

## STATLIGT STÖD – IRLAND

## Stöd nr C 78/2001 (ex NN 22/01) – Befrielse från punktskatt för mineraloljor som används som bränsle för produktion av aluminiumoxid i Shannon-regionen

## Uppmaning att inkomma med synpunkter enligt artikel 88.2 i EG-fördraget

(2002/C 30/07)

(Text av betydelse för EES)

Genom den skrivelse, daterad den 30 oktober 2001, som återges på det giltiga språket på de sidor som följer på denna sammanfattning, underrättade kommissionen Irland om sitt beslut att inleda det förfarande som anges i artikel 88.2 i EG-fördraget avseende ovannämnda stöd.

Berörda parter kan inom en månad från dagen för offentliggörandet av denna sammanfattning och den därpå följande skrivelsen inkomma med sina synpunkter på det stöd avseende vilket kommissionen inleder förfarandet. Synpunkterna skall sändas till följande adress:

Europeiska kommissionen  
Generaldirektoratet för konkurrens  
Registreringsenheten för statligt stöd  
B-1049 Bryssel  
Fax (32-2) 296 12 42.

Synpunkterna kommer att meddelas Irland. Den tredje part som inkommer med synpunkter kan skriftligen begära konfidentiell behandling av sin identitet, med angivande av skälen för begäran.

## SAMMANFATTNING

## Bakgrund

Enligt artikel 6 i rådets direktiv 92/82/EEG<sup>(1)</sup> skall minimiskattesatsen på tjock eldningsolja sättas till 13 ecu per 1 000 kg. Den punktskatt som tillämpas av Irland på industriell tung eldningsolja ligger på 13,46 euro per 1 000 kg (plus 12,5 % moms) vilket är något över minimisatsen.

På grundval av artikel 1 i rådets beslut 92/510/EEG<sup>(2)</sup>, 97/425/EEG<sup>(3)</sup>, 1999/880/EG<sup>(4)</sup> och 2001/224/EG<sup>(5)</sup> skattebefriar Irland dock mineraloljor som används som bränsle för produktion av aluminiumoxid i Shannon-regionen. I skäl 5 i beslut 2001/224/EG sägs: "Detta beslut påverkar inte resultatet av de eventuella förfaranden med anledning av störningar av den inre marknadens sätt att fungera som kan komma att inledas med stöd av artiklarna 87 och 88 i fördraget. Beslutet befriar inte medlemsstaterna från deras skyldighet att i enlighet med artikel 88 i fördraget till kommissionen anmäla alla planerade statliga stödåtgärder".

Aluminiumoxid är ett vitt pulver som huvudsakligen används i smältverk för att producera aluminium.

Inom EU produceras aluminiumoxid i Italien, Frankrike, Irland, Tyskland, Grekland, Spanien och Förenade kungariket. Energi är en mycket stor kostnadspost vid produktion av aluminiumoxid (cirka 20 % av de sammanlagda kostnaderna). Utom i Tyskland där gas är bränslet använder anläggningarna i de övriga länderna mineraloljor.

Det finns bara en producent av aluminiumoxid i Irland, Aughinish Alumina Ltd, som ligger i Shannon-regionen och som tillhör Glencore-gruppen<sup>(6)</sup>. Företaget har 430 anställda och producerar cirka 1,5 miljoner ton aluminiumoxid som huvudsakligen exporteras till övriga länder i Europeiska unionen.

År 1998 uppgick den irländska exporten av aluminiumoxid till resten av EU till 713 000 ton (51 % av produktionen) och 1999 låg den på 778 000 ton (54 % av produktionen).

Den irländska regeringen begärde ett undantag från minimisatsen för punktskatter år 1992 under hänvisning till att anläggningen var belägen i ett relativt underutvecklat område och att anläggningen, eftersom den använde tung eldningsolja som energikälla, inte kunde konkurrera med andra länders industrier som har lägre skattesatser på bränsle och som eventuellt också använder naturgas eller andra energikällor som beskattas lägre eller inte alls.

