



COMMISSION OF THE EUROPEAN COMMUNITIES

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**REPORT FROM THE COMMISSION TO THE COUNCIL
AND THE EUROPEAN PARLIAMENT**

*under Article 8(6) of Council Directive 92/81/EEC,
on the situation with regard to the exemptions or reductions for specific
policy considerations as set out in Article 8(4) of Directive 92/81
and
concerning the obligatory exemption of mineral oils used as fuel for the
purpose of air navigation other than private pleasure flying and the
exemptions or reductions possible for navigation on
inland waterways other than for private pleasure craft
as set out in Articles 8(1)(b) and 8(2)(b) of the same Directive*

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 Article 8(4) of Directive 92/81/EEC

(presented by the Commission)

*Commission report to the Council and the European Parliament
under Article 8(6) of Council Directive 92/81/EEC,
on the situation with regard to the exemptions or reductions for specific
policy considerations as set out in Article 8(4) of Directive 92/81
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purpose of air navigation other than private pleasure flying and the
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inland waterways other than for private pleasure craft
as set out in Articles 8(1)(b) and 8(2)(b) of the same Directive.*

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**REVIEW OF THE EXEMPTIONS OR REDUCTIONS AUTHORIZED UNDER
ARTICLE 8(4) OF COUNCIL DIRECTIVE 92/81/EEC AND THE EXEMPTIONS OR REDUCTIONS
APPLIED UNDER ARTICLES 8(1)(B) AND 8(2)(B) OF THE SAME DIRECTIVE**

1. SCOPE AND OBJECTIVE OF THE REVIEW

The Community Excise system for taxation of mineral oils

1.1 Council Directive 92/81/EEC¹ which came into force on 1/1/93 as part of a package of measures necessary for the abolition of fiscal controls at intra-Community frontiers defines the products which are to be regarded as mineral oils for the purposes of Community Excise Duty provisions. Member States are required, in accordance with the provisions of this Directive, to apply excise duty to a specified range of mineral oil products. They are free to decide the rate of duty they wish to apply to each product and, in certain cases, for different uses of each product, provided that they respect the minimum rates laid down in Council Directive 92/82/EEC². Moreover, although there is provision in the Directive for the application of different rates of duty on different uses of specific products, this does not extend to the application of different rates for different grades of the same product. In such cases, a derogation under Article 8(4) of Directive 92/81/EEC is necessary.

1.2 The products concerned and existing Community minimum rates are as follows:

<u>PRODUCTS</u>	<u>ECU PER 1000 LITRES</u>
Petrol	
- leaded	337
- unleaded	287
Gas Oil	
- used as propellant	245
- used for industrial and other uses*	18
- used as heating fuel	18
LPG and Methane (1000 kg)	
- used as propellant	100
- used for industrial and other uses*	36
- used as heating fuel	0
Heavy Fuel Oil (1000 kg)	13
Kerosene	
- used as propellant	245
- used for industrial and other uses*	18
- used as heating fuel	0

¹ Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ n° L316, 31/10/92).

² Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duty on mineral oils (OJ n° L316, 31/10/92).

* This covers mineral oils used in:

- a) stationary motors;
- b) plant and machinery used in construction, civil engineering and public works; and
- c) vehicles intended for off-road use or which have not been authorised for use on the public highway.

- 1.3 Any other product used as a motor fuel must be taxed at the same rate as the equivalent fuel listed above: Any other hydrocarbon, (except for coal, lignite, peat or similar solid hydrocarbons or natural gas) which is used for heating purposes, must be taxed at the rate for the equivalent mineral oil.

Exemptions and reductions

- 1.4 Under Article 8(1) of Directive 92/81, Member States are required to exempt mineral oils from the harmonised excise duty when they are :

- a) used for purposes other than as motor fuels or as heating fuels;
- b) supplied for use as fuels for the purpose of air navigation other than private pleasure flying;
- c) supplied for use as fuel for the purposes of navigation within Community waters (including fishing), other than in private pleasure craft;
- d) injected into blast furnaces for reduction purposes.

- 1.5 Article 8(2) of Directive 92/81 gives Member States the option to apply total or partial exemptions or reductions on mineral oils when used:

- 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.

- 1.6 In addition to the above compulsory and optional reduced rates and exemptions, Member States may apply to the Council for authorisation to introduce further exemptions or reduced rates "for specific policy considerations" under a procedure laid down in Article 8(4) of Council Directive 92/81. This provision was introduced to enable Member States to maintain a number of minor exemptions and reduced rates which they had applied prior to 1 January 1993 and which did not affect the proper functioning of the Internal Market. It also permitted them to subsequently introduce new exemptions or reduced rates designed to achieve certain National policy objectives. The requirement to seek Council authorisation was clearly necessary in order to permit the Commission and other Member States to evaluate the possible effects of such measures and to object to them if they considered that they were likely to give rise to distortion of competition or were not compatible with other principles of the Internal Market.

