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Legislation

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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/77/EEC

of 19 October 1992

supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DIRECTIVE :

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

Article 1

Directive 77/388/EEC is hereby amended as follows :

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

1. Article 12 (3) is replaced by the following :

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

3. (a) From 1 January 1993 Member States shall apply a standard rate which, until 31 December 1996, may not be less than 15 %.

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

On the basis of the report on the operation of the transitional arrangements and proposals on the definitive arrangements to be submitted by the Commission pursuant to Article 281 the Council shall decide unanimously before 31 December 1995 on the level of the minimum rate to be applied after 31 December 1996 with regard to the standard rate.

Whereas completing the internal market, which is one of the fundamental objectives of the Community, requires as a first step that fiscal controls at the frontiers be abolished ;

Member States may also apply either one or two reduced rates. The reduced rates may not be less than 5 % and shall only apply to supplies of the categories of goods and services specified in Annex H.

Whereas, if distortions are to be avoided, such abolition implies in the case of value added tax, not only a uniform tax base but also a number of rates and rate levels which are sufficiently close as between Member States ; whereas it is therefore necessary to amend Directive 77/388/EEC ⁽⁴⁾ ;

- (b) Member States may apply a reduced rate to supplies of natural gas and electricity provided that no risk of distortion of competition exists. A Member State intending to apply such a rate must, before doing so, inform the Commission. The Commission shall give a decision on the existence of a risk of distortion of competition. If the Commission has not taken that decision within three months of the receipt of the information a risk of distortion of competition is deemed not to exist.

Whereas, during the transitional period, certain derogations concerning number and level of rates should be possible,

- (c) The rules concerning the rates applied to works of art, antiques and collector's items, shall be

⁽¹⁾ OJ No C 176, 17. 7. 1990, p. 8.

⁽²⁾ OJ No C 324, 24. 12. 1990, p. 104.

⁽³⁾ OJ No C 332, 31. 12. 1990, p. 1.

⁽⁴⁾ OJ No L 145, 13. 6. 1977, p. 1. Last amended by Directive 91/680/EEC (OJ No L 376, 31. 12. 1991, p. 1).

determined by the directive relating to the special arrangements applicable to second-hand goods, works of art, antiques and collector's items. The Council shall adopt this Directive before 31 December 1992.

- (d) The rules concerning the taxation of agricultural outputs other than those falling within category 1 of Annex H shall be decided unanimously by the Council before 31 December 1994 on the basis of a Commission proposal.

Until 31 December 1994, those Member States currently applying a reduced rate may continue to do so; those currently applying a standard rate may not apply a reduced rate. This will allow a two-year postponement of the application of the standard rate.

- (e) The rules concerning the regime and the rates applied to gold shall be determined by a directive relating to special arrangements applicable to gold. The Commission shall make such a proposal in time for its adoption by the Council, acting unanimously, before 31 December 1992.

Member States will take all necessary measures to combat fraud in this area from 1 January 1993. These measures may include the introduction of a system of accounting for VAT on supplies of gold between taxable persons in the same Member State which provides for the payment of tax by the buyer on behalf of the seller and a simultaneous right for the buyer to a deduction of the same amount of tax as input tax';

2. the first sentence of Article 12 (4) shall be deleted;
3. the following subparagraph is added to Article 12 (4):

'On the basis of a report from the Commission, the Council shall, starting in 1994, review the scope of the reduced rates every two years. The Council, acting unanimously on a proposal from the Commission, may decide to alter the list of goods and services in Annex H.';

4. Article 28 (2) is replaced by the following:

'2. Notwithstanding Article 12 (3), the following provisions shall apply during the transitional period referred to in Article 281.

- (a) Exemptions with refund of the tax paid at the preceding stage and reduced rates lower than the

minimum rate laid down in Article 12 (3) in respect of the reduced rates, which were in force on 1 January 1991 and which are in accordance with Community law, and satisfy the conditions stated in the last indent of Article 17 of the second Council Directive of 11 April 1967, may be maintained.

Member States shall adopt the measures necessary to ensure the determination of own resources relating to these operations.

In the event that the provisions of this paragraph create for Ireland distortions of competition in the supply of energy products for heating and lighting, Ireland may, on specific request, be authorized by the Commission to apply a reduced rate to such supplies, in accordance with Article 12 (3). In that case, Ireland shall submit its request to the Commission together with all necessary information. If the Commission has not taken a decision within three months of receiving the request, Ireland shall be deemed to be authorized to apply the proposed reduced rates.

- (b) Member States which, at 1 January 1991 in accordance with Community law, applied exemptions with refund of tax paid at the preceding stage, or reduced rates lower than the minimum laid down in Article 12 (3) in respect of the reduced rates, to goods and services other than those specified in Annex H, may apply the reduced rate or one of the two reduced rates provided for in Article 12 (3) to any such supplies.
- (c) Member States which under the terms of Article 12 (3) will be obliged to increase their standard rate as applied at 1 January 1991 by more than 2 %, may apply a reduced rate lower than the minimum laid down in Article 12 (3) in respect of the reduced rate to supplies of categories of goods and services specified in Annex H. Furthermore, those Member States may apply such a rate to restaurant services, children's clothing, children's footwear and housing. Member States may not introduce exemptions with refund of the tax at the preceding stage on the basis of this paragraph.
- (d) Member States which at 1 January 1991 applied a reduced rate to restaurant services, children's clothing, children's footwear and housing, may continue to apply such a rate to such supplies.
- (e) Member States which at 1 January 1991 applied a reduced rate to supplies of goods and services other

than those specified in Annex H may apply the reduced rate or one of the two reduced rates provided for in Article 12 (3) to such supplies, provided that the rate is not lower than 12 %.

- (f) The Hellenic Republic may apply VAT rates up to 30 % lower than the corresponding rates applied in mainland Greece in the departments of Lesbos, Chios, Samos, the Dodecanese and the Cyclades, and on the following islands in the Aegean: Thasos, Northern Sporades, Samothrace and Skiros.
- (g) On the basis of a report from the Commission, the Council shall, before 31 December 1994, re-examine the provisions of subparagraphs (a) to (f) above in relation to the proper functioning of the internal market in particular. In the event of significant distortions of competition arising, the Council, acting unanimously on a proposal from the Commission, shall adopt appropriate measures.';

5. Annex H in the Annex to this Directive shall be appended.

Article 2

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 provisions of national law which they adopt in the field governed by this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 19 October 1992.

For the Council

The President

J. COPE

ANNEX

ANNEX H

LIST OF SUPPLIES OF GOODS AND SERVICES WHICH MAY BE SUBJECT TO REDUCED RATES OF VAT

In transposing the categories below which refer to goods into national legislation, Member States may use the combined nomenclature to establish the precise coverage of the category concerned.

Category	Description
1	Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption ; live animals, seeds, plants and ingredients normally intended for use in preparation of foodstuffs ; products normally intended to be used to supplement or substitute foodstuffs
2	Water supplies
3	Pharmaceutical products of a kind normally used for health care, prevention of diseases and treatment for medical and veterinary purposes, including products used for contraception and sanitary protection
4	Medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled, including the repair of such goods, and children's car seats
5	Transport of passengers and their accompanying luggage
6	Supply, including on loan by libraries, of books (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript, maps and hydrographic or similar charts), newspapers and periodicals, other than material wholly or substantially devoted to advertising matter
7	Admissions to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities Reception of broadcasting services
8	Services supplied by or royalties due to writers, composers and performing artists
9	Supply, construction, renovation and alteration of housing provided as part of a social policy
10	Supplies of goods and services of a kind normally intended for use in agricultural production but excluding capital goods such as machinery or buildings
11	Accommodation provided by hotels and similar establishments including the provision of holiday accomodation and the letting of camping sites and caravan parks
12	Admission to sporting events
13	Use of sporting facilities
14	Supply of goods and services by organizations recognized as charities by Member States and engaged in welfare or social security work, insofar as these supplies are not exempt under Article 13
15	Services supplied by undertakers and cremation services, together with the supply of goods related thereto
16	Provision of medical and dental care as well as thermal treatment in so far as these services are not exempt under Article 13
17	Services supplied in connection with street cleaning, refuse collection and waste treatment, other than the supply of such services by bodies referred to in Article 4 (5)

