



EUROPA > Summaries of legislation > Community framework for the taxation of energy products and electricity

[Home page](#)

[Agriculture](#)

[Audiovisual and Media](#)

[Budget](#)

[Competition](#)

[Consumers](#)

[Culture](#)

[Customs](#)

[Development](#)

[Economic and Monetary](#)

[Affairs](#)

[Education, Training,](#)

[Youth](#)

[Employment and Social](#)

[Policy](#)

[Energy](#)

[Enlargement](#)

[Enterprise](#)

[Environment](#)

[External Relations](#)

[External Trade](#)

[Food Safety](#)

[Foreign and Security](#)

[Policy](#)

[Fight against Fraud](#)

[Human Rights](#)

[Humanitarian Aid](#)

[Information Society](#)

[Institutional Affairs](#)

[Internal Market](#)

[Justice, Freedom and](#)

[Security](#)

[Maritime Affairs and](#)

[Fisheries](#)

[Public Health](#)

[Regional Policy](#)

[Research and Innovation](#)

[Taxation](#)

[Transport](#)

[EUROPEAN ENERGY POLICY >](#)  
[INTERACTIONS BETWEEN THE AUTOMOBILE INDUSTRY AND SPECIFIC POLICIES >](#)  
[INTERNAL ENERGY MARKET >](#)  
[TACKLING CLIMATE CHANGE >](#)  
[TAXATION >](#)

## Community framework for the taxation of energy products and electricity

The European Union establishes generalised arrangements for the taxation of energy products and electricity. The Community system of minimum rates, which for a long time was confined to mineral oils, is extended to coal, natural gas and electricity. This system sets the minimum rates of taxation applicable to energy products when used as motor or heating fuels and to electricity. Its aim is thus to improve the operation of the internal market by reducing distortions of competition between mineral oils and other energy products. In line with the Community's objectives and the Kyoto Protocol, it encourages more efficient use of energy so as to reduce dependence on imported energy products and limit greenhouse gas emissions. Also in the interests of protecting the environment, it authorises Member States to grant tax advantages to businesses that take specific measures to reduce their emissions.

### ACT

Council Directive [2003/96/EC](#) of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity [ [See amending acts](#) ]

### SUMMARY

Energy products and electricity are only taxed when they are used as motor or heating fuel, and not when they are used as raw materials or for the purposes of chemical reduction or in electrolytic and metallurgical processes.

On the basis of this principle, the Directive sets minimum rates of taxation for motor fuel, motor fuel for industrial or commercial use, heating fuel and electricity. The "levels of taxation" \* applied by the Member States may not be lower than the minimum rates set in the Directive.

The minimum levels of taxation applicable to motor fuels are the following:

	Current minimum excise rates	Minimum excise rates from 1.1.2004	Minimum excise rates from 1.1.2010
-			
Petrol (/1000 l.)	337	421	421

-	Current minimum excise rates	Minimum excise rates from 1.1.2004	Minimum excise rates from 1.1.2010
Unleaded petrol (/1000 l.)	287	359	359
Diesel (/1000 l.)	245	302	330
Kerosene (/1000 l.)	245	302	330
LPG (/1000 l.)	100	125	125
Natural gas	100 (/1 000 kg)	2.6 (/gigajoule)	2.6 (/gigajoule)

(The volumes are measured at a temperature of 15° C).

No later than 1 January 2012, the Council acting unanimously after consulting the European Parliament must, on the basis of a report and a proposal from the Commission, decide upon the minimum levels of taxation applicable to gas-oil for a further period beginning on 1 January 2013.

The Directive allows Member States to differentiate between commercial \* and non-commercial use of gas-oil used as propellant, provided that the Community minimum levels are observed and the rate for commercial gas-oil used as propellant does not fall below the national level of taxation in force on 1 January 2003, notwithstanding any derogations for this use laid down in the Directive.

This differentiation enables Member States to reduce the gap between the level of excise duty applicable to non-commercial gas-oil used in cars and that applicable to petrol, since there is no environmental or other justification for the lower minimum rate currently applicable to the use of gas-oil in cars.

