carbon content nor their pollutant potential.²⁵ This resulted in a specific paragraph in the new Green Deal strategy urging member states to consent to a reform of the ETD to meet the following aims:

- Aligning taxation of energy products and electricity with EU energy and climate policies, to contribute to the EU 2030 energy targets and climate neutrality by 2050;
- Preserving the EU single market by updating the scope and the structure of tax rates and rationalising the use of optional tax exemptions and reductions.²⁶

Exemptions and reduced rates based on the use of fuel might be addressed with the help of a Taxonomy. Indeed, under the current drafting, business owners and companies might benefit from reduced rates under the ETD on the one hand and carry activities harmful for the environment on the other. It consequently jeopardises the new aim recognised to excise duties of sending a price signal on the climate impact of fossil fuels. The idea discussed in this chapter is not to revoke all preferential regimes but instead to use the Taxonomy to bring more selectivity. A targeted mapping of economic activities may help to refine the current regime to reorient tax expenditures to activities that are contributing to general objectives of the European Union and its member states.

In keeping with this spirit, exemptions and reduced rates relating to business use might be limited to companies carrying out an activity contributing substantially to one of the six objectives listed in the Taxonomy. Without being intended for tax purposes, the Taxonomy is well designed to match the objective of an excise system including environmental and climate concerns:

- Economic activities benefiting from ETD business preferential regimes are covered by the Taxonomy;
- Activity of producing energy is included in the Taxonomy, so are the screening criteria linked to the manufacturing of all energy products.

Indeed, the Taxonomy includes the production of energy in two objectives: substantial contribution to climate change mitigation and substantial contribution to climate change adaptation. However, only certain ways of generating energy are considered as environmentally sustainable. Among others, are listed the production of electricity from renewables, which does not fall into the scope of the ETD, but also the use of gas for electricity generation, for heating and for cooling. The screening criteria are relatively severe, as they use a declining threshold for GHG emissions reaching 0g/CO₂ per unit by 2050. The addition of the Taxonomy criteria to benefit from the reduced business rates will consequently help to reinforce the environmental character of the ETD.

Moreover, the use of a Taxonomy will provide a better view on the amount of fossil energy used by member states to foster climate change mitigation and make it possible to align this objective with the Green Deal target.

b. VAT

The EU tax on added value is one of the most advanced tax systems on consumption in the world and one of the most harmonised public levies at the European level.

As for the ETD, the main objective of VAT harmonisation was the completion of the internal market. However, as a consumption tax, the fourth recital of the last VAT directive²⁷ establishes another objective:

A VAT system achieves the highest degree of simplicity and of neutrality when the tax is levied in as general a manner as possible and when its scope covers all stages of production and distribution, as well as the supply of services.²⁸

The neutrality principle requires to limit operations falling outside of the scope and to avoid potential competition distortion due to preferential tax regimes. A limit of two reduced rates per member state was consequently imposed – with an absolute minimum rate of 5%. Annex 3 lists goods and services where a reduced rate can be applied but does not include any product or service harmful to the environment.

In our opinion, the most problematic provision consists in article 110 of the VAT directive.²⁹ This article states as follows:

Member states which, at 1 January 1991, were granting exemptions with deductibility of the VAT paid at the preceding stage or applying reduced rates lower than the

minimum laid down in Article 99 may continue to grant those exemptions or apply those reduced rates.

The exemptions and reduced rates referred to in the first paragraph must be in accordance with Community law and must have been adopted for clearly defined social reasons and for the benefit of the final consumer.³⁰

When adopted in 1991, the intention was to have a progressive phase-out. However, in 2020, 'parking rates' are still applied by several member states. One of the reasons might be that, when a member state decides to raise one of its 'parking rates', it will not be possible in the future to reintroduce a reduced rate on this product or service if not included in Annex 3.

