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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.11.1999  
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Proposal for a

**COUNCIL DECISION**

**authorising 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 Directive 92/81/EEC**

## EXPLANATORY MEMORANDUM

The taxation of mineral oils in the Community is currently governed by Council Directive 92/81/EEC,<sup>1</sup> which specifies products which should be treated as mineral oils and the uses which make them liable to tax. It also lays down a number of compulsory exemptions from the normal rules on taxation, as well as some optional exemptions and reduced rates. In addition, Article 8(4) of the Directive allows the Council, acting unanimously on a proposal from the Commission, to authorise a Member State to introduce further exemptions or reductions for specific policy considerations. At present, over ninety such derogations exist.

Directive 92/81/EEC provides for the Commission to review exemptions and reductions periodically. If the Commission considers that they may no longer be applied because they distort competition or the operation of the internal market or are incompatible with Community policy on protection of the environment, it is to present appropriate proposals to the Council. All derogations granted under Article 8.4 have to be reviewed by 31 December 1999 when the authorisation granted by the relevant Decisions expire. The Council will review the situation on the basis of a Commission proposal and decide whether the authorisations should be withdrawn, amended or extended.

The last major review of derogations granted under Article 8(4) resulted in Council Decision 97/425/EC of 30 June 1997. Article 1 of that decision contains derogations that continue to apply automatically unless the Council decides unanimously, on a proposal from the Commission, whether any or all of them should be abolished or modified. This Article was the result of a compromise proposal and was only reluctantly accepted by the Commission who believe that derogations that are not time-limited are contrary to Community law. A Commission Minute Statement to that effect was included in the final document. This proposal therefore removes automatic extensions for derogations and gives Council more effective control over such measures by ensuring that they are examined regularly and that positive decisions are taken as to whether they should continue.

During the discussions prior to adoption of Council Decision 97/425/EC, questions were raised regarding the compatibility of some of the derogations with the Treaty provisions on State Aid. Accordingly, the Decision when finally adopted, provided that the derogations under Article 3 should be the subject of another Council Decision which would decide their future and which was to be adopted before 31 December 1998. In the event, questions regarding State Aid and the derogations in question were not resolved by that time. Therefore, Council Decision 99/255/EEC was adopted, and this extended the life of the derogations in Article 3 for 12 months, until 31 December 1999, by which time Council considered that the issues regarding State Aid should have been resolved.

The Commission has therefore further reviewed the validity of derogations granted under Article 8(4) of Directive 92/81/EC, with particular reference to whether they infringed upon the provisions for State Aid set out in Article 87 of the Treaty. As a result, 4 existing derogations have been identified as being contrary to State Aid provisions. They have been separately identified in Article 3 of this proposal and have been authorised only until 31 December 2000, giving recipients one year to adapt to the new situation. Furthermore, several Member States have derogations that allow reduced rates of excise duty, or exemptions from excise duty on waste oils which are used as fuel, either directly after recovery or following a recycling process for waste oils, and where the reuse is subject to duty. The Commission also

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<sup>1</sup> Council Directive 92/81/EEC of 19 October 1992, OJ L 316, 31.10.1992.

included a minute statement on waste oils in Council Decision 97/425/EC declaring its intention to keep these derogations under review in the light of the results of its examination of the treatment of waste oil. The current derogations were authorised mainly because of concerns regarding disposal of waste oils. By giving a fiscal incentive for its use as a fuel, the derogations made it less likely that waste oil would be dumped.

Article 3 of the current Directive on the disposal of waste oil (75/439/EEC as amended by Directive 87/101/EEC) provides that "where technical, economic and organisational constraints so allow, Member States shall take the measures necessary to give priority to the processing of waste oils by regeneration". In the light of a recent judgement of the European Court of Justice in case C102-97 (Commission v The Federal republic of Germany) the Commission considers that the duty derogations for waste oils are contrary to the objective of Directive 75/439/EEC as amended. Accordingly, these derogations have been separately identified in Article 2 of this proposal and have been authorised only until 31 December 2000, giving recipients one year to adapt to the new situation. However, to ensure that any environmental constraints of individual Member States can be taken into account, provision has been made for an extension beyond this date if necessary. Authorisation of an extension would require a unanimous decision by the Council.