<sup>(1)</sup> EGT L 316, 31.10.1992, s. 19.

<sup>(2)</sup> EGT L 316, 31.10.1992, s. 16.

<sup>(3)</sup> EGT L 182, 10.7.1997, s. 22.

<sup>(4)</sup> EGT L 331, 23.12.1999, s. 73.

<sup>(5)</sup> EGT L 84, 23.3.2001, s. 23.

<sup>(6)</sup> Glencore är en diversifierad resursgrupp med världsomspännande verksamheter i gruvor, smältverk, raffinaderier samt förädling och handel med mineraler och metaller, energiprodukter och jordbruksprodukter. Omsättningen låg år 2000 på 48 miljarder US-dollar.

## Bedömning av stödet

Punktskattebefrielsen utgör statligt stöd i den mening som avses i artikel 87.1 i EG-fördraget eftersom den ger mottagaren en fördel som finansieras med statliga medel och som endast tillämpas på vissa företag eller regioner. Den snedvrider konkurrensen och eftersom aluminiumoxid exporteras från Irland till övriga EU påverkas handeln inom gemenskapen.

Vad beträffar förenligheten med den gemensamma marknaden betvivlar kommissionen att punktskattebefrielsen uppfyller driftsstödsvillkoren i riktlinjerna för statligt stöd för regionala ändamål<sup>(7)</sup> (punkterna 4.15 och 4.17), eftersom de irländska myndigheterna inte har påvisat några särskilda handikapp eller bedömt deras betydelse för att motivera att driftsstöd beviljas. Vidare är stödet inte begränsat i tiden, och det minskar inte heller successivt.

Likaledes anser kommissionen att Irland inte tycks ha uppfyllt villkoren i punkt 3.4 i gemenskapens riktlinjer avseende statligt stöd till miljöskydd som gällde mellan mars 1994 och februari 2001<sup>(8)</sup> (det skall endast kompensera för extra produktionskostnader och vara tillfälligt och i princip degressivt) och villkoren i punkt 53 i de nuvarande riktlinjerna<sup>(9)</sup> (varaktighet begränsas till fem år med successiva minskningar [punkt 45] eller icke degressivt men begränsat till 50 % av extrakostnaderna [punkt 46]).

Med anledning av det ovan anförda har kommissionen beslutat att inleda ett förfarande enligt artikel 88.2 i EG-fördraget med avseende på stödet.

### SKRIVELSE

"The Commission wishes to inform Ireland that, having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

#### 1. FACTS

(1) Article 6 of Council Directive 92/82/EEC<sup>(10)</sup> establishes a minimum rate of excise duty on heavy oil of ECU 13 per 1 000 kg. The excise duty applied by Ireland to industrial heavy oil is EUR 13,46 per 1 000 kg (accrued by VAT of 12,5 %) which is slightly above the minimum rate.

(2) However, based on the authorisation granted by Article 1 of Council Decisions 92/510/EEC<sup>(11)</sup>, 97/425/EC<sup>(12)</sup>, 1999/880/EC<sup>(13)</sup> and 2001/224/EC<sup>(14)</sup>, Ireland exempts

<sup>(7)</sup> EGT C 74, 10.3.1998, s. 9.

<sup>(8)</sup> EGT C 72, 10.3.1994, s. 3.

<sup>(9)</sup> EGT C 37, 3.2.2001, s. 3.

<sup>(10)</sup> OJ L 316, 31.10.1992, p. 19.

<sup>(11)</sup> OJ L 316, 31.10.1992, p. 16.

<sup>(12)</sup> OJ L 182, 10.7.1997, p. 22.

<sup>(13)</sup> OJ L 331, 23.12.1999, p. 73.