COUNCIL DIRECTIVE 92/78/EEC

of 19 October 1992

amending Directives 72/464/EEC and 79/32/EEC on taxes other than turnover taxes which are levied on the consumption of manufactured tobacco

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 72/464/EEC ⁽⁴⁾ lays down general provisions concerning excise duties on manufactured tobacco and special provisions concerning the structure of excise duties applicable to cigarettes;

Whereas Directive 79/32/EEC ⁽⁵⁾ laid down the definitions of the various groups of manufactured tobacco;

Whereas the definition of manufactured tobacco should no longer extend to snuff and chewing tobacco;

Whereas in Article 3 (1) of Directive 72/464/EEC and in Article 1 (1) of Directive 79/32/EEC a distinction needs to be made between fine-cut tobacco for the rolling of cigarettes and other smoking tobacco;

Whereas in Article 4 (1) and 6 (2) of Directive 72/464/EEC the concept of import and release for consumption needs to be modified in connection with the abolition of fiscal frontiers;

Whereas in Article 5 (1) of Directive 72/464/EEC a manufacturer needs to be defined as a natural or legal person who actually prepares tobacco products and sets the maximum retail selling price for each of the Member States for which the products in question are to be released for consumption;

Whereas a majority of Member States grant exemptions from excise duty or make refunds of excise duty in respect of certain types of manufactured tobacco depen-

ding on the use which is made of them, and whereas the exemptions or refunds for particular uses need to be specified in this Directive;

Whereas the definitions of tobacco products are all-embracing and therefore the reference to subheading 24.02 E of the Common Customs Tariff should be deleted from Article 2 (3) and (4) of Directive 79/32/EEC;

Whereas rolls of tobacco capable of being smoked as they are after simple handling should also be deemed to be cigarettes for the purposes of uniform taxation of these products;

Whereas Germany should be authorized to tax rolls at least at the rate or amount applicable to fine-cut tobacco for the rolling of cigarettes until 31 December 1998 at the latest;

Whereas Articles 5, 6, 7 (3) and 8 of Directive 79/32/EEC have lapsed and should be deleted,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 72/464/EEC is hereby amended as follows:

1. Article 2 shall be deleted;

2. Article 3 shall be amended as follows:

(a) point (c) of paragraph 1 shall be replaced by the following:

'(c) smoking tobacco:

— fine-cut tobacco for the rolling of cigarettes,

— other smoking tobacco';

(b) points (d) and (e) shall be deleted;

3. Article 4 (1) shall be amended as follows:

the phrase 'national and imported cigarettes' shall be replaced by 'cigarettes manufactured in the Community and those imported from non-member countries';

4. Article 5 (1) shall be replaced by the following:

'1. Manufacturers established in the Community, or, where appropriate, their representatives or authorized agents in the Community and importers of tobacco from non-member countries shall be free to determine the maximum retail selling price for each of their

⁽¹⁾ OJ No C 322, 21. 12. 1990, p. 16.

⁽²⁾ OJ No C 94, 13. 9. 1992, p. 33.

⁽³⁾ OJ No C 69, 18. 3. 1991, p. 25.

⁽⁴⁾ OJ No L 303, 31. 12. 1972, p. 1. Last amended by Directive 86/246/EEC (OJ No L 164, 20. 6. 1986, p. 26).

⁽⁵⁾ OJ No L 10, 16. 1. 1979, p. 8. Amended by Directive 80/369/EEC (OJ No L 90, 3. 4. 1980, p. 42) and by the Act of Accession of Spain and Portugal.

products for each Member State for which the products in question are to be released for consumption. This provision may not, however, hinder implementation of the national systems of legislation regarding the control of price levels or the observance of imposed prices, provided that they are compatible with Community legislation. A natural or legal person who converts tobacco into manufactured products prepared for retail sale shall be deemed to be a manufacturer.';

5. In Article 6 (2), the word 'national' shall be deleted;

6. the following Article shall be inserted:

Article 6a

The following may be exempted from excise duty or excise duty already paid on them may be refunded:

- (a) denatured manufactured tobacco used for industrial or horticultural purposes;
- (b) manufactured tobacco which is destroyed under administrative supervision;
- (c) manufactured tobacco which is solely intended for scientific tests and for tests connected with product quality;
- (d) manufactured tobacco which is re-worked by the producer.

Member States shall determine the conditions and formalities to which the abovementioned exemptions or refunds are subject.';

7. Article 10b (5) shall be replaced by the following:

'5. Member States may levy a minimum excise duty on cigarettes and on fine-cut tobacco for the rolling of cigarettes, provided that this does not have the effect of raising the total tax to more than 90 % of the total tax on the most popular price category of cigarettes or the most popular price category of fine-cut tobacco for the rolling of cigarettes respectively.';

8. Article 12 (1) shall be amended as follows:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 1973. They shall immediately inform the Commission thereof.'

Article 2

Council Directive 79/32/EEC is hereby amended as follows:

1. Article 1 shall be amended as follows:

(a) point (c) of paragraph 1 shall be replaced by the following:

'(c) smoking tobacco:

- fine-cut tobacco for the rolling of cigarettes,
- other smoking tobacco';

(b) points (d) and (e) shall be deleted;

2. Article 2 shall be amended as follows:

(a) in point 3, the words 'falling within subheading 24.02 E of the Common Customs Tariff' shall be deleted;

(b) in point 4, the words 'falling within subheading 24.02 E of the Common Customs Tariff' shall be deleted;

3. Article 3 (1) shall be replaced by the following:

'1. The following shall be deemed to be cigarettes:

- (a) rolls of tobacco capable of being smoked as they are and which are not cigars or cigarillos within the meaning of Article 2;
- (b) rolls of tobacco which, by simple non-industrial handling, are inserted into cigarette-paper tubes;
- (c) rolls of tobacco which, by simple non-industrial handling, are wrapped in cigarette paper.

Until 31 December 1998, the Federal Republic of Germany shall be authorized to tax the rolls of tobacco referred to in (b) at least at the rate or amount applicable to fine-cut tobacco for the rolling of cigarettes.';

4. The following Article shall be inserted:

Article 4a

Smoking tobacco as defined in Article 4 in which more than 25 % by weight of the tobacco particles have a cut width of less than 1 millimetre shall be deemed to be fine-cut tobacco for the rolling of cigarettes. Member States which do not apply this cut width of 1 millimetre on 1 January 1993 shall have until 31 December 1997 to comply with this provision.

Member States may also deem smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of more than 1 millimetre and which was sold or intended to be sold for the rolling of cigarettes to be fine-cut tobacco for the rolling of cigarettes.';

5. Articles 5, 6, 7 (3) and 8 shall be deleted;

6. Article 9 shall be amended as follows :

- (a) in paragraph 1, the figure '1' shall be deleted ;
- (b) paragraphs 2 and 3 shall be deleted.

Article 3

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

When the Member States adopt such provisions 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 4

This Directive is addressed to the Member States.

Done at Luxembourg, 19 October 1992.

For the Council

The President

J. COPE

COUNCIL DIRECTIVE 92/79/EEC
of 19 October 1992
on the approximation of taxes on cigarettes

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 72/464/EEC ⁽⁴⁾ lays down general provisions concerning excise duties on manufactured tobacco and special provisions concerning the structure of excise duties applicable to cigarettes;

Whereas Directive 79/32/EEC ⁽⁵⁾ laid down the definitions of the various groups of manufactured tobacco;

Whereas for the completion on 1 January 1993 of an internal market without frontiers it is necessary to establish an overall minimum excise duty for cigarettes;

Whereas it is necessary for the Kingdom of Spain to have a transitional period of two years in order to attain that overall minimum excise duty;

Whereas the Portuguese Republic should be granted the possibility of a reduced rate for cigarettes made by small-scale producers and consumed in the most remote regions of the Azores and Madeira;

Whereas a procedure should be introduced so that, as regards the overall incidence and the structure of excise duties on cigarettes, it will be possible every two years to make the adjustments necessary to take account of the proper functioning of the internal market and the wider objectives of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Not later than 1 January 1993, Member States shall apply to cigarettes minimum consumption taxes in accordance with the rules provided for in this Directive.