From an environmental perspective, 'parking rates' are the biggest concern in the VAT system because of the wrong price signal they send. Indeed, in reason of their adoption in the 1980s, products and services benefiting from a reduced rate were not selected based on modern environmental concerns or climate change. It results that certain countries tax at preferential rates fossil fuels, despite their disastrous effect on the climate and the environment.³¹

Applied to consumption tax, the Taxonomy could limit reduced rates and exemptions to goods and services offered by economic operators compliant with the screening criteria. From a legal perspective, such an ambitious vision might be difficult in an international context. Indeed, in application of the General Agreement on Tariffs and Trade (GATT) provision on border adjustments³² and to maintain a fair access to the European market for foreign producers, it is necessary to let producers located outside the European Union have the option to prove they comply with the screening criteria. Moreover, the adoption of a common standard for sustainable activities will impose harmonisation of the potential domains where a reduced rate could be applied and raise as a new objective for consumption tax the protection of the environment and of the climate.

c. State Aids and Section 7 of the General Block Exemption Regulation

The last area where environmental and energy concerns might echo is the control of state aids. As for other aids, tax expenditures or subsidies granted for environmental purpose through state resources, which distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, are incompatible with the internal market in application of article 107 Treaty on the Functioning of the European Union (TFEU).³³ However, the treaty also includes the possibility to exempt certain categories of aids via a general scheme. This possibility was materialised in the adoption of the GBER³⁴ for certain areas of public intervention. It allows member states

to support certain categories of activities without prior notification to the European Commission. Section 7 of the GBER is dedicated to aid belonging to the environmental protection field and contains all conditions for state aids to be declared compatible. However, the tax design is assessed more in details than the effective environmental impact. The too general environmental criteria engender a lack of precision, especially when compared to the criteria developed in application of the Taxonomy, both in the different dimensions they cover than in the severity of the requirements.³⁵

By adding the Taxonomy requirements for an activity to be declared compatible with the treaty, public aids might be more accurately redirected to the right projects and companies and contribute therefore to Green Deal objectives. Moreover, it will help to bring coherence between objectives at the level of the Union and aids granted by member states.

4. A TAXONOMY TO BRING MORE COHERENCE IN THE FISCAL LANDSCAPE

The proposed introduction of a common database for environmentally sustainable activities for tax matters aims at fostering transparency for the taxpayer of tax expenditures directed to environmental and climate projects. With the help of the legislative bundle from the ‘Action plan for sustainable finance’,³⁶ it aims at increasing the amount of private capital and public expenses that are redirected to key activities for tackling climate change and fostering environmental protection, including in a Covid-19 context.

As illustrated in Figure 31.1, according to classical economic theory, capital comes from two different sources: from the state or from private investment. For the latter, the investment might come directly from private citizens, by buying shares or bonds issued by a company or from the banks acting as intermediaries. With the entry into force of the Taxonomy and Disclosure regulations, market participants – including banks – must disclose the share of sustainable activities of every financial product they market as sustainable. A similar obligation for tax expenditures granted by member states might help in monitoring progress in key areas of the energy transition.

To align fiscal provisions with climate and environment targets of the Green Deal, the following modifications could be envisaged in fiscal matters:

- In the *Energy Taxation Directive*, exemptions and reduced rates for business use could be limited to economic operators who are carrying out mainly activities contributing to one of the Taxonomy objectives. The requested share could be adjusted according to technological progress. Two main advantages might be found in these amendments: first, it maintains a fair playing field between economic participants by harmonising at

the European level areas where business exemptions and reduced rates can be granted by member states; second, it aligns ETD provisions with the objective of carbon neutrality in 2050.

- In the *VAT directive*, provisions could be revamped to repeal ‘parking rates’ and to introduce a requirement for the manufacturer of goods or services to comply with the screening criteria of the Taxonomy in order to benefit from a reduced rate. Again, the required share of compliant activities might be adjusted over time and the list of activities might evolve to match new technological developments.
- Finally, the *state aid legal framework* might be refined by integrating in the GBER the stronger screening criteria from the Taxonomy.

From a political perspective, according to article 113, enacting secondary law in fiscal matters requires unanimity at the level of the Council.³⁷ Reaching unanimity on potential reforms might not be a walk in the park, as shown by previous attempts from the Commission to redraft the ETD and the VAT directive. However, preferential tax regimes based on the evolution of the share of sustainable activities over time might be envisaged.