- 1.7 On 19 October 1992 the Council took its first decision³ granting all Member States individual and specific derogations, thus easing the introduction of the Common system on 1 January 1993. A second decision was taken on 13 December 1993, concerning requests from Belgium, Luxembourg, Greece, Italy and Portugal.⁴ A third formal decision was taken on 22 December 1995, involving requests from Belgium, Luxembourg, Denmark, Italy, Austria, Portugal and Finland.⁵ A fourth formal decision was taken on 22 April 1996, involving requests from Italy, Austria, Sweden and the United Kingdom.⁶ A fifth formal decision was taken on 27 June 1996 on a request from Ireland.⁷ In addition, since neither the Commission nor any national administration requested that certain requests be considered formally by the Council, some decisions have been taken tacitly. These decisions have not been published. They concern requests from Ireland, the UK, France, Germany, Portugal and Spain to be allowed to exempt waste oils used for heating purposes; from Italy to be allowed to apply reduced rates to mineral oils consumed in the regions of Udine and Trieste; and from France to be allowed to apply reduced rates to mineral oils consumed on the Island of Corsica. Furthermore, Austria, Finland and Sweden were granted certain derogations at the time of their accession to the Community. These are set out in their Act of Accession.⁸ Further requests from Sweden, France and Greece are also currently being processed. A full list of all authorisations granted under the procedure is set out in Annex A.

The review requirements

- 1.8 In order to enable the Commission and the Member States to continue to monitor the compatibility of the various derogations granted under the provisions of Article 8(4) with the requirements of the Internal Market, Article 8(6) requires the Council to review, before 31 December 1996, *"the situation with regard to the exemptions or reductions set out in paragraph (4) on the basis of a report by the Commission and [to] 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."*

This document constitutes the report which the Commission is required to make under this Article.

- 1.9 In addition, no later than 31 December 1997, the Council is required to review the obligatory exemption for mineral oils supplied for use as fuels for the purpose of air navigation other than private pleasure flying provided for in Article 8(1)(b) of Directive 92/81 as well as the optional exemptions or reduced rates permitted under Article 8(2)(b) for mineral oils which are used under fiscal control for navigation on inland waterways other than in private pleasure craft. This review must take place on

³ Council Decision 92/510/EEC of 19 October 1992, OJ L316 of 31.10.92.

⁴ Council Decision 93/697/EC of 13 December 1993, OJ L321 of 23.12.93.

⁵ Council Decision 95/585/EC of 22 December 1995, OJ L327 of 30.12.95.

⁶ Council Decision 96/273/EC of 22 April 1996, OJ L102 of 24.04.96.

⁷ Council decision 96/418/EC of 27 June 1996, OJ L172 of 11.07.96.

⁸ Annex IX, Chapter XV fiscality OJ C241 (p 335) of 29.08.1994.

the basis of a report by the Commission and must take account of the external costs entailed in such means of transport and the implications for the environment, and the Council must decide unanimously, on a proposal from the Commission whether to abolish or modify these exemptions.

This review clause in Article 8(7) only foresaw a review being carried out, by 31 December 1997. However, given the interest shown by Member States, the Commission indicated in its first review of the minimum rates of excise duty⁹ its willingness to look at these specific exemptions as part of its general review of Article 8(4) during the course of 1996. This document therefore constitutes the report which the Commission is required to make under Article 8(7).

Structure of the review

- 1.10 Over 70 derogations have now been given under Article 8(4) and for convenience, they have been grouped according to the various policy areas in which they fall. In some cases there are several possible headings and in these instances the derogation has been listed under what is considered to be the primary reason for the request. The first area is that of Transport to which can be linked the questions of air and inland water navigation. Air transport is dealt with in Chapter 2 and sea and inland waterway transport in Chapter 3. A second grouping is the Industrial and Commercial sector dealt with in Chapter 4. This includes exemptions on fuel used in alumina production, the production of molecular sieves and samples taken for analysis. The third group is the Environmental policy area, covered in Chapter 5, which is becoming more and more important. Member States who want to use tax incentives in their environmental policy are increasingly applying for derogations based on environmental arguments. Examples here are the ability to apply different rates to different environmental classes for diesel fuel and petrol, exemptions for the use of waste oils as heating fuel and reduced rates of duty on fuels - especially gases - used in public transport vehicles. The fourth category is Regional policy, covered in Chapter 6 where some Member States have been granted derogations for fuel consumed in particular regions. The final area is Other policy, dealt with in Chapter 7, which covers derogations such as those concerned with the taxation of fuel used by the armed forces and Government agencies and social policy areas such as reduced rates of duty on fuel consumed by vehicles used by disabled persons, fuel used in lighthouses, in pumps used for drainage of flooded land and in desalination plants. A breakdown of derogations by category is set out in Annex B.
- 1.11 As already indicated, it is clear that in evaluating the individual derogations, the main focus must be on the criteria laid down in Article 8(5) of the structures Directive : compatibility with the Internal Market, fair competition and the protection of the environment. However, given that the derogations have also been granted to fulfil other policy concerns, such as Transport, Industrial, Regional or Social, the review will also have to consider the impact of these derogations in other policy areas and evaluate in a number of cases whether a fiscal incentive provides the best instrument for such purposes.

⁹ Commission Report, COM(95) 285 Final of 13.09.1995.

1.12 Finally, the Commission considers that it is necessary to examine the whole procedure whereby Member States can apply for, and the Council agrees to, derogations from the general regime. Chapter 8 of this report therefore analyses the experience to date with the existing system.