⁽¹⁾ OJ No C 12, 18. 1. 1990, p. 4.

⁽²⁾ OJ No C 94, 13. 4. 1992, p. 35.

⁽³⁾ OJ No C 225, 10. 9. 1990, p. 56.

⁽⁴⁾ OJ No L 303, 31. 12. 1972, p. 1. Last amended by Directive 92/78/EEC, (see page 5 of this Official Journal).

⁽⁵⁾ OJ No L 10, 16. 1. 1979, p. 8.

2. Paragraph 1 shall apply to the taxes which, pursuant to Directive 72/464/EEC, are levied on cigarettes and which comprise:

- (a) a specific excise duty per unit of the product;
- (b) a proportional excise duty calculated on the basis of the maximum retail selling price;
- (c) a VAT proportional to the retail selling price.

Article 2

Not later than 1 January 1993, each Member State shall apply an overall minimum excise duty (specific duty plus *ad valorem* duty excluding VAT) the incidence of which shall be set at 57 % of the retail selling price (inclusive of all taxes) for cigarettes of the price category most in demand.

The overall minimum excise duty on cigarettes shall be determined on the basis of cigarettes of the price category most in demand according to data established as at 1 January of each year, beginning on 1 January 1993.

Article 3

1. The Kingdom of Spain shall have a transitional period of two years, starting on 1 January 1993, to attain the overall minimum excise duty laid down in Article 2.

2. The Portuguese Republic may apply a reduced rate of up to 50 % less than that laid down in Article 2 to cigarettes consumed in the most remote regions of the Azores and Madeira, made by small-scale manufacturers each of whose annual production does not exceed 500 tonnes.

Article 4

Every two years, and for the first time not later than 31 December 1994, the Council, acting on the basis of a report and, where appropriate, a proposal from the Commission, shall examine the overall minimum excise duty laid down in Article 2, the provisions of Article 3 (2) and the structure of excise duties as defined in Article 10b of Directive 72/464/EEC and, acting unanimously after consulting the European Parliament, shall adopt the necessary measures. The report by the Commission and the examination by the Council shall take into account the proper functioning of the internal market and the wider objectives of the Treaty.

Article 5

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 6

This Directive is addressed to the Member States.

Done at Luxembourg, 19 October 1992.

For the Council

The President

J. COPE

COUNCIL DIRECTIVE 92/80/EEC

of 19 October 1992

on the approximation of taxes on manufactured tobacco other than cigarettes

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 72/464/EEC ⁽⁴⁾, lays down in Title I general provisions on excise duty which are applicable to all manufactured tobacco; whereas, under Title II, special provisions have already been adopted for cigarettes; whereas special provisions have yet to be adopted for other types of manufactured tobacco;

Whereas Directive 79/32/EEC ⁽⁵⁾ laid down the definitions relating to the various groups of manufactured tobacco;

Whereas, in order to establish the internal market on 1 January 1993, it is necessary to establish minimum excise duties for manufactured tobacco other than cigarettes;

Whereas a harmonized incidence of tax should be established for all products belonging to the same group of manufactured tobacco;

Whereas the setting of an overall minimum excise duty expressed as a percentage, as an amount per kilogram or for a given number of items is the most appropriate for achieving the internal market;

Whereas the Italian Republic and the Kingdom of Spain should be granted until 31 December 1998 the possibility of a lower rate of tax on cigars and cigarillos in respect of rolls of tobacco consisting entirely of natural tobacco which are not cigarettes;

Whereas a procedure should be introduced to enable the rates or amounts laid down in this Directive to be reviewed periodically on the basis of a Commission report taking account of all the appropriate factors;

Whereas a mechanism should be set up to enable specific amounts expressed in ecu to be converted into national currency,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The following groups of manufactured tobacco produced in the Community and imported from non-member countries shall be subject, in each Member State, to a minimum excise duty as laid down in Article 3:

- (a) cigars and cigarillos;
- (b) fine-cut tobacco intended for the rolling of cigarettes;
- (c) other smoking tobaccos.

Article 2

For the purposes of this Directive, the definitions of the products referred to in Article 1 shall be those laid down in Articles 2, 4 and 4a respectively of Directive 79/32/EEC.

Article 3

1. Not later than 1 January 1993, Member States shall apply an excise duty which may be:

- either an *ad valorem* duty calculated on the basis of the maximum retail selling price of each product, freely determined by manufacturers established in the Community and by importers from non-member countries in accordance with Article 5 of Directive 72/464/EEC,
- or a specific duty, by quantity,
- or a mixture of both, combining an *ad valorem* element and a specific element, provided that the overall excise duty expressed as a percentage, as an amount per kg or for a given number of items is at least equivalent to the rates or minimum amounts laid down for:
 - cigars and cigarillos: 5 % of the retail selling price inclusive of all taxes, or ECU 7 per 1 000 items or per kilogram
 - fine-cut smoking tobacco intended for the rolling of cigarettes: 30 % of the retail selling price inclusive of all taxes, or ECU 20 per kilogram
 - other smoking tobaccos: 20 % of the retail selling price inclusive of all taxes, or ECU 15 per kilogram.

⁽¹⁾ OJ No C 12, 18. 1. 1990, p. 8.

⁽²⁾ OJ No C 94, 13. 1. 1992, p. 38.

⁽³⁾ OJ No C 225, 10. 9. 1990, p. 56.

⁽⁴⁾ OJ No L 303, 31. 12. 1972, p. 1. Last amended by Directive 92/78/EEC (see page 5 of this Official Journal).

⁽⁵⁾ OJ No L 10, 16. 1. 1979, p. 8.

2. The rates or amounts referred to in paragraph 1 shall be effective for all products belonging to the group of manufactured tobaccos concerned, without distinction within each group as to quality, presentation, origin of the products, the materials used, the characteristics of the firms involved or any other criterion.

3. The Italian Republic and the Kingdom of Spain may until 31 December 1998 apply to rolls of tobacco consisting entirely of natural tobacco which are not cigarettes a rate or amount which may be up to 50 % less than the normal national rate of excise duty for cigars and cigarillos and which may fall below the minimum rate laid down in paragraph 1.

Article 4

Every two years, and for the first time not later than 31 December 1994, the Council, acting on the basis of a report and, where appropriate, a proposal from the Commission, shall examine the rates of duty laid down herein and, acting unanimously after consulting the European Parliament, shall adopt the necessary measures. The report by the Commission and the examination by the Council shall take into account the proper functioning of the internal market, the real value of the rates of duty and the wider objectives of the Treaty.

Article 5

1. The value of the ecu in national currencies to be applied to the value of specific excise duties shall be fixed once a year. The rates to be applied shall be those obtaining on the first working day of October and published in the *Official Journal of the European Communities*

and shall have effect from 1 January of the following calendar year.

2. Member States may maintain the amounts of the excise duties in force at the time of the annual adjustment provided for in paragraph 1 if the conversion of the amounts of the excise duties expressed in ecu would result in an increase of less than 5 % or ECU 5, whichever is the lower amount, in the excise duty expressed in national currency.

Article 6

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 7

This Directive is addressed to the Member States.

Done at Luxembourg, 19 October 1992.