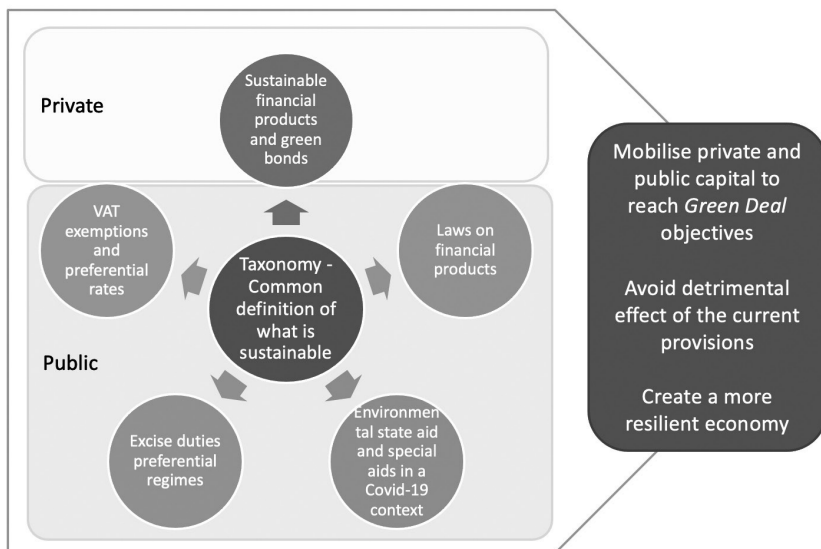


Figure 13.1 The use of the Taxonomy in the different fields of public policy

The proposal behind this chapter is obviously not to reform the entire tax system on the basis of tackling climate change and making environment protection the only top priority. It aims at unifying the definition of environmental sustainability in two interconnected areas of public intervention: taxation and banking regulation. With the rapid outbreak of Covid-19, the need for public funding is increasing, and billions of public money is reaching businesses. The conditions to benefit from such help are not predetermined and will certainly broadly vary between member states. In this specific context, one might find it interesting to dedicate the most generous financial support to businesses and companies that have already committed themselves to a product compliant with the most advanced climate and environmental standards, like the ones included in the Taxonomy. The current Covid-19 outbreak seems indeed to support the idea that a transition to more sustainable activities will make the economy more resilient to crisis and prevent additional threats due to climate change. Moreover, preserving the environment will limit the spread of diseases only present in pristine environments.

5. CONCLUSION

As presented in the first parts, the adoption of a Taxonomy for sustainable activities might constitute an important step to reach greater protection of the environment and to mitigate climate change. It makes the boundary between sustainable and not sustainable activities clearer and suggests a reflection about the real impact of investment decisions on environmental concerns.

As for financial regulation, climate change and environment protection were not the initial objectives of excise duties or VAT, neither was it for state aid control. However, due to the absence of evolution of these provisions during the last 15 years, the current tax regimes are becoming obsolete and lack adequacy with the current concerns and challenges. The existence of several preferential regimes supporting non-sustainable activities, services and goods are making climate and environmental goals difficult to reach. For instance, reduced VAT rates on the most pollutant energy products distort the price signal sent to the consumer.

Instead of trying to reform each legislation, this chapter suggests using for tax purpose the already existing Taxonomy of sustainable activities. Environmental experts develop screening criteria to delimit sustainable activities in all main areas of economic activity. We propose to use these screening criteria in order to insert a harmonised definition of sustainable activities to all main tax regulations. It could result in (1) limitation of a VAT reduced rate to goods and services with production processes in line with the Taxonomy criteria, (2) an excise preferential business regime granted only to companies and individuals carrying on sustainable activities responding to the Taxonomy

standards – or in proportion of this compliance – and (3) a more ambitious and more precise legal framework for state aids.

In our opinion, the adoption of a common definition of sustainable economic activity will help to bring more transparency to the allocation of public funds in the field of climate or environment initiatives. Furthermore, it will create an equality between public and private financial resources dedicated to sustainable activities and maintain a level playing field among European businesses when it comes to advantageous tax regimes for environmental initiatives. Finally, it will be an important tool to reach the Green Deal objective for environment preservation and climate change mitigation. As the current Covid-19 epidemic emphasises the need for public support, a common standard for tax measures in favour of sustainable development will help to rebuild the economy in a greener way and make it more resilient to future crises.