**The minimum levels of taxation applicable to fuels for industrial or commercial use are the following:**

-	Current minimum excise rates	Minimum excise rates from 1.1.2004
Diesel (/1000 l.)	18	21
Kerosene (/1000 l.)	18	21
LPG (/1000 kg.)	36	41
Natural gas	36 (/1 000 kg)	0.3 (/gigajoule)

(The volumes are measured at a temperature of 15° C).

The Directive specifies that industrial and commercial uses are:

- agricultural, horticultural or piscicultural works, and forestry;
- stationary motors;
- plant and machinery used in construction, civil engineering and public works;
- vehicles intended for use off the public roadway.

The minimum levels of taxation applicable to heating fuels and electricity are the

following:

-	<b>Current minimum excise rates</b>	<b>Minimum excise rates from 1.1.2004 (business use)</b>	<b>Minimum excise rates from 1.1.2004 (non-business use)</b>
Diesel (/1000 l.)	18	21	21
Heavy fuel oil (/1000 kg.)	13	15	15
Kerosene (/1000 l.)	0	0	0
LPG (/1000 kg.)	0	0	0
Natural gas (/gigajoule)	-	0.15	0.3
Coal and coke (/gigajoule)	-	0.15	0.3
Electricity (/MWh)	-	0.5	1.0

(The volumes are measured at a temperature of 15° C).

The Member States which on 1 January 2003 were authorised to apply a monitoring charge for heating gas-oil may continue to apply a reduced rate of EUR 10 per 1000 litres for that product. This authorisation will be repealed on 1 January 2007 if the Council, acting unanimously on the basis of a report and a proposal from the Commission, so decides, having noted that the level of the reduced rate is too low to avoid problems of trade distortion between the Member States.

#### **Differentiated rates of taxation**

Provided that they comply with the minimum levels of taxation prescribed by the Directive and are compatible with Community law, differentiated rates of taxation may be applied by Member States, under fiscal control, in the following cases:

- when the differentiated rates are directly linked to product quality;
- when the differentiated rates depend on quantitative consumption levels for electricity and energy products used for heating purposes;
- for the following uses: local public passenger transport (including taxis), waste collection, armed forces and public administration, disabled people, ambulances;
- between business and non-business use, for the energy products and electricity referred to above.

#### **Exemptions and reductions**

The following are exempt from taxation:

- energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity. However, Member States may, for reasons of environmental policy, subject these products to taxation;
- energy products supplied for use as fuel for the purpose of air navigation

- other than in private pleasure-flying;
- energy products supplied for use as fuel for the purposes of navigation within Community waters, including fishing, other than private pleasure craft, and electricity produced on board a craft.

Member States may limit the scope of the last two exemptions to international and intra-Community transport. Thus for all air or sea transport within a Member State or between two Member States that have signed a bilateral agreement to this effect, the Member States may apply a level of taxation lower than the minimum that set by the Directive.

Member States may apply total or partial exemptions or reductions in the level of taxation to, *inter alia*:

- energy products used under fiscal control in the field of pilot projects for the technological development of more environmentally-friendly products or in relation to fuels from renewable sources;
- biofuels;
- forms of energy which are of solar, wind, tidal or geothermal origin, or from biomass or waste;
- energy products and electricity used for the carriage of goods and passengers by rail, metro, tram and trolley bus;
- energy products supplied for use as fuel for navigation on inland waterways (including fishing) other than in private pleasure craft, and electricity produced on board a craft;
- natural gas and LPG used as propellants.

The Directive takes account of the competitiveness of businesses by providing for measures to alleviate the tax burden on energy intensive businesses and/or businesses that undertake to achieve environmental protection objectives or to improvements in energy efficiency.

It also provides that Member States may refund, fully or in part, taxes paid by businesses that have invested in the rationalisation of their energy use. This refund may be as much as 100% in the case of energy intensive businesses, and up to 50% for other businesses.

#### **Transitional periods**

For some Member States the Directive defines transitional periods during which they are required to gradually reduce the gap between their rates and the new minimum rates of taxation. However, when the difference between the national rate and the minimum rate does not exceed 3 % of the minimum rate, the Member State may wait until the end of the period to adjust its national level.