2. REVIEW OF THE EXEMPTIONS GRANTED TO AVIATION FUEL

- 2.1 As already outlined in Chapter 1, the Commission has undertaken to review the compulsory exemption for commercial aircraft fuel. This chapter deals with this obligatory exemption as outlined in Article 8(1)(b) of Council Directive 92/81/EEC, and also examines the various national authorisations granted under Article 8(4) of the same Directive concerning private aircraft fuel. In reviewing the exemption provision it is explicitly stated in the review clause that the review will have to take into account the external costs entailed in such means of transport and the implications for the environment

The obligatory exemption, under article 8(1)(b), from the harmonised excise duty on mineral oils supplied for use as fuels for the purpose of air navigation other than private pleasure flying

The existing situation

- 2.2 There are two types of aviation fuel in current use. Jet fuel (AVTUR or JET - A1) is used by jet and turboprop powered aircraft and powers the vast majority of international and intra Community flights. Aviation gasoline (AVGAS) is used in smaller piston engined aircraft operated by air taxi companies and in virtually all private aircraft. The commercial use of aviation fuel can be divided into three areas:

- 1) International flights involving departure to or arrival from third countries.
- 2) Intra-Community flights involving travel between two or more Member States.
- 3) National flights.

- 2.3 Aviation kerosene (AVTUR) is currently not subject to taxation. This is largely because of international commitments under which all contracting parties to the International Civil Aviation Organisation (ICAO) have entered into reciprocal arrangements to supply aircraft fuel exempt of all taxes. To be more specific, Article 24 of the Chicago Convention on International Civil Aviation of 1944, which states:

"Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board on aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of that State shall be exempt from customs duty, inspection fees or similar national or local duties and charges".

- 2.4 Although Article 24 of the Chicago convention only deals with "goods" already on board the aircraft, the ICAO Council resolution of 14 December 1993 (Doc 8632-C/968) confirms that fuel embarked on aircraft destined for another State, shall also be exempt. Furthermore, it is made clear that "*.....or similar national or local duties and charges*" includes for example excise duties and sales and consumption taxes. These resolutions are adhered to by all EU Member States and are implemented through several bilateral agreements. All Member States of the European Union are members of ICAO, while the European Community has had observer status since 1989.

- 2.5 In the light of this international commitment and also taking into account the problem of competition between Community and third country airlines the Council, when adopting a harmonised structure for excise duties within the Union, chose to provide a compulsory exemption for commercial aircraft fuel (Article 8(1)(b) of Council Directive 92/81/EEC of 19 October 1992).

The competitiveness of the European air transport industry

- 2.6 The air transport industry is more exposed to third country competition than any other form of transport with the possible exception of shipping. Taxation of aviation fuel used on intra Community or international flights would reduce the competitiveness of the European industry in relation to third country carriers.
- 2.7 Fuel costs represent 10-15% of the operating costs of European carriers. The Air Transport Association of America has calculated the costs of the discontinuation of the jet fuel waiver in the United States¹⁰. The supplementary cost for the American air carriers would be in the range of 500 million dollars annually in addition to the negative effects on airline industry employment. The overall effects would be similar for the European industry, the level of cost obviously depending on the level of tax. If tax were to be levied in the European Union at the same rate as that agreed (but waived) for jet fuel in the United States, the cost for the European air transport industry would be in excess of 250 million ECU per year. This would clearly constitute a substantial burden for any industry faced with fierce international competition.

Transport and Environment

- 2.8 As previously stated, the Council decided in 1992 that the review of mandatory duty exemptions for fuel consumed in commercial aviation and navigation should be based on the external costs of such modes of transport and their environmental implications. Both aspects are discussed here as a number of policy developments have taken place since then:
- In its conclusions on transport and the environment of 16 December 1994, the Council considered that excluding commercial air traffic from indirect taxation cannot be justified on environmental grounds and called on the Commission to take this into account in reviewing the tax exemptions concerned.
 - The Fifth Environmental Action Programme (COM(92)23 final, 27.3.1992) stated that "*prices should reflect the full cost to society of production and consumption, including the environmental cost.*" (Chapter 7.4). In its proposal for a European Parliament and Council Decision on the review of the Action Programme (COM(95)647 final, 24.1.1996), the Commission proposed to develop "*measures to achieve a greater internalisation of external costs in transport prices*"

¹⁰ The United States has established a fuel tax of 4.3 cents/gallon for national carriers but has recently waived its application.

- Similarly, the policy paper on transportation presented by Italy on behalf of the EU to the ad hoc group on the Berlin Mandate under the UN Framework Convention on Climate Change proposed to explore the feasibility on introducing aviation fuel taxation in the ICAO framework. At their meeting in Paris on 19 - 20 February 1996, the OECD Environment Ministers "*urged the International Civil Aviation Organisation (ICAO) and other competent bodies to explore the feasibility of introducing different regulatory or fiscal measures, including air fuel taxation and efficiency standards;*"

2.9 Action is needed as emissions from aircraft represent an increasing proportion of Community production of several major pollutants. A number of studies have indicated that the rapid growth in air transport is likely to lead to a doubling of CO₂ emissions from this source by 2005 compared with 1993. This trend undermines the achievement of the Community's objectives for stabilising CO₂ emissions by the year 2000 at 1990 levels and reducing them thereafter.

External costs

2.10 The Commission has adopted the Green Paper "Towards Fair and Efficient Pricing in Transport" (COM(95)691 final, 20.12.1995). The Green Paper states that the uncertainty surrounding external cost estimates does not invalidate the need to make changes where appropriate as the direction and order of magnitude of the required changes is known. In this respect, the figures advanced by the Green Paper are relevant for this review, not only in relation to their overall size, but also on the hierarchy they establish between different transport modes.