NOTES

1. Sébastien Eric Wolff is a PhD candidate at the Catholic University of Louvain (Belgium) under the supervision of Pr. Dr E. Traversa, lecturer at the ICHEC Brussels Management School (Belgium) and guest lecturer at the Université de Lorraine (France).
2. Communication of 8 March 2018 from the Commission: ‘Action Plan: Financing Sustainable Growth’, COM/2018/097 final.
3. Communication of 11 December 2019 from the European Commission: ‘The European Green Deal’, COM/2019/640 final.
4. Council directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, *OJ L* 283 of 31 October 2003, 51.
5. See for instance: OECD (2020). *Government support and the COVID-19 pandemic*. 14 April 2020, accessed 18 May 2021 at https://read.oecd-ilibrary.org/view/?ref=128_128572-w5qyf5699d&title=Government-support-and-the-COVID-19-pandemic; OECD (2020). *COVID-19 and fiscal relations across levels of government*. 31 July 2020, accessed 18 May 2021 at <http://www.oecd.org/coronavirus/policy-responses/covid-19-and-fiscal-relations-across-levels-of-government-ab438b9f/>.
6. See i.e.: Transport and Environment (2020). No going back: European public opinion on air pollution in the Covid-19 era, accessed 18 May 2021 at <https://www.transportenvironment.org/sites/te/files/publications/Briefing%20-%20polling%20Covid-19%20-%26%20mobility.pdf>; He, G., Pan, Y. and Tanaka, T. (2020). The Short-Term Impacts of COVID-19 Lockdown on Urban Air Pollution in China. *Nature Sustainability*, 7 July 2020, 1005–10; European Energy Agency (2020). Air quality and COVID-19. 12 August 2020, accessed 18 May 2021 at <https://www.eea.europa.eu/signals/themes/air/air-quality-and-covid19/air-quality-and-covid19>.
7. ‘Action Plan: Financing Sustainable Growth’ (n 2).
8. Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related

- disclosures for benchmarks. *OJ L* 317 of 9 December 2019, 17. Hereafter 'Benchmark regulation'.
9. Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector. *OJ L* 317 of 9 December 2019, 1. Hereafter 'Disclosure regulation'.
 10. Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088. *OJ L* 198 of 22 June 2020, 13. Hereafter 'Taxonomy regulation'.
 11. Taxonomy regulation, article 3.
 12. Taxonomy regulation, articles 10 to 15.
 13. Taxonomy regulation, article 10, par. 1.
 14. Technical Expert Group on Sustainable Finance (2020). *Taxonomy report: technical annex*, March 2020, accessed 18 May 2021 at https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/200309-sustainable-finance-teg-final-report-taxonomy_en.pdf, 556.
 15. Euro 6 norm is an emissions standard for light vehicles for type approval in the European Union established by Regulation (EU) 715/2017.
 16. Directive 2000/53/EC 18 September 2000 on end-of life vehicles. *OJ L* 269 of 21 October 2000, 34.
 17. Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended. *OJ L* 200 of 31 July 2009, 1.
 18. Council directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity. *OJ L* 283 of 31 October 2013, 53. Hereafter 'ETD'.
 19. ETD, article 4.
 20. In Sweden, the levy is composed of one energy tax and a CO₂ levy.
 21. Irish Tax and Duties (2020). 'Excise – Accounting for Mineral Oil Tax Manual', June 2020.
 22. ETD, article 5.
 23. It is the case in Austria, Belgium, Germany and Luxemburg.
 24. As for instance the insular territories of Greece.
 25. For an in-depth assessment of the current provisions of the ETD, see: European Commission (2019). 'Evaluation of the Council Directive 2003/96/EC of 27 October 2003 Restructuring the Community Framework for the Taxation of Energy Products and Electricity', SWD(2019) 329 final of 11 September 2019; Harding, M., Martini, C. and Thomas, C. (2016). Taxing Energy Use: Patterns and Incoherencies – Energy Taxation in Europe and the OECD. In Bardazzi, R., Pazienza, M.G. and Tonini, T. (eds), *European Energy and Climate Security*, Springer, 233–64; Deffaa, W. (2011). New Impetus for EU Taxation Policy. *Intereconomics* 2011 (46), 5, 287–96.
 26. The EU Green Deal states as follows: 'Ensuring that taxation is aligned with climate objectives is also essential. The Commission will propose to revise the Energy Taxation Directive, focusing on environmental issues, and proposing to use the provisions in the Treaties that allow the European Parliament and the Council to adopt proposals in this area through the ordinary legislative procedure by qualified majority voting rather than by unanimity.'

