

## II

*(Preparatory Acts)*

## COMMISSION

**Amended proposal for a Council Directive on the harmonization of the structures of excise duties on mineral oils <sup>(1)</sup>**

(92/C 45/03)

*COM(92) 4 final*

*(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 24 January 1992)*

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<sup>(1)</sup> OJ No C 322, 21. 12. 1990, p. 18.

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ORIGINAL PROPOSAL

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AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Unchanged

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Council Directive ... lays down provisions relating to the rates of excise duty applicable to mineral oils;

Whereas it is necessary, if these duties are to be applied in a uniform manner, to determine common definitions for all the products concerned;

Whereas it is useful to base such definitions on those set out in the combined nomenclature which represents an established comprehensive system providing a suitable basis for taxation purposes;

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Whereas it is necessary to ensure that duty is charged on a common basis;

Whereas it is necessary to lay down precisely at Community level the exemptions or rate reductions which apply to those mineral oils which cross frontiers;

Whereas, however, it is appropriate to permit Member States to apply their own conditions to exemptions or rate reductions linked to end uses within the territory of the State,

HAS ADOPTED THIS DIRECTIVE:

### I. Field of application

#### *Article 1*

1. Member States shall impose on mineral oils a harmonized excise duty in accordance with the provisions of this Directive.

2. Member States shall fix their rates in accordance with Council Directive ... approximating the rates of excise duty on mineral oils.

#### *Article 2*

1. For the purpose of this Directive, 'mineral oil' covers:

- (a) products falling within CN code 2706, for use as substitutes for fuel oils;
- (b) products falling within CN codes 2707 99 11 and 2707 99 19 of which 90 % or more of their volume distils at a temperature up to 215 °C and products falling within CN codes 2707 10 10, 2707 10 90, 2707 20 10, 2707 20 90, 2707 30 10, 2707 30 90, 2707 50 10, 2707 50 91 and 2707 50 99;
- (c) products falling within CN codes 2707 91 00, 2707 99 91 and 2707 99 99 for use as substitutes for fuel oils;
- (d) products falling within CN code 2710, with the exception of those preparations which do not possess the qualities necessary for use as motor fuels;
- (e) products falling within CN code 2711, excluding natural gas and methane except where those products are used as motor fuels;

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- (f) products falling within CN codes 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 and codes 2902 11 00, 2902 19 90, 2902 20 10, 2902 20 90, 2902 30 10, 2902 30 90, 2902 41 00, 2902 42 00, 2902 43 00, 2902 44 10 and 2902 44 90;
- (j) products falling within CN codes 3403 11 00, 3403 19 10, 3403 19 91 and 3403 19 99;
- (k) products falling within CN codes 3404 containing more than 85 % by weight of the products referred to in (f) or (g);
- (l) products falling within CN codes 3811 21 00 and 3811 29 00;
- (m) products falling within CN codes 3811 19 00 and 3811 90 00;
- (n) products falling within CN codes 3817 10 10, 3817 10 90 and 3817 20 00;

2. Those mineral oils, other than those for which a level of duty is specified in Directive . . . , shall be subject to excise duty if intended for use, offered for sale or used as fuel or road fuel. The rate of duty to be charged shall be fixed, according to use, at the rate for the equivalent fuel or road fuel.

3. In addition to the taxable products enumerated in paragraph 1, any product similar in nature to mineral oils and intended for use, offered for sale or used as motor fuel, or as an additive or extender in motor fuels, shall also be taxed as motor fuel.

4. For the purpose of this Directive, 'products falling within CN code' shall mean those listed under the said heading in the CN in force.

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## II. Establishment of the excise duty

Unchanged

*Article 3*

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 enumerated in Article 2 (1) used as heavy fuel oils, the specific duty shall be calculated per 1 000 kilograms of product.

*Article 4*

1. In addition to the common provisions defining the chargeable event as set out in Directive . . . , the offer for sale or use as motor fuel, or as an additive or extender, as provided for in Article 2 (3) shall also be considered as a chargeable event giving rise to the excise duty in the case of mineral oils.

2. The consumption of mineral oils within the curtilage of an establishment producing mineral oils shall not be considered as a chargeable event giving rise to the excise duty except when such consumption is for purposes not related to that production or for the propulsion of motor vehicles.

*Article 5*

1. Without prejudice to the provisions of Article 6, an establishment in which the products referred to in Article 2 (1) are manufactured or subject to a specific process within the meaning of additional note 4 to Chapter 27 of the CN is considered as an establishment producing mineral oils.

2. Member States shall not be obliged to treat as 'establishments producing mineral oils', those establishments in which the only products manufactured are lubricants not subject to the harmonized excise duty.