For the Council

The President

J. COPE

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

COUNCIL DECISION

of 19 October 1992

authorizing Member States to continue to apply to certain mineral oils when used for specific purposes, existing reduced rates of excise duty or exemptions from excise duty, in accordance with the procedure provided for in Article 8 (4) of Directive 92/81/EEC

(92/510/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION :

Having regard to the Treaty establishing the European Economic Community,

Article 1

Having regard to Council Directive 92/81/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils⁽¹⁾ and in particular Article 8 (4) thereof,

In accordance with the provisions of Article 8 (4) of Directive 92/81/EEC and notwithstanding the obligations laid down in Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils⁽²⁾, the following Member States are authorized to continue to apply the existing reductions in rates of excise duties or exemptions from excise duty as herein specified :

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 8 (4) of Directive 92/81/EEC, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce exemptions or reductions in the excise duty charged on mineral oils for special policy considerations ;

1. in the Kingdom of Belgium :

- for local public passenger transport vehicles,
- for LPG, natural gas and methane,
- in respect of motors used for the drainage of flooded land,
- in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC,
- for navigation in private pleasure craft ;

Whereas the Commission has been informed by Member States of their intention to continue to apply certain such exemptions or reductions which are already provided for in their fiscal law and to which the procedure provided for under the said Article 8 (4) should be applied ;

2. in the Federal Republic of Germany :

- for the use of waste hydrocarbon gases as heating fuel,
- on samples of mineral oils intended for analysis, tests on production or for other scientific purposes ;

Whereas the other Member States have been informed thereof ;

Whereas, it is accepted by the Commission and by all Member States that all of these exemptions are well founded in terms of specific policies and do not give rise to distortions in competition or interfere with the working of the internal market ;

3. in the Kingdom of Denmark :

- for partial reimbursement to the commercial sector, provided that such taxes are in conformity with Community provisions and provided that the amount of the tax paid and not reimbursed at all times respects the minimum rates of duty or monitoring charge on mineral oils as provided for in Community law,
- for local public passenger transport vehicles,

Whereas the reductions or exemptions will be continually reviewed by the Commission to ensure their compatibility with the operation of the internal market or Community policy in the area of protection of the environment ;

Whereas pursuant to Article 8 (6) of Directive 92/81/EEC, the Council is required to review the situation at the latest by 31 December 1996 on the basis of a report from the Commission,

⁽¹⁾ See page 12 of this Official Journal.

⁽²⁾ See page 19 of this Official Journal.

- for a reduction in the rate of duty on diesel to encourage the use of more environment friendly fuels provided that such incentives are linked to established technical characteristics including specific gravity, sulphur content, distillation point, certain number and index and provided that such rates at all times respect the minimum rates of duty on mineral oils as provided for in Community law,
 - in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC;
4. in the Hellenic Republic :
- for use by the armed forces of the State,
 - for local public transport vehicles,
 - in respect of desalination plants,
 - for a reduction in the rate of duty on diesel to encourage the use of more environmentally friendly fuels provided that such incentives are linked to established technical characteristics including specific gravity, sulphur content, distillation point, certain number and index and provided that such rates at all times respect the minimum rates of duty on mineral oils as provided for in Community law,
 - for navigation in private pleasure craft not registered in Greece,
 - for LPG and methane used for industrial purposes ;
5. in the Kingdom of Spain :
- for LPG, used as motor fuel in local public transport vehicles ;
6. in the French Republic :
- for fuel used in taxis within the limits of an annual quota,
 - in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC,
 - for consumption on the island of Corsica until 31 December 1994,
 - in the framework of certain policies aimed at assisting regions suffering from depopulation ;
7. in Ireland :
- in local public transport vehicles,
 - in motor vehicles used by the disabled,
 - in the operation of lighthouses,
 - the production of alumina in the Shannon region,
 - for LPG, natural gas and methane used as motor fuel,
 - in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC,
 - for navigation in private pleasure craft ;
8. in the Italian Republic :
- in local public passenger transport vehicles,
 - in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC,
 - in respect of motors used for the drainage of flooded land,
 - the use of waste hydrocarbon gases as fuel,
 - in respect of ambulances,
 - for consumption in the regions of Val d'Aosta and Gorizia,
 - for consumption in the regions of Udine and Trieste until 31 December 1994,
 - for methane used as fuel in motor vehicles,
 - in respect of the national armed forces ;
9. in the Grand Duchy of Luxembourg :
- in local public transport vehicles,
 - for LPG, natural gas and methane ;
10. in the Kingdom of the Netherlands :
- in respect of desalination plants,
 - for LPG, natural gas and methane,
 - in respect of the national armed forces,
 - on samples of mineral oils intended for analysis, tests on production or for other scientific purposes,
 - in respect of motors used for the drainage of flooded land ;
11. in the Portuguese Republic :
- in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC ;

12. in the United Kingdom of Great Britain and Northern Ireland :

- for local public passenger transport vehicles,
- for navigation in private pleasure craft,
- for LPG, natural gas and methane used as motor fuel,
- in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC,

— in the operation of lighthouses.

Article 2

This Decision is addressed to the Member States.

Done at Luxembourg, 19 October 1992.

For the Council

The President

J. COPE

COUNCIL DIRECTIVE 92/82/EEC

of 19 October 1992

on the approximation of the rates 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 92/81/EEC ⁽⁵⁾ lays down provisions relating to the structures of excise duty applicable to mineral oils;

Whereas Member States must apply minimum rates of excise duty on these products by 1 January 1993 if the internal market is to be achieved by that date;

Whereas the excise rate on mineral oils should be charged at a specific rate by reference to a fixed quantity of the chargeable products;

Whereas it is possible to permit certain Member States to apply reduced rates to products consumed within particular regions of their territories;

Whereas it is necessary for the rates laid down in this Directive to be reviewed periodically on the basis of a Commission report taking account of all the appropriate factors;

Whereas a mechanism should be set up to enable specific amounts expressed in ecu to be converted into national currency,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Not later than 1 January 1993, Member States shall apply rates of excise duty on mineral oils which will be not less than the minimum rates prescribed in this Directive.

⁽¹⁾ OJ No C 16, 23. 1. 1990, p. 10.
⁽²⁾ OJ No C 183, 15. 7. 1991, p. 290.
⁽³⁾ OJ No C 225, 10. 9. 1991, p. 54.
⁽⁴⁾ OJ No L 76, 23. 3. 1992, p. 1.
⁽⁵⁾ See page 12 of this Official Journal.

Article 2

1. The mineral oils covered by this Directive are :
 - leaded petrol falling within CN codes 2710 00 31 and 2710 00 35,
 - unleaded petrol falling within CN code 2710 00 33,
 - gas oil falling within CN code 2710 00 69,
 - heavy fuel oil falling within CN code 2710 00 79,
 - liquid petroleum gas falling within CN codes 2711 12 11 to 27 11 19 00,
 - methane falling within CN code 2711 29 00,
 - kerosene falling within CN codes 27 10 00 51 and 27 10 00 55.
2. References in paragraph 1 above to CN codes shall be to those of the version of the Combined Nomenclature in force when this Directive is adopted.

Article 3

As from 1 January 1993, the minimum rate of excise duty on leaded petrol shall be fixed at ECU 337 per 1 000 litres except in the case of Luxembourg where, during the period from 1 January 1993 to 31 December 1994, the minimum rate of duty shall be fixed at ECU 292 per 1 000 litres.

Article 4

As from 1 January 1993, the minimum rate of excise duty on unleaded petrol shall be fixed at ECU 287 per 1 000 litres except in the case of Luxembourg where, during the period from 1 January 1993 to 31 December 1994, the minimum rate of duty shall be fixed at ECU 242 per 1 000 litres, provided that in every case the rate of duty shall be below that charged on leaded petrol.

Article 5

1. As from 1 January 1993, the minimum rate of excise duty on gas oil used as propellant shall be fixed at ECU per 1 000 litres except in the case of Luxembourg and Greece where, during the period from 1 January 1993 to 31 December 1994, the minimum rate of duty shall be fixed at ECU 195 per 1 000 litres.
2. As from 1 January 1993, the minimum rate of excise duty on gas oil used for the purposes set out in Article 8, paragraph 3, of Directive 92/81/EEC shall be fixed at ECU 18 per 1 000 litres.
3. As from 1 January 1993, the minimum rate of excise duty on heating gas oil shall be fixed at ECU 18 per 1 000 litres.

The Member States which on 1 January 1991 did not apply excise duty to heating gas oil are authorized to continue to apply a zero rate provided that they levy a monitoring charge of ECU 5 per 1 000 litres from 1 January 1993. The charge will be increased to ECU 10 per 1 000 litres on 1 January 1995 if the Council, acting unanimously on the basis of a Commission report, so decides, having noted that the level of the charge is too low to avoid problems of trade distortion between the Member States.

