

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2022/197

of 17 January 2022

establishing a common fiscal marker for gas oils and kerosene

(notified under document C(2022) 74)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oil and kerosene ⁽¹⁾, and in particular Article 2(2) thereof,

Whereas:

- (1) For the proper functioning of the internal market, and in particular to prevent tax evasion, Directive 95/60/EC provides for a common marking system to identify gas oils, falling within code 2710 00 69 of the Combined Nomenclature (CN), and kerosene, falling within CN code 2710 00 55, which have been released for consumption exempt from excise duty, or subject to a reduced excise duty rate. CN code 2710 00 69 has been split into CN codes 2710 19 43, 2710 19 46, 2710 19 47, 2710 19 48, 2710 20 11, 2710 20 16 and 2710 20 19, in order to take into account the sulphur content of gas oil and the presence of biodiesel in gas oil, while CN code 2710 00 55 has been transposed as CN code 2710 19 25 ⁽²⁾.
- (2) Commission Implementing Decision (EU) 2017/74 ⁽³⁾ confirmed the product identified by the scientific name N-ethyl-N-[2-(1-isobutoxyethoxy)ethyl]-4-(phenylazo)aniline (Solvent Yellow 124), which had been established by Commission Implementing Decision 2011/544/EU ⁽⁴⁾, as the common fiscal marker provided for by Directive 95/60/EC, for the marking of gas oils and kerosene which have not borne duty at the full rate applicable to such energy products used as propellant.
- (3) Article 2 of Implementing Decision (EU) 2017/74 requires that Implementing Decision to be reviewed by 31 December 2021 at the latest, in the light of technical developments in the field of marking systems and the need to counteract fraudulent use of energy products exempt from excise duty, or subject to a reduced excise duty rate.
- (4) As part of the review process, the Commission launched in 2015 a call for expression of interest to present products suitable for use as a fiscal marker in gas oils and kerosene ⁽⁵⁾. The Commission sought to identify a substance for marking which performs better with regard to a set of predefined criteria compared to the substance currently in use. For all candidate markers, the Commission requested and received, from the suppliers, the maximum selling price for the markers and their yearly indexation methods.
- (5) The candidate markers proposed by suppliers were thoroughly investigated from a technical standpoint with the assistance of the Joint Research Centre to check their resilience to the most common illegal removal techniques. The analysis ⁽⁶⁾ identified the product with the commercial name ACCUTRACE™ PLUS containing butoxybenzene as the preferred marker.

⁽¹⁾ OJ L 291, 6.12.1995, p. 46.

⁽²⁾ The codes of the Combined Nomenclature shall be those of Commission Implementing Regulation (EU) 2020/1577 of 21 September 2020 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 361, 30.10.2020, p. 1).

⁽³⁾ Commission Implementing Decision (EU) 2017/74 of 25 November 2016 establishing a common fiscal marker for gas oils and kerosene (OJ L 10, 14.1.2017, p. 7).

⁽⁴⁾ Commission Implementing Decision 2011/544/EU of 16 September 2011 on establishing a common fiscal marker for gas oils and kerosene (OJ L 241, 17.9.2011, p. 31).

⁽⁵⁾ OJ C 299, 11.9.2015, p. 28.

⁽⁶⁾ <https://publications.jrc.ec.europa.eu/repository/handle/JRC107206>

- (6) In a review of Directive 95/60/EC in 2019 ⁽⁷⁾, the Commission's evaluation confirmed the usefulness of common rules for the marking of fuels that are subject to reduced excise duty rates but identified the shortcomings of Solvent Yellow 124 in terms of its lack of resilience to common removal methods. The evaluation confirmed the need to replace Solvent Yellow 124 with a more robust marker that cannot be removed.
- (7) These findings were corroborated by the Customs Cooperation Working Party of the Council ⁽⁸⁾ who found that fuel laundering also resulted in serious environmental pollution due to the use of chemicals such as sulfuric acid, chloric acid and bleaching earth and the illegal dumping of waste products and oil sludge in nature, agricultural land or public roads.
- (8) Consequently, ACCUTRACE™ PLUS should be established instead of Solvent Yellow 124 as the common fiscal marker within the meaning of Directive 95/60/EC subject to the conditions set out in that Directive. The marking level should be set at a harmonised range to facilitate implementation and control of compliance across the Union.
- (9) In the interest of a smooth implementation of the new marker, and to allow Member States to exhaust existing stocks of the current marker Solvent Yellow 124, a transitional period of 24 months should be allowed. During this transitional period Member States should be allowed to use either Solvent Yellow 124 or ACCUTRACE™ PLUS as the common fiscal marker within the meaning of Directive 95/60/EC.
- (10) The availability of ACCUTRACE™ PLUS, despite it being under patent cover in the Union, should be secured, where appropriate, by licensing agreements.
- (11) This Decision does not release any undertaking from its obligations under Article 102 of the Treaty on the Functioning of the European Union.
- (12) The opportunities offered by future developments in science should be taken into account by setting a time limit for the review of this Decision.
- (13) A review of this Decision should be undertaken at any time prior to this time limit if ACCUTRACE™ PLUS is found to give rise to tax evasion or to cause health or environmental damage.
- (14) Implementing Decision (EU) 2017/74 should therefore be repealed.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Committee on Excise Duty,

HAS ADOPTED THIS DECISION:

Article 1

The common fiscal marker provided for by Directive 95/60/EC, for the marking of all gas oils falling within CN codes 2710 19 43, 2710 19 46, 2710 19 47, 2710 19 48, 2710 20 11, 2710 20 16 and 2710 20 19 as well as of kerosene falling within CN code 2710 19 25, shall be ACCUTRACE™ PLUS, as specified in the Annex to this Decision.

Member States shall set a marking level of ACCUTRACE™ PLUS at least 12,5 milligram per litre and not more than 18,75 milligram per litre of energy product. This corresponds to a marking level at least 9,5 milligram of butoxybenzene per litre and not more than 14,25 milligram of butoxybenzene per litre of energy product.

⁽⁷⁾ https://ec.europa.eu/taxation_customs/sites/taxation/files/fiscal-marking-report-2019.pdf

⁽⁸⁾ <https://data.consilium.europa.eu/doc/document/ST-6595-2020-INIT/en/pdf>
see final report adopted on Action 9.1.2.1 – “Smuggling and illegal handling of mineral oils: Laundering (the removal of fiscal marker)”.

Article 2

Member States may use either Solvent Yellow 124 or ACCUTRACE™ PLUS as the common fiscal marker within the meaning of Directive 95/60/EC during a transitional period ending on 18 January 2024. If they use Solvent Yellow 124 as the common fiscal marker in that transitional period, Member States shall set a marking level of at least 6 mg and not more than 9 mg of Solvent Yellow 124 per litre of energy product.

Article 3

This Decision shall be reviewed by 31 December 2028 at the latest, taking into account technical developments in the field of marking systems and the need to counteract fraudulent use of energy products exempt from excise duty or subject to a reduced excise duty rate.

An earlier review shall be undertaken if it is found that ACCUTRACE™ PLUS gives rise to tax evasion or causes health or environmental damage.

Article 4

Implementing Decision (EU) 2017/74 is repealed.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 17 January 2022.

For the Commission
Paolo GENTILONI
Member of the Commission

ANNEX

1. Commercial name: ACCUTRACE™ PLUS
 2. Identification according to the Colour Index: Colourless
 3. Scientific name: *Butoxybenzene* (CAS Registry Number 1126-79-0)
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