*Article 6*

Member States shall not be obliged to 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 reuse possible in his own undertaking provided that the amounts of excise duty already paid on such oil is not lower than the amount of excise duty which would be due were the reused oil to be liable again to the excise duty;

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(c) the operation consisting of mixing, outside a production establishment or a bonded warehouse, mineral oils with other mineral oils or other materials, provided:

- that excise duty on the components has been paid previously,
- and
- that the amount paid is not less than the amount of excise duty which would be chargeable on the mixture.

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

The second proviso shall not apply where components to which different rates apply have to be mixed for technical reasons.

*Article 7*

1. In addition to the common provision on the payment of excise duty as set out in Council Directive . . . , excise duty on mineral oils shall also become due:

- upon the occurrence of one of the chargeable events referred to in Article 4,
- when it is established that a final use condition necessary for the benefit of a reduced rate of duty or an exemption is not or is no longer fulfilled.

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

Rules for recovering the increase or the repayment of the excess of the excise duty shall be determined by the Member States.

*Article 8*

1. In addition to the common provisions on exempt uses of excisable products as set out in Directive . . . and without prejudice to other Community provisions, Member States shall exempt the following products 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:

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- (a) oils used for purposes other than as motor fuels or as heating fuels;
- (b) oils used as fuel for the propulsion of railway vehicles running on public railway networks;
- (c) gases referred to in Article 2 (1) (e) and (l) used for purposes other than as motor fuels;
- (d) oils supplied for use as fuels for the purpose of air navigation other than private pleasure flying.

For the purpose of this Directive, 'private pleasure flying' means the use of aircraft by the owner thereof or the natural or legal person who enjoys their use either through hire or through any other means, for purposes other than commercial purposes and in particular other than for carriage of passengers or goods for consideration;

- (e) oils supplied for use as fuel for the purpose of navigation on inland waterways and within Community waters (including fishing) other than for use in private pleasure craft.

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

2. Without prejudice to other Community provisions, Member States shall remain free to determine the exemptions or reductions in the rate of duty which they apply to mineral oils used under fiscal control:

— in the process of producing electricity by public utilities,

— in agriculture, horticulture, forestry and inland fisheries,

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2. Without prejudice to other Community provisions, Member States shall remain free to determine the exemptions or reductions in the rate of duty which they apply to mineral oils used under fiscal control:

— in the process of producing electricity by public utilities,

— in agriculture, horticulture, forestry and inland fisheries,

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— in the area of local public transport.

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— in the area of pilot projects for the technological development of more environmentally friendly products.

3. If the Commission considers that the exemptions or reductions provided for in paragraphs 1 and 2 are no longer sustainable, particularly in terms of fair competition or distortion to the functioning of the internal market, or Community policy in the area of protection of the environment, it shall submit appropriate proposals to the Council.

Unchanged

4. In any event, and at the latest before 31 December 1996, the Council shall review the situation with regard to the exemptions or reductions provided for in paragraphs 1 and 2 on the basis of a report from the Commission and shall determine on a proposal from the Commission, after consultation with the European Parliament, whether any or all of them shall be abolished.

5. Member States shall be free to give effect to the exemptions or reductions in the rate of duty listed in paragraphs 1 and 2 by means of a refund of excise paid.

### III. Controls

#### *Article 9*

Pending the establishment of Community norms for the colouring and marking of those mineral oils used at a reduced rate as fuel or as motor fuel, Member States will take all necessary measures to prevent improper use.

By 31 December 1992 the Council shall adopt Community rules for the colouring and marking of those mineral oils used at a reduced rate as fuel or as motor fuel.

### IV. Final provisions

Unchanged

#### *Article 10*

Where necessary, the Community measures to give effect to this Directive shall be adopted by the Commission according to the procedure provided for in Title VI of Council Directive ... concerning the general arrangements for products subject to excise duty and on the holding and movement of such products.

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*Article 11*

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

When the Member States adopt such provisions they shall contain a reference to this Directive or shall be accompanied by such a reference on official publication. The Member States shall lay down the manner in which such reference shall be made.

*Article 12*

This Directive is addressed to the Member States.

**Amendment to the proposal for a Council Directive on the general arrangements for products subject to excise duty and on the holding and movement of such products <sup>(1)</sup>**

(92/C 45/04)

COM(92) 6 final

*(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 24 January 1992)*

<sup>(1)</sup> OJ No C 322, 21. 12. 1990, p. 1.

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## TITLE I

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**General provisions****General provisions***Article 1**Article 1*

1. This Directive lays down the arrangements for excise duties and other indirect taxes which are levied directly or indirectly on the consumption of products, except for value added tax and taxes established by the institutions of the European Communities.

1. This Directive lays down the arrangements for excise duties and other indirect taxes which are levied directly or indirectly on the consumption of products, except for value added tax and taxes established by the institutions of the European Communities.

2. The particular provisions relating to the rates and structures of duty on products subject to excise duty are contained in Directives . . . .

Unchanged