Article 6

As from 1 January 1993, the minimum rate of excise duty on heavy fuel oil shall be fixed at ECU 13 per 1 000 kg.

Article 7

1. As from 1 January 1993, the minimum rate of excise duty on liquid petroleum gas and on methane, when used as a propellant, shall be fixed at ECU 100 per 1 000 kg.
2. As from 1 January 1993, the minimum rate of excise duty on liquid petroleum gas and methane used for the purposes set out in Article 8 (3) of Directive 92/81/EEC shall be fixed at ECU 36 per 1 000 kg.
3. As from 1 January 1993, the minimum rate of excise duty on liquid petroleum gas and on methane when used for heating purposes shall be fixed at ECU 0 per 1 000 kg.

Article 8

1. As from 1 January 1993, the minimum rate of excise duty on kerosene when used as a propellant shall be fixed at ECU 245 per 1 000 litres.
2. As from 1 January 1993, the minimum rate of excise duty on kerosene used for the purposes set out in Article 8 (3) of Directive 92/81/EEC shall be fixed at ECU 18 per 1 000 litres.
3. As from 1 January 1993, the minimum rate of excise duty on kerosene used for heating purposes shall be fixed at ECU 0 per 1 000 litres.

Article 9

1. The Portuguese Republic may apply rates of excise duty on mineral oils consumed in the Autonomous Region of the Azores lower than the minimum rates laid down in this Directive in order to compensate for the transport costs incurred as a result of the insular and dispersed nature of this region.
2. The Hellenic Republic may apply rates of excise duty up to ECU 22 lower than the minimum rates laid down in this Directive on gas oil used as propellant and on petrol consumed in the departments of Lesbos, Chios, Samos, the Dodecanese and the Cyclades and on the

following islands in the Aegean : Thasos, North Sporades, Samothrace and Skiros.

Article 10

Every two years, and for the first time not later than 31 December 1994, the Council, acting on the basis of a report and where appropriate, a proposal from the Commission, shall examine the rates of duty laid down herein and, acting unanimously after consulting the European Parliament, shall adopt the necessary measures. The report by the Commission and the consideration by the Council shall take into account the proper functioning of the internal market, the real value of the rates of duty and the wider objectives of the Treaty.

Article 11

1. The value of the ecu in national currencies to be applied to the value of specific excise duties shall be fixed once a year. The rates to be applied shall be those obtained on the first working day of October and published in the *Official Journal of the European Communities* and shall have effect from 1 January of the following calendar year.
2. Member States may maintain the amounts of the excise duties in force at the time of the annual adjustment provided for in paragraph 1 if the conversion of the amounts of the excise duties expressed in ecu would result in an increase of less than 5% or ECU 5, whichever is the lower amount, in the excise duty expressed in national currency.

Article 12

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 13

This Directive is addressed to the Member States.

Done at Luxembourg, 19 October 1992.

For the Council
The President
J. COPE

COUNCIL DIRECTIVE 92/83/EEC

of 19 October 1992

on the harmonization of the structures of excise duties on alcohol and alcoholic beverages

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 lays down provisions on the general arrangements for products subject to excise duty ⁽⁴⁾;

Whereas Directive 92/84/EEC ⁽⁵⁾ lays down minimum rates of excise duty to be applied in the Member States to alcohol and alcoholic beverages;

Whereas it is important to the proper functioning of the internal market 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 in force at the date of the adoption of this Directive;

Whereas, in the case of beer, it is possible to permit alternative methods of calculating the duty on the finished product;

Whereas, in the case of beer, it is possible within certain limits to permit Member States to apply the duty to gravity bands of more than one degree Plato, provided always that no beer is charged at less than the Community minimum rate;

Whereas, in the case of beer produced in small independent breweries and ethyl alcohol produced in small distilleries, common solutions are required permitting Member States to apply reduced rates of duty to those products;

Whereas it is possible to permit variations in the strength at which Member States commence to subject beer to

duty, provided that no unacceptable problems are caused in the internal market;

Whereas in the case of beer, wine and other fermented beverages it is advisable to permit Member States to exempt from duty home-made products which are not produced for commercial purposes;

Whereas, in principle, Member States should apply a single rate per hectolitre of finished product to all still wine and other still fermented beverages, and a single rate of duty per hectolitre of finished product to all sparkling wine and sparkling fermented beverages;

Whereas it is advisable to permit Member States to apply reduced rates of duty to all kinds of wine and other fermented beverages provided always that the actual alcoholic strength of the products does not exceed 8,5 % vol.;

Whereas Member States applying a higher rate of duty to certain wines on 1 January 1992 should be permitted to continue to do so;

Whereas in principle, Member States should apply a single rate of duty per hectolitre of finished product to all intermediate products;

Whereas it is advisable to permit Member States to apply a reduced rate of the intermediate products duty, on the one hand to products of strengths not exceeding 15 % vol., and on the other hand to natural sweet wines;

Whereas, in principle, Member States should apply the same rate of duty per hectolitre of pure alcohol to all ethyl alcohol as defined in this Directive;

Whereas it is possible to permit Member States to apply reduced rates or exemptions for certain products of a regional and traditional nature;

Whereas, in the cases where Member States are permitted to apply reduced rates, such reduced rates should not cause distortion of competition within the internal market;

Whereas Member States should be permitted to refund the excise duty on alcoholic drinks which have become unfit for consumption;

Whereas it is necessary to lay down at Community level the exemptions which apply to goods which are transported between Member States;

Whereas, however, it is possible to permit Member States an option to apply exemptions tied to end-uses within their territory;

⁽¹⁾ OJ No C 322, 21. 12. 1990, p. 11.

⁽²⁾ OJ No C 67, 16. 3. 1992, p. 165.

⁽³⁾ OJ No C 96, 18. 3. 1991, p. 25.

⁽⁴⁾ OJ No L 76, 23. 3. 1992, p. 1.

⁽⁵⁾ See page 29 of this Official Journal.

Whereas it is necessary to provide for a system of notification of the denaturing requirements of each Member State for completely denatured alcohol, and for their acceptance by other Member States ;

Whereas Member States should not be deprived of the means of combating any evasion, avoidance or abuse which may arise in the field of exemptions ;

Whereas Member States should be permitted to give effect to the exemptions required by this Directive by way of refund ;

Whereas, since certain Member States apply a higher rate of duty to 'other sparkling fermented beverages' than to intermediate products, they should be permitted to apply this higher rate to intermediate products having the characteristics of these 'other sparkling fermented beverages',

HAS ADOPTED THIS DIRECTIVE :

SECTION I

BEER

Scope

Article 1

1. Member States shall apply an excise duty to beer in accordance with this Directive.
2. Member States shall fix their rates in accordance with Directive 92/84/EEC.

Article 2

For the purposes of this Directive, the term 'beer' covers any product falling within CN code 2203 or any product containing a mixture of beer with non-alcoholic drinks falling within CN code 2206, in either case with an actual alcoholic strength by volume exceeding 0,5 % vol.

Establishment of the duty

Article 3

1. The excise duty levied by Member States on beer shall be fixed by reference either :
 - to the number of hectolitre/degrees Plato,
 - or
 - to the number of hectolitre/degrees of actual alcoholic strength by volume
 of finished product.
 2. In assessing the charge to duty on beer in accordance with the requirements of Directive 92/84/EEC, Member States may ignore fractions of a degree Plato or degree of actual alcoholic strength by volume.
- In addition, Member States which levy the duty by reference to the number of hectolitre/degrees Plato may divide beer into categories consisting of no more than four degrees Plato per category and charge the same rate

of duty per hectolitre on all beers falling within each category. Such rates shall invariably equal or exceed the minimum rate laid down in Article 6 of Directive 92/84/EEC, hereinafter referred to as the minimum rate.

Article 4

1. Member States may apply reduced rates of duty, which may be differentiated in accordance with the annual production of the breweries concerned, to beer brewed by independent small breweries within the following limits :

- the reduced rates shall not be applied to undertakings producing more than 200 000 hl of beer per year,
- the reduced rates, which may fall below the minimum rate, shall not be set more than 50 % below the standard national rate of excise duty.