Proposal for a

## COUNCIL DECISION

**authorising 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 Directive 92/81/EEC**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils<sup>2</sup>, and in particular Article 8(4) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Pursuant to Article 8(4) of Directive 92/81/EEC, the Council, acting unanimously on a proposal from the Commission, authorised Member States to introduce exemptions or reductions in the excise duty charged on mineral oils for special policy considerations.
- (2) The Council is required to decide before 31 December 1999, on the basis of a proposal from the Commission, whether the derogations that provide for exemptions and reductions which expire on 31 December 1999 should be modified or extended for a further period.
- (3) Member States are authorised to automatically continue to apply certain exemptions and reductions for two years from 1 January 2000, and for subsequent periods of two years, unless the Council decides before 31 December 1999, on the basis of a proposal from the Commission, whether any or all of these derogations shall be abolished or modified.
- (4) The exemptions and reductions provided for under Article 8(4) of Council Directive 92/81/EEC should be regularly examined to ensure that they remain sustainable, particularly in terms of fair competition or distortion of the operation of the single market, or Community policy in the area of protection of the environment.
- (5) According to Article 1 of Council decision 97/425/EC of 30 June 1997, some exemptions and reductions continue to apply automatically unless the Council decides unanimously on a proposal from the Commission whether any or all of them should be abolished or modified; whereas the Commission believes that derogations that are not time-limited are contrary to Community law; whereas consequently derogations should be examined regularly and positive decisions taken as to whether they should continue.

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<sup>2</sup> OJ L 316, 31.10.92, p 12, Directive as last amended by Directive 94/74/EC (OJ L 365, 31.12.94, p 46).

- (6) The exemptions and reductions authorised under Article 1 of this Decision should continue to have effect until 31 December 2002; whereas there should be provision for an extension beyond this date; whereas any extension should be by unanimous decision by Council.
- (7) The exemptions and reductions concerning waste oil authorised under Article 2 of this Decision are contrary to the objective pursued by Directive 75/439/EEC as amended; whereas these exemptions and reductions should therefore be abolished; whereas the derogations should continue to have effect until 31 December 2000 to enable the recipients to adapt to the new situation; whereas there should be provision for an extension beyond this date to ensure that any environmental constraints of individual Member States are taken into account; whereas any extension should be by unanimous decision by Council.
- (8) The exemptions and reductions authorised under Article 3 of this decision should be abolished in view of their potential conflict with the State Aid provisions of the Treaty establishing the European Community; whereas abolition should be phased in to allow recipients to adapt to the new situation; whereas there should be no provision for a further extension.
- (9) The exemptions and reductions in this Decision are authorised without prejudice to the State Aid provisions of the Treaty establishing the European Community; whereas in order to allow the Commission to ensure the compatibility of existing derogations with the common market and in accordance with Article 88(1) of the Treaty, the Commission may propose appropriate measures where an existing derogation is found to fall under Article 87(1) of the Treaty and is not, or is no longer, compatible with the common market; whereas in accordance with Article 88(3) of the Treaty any plans to grant new aid are to be notified to the Commission and should not be put into effect before the Commission has authorised them; whereas accordingly, any new requests for derogations under Article 8(4) of Council Directive 92/81/EEC that are liable to fulfil the criteria of Article 87(1) of the Treaty will have to be notified to the Commission by virtue of Article 88(3).