2.11 Based on these orders of magnitude, it is worth noting that, although aviation is responsible for 6% of the overall cost, which is relatively minor compared to road transport, 15.6% of the external cost of air pollution in the EU is attributable to aircraft. In comparison, the absolute figures for waterborne transport are negligible.

2.12 Given the environmental impact of aviation activities, the mandatory exemption applied to mineral oils used in aviation (Article 8(1)(b)) should ideally be abolished. However, the practical impact of such an initiative taken solely at a national or Community level cannot be ignored:

- *Community carriers would find themselves at a competitive disadvantage vis à vis third country carriers by having to pay, higher prices for their fuel;*
- *there would be a risk of third countries acting as "gas stations" for European carriers, implying that large amounts of untaxed fuel would be burned over European airspace in addition to the problem of a higher fuel burn and extra kilometres flown in order to carry the untaxed fuel. This would depend on the level of duty charged as the extra costs of diversion would need to be balanced against the possible savings but certain carriers could be put at a disadvantage if they did not have ready access to untaxed fuel outside the Union.*

- *costs for consumers would rise, since any increase in fuel prices will invariably be passed on by carriers;*

2.13 Besides the problem of competition with carriers from third countries, the compulsory tax exemption has so far helped to prevent distortion of competition between carriers inside the Community. A unilateral removal would risk creating distortions if a common tax-level was not agreed.

Conclusion

2.14 The Commission concludes that a clause should be included in Article 8(1)(b) of Council Directive 92/81/EEC which would require the Council to extend excise duties on mineral oil to aviation kerosene as soon as the international legal situation allows the Community to levy such a tax on all carriers including those from third countries. This proposal would strengthen the Community's position for a corresponding initiative in the framework of ICAO. This conclusion will be acted upon when the Commission puts forward proposals later this year for a legal framework for the taxation of energy products. At the same time the Commission will examine the possibility of amending the wording of the exemption to give Member States the option to levy tax on fuel used for national flights pending the abolition of the exemption.

The various national exemptions on aviation fuel used in private pleasure flying, granted under Article 8(4) of Council Directive 92/81/EEC

Existing exemptions or reductions

2.15 Virtually all aviation fuel used in private pleasure flying is aviation gasoline (AVGAS). Article 8.1(b) provides for an obligatory exemption from the harmonised excise duty on mineral oils supplied for use as fuels for the purposes of air navigation other than private pleasure flying. Council Decision 92/510/EEC of 19 October 1992 allows Belgium, Denmark, France, Italy, Ireland, Portugal, and the United Kingdom to apply reductions or exemptions from the harmonised excise duty on mineral oils, to fuel used in private pleasure flying. Council Decision 96/273/EEC of 22 April 1996 gives Sweden the same power and the treaty of Accession provides Finland with the same derogation. Only the Swedish derogation is explicitly limited in time until the end of 1996. Therefore, a total of 9 out of the 15 Member States have been authorised to apply reduced rates or exemptions from duty on aviation fuel when used for private flying. In practice, Ireland and the United Kingdom apply a reduced rate, while the other seven Member States apply a total exemption.

2.16 The key issue for transport policy, next to the internalisation of external costs, is the creation of a level playing field across transport modes. When these are not priced at their full costs, serious distortions in the transport sector can occur, resulting in substantial welfare losses. Although not raising major competition concerns and limited in size, the exemption of fuel for private pleasure flying violates the goal of efficient pricing.

2.17 The role of the EU in this field is important, as the impact of efficient pricing in one country can have substantial effects on transport allocation in other countries, due to increased international integration. If one country gives preferential treatment to one mode of transport, neighbouring countries may be forced to do likewise. Conceivably, reduced excise duty rates on fuels for some modes of transport could be justified, depending on the extent to which they already cover their infrastructure costs through other fees and charges.

Conclusion

2.18 Many of the environmental arguments relating to commercial aviation, also apply to private pleasure flying. Although several Member States have expressed reservations concerning the administrative complications of removing the exemption for private flying, other administrations already operate this policy without major problems. To be consistent in its transport, environment and taxation policy, the Commission concludes that the exemptions granted should be abolished.

3. REVIEW OF THE REDUCTIONS OR EXEMPTIONS GRANTED TO FUEL CONSUMED FOR SOME MEANS OF WATERBORNE TRANSPORT

Exemption or reductions of excise duty of fuel used in commercial navigation on inland waterways (Article 8(2)(b) of Directive 92/81/EEC)

The existing situation

- 3.1 Article 8(1)(c) of Council 92/81/EEC requires Member States to exempt from excise duty mineral oils used as fuel by commercial vessels in Community waters, including fishing vessels. Article 8(2) also allows Member States to exempt, wholly or partly, such oils used as fuel in commercial navigation on inland waterways. The revision clause in Article 8(7) of the Directive only provides for a review of commercial navigation on inland waterways and not the obligatory exemption in Article 8(1)(c).
- 3.2 The expression "Community waters" covers the territorial waters of the 15 Member States, namely the sea zone up to 12 miles from the baseline of the coast, and including the "internal waters" of each Member State, that is to say the sea areas largely surrounded by land, and ports. The seas outside territorial water are the high seas. "Inland waterways" includes lakes and rivers.
- 3.3 At present Austria (on the river Danube and lake Constance), Belgium, Denmark, Spain, Italy, Luxembourg, Finland, the Netherlands, Germany and Sweden exempt fuel used in commercial navigation on inland waterways. France, Ireland and the United Kingdom give reductions in the rate of excise duty while Greece and Portugal give no exemption or reductions in the rate of duty for this specific use.