2. For the purposes of the reduced rates the term 'independent small brewery' shall mean a brewery which is legally and economically independent of any other brewery, which uses premises situated physically apart from those of any other brewery and does not operate under licence. However, where two or more small breweries cooperate, and their combined annual production does not exceed 200 000 hl, those breweries may be treated as a single independent small brewery.

3. Member States shall ensure that any reduced rates they may introduce apply equally to beer delivered into their territory from independent small breweries situated in other Member States. In particular they shall ensure that no individual delivery from another Member State ever bears more duty than its exact national equivalent.

Article 5

1. Member States may apply reduced rates, which may fall below the minimum rate, for beer with an actual alcoholic strength by volume not exceeding 2,8 % vol.
2. Member States may confine the application of this Article to products containing a mixture of beer with non-alcoholic drinks falling within CN code 2206.

Article 6

Subject to such conditions as they shall lay down to ensure the straightforward application of the exemption, Member States may exempt from excise duty beer produced by a private individual and consumed by the producer, members of his family or his guests, provided that no sale is involved.

SECTION II

WINE

Scope

Article 7

1. Member States shall apply an excise duty to wine in accordance with this Directive.

2. Member States shall fix their rates in accordance with Directive 92/84/EEC.

Article 8

For the purposes of this Directive :

1. The term 'still wine' covers all products falling within CN codes 2204 and 2205, except sparkling wine as defined in paragraph 2 of this Article :
 - having an actual alcoholic strength by volume exceeding 1,2 % vol. but not exceeding 15 % vol., provided that the alcohol contained in the finished product is entirely of fermented origin,
 - having an actual alcoholic strength by volume exceeding 15 % vol. and not exceeding 18 % vol. provided they have been produced without any enrichment and that the alcohol contained in the finished product is entirely of fermented origin ;
2. The term 'sparkling wine' covers all products falling within CN codes 2204 10, 2204 21 10, 2204 29 10 and 2205 :
 - are contained in bottles with 'mushroom stoppers' held in place by ties or fastenings, or they have an excess pressure due to carbon dioxide in solution of three bar or more,
 - have an actual alcoholic strength by volume exceeding 1,2 % vol. but not exceeding 15 % vol., provided that the alcohol contained in the finished product is entirely of fermented origin.

Establishment of the duty

Article 9

1. The excise duty levied by Member States on wine shall be fixed by reference to the number of hectolitres of finished product.
2. Except as provided in paragraphs 3 and 4, Member States shall levy the same rate of excise duty on all products chargeable with the duty on still wine. Similarly, they shall levy the same rate of excise duty on products chargeable with the duty on sparkling wine. they may apply the same rate of duty to both still and sparkling wine.
3. Member States may apply reduced rates of excise duty to any type of still wine and sparkling wine of an

actual alcoholic strength by volume not exceeding 8,5 % vol.

4. Member States which on 1 January 1992 applied a higher rate of duty to still wines as defined in Article (8) (1), second indent, may continue to apply this rate. This higher rate must not be more than the standard national rate applied to intermediate products.

Article 10

Subject to such conditions as they shall lay down to ensure the straightforward application of this Article, Member States may exempt from excise duty wine produced by a private individual and consumed by the producer, members of his family or his guests, provided no sale is involved.

SECTION III

FERMENTED BEVERAGES OTHER THAN WINE AND BEER

Scope

Article 11

1. Member States shall apply an excise duty to fermented beverages other than beer and wine (other fermented beverages) in accordance with this Directive.
2. Member States shall fix their rates in accordance with Directive 92/84/EEC.

Article 12

For the purposes of this Directive and without prejudice to the provisions of Article 17 :

1. The term 'other still fermented beverages' covers all products falling within CN codes 2204 and 2205 but not mentioned in Article 8 above, and products falling within CN code 2206, except other sparkling fermented beverages as defined in point 2 of this Article and any product covered by Article 2 :
 - having an actual alcoholic strength by volume exceeding 1,2 % vol. but not exceeding 10 % vol.,
 - having an actual alcoholic strength by volume exceeding 10 % but not exceeding 15 % vol., provided that the alcohol contained in the product is entirely of fermented origin.

2. The term 'other sparkling fermented beverages' covers all products falling within CN code 2206 00 91 as well as products falling within CN codes 2204 10, 2204 21 10, 2204 29 10 and 2205 not mentioned in Article 8 above which :

- are contained in bottles with 'mushroom stoppers' held in place by ties or fastenings, or they have an excess pressure due to carbon dioxide in solution of three bar or more,
- have an actual alcoholic strength by volume exceeding 1,2 % vol., but not exceeding 13 % vol.,
- have an actual alcoholic strength by volume exceeding 13 %, but not exceeding 15 % vol., provided that the alcohol contained in the product is entirely of fermented origin.

Establishment of the duty

Article 13

1. The excise duty levied by Member States on other fermented beverages shall be fixed by reference to the number of hectolitres of finished product.
2. Except as provided in paragraph 3, Member States shall levy the same rate of excise duty on all products chargeable with the duty on other still fermented beverages. Similarly they shall levy the same rate of excise duty on all products chargeable with the duty on other sparkling fermented beverages. They may apply the same rate of excise duty to both other still fermented beverages and other sparkling fermented beverages.
3. Member States may apply reduced rates of excise duty to any type of other still and sparkling fermented beverages of an actual alcoholic strength by volume not exceeding 8,5 % vol.

Article 14

Subject to such conditions as they shall lay down to ensure the straightforward application of this Article, Member States may exempt from excise duty other still and sparkling fermented beverages produced by a private individual and consumed by the producer, members of his family or his guests, provided no sale is involved.

Article 15

For the application of Directive 92/84/EEC and Directive 92/12/EEC, references to 'wine' shall be deemed to apply equally to other fermented beverages as defined in this section.

SECTION IV

INTERMEDIATE PRODUCTS

Scope

Article 16

1. Member States shall apply an excise duty to intermediate products in accordance with this Directive.
2. Member States shall fix their rates in accordance with Directive 92/84/EEC. Such rates shall never fall below the rates which Member States apply to the products of Articles 8 (1) and 12 (1) of the present Directive.

Article 17

1. For the purposes of this Directive the term 'intermediate products' covers all products of an actual alcoholic strength by volume exceeding 1,2 % vol, but not exceeding 22 % vol and falling within CN codes 2204, 2205 and 2206 but not covered by Articles 2, 8 and 12.
2. Notwithstanding the provisions of Article 12, Member States may treat as an intermediate product any still fermented beverage falling within the scope of Article 12 (1) which has an actual alcoholic strength exceeding 5,5 % vol. and which is not entirely of fermented origin, and any sparkling fermented beverage falling within the scope of Article 12 (2) which has an actual alcoholic strength exceeding 8,5 vol. and which is not entirely of fermented origin.

Establishment of the duty

Article 18

1. The excise duty levied by Member States on intermediate products shall be fixed by reference to the number of hectolitres of finished product.
2. Except as provided in paragraphs 3, 4 and 5, Member States shall charge the same rate of duty on all products chargeable with the duty on intermediate products.
3. A Member State may apply a single reduced rate of duty to intermediate products with an actual alcoholic strength by volume not exceeding 15 % vol. subject to the following conditions :
 - the reduced rate shall not be set more than 40 % below the standard national rate of excise duty,
 - the reduced rate may not be less than the standard national rate applied to products covered by Articles 8 (1) and 12 (1) of this Directive.

4. Member States may apply a single reduced rate of duty to intermediate products which are defined in Article 13 (1) and (2) of Regulation (EEC) No 4252/88.

The reduced rate

- may fall below the minimum rate but shall not be set more than 50 % below the standard national rate of excise duty,
- or
- shall not be set below the minimum rate applied to intermediate products.

5. For intermediate products which are contained in bottles with 'mushroom stoppers' held in place by ties or fastenings, or have an excess pressure due to carbon dioxide in solution of three bars or more, Member States may apply the same rate as provided for products falling within the scope of Article 12 (2), provided that this rate is higher than the national rate for intermediate products.