HAS ADOPTED THIS DECISION:

#### *Article 1*

In accordance with Article 8(4) of Council Directive 92/81/EEC and notwithstanding the obligations imposed by Council Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils<sup>3</sup>, the following Member States are authorised to continue to apply the reductions in rates of excise duties or exemptions from excise duty herein specified until 31 December 2002 unless the Council unanimously determines before that date on a proposal from the Commission whether any or all of these derogations shall be modified or extended for a further specific period:

*1. Belgium:*

- for local public passenger transport vehicles,

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<sup>3</sup> OJ L 316, 31.10.92, p 19, Directive as last amended by Directive 94/74/EC (OJ L 365, 31.12.94, p 46).

- for liquid petroleum gas (LPG), natural gas and methane,
- 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,
- for a reduction in the rate of excise duty on heavy fuel oil to encourage the use of more environmentally friendly fuels. Such reduction shall be specifically linked to sulphur content and in no case can the reduced rate fall below euro 6,5 per tonne.

2. *Denmark:*

- in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC,
- for partial reimbursement to the commercial sector, provided that the taxes concerned 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,
- 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 the application of differential rates of excise duty between petrol distributed from petrol stations equipped with a return system for petrol fumes and petrol distributed from other petrol stations, provided that such rates at all times respect the minimum rates of excise duty on mineral oils as provided for under Community law,
- for differential rates of excise duty on petrol to reflect different environmental categories provided that these differential rates are in accordance with 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), and in particular the minimum rates of excise duty provided for in Articles 3 and 4 thereof,
- to apply differential rates of excise duty on diesel fuel provided that these differential rates are in accordance with 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, and in particular the minimum rates of excise duty provided for in Article 5 thereof.

3. *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,
- for a differentiated rate of excise duty for heating oils used by manufacturing industries, provided that the differentiated rate is in accordance with the obligations laid down in Council Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils, and in particular the minimum rates of excise duty provided for in Articles 3 and 4 thereof.

4. *Greece:*

- for local public transport vehicles,
- for LPG and methane used for industrial purposes,
- for use by the national armed forces,
- to grant relief from the excise duties on mineral oils for fuels intended to be used to power the official vehicles of the Ministry of the Presidency and the national police force,
- for differential rates of tax on unleaded petrol to reflect different environmental categories, provided that such rates at all times respect the minimum rates of duty on mineral oils as provided for in Community law.

5. *Spain:*

- for LPG used as motor fuel in local public transport vehicles,
- for LPG used as motor fuel in taxis,
- for differential rates of tax on unleaded petrol to reflect different environmental categories, provided that such rates at all times respect the minimum rates of duty on mineral oils as provided for in Community law.

6. *France:*

- in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC,
- for fuel used in taxis within the limits of an annual quota,
- in the framework of certain policies aimed at assisting areas suffering from depopulation,
- for a reduction in the rate of excise duty on heavy fuel oil to encourage the use of more environmentally friendly fuels. This reduction shall be specifically linked to sulphur content and the rate of duty charged on heavy fuel oil must correspond to the minimum rate of duty on heavy fuel oil as provided for in Community law,
- for exemption from duty on gases used as motor fuel for public transport subject to an annual quota,



- for a differentiated rate of excise duty on a new fuel composed of a water-and-antifreeze/diesel emulsion stabilised by surfacants provided that this differentiated rate is in accordance with 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, and in particular the minimum rates of excise duty provided for in Article 5 thereof,
- for consumption on the island of Corsica, provided that the reduced rates at all times respect the minimum rates of duty on mineral oils as provided for under Community law,
- for a differentiated diesel rate for commercial vehicles provided that the rate of duty respects the minimum rate provided for under Community law,

7. *Ireland:*

- 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,
- for local public passenger transport vehicles,
- for LPG, natural gas and methane used as motor fuel,
- in motor vehicles used by the disabled,
- for differential rates of tax on unleaded petrol to reflect different environmental categories, provided that such rates at all times respect the minimum rates of duty on mineral oils as provided for in Community law.