Transport externalities

- 3.4 Inland navigation has extremely low external costs; the external costs of accidents and noise, for example, are virtually nil, whilst air pollution costs are greatly below those incurred by road transport. The inland waterway network also has considerable spare capacity and can therefore play a role in diverting traffic away from congested parts of the road networks. For these reasons, encouraging a modal shift away from road transport to more environmentally friendly modes, such as inland navigation forms part of Community transport policy. The aim was outlined in the Commission's White Paper "The future Development of the Common Transport Policy" which was published in 1992 and the issue of external costs is analysed in depth in the Commission's recently published Green Paper "Towards Fair and Efficient Pricing in Transport".
- 3.5 The Green Paper presents an overview of the mounting evidence which shows that present trends in transport are unsustainable and examines various policy options for internalising the large external costs of road transport in order to arrive at a sustainable and more efficient transport system. This, however, is a long-term aim. Until the policies and technologies are in place which would allow the true costs of road transport to be internalised, there is a need to ensure that environmentally-friendly modes of transport are not disadvantaged.

- 3.6 Furthermore, since certain waterways are used by vessels also engaged in navigation in Community waters, inland navigation should be put on the same footing as all other commercial shipping in respect of excise duty. Another element for consideration is that inland navigation fuel on the Rhine, by virtue of a special Rhine Regulation of 1954, is already exempt from excise duty. In economic terms, the Rhine is by far the most important waterway in Europe, and it would therefore be logical to harmonise the rules on other waterways with those currently in force on the Rhine.
- 3.7 With regard to the optional exemption for the carriage of goods and passengers by rail (Article 8(2)(c) of Council Directive 92/81/EEC), the above mentioned arguments concerning external costs are equally applicable. As such the question of the exemption for rail services should be considered in the overall context of Directive 92/81/EEC when the Commission puts forward proposals for a new general approach to the taxation of energy products. From information available to the Commission; Belgium, Denmark, Spain and Luxembourg exempt certain fuel types from excise duty when used in rail transport. Austria, Finland, France, Italy, Ireland, the Netherlands and the United Kingdom apply a reduced rate. Germany, Greece and Portugal do not grant any exemption or reduction in the rate of duty. Sweden only exempts fuel used to transport goods by rail, fuel used for passenger transport being taxable.

Conclusion

- 3.8 To ensure a level playing field and to pursue environmental and transport policy goals the Commission concludes that the optional exemption for inland waterways should be made obligatory as is already the case for maritime navigation in Community waters. This matter together with the question of the exemption for rail services will be addressed by the Commission in its proposal later this year for a framework for the taxation of energy products.

Exemption or reduction in the rate of duty on fuel used in private pleasure craft

Existing situation

- 3.9 Under Council Decision 92/510/EEC of 19 October 1992 Belgium, Greece, Ireland and the United Kingdom have the right to exempt from excise duty fuel used in private pleasure craft. Finland has the same power under the Accession Treaty (OJ C241 of 29 August 1994). Ireland and the United Kingdom apply a reduced rate of duty, while Greece limits the tax exemption to vessels not registered in Greece. Belgium and Finland apply an exemption.
- 3.10 Problems have occurred where private pleasure craft have arrived in a Member State not granting any exemption carrying marked low taxed or exempt fuel. The fuel had been legally bunkered in a Member State applying a derogation, but the fact that it was marked led to investigations and delays. Furthermore, the risk of "cross-border" shopping between taxing and non-taxing Member States is substantial in view of the wide variation in duty rates.

Conclusion

- 3.11 As with private use of aviation fuel, concern has been expressed by several Member States about the administrative complications of removing the power to grant reductions and exemptions in this area. Nevertheless, to ensure the functioning of the Internal Market, and since no environmental or transport policy goals support an exemption of this specific use the Commission concludes that the derogations already granted be cancelled.**

4. REVIEW OF THE DEROGATIONS EXISTING IN THE INDUSTRIAL AND COMMERCIAL SECTOR

The existing situation

- 4.1 As mentioned in paragraph 1.7 a number of Member States have been granted derogations for specific Industrial and Commercial policy reasons. These include the production of alumina in Sardinia and the Shannon area, samples taken for analysis, testing or other scientific purposes, reduced rates of duty for enterprises with a very high consumption of energy and the production of molecular sieves in Calabria.
- 4.2 Council Decision 92/510/EEC of 19 October 1992. gave Ireland the power to continue to exempt from excise duty mineral oils used as fuel in the production of alumina in the Shannon region. The Irish government requested this derogation to assist an Industry in a relatively underdeveloped area. The production of alumina in this area uses heavy fuel oil as an energy source, and it was felt that it could not compete with other countries industries having lower tax rates on fuel oil and possibly also using lower or non taxed natural gas or other energy sources. No time limitation was linked to the Irish derogation. Italy obtained a similar derogation for the production of alumina in Sardinia by Council Decision 93/697/EEC of 13 December 1993 until 31 December 1994 for similar reasons. This derogation was extended until 31 December 1996 by Council Decision 96/273/EEC of 22 April 1996.
- 4.3 Germany and the Netherlands have a derogation allowing them to exempt from taxation samples of mineral oils intended for analysis, tests on production or for other scientific purposes (Council Decision 92/510/EEC of 19 October 1992). In practice Germany applies a total exemption while the Netherlands does not currently use the derogation. At present no distortion of the functioning of the Internal Market deriving from the application of these derogations has been identified.
- 4.4 Denmark and Sweden have both been given derogations which allows them to apply a lower taxation for fuel used in the industrial sector. Denmark is allowed to apply: *"partial reimbursement to the commercial sector, provided that such taxes are in conformity with Community provision 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"*. (Council Decision 92/510/EEC of 19 October 1992). Sweden obtained in its Accession Treaty a derogation allowing it to apply; *"a reduced excise duty rate*

