

COUNCIL DIRECTIVE 92/81/EEC

of 19 October 1992

on the harmonization of the structures of excise duties on mineral oils

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Directive 92/12/EEC ⁽⁴⁾ lays down provisions on the general arrangements for products subject to excise duty;

Whereas Directive 92/82/EEC ⁽⁵⁾ lays down provision in respect of the minimum rates of excise duty applicable to certain mineral oils;

Whereas it is important to the proper functioning of the internal market to determine common definitions for all mineral oil products which shall be subject to the general excise monitoring system;

Whereas it is useful to base such definitions on those in the combined nomenclature in force at the date of the adoption of this Directive;

Whereas it is necessary to lay down certain obligatory exemptions at Community level;

Whereas, however, it is appropriate to permit Member States to apply on an optional basis certain other exemptions or reduced rates within their own territory where this does not give rise to distortions of competition;

Whereas it is necessary to provide for a procedure to authorize the introduction of further exemptions or rate reductions;

Whereas it is necessary to provide for a review procedure for all the exemptions or reduced rates provided for in this Directive in order to monitor their continued compatibility with the proper functioning of the internal market,

HAS ADOPTED THIS DIRECTIVE:

I. Scope

Article 1

1. Member States shall impose a harmonized excise duty on mineral oils in accordance with this Directive.
2. Member States shall fix their rates in accordance with Directives 92/82/EEC on the approximation of the rates of excise duty on mineral oils.

Article 2

1. For the purposes of this Directive 'mineral oil' shall cover:

- (a) products falling within CN code 2706;
- (b) products falling within CN codes 2707 10, 2707 20, 2707 30, 2707 50, 2707 91 00 and 2707 99 (except 2707 99 30, 2707 99 50 and 2707 99 70);
- (c) products falling within CN code 2709;
- (d) products falling within CN code 2710;
- (e) products falling within CN code 2711, including chemically pure methane and propane but excluding natural gas;
- (f) products falling within CN codes 2712 10, 2712 20 00, 2712 90 31, 2712 90 33, 2712 90 39 and 2712 90 90;
- (g) products falling within CN code 2713 with the exception of resinous products, used bleaching earth, acid residues and basic residues;
- (h) products falling within CN code 2715;
- (i) products falling within CN code 2901;
- (j) products falling within CN codes 2902 11 00, 2902 19 90, 2902 20, 2902 30, 2902 41 00, 2902 42 00, 2902 43 00 and 2902 44;
- (k) products falling within CN codes 3403 11 00 and 3403 19;
- (l) products falling within CN code 3811;
- (m) products falling within CN code 3817.

2. Mineral oils other than those for which a level of duty is specified in the rates Directive 92/82/EEC shall be subject to excise duty if intended for use, offered for sale or used as heating fuel or motor fuel. The rate of duty to be charged shall be fixed, according to use, at the rate for the equivalent heating fuel or motor fuel.

3. 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 as motor fuel. Any other hydrocarbon, except for coal, lignite, peat or other similar solid hydrocarbons or natural gas, intended for use, offered for sale or used for heating purposes shall be taxed at the rate for the equivalent mineral oil.

⁽¹⁾ OJ No C 322, 21. 12. 1990, p. 18.

⁽²⁾ OJ No C 183, 15. 7. 1991, p. 289.

⁽³⁾ OJ No C 69, 18. 3. 1991, p. 25.

⁽⁴⁾ OJ No L 76, 23. 3. 1992, p. 1.

⁽⁵⁾ See page 19 of this Official Journal.

However, coal, lignite, peat or any other similar solid hydrocarbons or natural gas may be subject to taxation in accordance with Article 3 (3) of Directive 92/12/EEC.

4. References in paragraph 1 above to codes of the Combined Nomenclature shall be to those of the version of the CN in force when this Directive is adopted.

II. Establishment of the excise duty

Article 3

1. In each Member State, mineral oils shall be subject to a specific excise duty calculated per 1 000 litres of product at a temperature of 15 °C. However, for products listed in Article 2 (1) used as heavy fuel oils, and for LPG and methane, the specific duty shall be calculated per 1 000 kilogram.

2. Member States may calculate the specific excise duty for heavy fuel oils, LPG and methane in a manner other than that provided for in paragraph 1. In that event they shall be obliged to calculate in proportion to the quantities.

Article 4

1. In addition to the general provisions defining the chargeable event and the provisions for payment of the excise duty set out in Directive 92/12/EEC, excise duty on mineral oils shall also become due on the occurrence of one of the chargeable events mentioned in Article 2 (3) of this Directive.

2. Member States may also provide that excise duty on mineral oils shall become due when it is established that a final use condition laid down in national rules for the purpose of a reduced rate of duty or exemption is not or is no longer fulfilled.

3. The consumption of mineral oils within the curtilage of an establishment producing mineral oils shall not be considered a chargeable event giving rise to excise duty as long as the consumption is for the purpose of such production.

However, where such consumption is for purposes not related to that production and in particular for the propulsion of vehicles, this shall be considered a chargeable event giving rise to excise duty.