8. *Italy:*

- in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC,
- in local public passenger transport vehicles,
- for fuel used in taxis,
- for waste hydrocarbon gases used as fuel,
- for methane used as fuel in motor vehicles,
- for consumption in the regions of Val d'Aosta and Gorizia,
- in respect of the national armed forces,
- in respect of ambulances,
- for a reduction in excise duty on petrol consumed on the territory of Friuli-Venezia Giulia, provided that the rate of duty respects the minimum rate provided for under Community law,

- for a reduction in the rate of duty for mineral oils consumed in the regions of Udine and Trieste, provided that the rates of duty respect the minimum rates provided for under Community law,
- for reduced rates of excise duty on LPG and heating oils distributed through networks as heating fuel to particularly disadvantaged geographical areas, provided that the differentiated rates are in accordance with the obligations laid down in Council Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils, and in particular the minimum rates of duty provided for in Articles 5 and 7 thereof.

9. *Luxembourg:*

- in local public passenger transport vehicles,
- for LPG, natural gas and methane,
- for a reduction in the rate of excise duty on heavy fuel oil to encourage the use of more environmentally friendly fuels. Such reduction shall be specifically linked to sulphur content and in no case can the reduced rate fall below euro 6,5 per tonne.

10. *The Netherlands:*

- for LPG, natural gas and methane,
- on samples of mineral oils intended for analysis, tests on production or for other scientific purposes,
- in respect of the national armed forces,
- notwithstanding the obligations laid down in Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils, for different rates of excise duty on LPG used as motor fuel in public transport vehicles,
- for a differentiated diesel rate for commercial vehicles, provided that the rate of duty respects the minimum rate provided for under Community law.

11. *Austria:*

- for LPG used as motor fuel in local public passenger transport vehicles,
- for natural gas and methane,

12. *Portugal:*

- in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC,
- to grant relief from excise duty for LPG, natural gas and methane when used as fuel for local public passenger transport,

- for a reduction in excise duty on fuel oil consumed in the autonomous region of Madeira; this reduction may not be greater than the additional costs incurred in transporting the fuel oil to that region,
- for differential rates of tax on unleaded petrol to reflect different environmental categories, provided that such rates at all times respect the minimum rates of duty on mineral oils as provided for in Community law,
- for a reduction in the rate of excise duty on heavy fuel oil to encourage the use of more environmentally friendly fuels. This reduction shall be specifically linked to sulphur content and the rate of duty charged on heavy fuel oil must correspond to the minimum rate of duty on heavy fuel oil as provided for in Community law,
- for a different rate of excise duty on diesel fuel used by commercial vehicles provided that these differential rates are in accordance with the obligations laid down in Council Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils, and in particular the minimum rates of excise duty provided for in Article 5 thereof.

13. *Finland:*

- 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,
- for an exemption from excise duty for methane and LPG for all purposes,
- for reduced excise duty rates on diesel fuel and heating gas oil, provided that such rates at all times respect the minimum rates of duty on mineral oils as provided for in Community law,
- for reduced excise duty rates on reformulated unleaded and leaded petrol, provided that such rates at all times respect the minimum rates laid of duty on mineral oils provided for in Community law,
- notwithstanding the obligations laid down in Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils, and in particular the minimum rates laid down in Article 7 thereof, for an exemption from excise duty on natural gas when used as a motor fuel.

14. *Sweden:*

- for reduced excise duty rate for mineral oils used for industrial purposes, provided that such rates at all times respect the minimum rates of duty on mineral oils as provided for in Community law,
- for an exemption from excise duty for biologically produced methane and other waste gases,
- for reduced tax rates for diesel in accordance with environmental classifications,

- for differential rates of tax on unleaded petrol to reflect different environmental categories, provided that such rates at all times respect the minimum rates of duty on mineral oils as provided for in Community law,
- for a reduced rate of excise duty on mineral oils used for industrial purposes by introducing both a rate which is lower than the standard rate and a reduced rate for energy-intensive enterprises, provided that such rates at all times respect the minimum rates of excise duty on mineral oils laid down by Community law and do not give rise to distortions of competition,
- in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC.

