

Council Directive 2003/96/EC of 27 October 2003
restructuring the Community framework for the taxation of
energy products and electricity (Text with EEA relevance)

Article 2

- 1 For the purposes of this Directive, the term ‘energy products’ shall apply to products:
- a falling within CN codes 1507 to 1518, if these are intended for use as heating fuel or motor fuel;
 - b falling within CN codes 2701, 2702 and 2704 to 2715;
 - c falling within CN codes 2901 and 2902;
 - d falling within CN code 2905 11 00, which are not of synthetic origin, if these are intended for use as heating fuel or motor fuel;
 - e falling within CN code 3403;
 - f falling within CN code 3811;
 - g falling within CN code 3817;
 - h falling within CN [F1codes][F13824 99 86, 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93, 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90] if these are intended for use as heating fuel or motor fuel.

- 2 This Directive shall also apply to:

Electricity falling within CN code 2716.

- 3 When intended for use, offered for sale or used as motor fuel or heating fuel, energy products other than those for which a level of taxation is specified in this Directive shall be taxed according to use, at the rate for the equivalent heating fuel or motor fuel.

In addition to the taxable products listed in paragraph 1, any product intended for use, offered for sale or used as motor fuel, or as an additive or extender in motor fuels, shall be taxed at the rate for the equivalent motor fuel.

In addition to the taxable products listed in paragraph 1, any other hydrocarbon, except for peat, intended for use, offered for sale or used for heating purposes shall be taxed at the rate for the equivalent energy product.

- 4 This Directive shall not apply to:

- a output taxation of heat and the taxation of products falling within CN-codes 4401 and 4402;
- b the following uses of energy products and electricity:
 - energy products used for purposes other than as motor fuels or as heating fuels,
 - dual use of energy products

An energy product has a dual use when it is used both as heating fuel and for purposes other than as motor fuel and heating fuel. The use of energy products for chemical reduction and in electrolytic and metallurgical processes shall be regarded as dual use,

- electricity used principally for the purposes of chemical reduction and in electrolytic and metallurgical processes,

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- electricity, when it accounts for more than 50 % of the cost of a product. ‘Cost of a product’ shall mean the addition of total purchases of goods and services plus personnel costs plus the consumption of fixed capital, at the level of the business, as defined in Article 11. This cost is calculated per unit on average. ‘Cost of electricity’ shall mean the actual purchase value of electricity or the cost of production of electricity if it is generated in the business,
- mineralogical processes

‘Mineralogical processes’ shall mean the processes classified in the NACE nomenclature under code DI 26 ‘manufacture of other non-metallic mineral products’ in Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community⁽¹⁾.

However, Article 20 shall apply to these energy products.

5 References in this Directive to codes of the combined nomenclature shall be to those of Commission Regulation (EC) No 2031/2001 of 6 August 2001, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽²⁾.

A Decision to update the codes of the combined nomenclature for the products referred to in this Directive shall be taken once every year in accordance with the procedure laid down in Article 27. The Decision must not result in any changes in the minimum tax rates applied in this Directive or to the addition or removal of any energy products and electricity.

Textual Amendments

- F1** Substituted by [Commission Implementing Decision \(EU\) 2018/552 of 6 April 2018 updating the references in Council Directive 2003/96/EC to the codes of the Combined Nomenclature for certain products.](#)

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- (1) [OJ L 293, 24.10.1990, p. 1](#). Regulation as last amended by Commission Regulation (EC) No 29/2002 ([OJ L 6, 10.1.2002, p. 3](#)).
- (2) [OJ L 279, 23.10.2001, p. 1](#).