SECTION V

ETHYL ALCOHOL

Scope

Article 19

1. Member States shall apply an excise duty to ethyl alcohol in accordance with this Directive.
2. Member States shall fix their rates in accordance with Directive 92/84/EEC.

Article 20

For the purposes of this Directive the term 'ethyl alcohol' covers:

- all products with an actual alcoholic strength by volume exceeding 1,2 % volume which fall within CN codes 2207 and 2208, even when those products form part of a product which falls within another chapter of the CN,
- products of CN codes 2204, 2205 and 2206 which have an actual alcoholic strength by volume exceeding 22 % vol.,
- potable spirits containing products, whether in solution or not.

Establishment of the duty

Article 21

The excise duty on ethyl alcohol shall be fixed per hectolitre of pure alcohol at 20°C, and shall be calculated by

reference to the number of hectolitres of pure alcohol. Subject to the provisions of Article 22, Member States shall charge the same rate of duty on all products chargeable with the duty on ethyl alcohol.

Article 22

1. Member States may apply reduced rates of excise duty to ethyl alcohol produced by small distilleries within the following limits:

- the reduced rates, which may fall below the minimum rate, shall not be applied to undertakings producing more than 10 hectolitres of pure alcohol per year. However, Member States which applied reduced rates on 1 January 1992 to undertakings producing between 10 hectolitres and 20 hectolitres of pure alcohol per year may continue to do so,

- the reduced rates shall not be set more than 50 % below the standard national rate of excise duty.

2. For the purposes of the reduced rates, the term 'small distillery' shall mean a distillery which is legally and economically independent of any other distillery and which does not operate under licence.

3. Member States shall ensure that any reduced rate they may introduce applies equally to ethyl alcohol delivered into their territory from independent small producers situated in other Member States.

4. Member States may lay down provisions whereby the alcohol produced by small producers shall be released for free circulation as soon as it is obtained (provided the producers have not themselves carried out any intra-Community transactions) without being subjected to the tax warehousing arrangements, and be taxed definitively on a flat-rate basis.

5. Member States may apply reduced rates of duty to products falling within CN code 2208 which have an actual alcoholic strength by volume not exceeding 10 % vol.

Article 23

The following Member States may apply a reduced rate, which may fall below the minimum rate but not be set more than 50 % below the standard national rate of duty on ethyl alcohol, to the following products:

1. the French Republic, in respect of rum as defined in Article 1 (4) (a) of Regulation (EEC) No 1576/89 and produced from sugar cane harvested in the place of manufacture as set out at Article 1 (3) (1) of that Regulation, having a content of volatile substances other than ethyl and methyl alcohol equal to or exceeding 225 grams per hectolitre of pure alcohol, and an actual alcoholic strength by volume equal to or exceeding 40 % vol.;

2. the Hellenic Republic, in respect of those aniseed flavoured spirit drinks defined in Regulation (EEC) No 1576/89 which are colourless and have a sugar content of 50 grams or less per litre, and in which at least 20 % of the alcoholic strength of the final product is composed of alcohol flavoured by distillation in traditional discontinuous copper stills with a capacity of 1 000 litres or less.

SECTION VI

MISCELLANEOUS

Article 24

1. Member States need not require that products covered by this Directive shall be manufactured in a tax warehouse from constituent alcoholic products which are held in suspension of the relevant excise duties, provided that the duty on the constituents has already been paid in advance and that the total tax payable on the constituent alcoholic products is not less than the tax payable on the product which results from their mixture.

2. The Kingdom of Spain need not consider as the manufacture of intermediate products the preparation of wines produced in the regions of Moriles-Montilla, Tarragona, Priorato and Terra Alta, to which alcohol has been added in such a way that their alcoholic strength does not increase by more than 1 % vol.

Article 25

Member States may refund the excise duty on alcoholic drinks withdrawn from the market because their condition or age renders them unfit for human consumption.

Article 26

References in this Directive to CN codes shall be to those of the version of the combined nomenclature in force when this Directive is adopted.

SECTION VII

EXEMPTIONS

Article 27

1. Member States shall exempt the products covered by this Directive 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) when distributed in the form of alcohol which has been completely denatured in accordance with the requirements of any Member State, such requirements having been duly notified and accepted in accordance with paragraphs 3 and 4 of this Article. This exemption shall be conditional on the application of the provisions of Directive 92/12/EEC to commercial movements of completely denatured alcohol ;
- (b) when both denatured in accordance with the requirements of any Member State and used for the manufacture of any product not for human consumption ;
- (c) when used for the production of vinegar falling within CN code 2209 ;
- (d) when used for the production of medicines defined by Directive 65/65/EEC ;
- (e) when used for the production of flavours for the preparation of foodstuffs and non-alcoholic beverages with an alcohol strength not exceeding 1,2 % vol. ;
- (f) when used directly or as a constituent of semi-finished products for the production of foodstuffs, filled or otherwise, provided that in each case the alcoholic content does not exceed 8,5 litres of pure alcohol per 100 kg of the product for chocolates, and 5 litres of pure alcohol per 100 kg of the product for other products.

2. Member States may exempt the products covered by this Directive 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, when used :

- (a) as samples for analysis, for necessary production tests, or for scientific purposes ;
- (b) for scientific research ;
- (c) for medical purposes in hospitals and pharmacies ;
- (d) in a manufacturing process provided that the final product does not contain alcohol ;
- (e) in the manufacture of a component product which is not subject to excise duty under this Directive.

3. Before 1 January 1993 and three months before any intended subsequent change in national law, each Member State shall communicate to the Commission, together with all relevant information, the denaturants which it intends to employ for the purposes of paragraph 1 (a). The Commission shall transmit the communications to the other Member States within one month of receipt.

4. If, within two months of the other Member States being informed, neither the Commission nor any Member State has requested that the matter be raised in the Council, the Council shall be deemed to have authorized the denaturing processes notified. If an objection is raised within the time limit, a decision shall be taken in accordance with the procedure laid down in Article 24 of Directive 92/12/EEC.

5. If a Member State finds that a product which has been exempted under paragraphs 1 (a) or 1 (b) above gives rise to evasion, avoidance or abuse, it may refuse to grant exemption or withdraw the relief already granted. The Member State shall advise the Commission forthwith. The Commission shall transmit the communication to the other Member States within one month of receipt. A final decision shall then be taken in accordance with the procedure laid down in Article 24 of Directive 92/12/EEC. Member States shall not be obliged to give retroactive effect to such a decision.

6. Member States shall be free to give effect to the exemptions mentioned above by means of a refund of excise duty paid.

Article 28

The United Kingdom may continue to apply the exemptions which it applied on 1 January 1992 to the following products:

- concentrated malt beverage the worts of which prior to fermentation were of a specific gravity of 1 200 of Original Gravity (47° Plato) or more;
- aromatic bitters of an actual alcoholic strength from 44,2 to 49,2 % vol., containing from 1,5 % to 6 % by weight of gentian, spices and other aromatic ingredients and from 4 to 10 % by weight of sugar, deli-

vered in containers holding 0,2 litres or less of product.

SECTION VIII

FINAL PROVISIONS

Article 29

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 30

This Directive is addressed to the Member States.

Done at Luxembourg, 19 October 1992.

For the Council

The President

J. COPE

AGREEMENT BETWEEN THE UNITED KINGDOM AND THE KINGDOM OF SPAIN AND RELATED STATEMENTS**Ad Article 18 of the Directive on the structures of excise duties on alcohol and alcoholic beverages**

(i) In the context of this Directive, *the Council and the Commission* register the following Agreement between the United Kingdom and the Kingdom of Spain dated 19 October 1992 concerning the rates of excise duty charged in the United Kingdom on 'British Sherry' and the liquor wines with the origin denomination 'Jerez-Xérès-Sherry':

1. The United Kingdom and the Kingdom of Spain hereby agree that the differential between the rate of duty charged in the United Kingdom on intermediate products (as defined in Council Directive 92/83/EEC on the structures of excise duties on alcohol and alcoholic beverages), of a strength not exceeding 15 % alcohol by volume (abv) and the rate charged on intermediate products of a strength over 15 % abv but not exceeding 22 % abv, calculated by dividing the difference between the two rates by the higher rate and expressing the result as a percentage, shall not exceed the following figures:

- from 1 January 1993 to 31 December 1993: 40 %
- from 1 January 1994 to 31 December 1994: 35 %
- from 1 January 1995 to 31 December 1995: 30 %
- from 1 January 1996 to 31 December 1996: 25 %.