Article 5

1. Without prejudice to Article 6, an establishment in which the products listed in Article 2 (1) are manufactured or subjected to a specific process within the

meaning of Additional Note 4 to Chapter 27 of the combined nomenclature shall be considered an establishment for the production of mineral oils.

2. Without prejudice to the rules on movement laid down in Directive 92/12/EEC Member States need not consider 'establishments for the production of mineral oils' those establishments in which the only products manufactured are mineral oils for which a level of duty is not specified by Directive 92/82/EEC.

Article 6

Member States need not treat as 'production of mineral oils':

- (a) operations during which small quantities of mineral oils are obtained incidentally;
- (b) operations by which the user of a mineral oil makes its re-use possible in his own undertaking provided that the excise duty already paid on such oil is not less than the excise duty which would be due if the re-used oil were again to be liable to excise duty;
- (c) the operation consisting of mixing, outside a production establishment or a bonded warehouse, mineral oils with other mineral oils or other materials, provided:
 - (i) that excise duty on the components has been paid previously; and
 - (ii) that the amount paid is not less than the amount of the excise duty which would be chargeable on the mixture.

The first condition shall not apply where the mixture is exempted for a specific use.

Article 7

On a change in one or more rates of excise duty, stocks of mineral oil put into consumption may be subject to an increase in or a reduction of the excise duty.

Article 8

1. In addition to the general provisions set out in Directive 92/12/EEC on exempt uses of excisable products, and without prejudice to other Community provisions, Member States shall exempt the following from the harmonized excise duty under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

- (a) mineral oils used for purposes other than as motor fuels or as heating fuels;
- (b) mineral oils supplied for use as fuels for the purpose of air navigations other than private pleasure flying.

For the purposes of this Directive, 'private pleasure flying' shall mean the use of aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.

Member States may limit the scope of this exemption to supplies of jet fuel (CN code 2710 00 51);

- (c) mineral oils supplied for use as fuel for the purposes of navigation within Community waters (including fishing), other than in private pleasure craft.

For the purposes of this Directive, 'private pleasure craft' shall mean any craft used by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.

2. Without prejudice to other Community provisions, Member States may apply total or partial exemptions or reductions in the rate of duty to mineral oils used under fiscal control:

- (a) in the process of producing electricity and in combined power and heat plants;
- (b) for navigation on inland waterways other than for private pleasure craft;
- (c) in the field of passenger transport, and the carriage of goods, by rail;
- (d) in the field of pilot projects for the technological development of more environmentally-friendly products and in particular in relation to fuels from renewable resources;
- (e) in the field of the manufacture, development, testing and maintenance of aircraft and ships;
- (f) exclusively in agricultural and in horticultural works, and in forestry and inland fisheries;
- (g) in respect of dredging operations in navigable waterways and in ports.

3. Member States may also, in the case of all or some of the following industrial and commercial uses, apply a reduced rate of taxation on gas oil and/or LPG and/or methane and/or kerosene used under fiscal control, provided that the rate charged is not less than the minimum rate set in Directive 92/82/EEC on the approximation of the rates of excise duty on mineral oils:

- (a) for stationary motors;
- (b) in respect of plant and machinery used in construction, civil engineering and public works;
- (c) for vehicles intended for use off the public roadway or which have not been granted authorization for use mainly on the public highway.

4. The Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce further exemptions or reductions for specific policy considerations.

A Member State wishing to introduce such a measure shall accordingly inform the Commission and shall also provide the Commission with all relevant or necessary information. The Commission shall inform the other Member States of the proposed measure within one month.

The Council shall be deemed to have authorized the exemption or reduction proposed if, within two months of the other Member States' being informed as laid down in the second subparagraph, neither the Commission nor any Member State has requested that the matter be considered by the Council.

5. If the Commission considers that the exemptions or reductions provided for in paragraph 4 are no longer sustainable, particularly in terms of fair competition or distortion of the operation of the internal market, or Community policy in the area of protection of the environment, it shall submit appropriate proposals to the Council. The Council shall take a unanimous decision on these proposals.

6. In any event, and at the latest before 31 December 1996, the Council shall review the situation with regard to the exemptions or reductions set out in paragraph 4 on the basis of a report by the Commission and shall unanimously determine on a proposal from the Commission, after consultation of the European Parliament, whether any or all of them shall be abolished, modified or extended.

7. No later than 31 December 1997 the Council shall review the exemptions provided for in paragraphs 1 (b) and 2 (b), on the basis of a report by the Commission and taking account of the external costs entailed in such means of transport and the implications for the environment and shall decide unanimously, on a proposal from the Commission, whether to abolish or modify those exemptions.

8. Member States shall be free to give effect to the exemptions or reductions in the rate of duty set out in paragraph 4 by refunding the excise duty paid.

III. Controls

Article 9

By 31 December 1992 the Council, acting unanimously on the basis of a proposal from the Commission, shall adopt Community rules for the colouring or the marking of those mineral oils which are exempt from duty or which are subject to a reduced rate as fuel or as motor fuel.

IV. Final provisions

Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1992. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 11

This Directive is addressed to the Member States.

Done at Luxembourg, 19 October 1992.

For the Council

The President

J. COPE