for mineral oils used for industrial purposes; on the condition that such rates are at no time set below the minimum rates laid down in Council Directive 92/82/EEC". Sweden has since applied for an amendment to the existing derogation to allow it to apply both a reduced rate for industrial purposes and a super reduced rate for heavy energy consuming industry until 31 December 1998.

- 4.5 Both countries have introduced CO₂ taxes which are calculated as a part of the overall excise duty on mineral oils. To avoid harming industry and its competitive position unnecessarily, they apply lower rates to industry. Given that Sweden has decided to increase its CO₂ tax and enlarge its scope it requires further support for heavy energy consuming industry. A practice already used in Denmark. The Danish system has been notified to the Commission and the State Aid aspect examined. Since the exemption is available on the basis of objective criteria to all companies, regardless of sector or region concerned and since the authorities do not have any discretionary power in the granting of exemptions, the scheme can be said to constitute a general measure falling outside the scope of Article 92(1) of the Treaty. The new Swedish system has been notified to the Commission and is being examined by the Commission Services for its possible State aid aspects. The two remaining countries in the Community having introduced CO₂/energy taxes, the Netherlands (which caps the tax paid on the basis of annual consumption by heavy industrial consumers) and Finland have not applied for any derogation for Industry.
- 4.6 The overall question of creating the necessary flexibility for Member States when wishing to introduce environmental taxes, such as a CO₂/energy tax will have to be considered within the framework of the Commission proposals on the taxation of energy products which will be submitted to Council later this year.
- 4.7 Council Decision 95/585/EEC of 22 December 1995 allows Italy to apply 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. In no case can the reduced rate fall below ECU 18 per tonne"*. This derogation applies until 31 December 1996. The Italian plant uses mineral oil in its production while similar plants in other Member States use natural gas which according to the Italian authorities gives them a competitive advantage. The Italian authorities requested total exemption, but examination by the Commission indicated that natural gas in, for example, Germany and France is also taxed and as such the pure energy costs would be comparable if at least the Community minimum rate was maintained. The Council therefore agreed, on a proposal from the Commission, to authorise a reduced rate rather than an exemption.

- 4.8 All the derogations granted in this area have been examined by the Commission from an Internal Market viewpoint. In general, an exemption from excise duty for certain undertakings, products or the production of certain goods in a Member State constitutes a state aid within the meaning of Article 92(1), provided it is capable of distorting competition and affecting trade between Member States. Article 92 stipulates that state aid is incompatible with the common market and thus prohibited, unless it is approved by the Commission pursuant to one of the exemption clauses in Article 92(2) or (3). In Article 92 the most important exemption clause covers regional aid and aid to facilitate the development of certain economic activities, such as aid to SMEs or aid for environmental protection.
- 4.9 It is clear, therefore, that to the extent the existing exemptions from excise duties constitute state aids, they can only be allowed to continue if exemption under one of the relevant clauses in Article 92 is applicable and such exemption is subject to the conditions the Commission normally imposes to approve such aid. In the light of these considerations and on the basis of the information available it seems that several of the existing exemptions give rise to some concern. The Commission therefore proposes to examine these derogations to see whether they are incompatible with the Common Market.

Conclusions

- 4.10 The Commission concludes that the Italian derogation for alumina production in Sardinia be extended until 31 December 1998 subject to the relevant Community minimum duty rates being respected. The Irish derogation for alumina production in the Shannon area should, in principle, be extended only until 31 December 1998. The Commission would therefore expect the Member States concerned to notify the provisions in question under Article 93(3) of the Treaty in sufficient time so that it can evaluate them in accordance with the appropriate provisions of the Treaty, including Article 92(3).
- 4.11 The Commission concludes that the German derogation allowing exemption from taxation for samples intended for analysis, test or other scientific purposes should be limited until 31 December 1998. The Commission will monitor the competitive aspects of the derogation and before 31 December 1998 will submit proposals to the Council concerning the future of the derogation. The same derogation for the Netherlands should be abolished since it is not being used.
- 4.12 The Commission concludes that the Danish and Swedish derogations allowing them to apply reduced rates of duty on fuel used in the industrial sector should be limited until agreement is reached on a common Community framework for taxation of energy products which should deal with this matter at a Community level, or at the latest until 31 December 1998.

4.13 The Commission concludes that the derogation allowing Italy to apply reductions in the excise duty on fuel oil used in the production of steam and for gas oil used in ovens for drying and activating molecular sieves in Reggio Calabria should be extended until 31 December 1998. The rates applied must respect Community minimum rates. The Commission will evaluate in detail this derogation to which similar considerations apply as those set out in para 4.10.