<sup>(14)</sup> OJ L 84, 23.3.2001, p. 23.

from the excise duty the mineral oils used as fuel for alumina production in the Shannon region. According to the fifth recital of the said Council Decision 2001/224/EC, 'this decision shall be without prejudice to the outcome of any procedures relating to distortions of the operation of the single market that may be undertaken, in particular under Articles 87 and 88 of the Treaty. It does not override the requirement for Member States to notify instances of potential State aid to the Commission under Article 88 of the Treaty'.

(3) Alumina is a white powder principally used in smelters to produce aluminium. It is produced out of bauxite ore by a refining process, the last step of which consists of calcination. More than 90 % of the calcined alumina will be used in the smelting of aluminium metal. The remainder is further processed and used in chemical applications. In several merger decisions<sup>(15)</sup>, the Commission has found that there are two separate product markets: smelter grade alumina (SGA) and chemical grade alumina (CGA). While the geographical market for SGA is worldwide, that for CGA is not wider than Europe.

(4) Within the EU, alumina is produced in Italy, France, Ireland, Germany, Greece, Spain and the United Kingdom. Energy is one very important cost item in alumina production (about 20 % of total costs). Except in Germany where gas is used as fuel, the plants in all the other countries use mineral oils.

(5) There is only one producer of alumina in Ireland, Aughinish Alumina Ltd, which is located in the Shannon region and which belongs to the Glencore group<sup>(16)</sup>. It has 430 employees and produces around 1,5 million tonnes of alumina which is exported mainly to the rest of the European Union.

(6) Aughinish Alumina Ltd's consumption of heavy fuel oil amounted to 328 000 000 kg in 1998 and 336 000 000 kg in 1999.

(7) In 1998, Irish exports of alumina to the rest of the EU amounted to 713 000 tonnes (51 % of production) and to 778 000 tonnes (54 % of production) in 1999.

(8) The Irish Government requested the derogation to the minimum rate for excise duty in 1992 on the grounds that the plant was located in a relatively underdeveloped area and that, since it used heavy oil as an energy source, it could not compete with other countries' industries having lower tax rates on fuel and possibly also using lower or non-taxed natural gas or other energy sources.

<sup>(15)</sup> See, for instance, Case COMP/M.1693 — Alcoa/Reynolds.

<sup>(16)</sup> Glencore is a diversified resources group with worldwide activities in the mining, smelting, refining, processing and trading of minerals and metals, energy products and agricultural products. Its turnover in 2000 was USD 48 billion.