Taking into account the importance which the Kingdom of Spain attaches to this question, the United Kingdom declares that it has the firm intention of maintaining the differential of no more than 25 % after 31 December 1996.

2. The Kingdom of Spain undertakes to withdraw the legal proceedings against the United Kingdom commenced on 4 September 1992 and registered in the Court of Justice of the European Communities under number 410914, and to institute no further proceedings connected with the duty differential referred to in Article 1 or with the use of the name "British Sherry" in the United Kingdom in the period up to 1 January 1996.

(ii) *The Council and the Commission* declare that, during 1995, the Council, acting on a proposal from the Commission, and according to the procedure of Article 43 of the EEC Treaty, shall adopt the necessary provisions to put an end to the exceptional regime of Article 129 of the Adhesion Act of the Kingdom of Spain to the European Communities before 1 January 1996.

The United Kingdom undertakes to promote any necessary legislation which would discontinue the authorisation of the use of the name 'British Sherry' on its domestic markets after 1 January 1996.

Furthermore, *the Commission* states that, in the context of the regular reports foreseen in Article 8 of the Council Directive on the approximation of the rates of excises duties on alcohol and alcoholic beverages, it will pay special attention to the rates applied to these products in order to take into account, in particular, the problem of competition between the different categories of drinks concerned.

(iii) *The Council and the Commission* agreed to publish the above agreement and statements simultaneously with the Directive, in the *Official Journal of the European Communities*.

COUNCIL DIRECTIVE 92/84/EEC

of 19 October 1992

on the approximation of the rates of excise duty on alcohol and alcoholic beverages

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty instituting 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 duties;

Whereas Directive 92/83/EEC ⁽⁵⁾ lays down provisions relating to the harmonization of the structures of excise duties on alcohol and alcoholic beverages;

Whereas Member States should apply minimum rates of excise duty on these products by 1 January 1993 if the internal market is to be achieved by that date;

Whereas the most appropriate basis for levying duty on ethyl alcohol is the volume of pure alcohol;

Whereas the most appropriate basis for levying duty on wine and intermediate products is the volume on the finished product;

Whereas the consumption pattern of sparkling wine differs from that of still wine; whereas, therefore, Member States may be allowed to charge differing rates of duty on the two products;

Whereas the methods of taxing beer within the Member States vary, and it is possible to permit this variation to continue, in particular by laying down a minimum rate expressed as a charge related both to the original gravity and to the alcoholic content of the product;

Whereas it is possible to permit certain Member States to apply reduced rates to products consumed within particular regions of their national territory;

Whereas it is necessary for the rates laid down in this Directive to be reviewed periodically on the basis of a

Commission report taking account of all the appropriate factors;

Whereas a mechanism should be set up to enable specific amounts expressed in ecu to be converted into national currency,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Not later than 1 January 1993, Member States shall apply minimum rates of excise duty in accordance with the rules laid down in this Directive.

Article 2

The products covered by this Directive are:

- alcohol and alcoholic beverages,
- intermediate products,
- wine,
- beer,

as defined in Directive 92/83/EEC.

Article 3

1. As from 1 January 1993, the minimum rate of excise duty on alcohol and alcohol contained in beverages other than those referred to in Articles 4, 5 and 6 shall be fixed at ECU 550 per hectolitre of pure alcohol.

However, Member States which apply to alcohol and alcoholic beverages a rate of duty not exceeding ECU 1 000 per hectolitre of pure alcohol may not reduce their national rate. In addition Member States which apply to the said products a rate of duty exceeding ECU 1 000 per hectolitre of pure alcohol may not reduce their national rate below ECU 1 000.

2. The Kingdom of Denmark may, however, maintain its existing system of taxing alcohol and the alcohol contained in other products until 30 June 1996, provided that the application of that system never results in the application of a charge which falls below that which would arise from the application of paragraph 1 in accordance with the rules laid down in Directive 92/83/EEC.

3. The Italian Republic may, however, maintain its existing system of taxing alcohol and the alcohol contained in other products, which provides a reduced

⁽¹⁾ OJ No C 12, 18. 1. 1990, p. 12.

⁽²⁾ OJ No C 94, 13. 4. 1992, p. 46.

⁽³⁾ OJ No C 225, 10. 9. 1991, p. 54.

⁽⁴⁾ OJ No L 76, 23. 3. 1992, p. 1.

⁽⁵⁾ See page 21 of this Official Journal.

rate for some categories of alcohol, until 30 June 1996, provided that the application of that system never results in the application of a charge which falls below that which would arise from the application of paragraph 1 in accordance with the rules laid down in Council Directive 92/83/EEC.

Article 4

As from 1 January 1993, the minimum rate of excise duty on intermediate products shall be fixed at ECU 45 per hectolitre of product.

Article 5

As from 1 January 1993, the minimum rate of excise duty on wine shall be fixed:

- for still wine at ECU 0,
 - and
 - for sparkling wine at ECU 0
- per hectolitre of product.

Article 6

As from 1 January 1993, the minimum rate of excise duty on beer shall be fixed:

- ECU 0,748 per hectolitre/degree Plato,
 - or
 - ECU 1,87 per hectolitre/degree of alcohol
- of finished product.

Article 7

1. The Hellenic Republic may apply a reduced rate of excise duty to ethyl alcohol consumed in the departments of Lesbos, Chios, Samos, the Dodecanese and the Cyclades and on the following islands in the Aegean: Thasos, Northern Sporades, Samothrace and Skiros.

The reduced rate, which may fall below the minimum rate of duty, may not fall more than 50 % below the standard national rate of duty on ethyl alcohol.

2. The Italian Republic may continue to apply the exemptions and reduced rates of excise duty, which may fall below the minimum rates, which were applied on 1 January 1992 to alcohol and alcoholic drinks consumed in the regions of Gorizia and the Aosta valley.

3. The Portuguese Republic may continue to apply, in the autonomous regions of Madeira and the Azores, reduced rates of excise duty not falling more than 50 % below the national rates, on the following products:

(a) in Madeira

- wine obtained from the purely regional grape varieties specified in Article 15 of Regulation (EEC) No 4252/88,

- rum as defined in Article 1 (4) (a) of Regulation (EEC) No 1576/89 having the geographical characteristics set out in Article 5 (3) and Annex II, point 1, of that Regulation,
- liqueurs produced from sub-tropical fruit enriched with sugar cane *eau-de-vie* and having the characteristics and qualities defined in Article 5 (3) (b) of Regulation (EEC) No 1576/89;

(b) in the Azores

- liqueurs as defined in Article 1 (4) (r) of Regulation (EEC) No 1576/89 produced from passion fruit and pineapple,
- *eau-de-vie* made from wine or from grape marc having the characteristics and qualities defined in Article 1 (4) (d) and (f) of Regulation (EEC) No 1576/89.

Article 8

Every two years, and for the first time not later than 31 December 1994, the Council, acting on the basis of a report and, where appropriate, a proposal from the Commission, shall examine the rates of duty laid down herein and, acting unanimously after consulting the European Parliament, shall adopt the necessary measures. The report by the Commission and the consideration by the Council shall take into account the proper functioning of the internal market, competition between the different categories of alcoholic drinks, the real value of the rates of duty and the wider objectives of the Treaty.

Article 9

1. The value of the ecu in national currencies to be applied to the value of specific excise duties shall be fixed once a year. The rates to be applied shall be those obtaining on the first working day of October and published in the *Official Journal of the European Communities* and shall have effect from 1 January of the following calendar year.

2. Member States may maintain the amounts of the excise duties in force at the time of the annual adjustment provided for in paragraph 1 if the conversion of the amounts of the excise duties expressed in ecu would result in an increase of less than 5 % or less than ECU 5, whichever is the lower amount, in the excise duty expressed in national currency.

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 a 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