5. REVIEW OF THE DEROGATIONS EXISTING IN THE ENVIRONMENTAL SECTOR

The existing situation

- 5.1 As set out in paragraph 1.7, all Member States have been granted derogations for specific environmental policy reasons. This heading covers a wide variety of derogations which may also overlap with other policy areas but they have been listed under the environmental category as this appears to be the major motivating factor. There can be no doubt that this sector will have an increased importance in any future requests. Member States have in some cases felt that the existing Directives regulating the taxation of mineral oil products were too restrictive when they wanted to adopt cost effective measures to achieve environmental policy objectives. Article 8(4) has, to date, been the only route for such initiatives. For example the ability to apply differential tax rates to different environmental categories of fuel products has been given to several Member States.
- 5.2 Derogations covered in this chapter include those given to the burning of waste oils, to LPG, natural gas and methane when used for Commercial or Industrial purposes and as motor fuels for public transport, to motor and heating fuels of different environmental categories and the use of waste hydrocarbon gases as heating fuel. It is also worth mentioning that several of the decisions concerning the burning of waste oil have been taken tacitly under the procedure laid down in Article 8(4). This being the case, these decisions have not yet been published.

Public transport

- 5.3 Austria, Belgium, Denmark, Greece, Spain, Italy, Ireland, Luxembourg, Portugal and the United Kingdom have all obtained derogations allowing them to exempt from excise duty fuel used in local public transport. The Austrian and Spanish derogations are limited to LPG and the Luxembourg and Portuguese to LPG, methane and natural gas. As in other areas, the exemptions are applied differently in the different Member States. From information available to the Commission, Denmark limits its exemption to certain fuel products, Belgium, Italy and Ireland only allow the application of a reduced rate, while Greece and Luxembourg do not apply the derogation. The United Kingdom does not apply the derogation as a direct duty adjustment, the reimbursement being made by way of a grant based on the amount of excise duty paid on fuel consumed.
- 5.4 There is mounting evidence which shows that the present growth trends in transport are unsustainable. To make public transport more attractive by lowering fuel costs could contribute to developing a more sustainable more efficient and less polluting transport system. The pollution will of course depend on the fuel used in the different means of transport. However seen from a pure economic angle, when various transport modes are not priced at their full cost, serious misallocations in the transport sector and substantial welfare losses can be the consequence. Therefore the tax exemptions applied could be said to violate the goal of efficient pricing.

Conclusions

- 5.5 The Commission concludes that the derogations granted in respect of public transport be maintained until a general rule is introduced as part of a common Community framework for the taxation of energy products or at the latest until 31 December 1998.

General exemptions or reductions in the rate of duty to be applied to LPG, Natural Gas and Methane

- 5.6 Council Directive 92/82/EEC of 19 October 1992 on the rates of duty on mineral oils sets, among others, a tax rate on LPG and methane. Natural gas as such falls outside the scope of the Directive. However, if natural gas is used as a motor fuel, Article 2(3) of the structures Directive requires that it shall be taxed at the rate for the equivalent product, i.e. LPG.
- 5.7 Austria, Belgium, Greece, Finland, Italy, Ireland, Luxembourg, the Netherlands and the United Kingdom have all obtained derogations allowing them to exempt LPG, natural gas and/or methane from excise duty. Austria has a derogation until 31 December 1996 for natural gas and methane only, while Finland has it for LPG and methane. For Italy, Ireland and the United Kingdom the derogation is limited to use as a motor fuel. From the information available to the Commission, Belgium only applies a reduced rate in the Commercial and Industrial sector. So does Greece but only for LPG and methane. Ireland applies a reduced rate. Italy in practice only exempts methane, Luxembourg exempts natural gas used as a road fuel while a reduced rate is applied to LPG and methane. The United Kingdom applies an exemption to all gases for off-road motor use while the Netherlands exempts natural gas and applies lower rates to LPG and methane. The general impression is that the derogations obtained are only used in a limited way by the individual Member States.
- 5.8 Viewed from an energy policy angle it appears that the application of exemptions and reductions on, for example, LPG creates a distortion vis-à-vis other fuel types. From an Internal Market view point, if the derogation is used to promote national production, the competition aspect cannot be ignored.
- 5.9 Europe is currently devoting a great deal of effort to the development and promotion of natural gas vehicles. The arguments in favour of this fuel revolve around the fact that it produces less pollution and is an indigenous alternative to gasoline which is largely imported. In an initial phase there could be a need for Member States to apply a lower rate for natural gas when used as fuel. As already mentioned earlier in this chapter, the general rule is that natural gas when used as a fuel will have to be taxed at the same rate as that applied to LPG. As such, if a tax-preference should be given to this cleaner fuel a derogation is required. The possibility of the addition of an optional reduced rate for gases used as a public transport fuel to the existing provisions of Article 8(3) of Directive '92/81 will be considered as part of the Commission review of the taxation of energy products as will the possibility of a reduction in the rate of duty on natural gas when used as a fuel in private vehicles.

Conclusions

- 5.10 The Commission concludes that the derogations granted in respect of the use of gases be maintained until a general rule is introduced as part of the Commission's proposals for the taxation of energy products or at the latest until 31 December 1998. The Commission will monitor the competitive and environmental aspects of these derogations and will submit proposals to the Council concerning their future by the end of 1998.

Exemption for excise duty on waste oils or waste hydrocarbon gases which are re-used as heating fuel, either directly after recovery, or following a recycling process in the case of waste oils.