15. *United Kingdom:*

- in respect of air navigation other than that covered by Article 8 (1) (b) of Directive 92/81/EEC,
- for local public passenger transport vehicles,
- for LPG, natural gas and methane used as motor fuel,
- for navigation in private pleasure craft,
- for a reduction in the rate of duty on diesel to encourage the use of more environmentally friendly fuels,
- for differential rates of tax on unleaded petrol to reflect different environmental categories, provided that such rates at all times respect the minimum rates of duty on mineral oils as provided for in Community law.

*Article 2*

In accordance with Article 8(4) of Council Directive 92/81/EEC and notwithstanding the obligations imposed by Council Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils, the following Member States are authorised to continue to apply the reductions in rates of excise duties or exemptions from excise duty herein specified until 31 December 2000 unless the Council unanimously determines before that date on a proposal from the Commission that they should be extended for a further specific period:

1. *Belgium:*

- for waste oils which are reused as fuel, either directly after recovery or following a recycling process for waste oils, and where the reuse is subject to duty.

2. *Germany:*

- for waste oils which are reused as fuel, either directly after recovery or following a recycling process for waste oils, and where the reuse is subject to duty.

3. *Spain:*

- for waste oils which are reused as fuel, either directly after recovery or following a recycling process for waste oils, and where the reuse is subject to duty.
4. *France :*
    - for waste oils which are reused as fuel, either directly after recovery or following a recycling process for waste oils, and where the reuse is subject to duty.
  5. *Ireland:*
    - for waste oils which are reused as fuel, either directly after recovery or following a recycling process for waste oils, and where the reuse is subject to duty.
  6. *Italy:*
    - for waste oils which are reused as fuel, either directly after recovery or following a recycling process for waste oils, and where the reuse is subject to duty.
  7. *Luxembourg:*
    - for waste oils which are reused as fuel, either directly after recovery or following a recycling process for waste oils, and where the reuse is subject to duty.
  8. *Austria:*
    - for waste oils which are reused as fuel, either directly after recovery or following a recycling process for waste oils, and where the reuse is subject to duty.
  9. *Portugal:*
    - for waste oils which are reused as fuel, either directly after recovery or following a recycling process for waste oils, and where the reuse is subject to duty.
  10. *Finland:*
    - for waste oils which are reused as fuel, either directly after recovery or following a recycling process for waste oils, and where the reuse is subject to duty.
  11. *United Kingdom:*
    - for waste oils which are reused as fuel, either directly after recovery or following a recycling process for waste oils, and where the reuse is subject to duty.

### *Article 3*

In accordance with Article 8(4) of Council Directive 92/81/EEC and notwithstanding the obligations imposed by Council Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils, the following Member States are authorised to continue to apply the reductions in rates of excise duties or exemptions from excise duty herein specified until 31 December 2000:

1. *France:*

- for an exemption for heavy fuel oil used as fuel for the production of alumina in the region of Gardanne.

2. *Ireland:*

- for the production of alumina in the Shannon region.

3. *Italy:*

- for an exemption from excise duty on mineral oils used as fuel for alumina production in Sardinia,
- for a reduction in the excise duty on fuel oil, for the production of steam, and for gas oil, used in ovens for drying and ‘activating’ molecular sieves in Reggio Calabria, provided that the rate of duty respects the minimum rates of duty on mineral oils as provided for under Community law.

*Article 4*

Council Decisions 1997/425/EC, 1998/274/EC, 1998/275/EC, 1999/83/EC, 1999/254/EC, 1999/255/EC, shall be repealed with effect from 1 January 2000.

Pending decisions before the Council concerning derogation requests from Finland, Portugal Italy and Germany shall also be repealed with effect from 1 January 2000.

*Article 5*

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*