Apart from the transitional periods, Member States are authorised to continue applying their various derogations until 31 December 2006, subject to prior review by the Council on the basis of a Commission proposal.

Member States with difficulties in implementing the new minimum levels of taxation are allowed a transitional period up to 1 January 2007 to avoid jeopardising price stability.

<b>Key terms used in the act</b>
<ul style="list-style-type: none"> <li>Level of taxation: the total charge levied in respect of all indirect taxes (except VAT) calculated directly or indirectly on the quantity of energy products and electricity at the time of release for consumption.</li> <li>Commercial gas-oil used as propellant: gas-oil used as propellant for the carriage of goods for hire or reward, or on own account, by motor vehicles or articulated vehicle combinations intended exclusively for the carriage of goods by road and with a maximum permissible gross</li> </ul>

<b>Key terms used in the act</b>
<p>laden weight of not less than 7.5 tonnes and for the carriage of passengers, whether by regular or occasional service, by a motor vehicle of category M2 or category M3, as defined in Council Directive <a href="#">70/156/EEC</a> of 6 February 1970 on the approximation of the laws of the Member States relating to the <u>type-approval of motor vehicles and their trailers</u> .</p> <ul style="list-style-type: none"> <li>• Biomass: the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste.</li> <li>• Energy-intensive business: a business entity where either the purchases of energy products and electricity amount to at least 3.0 % of the production value, or the national energy tax payable amounts to at least 0.5 % of the added value.</li> </ul>

## REFERENCES

<b>Act</b>	<b>Entry into force</b>	<b>Deadline for transposition in the Member States</b>	<b>Official Journal</b>
<a href="#">Directive 2003/96/EC</a> [adoption: consultation <a href="#">CNS/1997/0111</a> ]	31.10.2003	31.12.2003	Official Journal L 283 of 31.10.2003

<b>Amending act(s)</b>	<b>Entry into force</b>	<b>Deadline for transposition in the Member States</b>	<b>Official Journal</b>
<a href="#">Directive 2004/74/EC</a>	1.5.2004	1.5.2004	OJ L 195 of 2.6.2004
<a href="#">Directive 2004/75/EC</a>	1.5.2004	1.5.2004	OJ L 195 of 2.6.2004

## RELATED ACTS

Communication from the Commission to the Council of 12 December 2006 in accordance with Article 19(1) of Council Directive [2003/96/EC](#) (regional derogations) [[COM\(2006\) 795](#) final - Not published in the Official Journal].

Communication from the Commission to the Council of 12 December 2006 in accordance with Article 19(1) of Council Directive [2003/96/EC](#) (ambulant vendors) [[COM\(2006\) 794](#) final - Not published in the Official Journal].

Communication from the Commission to the Council of 5 December 2006 in accordance with Article 19(1) of Council Directive [2003/96/EC](#) (taxation of industrial uses of LPG and taxation of coal) [[COM\(2006\) 768](#) final - Not published in the Official Journal].

Communication from the Commission to the Council of 30 November 2006 in accordance with Article 19(1) of Council Directive [2003/96/EC](#) (operation of

private pleasure craft) [\[COM\(2006\) 743 final - Not published in the Official Journal\]](#).

Communication from the Commission to the Council of 30 November 2006 in accordance with Article 19(1) of Council Directive [2003/96/EC](#) (private pleasure-flying) [\[COM\(2006\) 742 final - Not published in the Official Journal\]](#).

Communication from the Commission to the Council of 30 November 2006 in accordance with Article 19(1) of Council Directive [2003/96/EC](#) (local public passenger transport, armed forces, public administration, ambulances) [\[COM\(2006\) 741 final - Not published in the Official Journal\]](#).

Communication from the Commission to the Council of 30 June 2006. "Review of the derogations in Annexes II and III of Council Directive [2003/96/EC](#) that expire by the end of 2006" [\[COM\(2006\) 342 final - Not published in the Official Journal\]](#).

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