27. Council directive 2006/112/EC of 28 November 2006 on the common system of value added tax, *OJ L* 347 of 11 December 2006, 1. Hereafter ‘VAT directive’.
28. VAT directive, recital 5.
29. For a review of all concerns caused by the reduced rates and exemptions, see: de la Feria, R. (2014). *VAT Exemptions: Consequences and Design Alternatives*. WoltersKluwer; Jogels, H. (2014). A Lot to Do about Reduced VAT Rates. *EC Tax Review*, 2014 (23), 5, 244–6. For the system in general: Cnossen, S. (2011). Value-Added Tax and Excises: Commentary. In Mirrless, J. (ed.), *Dimensions of Tax Design: The Mirrless Review*, OUP, 370–86; Englisch, J. (2011). EU Perspective on VAT Exemptions. *Working Papers Oxford University Centre for Business Taxation*, 1111.
30. VAT directive, article 110.
31. For the full list of rates applied by member states: European Commission, *VAT rates applied in the member states of the European Union*, 1 January 2020, accessed 18 May 2021 at https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_en.pdf.
32. More precisely GATT, article III.2. See also: Mehling M.A., Asselt, H. van, Das, K., Droege, S. and Verkuijl, C. (2019). Designing Border Carbon Adjustments for Enhanced Climate Action. *American Journal of International Law*, 113(3) 433–81; Holzer, K. (2014). *Carbon-Related Border Adjustment and WTO Law*. Edward Elgar Publishing; Weber, R.H. (2015). Border Tax Adjustment: Legal Perspective. *Climatic Change*, 133(3), 407–17; Pauwelyn, J. (2013). Carbon Leakage Measures and Border Tax Adjustments under WTO Law. In Van Calster, G. (ed.), *Research Handbook on Environment, Health and the WTO*, Edward Elgar Publishing, 448–506.
33. The European Commission published guidelines: EC (2014). Guidelines on State Aid for Environmental Protection and Energy 2014–2020. *OJ C* 200 of 28 June 2014, 1; see also Nicolaides, P. and Kleis, M. (2014). Critical Analysis of Environmental Tax Reductions and Generation Adequacy Provisions in the EEAG 2014–2020. *European State Aid Law Quarterly*, 13(4), 636–49; Villar-Ezcurra, M. (2017). The Concept of ‘Environmental Tax’ in a State Aid Context when a Fiscal Energy Measure is Concerned. *European State Aid Law Quarterly*, 16(1), 11–24.
34. Commission regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. *OJ L* 187 of 26 June 2014, 1.
35. Villar-Ezcurra, M. (2017). State Aids and Taxation in the Energy Sector: Looking for a New Approach. Englisch, J. (2017). Energy Tax Incentives and the GBER Regime. Respectively chapters 1 and 15 in: Mailló González-Orús, J. and Villar Ezcurra, M. (eds), *State Aids, Taxation and the Energy Sector*, Reuters; Boesherz, D. (2004). Community State Aid Policy and Energy Taxation. *EC Tax Review* 2004(4), 214–19; Merola, M. and Diaz, O. (2018). Energy and Environment. In: Nascimbene, B. and Di Pascale, A. (eds), *The Modernisation of State Aid for Economic and Social Development*, Studies in European Economic Law and Regulation, vol 14, Springer, 169–236; Mailló González-Orús, J. (2017). Balancing Environmental Protection, Competitiveness and Competition: A Critical Assessment of the GBER and EEAG. *European State Aid Law Quarterly*, 2017 16(1) 4–10.
36. ‘Action Plan: Financing Sustainable Growth’ (n 2).
37. Talus, K. (2016). *An Introduction to EU Energy Law*. OUP, 133; Terra, B.J.M. and Wattel, P.J. (2008). *European Tax Law*. 5th edn, Wolters Kluwer, 11 and ch. 7.