

The Commission claims that the Court should:

1. declare that by applying Paragraph 4(1) Nr. 2(b) of the Mineralölsteuergesetz (law on the taxation of mineral oils) the Federal Republic of Germany has failed to fulfil its obligations under Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils⁽¹⁾ inasmuch as it fails to charge excise duty on all mineral oils intended to be used for heating;
2. order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The action concerns the rule laid down in Paragraph 4(1) Nr. 2(b) of the German Mineralölsteuergesetz, and in particular the interpretation given to it in the Decree of the Bundesminister der Finanzen (Federal Minister of Finances) of 2 February 1998 (III A 1 — V 0355 — 10/97). Under that decree, 'combustion' was to be understood as meaning only the intentional use of the thermal value of a material, i.e. the total or partial combustion of mineral oil for the production of heat to be transmitted wholly or partially to another material. That other material, to which heat is transmitted, must thereby acquire the character of a new carrier of energy or heat. The use of the new heat carrier as a means of heating justifies the conclusion that the mineral oil used to produce that heat carrier has been heated. In accordance with that interpretation, there is no 'heating' where the material receiving the energy from the combustion is itself subjected to heat with a view to the manufacture of a product and it thereby loses its material characteristics. The same must therefore apply where the flame comes into direct contact with the material to be worked/transformed or destroyed. Nor can there be 'combustion' where a pilot light is maintained with mineral oil in order to burn harmful gas emissions or where mineral oil is mixed in a combustion chamber with emissions that are to be destroyed and is completely consumed.

According to the Commission, that interpretation infringes Article 2(2) of Directive 92/81. The words used in that provision, namely 'intended for use ... as heating fuel' must be interpreted independently and in the light of Community law. The wording, purpose and system of the directive support the interpretation that 'combustion' must be interpreted in broad terms and that any consumption of mineral oil for heating must be regarded as a combustion. In particular, it appears to be irrelevant whether the heat produced is used indirectly by means of a heat carrier for the warming of an object, or directly, in order to initiate or continue a chemical or industrial process.

⁽¹⁾ OJ L 316, 31.10.1992, p. 12.

Reference for a preliminary ruling from the Conseil d'État, Judicial Section, by decision of that court of 28 May 2001 in the case of National Farmers' Union against the General Secretariat of the French Government

(Case C-241/01)

(2001/C 245/13)

Reference has been made to the Court of Justice of the European Communities by decision of the Conseil d'État (French Council of State) Judicial Section, of 28 May 2001, received at the Court Registry on 22 June 2001, for a preliminary ruling in the case of National Farmers' Union against the General Secretariat of the French Government on the following questions:

- (1) whether, having regard to the legislative nature of Commission Decision 98/692/EC of 25 November 1998⁽¹⁾ and Commission Decision 99/514/EC of 23 July 1999⁽²⁾, and notwithstanding the expiry of the time limit for challenging them, a Member State may validly invoke significant changes in the factual or legal circumstances occurring after the expiry of that time-limit, where the changes in question are such as to cast doubt on the decisions' validity;
- (2) whether, at the date of the decisions taken by the French authorities, the abovementioned Commission decisions were valid, having regard to the precautionary principle laid down in Article 174 of the Treaty establishing the European Community;
- (3) whether a Member State may draw from the provisions of Article 30 EC (formerly Article 36 of the EC Treaty) the power to prohibit imports of agricultural products and live animals, inasmuch as Directives 89/662/EEC⁽³⁾ and 90/425/EEC⁽⁴⁾ cannot be regarded as harmonising the measures needed in order to attain the specific objective of protecting the health and life of humans provided for by that article.

⁽¹⁾ Commission Decision 98/692/EC of 25 November 1998 amending Decision 98/256/EC as regards certain emergency measures to protect against bovine spongiform encephalopathy (OJ L 328 of 4.12.1998, p. 28).

⁽²⁾ Commission Decision 1999/514/EC of 23 July 1999 setting the date on which dispatch from the United Kingdom of bovine products under the date-based export scheme may commence by virtue of Article 6(5) of Council Decision 98/256/EC (OJ L 195 of 28.7.1999, p. 42).

⁽³⁾ Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ L 395 of 30.12.1989, p. 13).

⁽⁴⁾ Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ L 224 of 18.8.1990, p. 29).