## 2. ASSESSMENT

- (9) In accordance with Article 6(1) of Council Regulation (EC) No 659/1999 of 22 March 1999, the decision to initiate proceedings shall summarise the relevant issues of fact and law, shall include a preliminary assessment from the Commission as to the aid character of the proposed measure, and shall set out the doubts as to its compatibility with the common market.
- (10) As for the nature of State aid of the measure within the meaning of Article 87(1) of the EC Treaty, the following considerations apply:
- (11) It is clear that the exemption from excise duty in point confers an advantage to its beneficiary which is placed in a more favourable financial position than the other undertakings that use mineral oils in other industries or regions.
- (12) It is also evident that the exemption is financed through State resources, since the State foregoes a certain amount of money that otherwise it would collect.
- (13) The exemption only applies to certain companies (those producing alumina) located in one specific region (the Shannon region). It favours therefore certain undertakings or the production of certain goods within the meaning of Article 87(1). Moreover, there is only one company producing alumina in the Shannon region, Aughinish Alumina Ltd.
- (14) As seen above, alumina is exported from Ireland to the rest of the EU. Intra-community trade is therefore affected.
- (15) The exemption of excise duties for the heavy oil used in Aughinish Alumina Ltd's production of alumina reduces the cost of an important input, giving it an advantage over other EU producers of alumina in the EU, and is therefore liable to distort competition.
- (16) As for its compatibility with the common market, neither the exceptions of Article 87(2) nor those contained in the exemption regulations<sup>(17)</sup> apply in the present case.
- (17) As for the possible applicability of other exceptions under Article 87(3), the following considerations apply:
- (18) Since the aid reduces Aughinish Alumina Ltd's current expenses, it constitutes operating aid which is normally prohibited.
- (19) Nevertheless, according to point 4(15) of the guidelines on national regional aid<sup>(18)</sup>, operating aid may exceptionally be granted in regions eligible under the derogation in Article 87(3)(a) provided that it is justified in terms of its contribution to regional development, and that its nature and its level is proportional to the handicaps it seeks to alleviate. In any case, it is for the Member State to demonstrate the existence of any handicaps and gauge their importance (point 4(15)) and operating aid must be both limited in time and progressively reduced (point 4(17)).
- (20) These conditions do not appear to be met in the present case. Although the Shannon region has lost its 87(3)(a) status as a result of the review of the regional map in 1999 and could, exceptionally, benefit from operating aid until the end of 2001, the Irish authorities have not demonstrated the existence of particular handicaps nor gauged their importance in order to justify the granting of operating aid. Moreover, it appears that the exemption in point is neither limited in time nor progressively reduced. The Commission considers that a period of 23 years (from 1983 until the end of 2006 if Ireland so wishes since unanimity is required to shorten that deadline) is too long a period to be considered 'limited'. On the other hand, there is no progressive reduction of the advantage.
- (21) Operating aid is also contemplated in the Community guidelines on State aid for environmental protection when it adopts the form of tax relief from environmental taxes<sup>(19)</sup>.
- (22) Originally, excise duties on mineral oils were not designed as an instrument of environmental policy. However, the Commission has acknowledged in its Communication on environmental taxes and charges in the single market<sup>(20)</sup>, that 'one likely feature for a levy to be considered as environmental would be that the taxable base of the levy has a clear negative effect on the environment'. As mineral oils have a clear negative effect on the environment, excise duties on mineral oils could be considered as environmental taxes for the purposes of the application of the environmental guidelines.
- (23) In any case, at this stage of the procedure, the conditions established in the Community guidelines for environmental protection do not appear to be met. According to point 3(4) of the Community guidelines on State aid for environmental protection in force between March 1994 and February 2001<sup>(21)</sup>, operating aid in the form of relief from environmental taxes should only compensate for extra production costs and be temporary and in principle degressive. Similarly, according to point 53 of the current guidelines, 'when the reductions concern a tax that has been harmonised at Community level and when the domestic tax is lower or equal to the Community minimum, the Commission takes the view that long-term exemptions are not justified'. In this case, any exemptions granted are subject to a limited duration of five years where the aid is degressive (point 45) or non-degressive but limited to 50 % of the extra costs (point 46). In the present case, the Commission notes that the period of five years is exceeded and that the aid has not been neither progressively reduced nor limited to extra costs.

<sup>(17)</sup> Commission Regulation (EC) No 70/2001 of 12 January 2001; Commission Regulation (EC) No 68/2001 of 12 January 2001.

<sup>(18)</sup> OJ C 74, 10.3.1998, p. 9.

<sup>(19)</sup> OJ C 37, 3.2.2001, p. 3.

<sup>(20)</sup> COM(97) 9 final of 26 March 1997.

<sup>(21)</sup> OJ C 72, 10.3.1994, p. 3.

(24) The Commission will take duly into account the fact that the decision adopted by the Council on 12 March 2001, on the basis of a Commission proposal, has extended the derogation in point. In this regard, the Commission states that this Council decision is without prejudice of the application of the State aid rules.

### 3. CONCLUSION

(25) In the light of the foregoing considerations, the Commission, has doubts that the aid in question fulfils the criteria for declaring its compatibility with the common market. It has therefore decided to initiate the procedure laid down in Article 88(2) of the EC Treaty against it.

(26) The Commission accordingly requests Ireland to submit its comments and to provide all such information as may

help to assess the measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

(27) The Commission warns Ireland that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Communities*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Communities* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication”.

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