- 5.11 A number of Member States have secured derogations allowing them to exempt from duty waste oil used for heating whether subjected to a purification process or not. Such use is taxable under Directive 92/81. However, according to Article 6(b) of the Structures Directive (92/81/EEC), Member States need not to treat as production of mineral oils operations by which the user of a mineral oil makes its re-use possible in his own undertaking. At present Austria, Germany, Spain, Finland, France, Ireland, Portugal and the United Kingdom apply a duty exemption for waste oils used either directly after recovery or following a recycling process. The reasoning behind these requests was a desire to prevent the dumping of used oils into landfill sites or waterways. The quality of heating fuel produced from these waste oils by simple heating or filtration processes is generally poor and the product would not be competitive without some form of tax advantage.

The requests from Germany, Spain, France, Ireland, the United Kingdom and Portugal were all agreed tacitly, in 1994. The Austrian and Finish requests were both agreed in Council Decision 95/585/EEC of 22 December 1995. Decision 95/585/EEC is limited until the end of 1996.

- 5.12 The disposal of waste oil is regulated by Council Directive 75/439/EEC, Article 3(1) of which states that "*...Member States shall take the measures necessary to give priority to the processing of waste oils by regeneration*". The various derogations for waste oils used as heating fuels could be seen as being contrary to the thrust of that Directive as they encourage combustion rather than regeneration.
- 5.13 The individual derogation requests were not detailed and did not specify which methods of recycling were to be approved. In practice the Member States charge duty on recycled oil that is used as a motor fuel and only apply the derogation to waste oil that is used as a heating fuel. In most cases, relief is only applied to simple recycling processes involving dewatering the oil and filtering out solid contaminants. At present methods such as vacuum distillation exist, effectively creating new oil which could be used as a relatively clean heating or motor fuel or reused as lubricating oil, but in practice only non dutiable lubricants are likely to be produced from this process as other uses would lead to taxation. In addition, irrespective of environmental concerns, the advantages of regeneration in terms of improved energy security and reduced use of fresh products should not be ignored.

- 5.14 The consequences of this duty exemption are already visible. Markets and undertakings linked to regeneration of used oils are declining because of diversion of the raw materials essential to their activities. The regeneration industry consists of some one hundred companies, most of which are SME's. Economic constraints make this activity barely profitable without public support. For those Member States where data is available it can be inferred that the application of the duty exemption will probably phase out regeneration. For instance, in Italy, which is not applying the exemption, regenerated oil amounts to 84.6% of oil collected, while only 13.3% is burned. By contrast, in the United Kingdom and Spain, the quantities regenerated are minor or negligible. Similarly, in France (40.1%) and Germany (65.2%), the amount of oil burned has increased dramatically.
- 5.15 Exempting re-use in own undertakings recognises the fact that duty is difficult to collect in such situations. This is certainly not the case where used oil is subject to collection and sale. Indeed, the waste oil Directive requires operators collecting or burning used oil to be duly registered, with a record kept of their transactions. It is argued that if combustion of used oil was taxed, such oil might be discharged into the environment, causing substantial pollution. Deposit or discharge of used oil into surface, ground, inland sea water, drainage systems and soil is prohibited by the Directive and any person or undertaking found to be involved in such action would face legal proceedings.
- 5.16 Waste oil recycled in the most technically advanced way is less environmentally harmful and, in addition, will contribute to the preservation of non renewable fossil fuels. The Commission Services are presently examining the main obstacles hindering the development of regeneration as evidence already available suggests that factors other than fiscal considerations are also involved. Nevertheless, it is clear that derogations applied in a way where they are seen to contradict the provisions of the waste oil Directive should be reconsidered.
- 5.17 Germany and Italy have a derogation allowing them to exempt from taxation the use of waste hydrocarbon gases as fuel (Council Decision 92/510/EEC of 19 October 1992). In practice Germany applies a total exemption while Italy, at present, does not apply the derogation. Sweden has provision for an exemption in respect of biologically produced methane and other waste gases, which was agreed as part of the Treaty of Accession. At present no distortion of the functioning of the Internal Market, deriving from the application of these derogations has been identified. In addition, the use of waste gases for heating purposes can be seen as environmentally advantageous.

Conclusions

- 5.18 The Commission concludes that the existing derogations relating to duty reductions or exemptions on waste oil and gases should be limited to 31 December 1998. The Austrian and Finnish derogations should be extended to the same date. The Swedish derogation allowing them to exempt from excise duty biologically produced methane and other waste gases, should be limited to the same date. By 31 December 1998, the Commission will submit proposals to the Council suggesting which methods of recycling should qualify for exemption and the derogations shall then be amended accordingly.

Reduction in the rate on heavy fuel oil with a lower sulphur content to encourage the use of more environmentally friendly fuel

- 5.19 Council decision 93/697/EEC of 13 December 1993 allowed Belgium and Luxembourg *"to apply a reduction in the rate of duty on heavy fuel oil to encourage the use of more environmentally friendly fuels provided that such an incentive is specifically linked to sulphur content and provided that the weighted average of duty charged on heavy fuel oil respects the minimum rate of duty on heavy fuel oils as provided for in Community law; in no case can the reduced rate fall below ECU 6,5 per tonne"* until 31 December 1994. After some opposition in Council this derogation was prolonged until 31 December 1996 by Council Decision 95/585/EEC of 22 December. From both an energy and environmental view point it was important that the derogation should only apply until the entry into force of Community arrangements for taxation of low-sulphur heavy fuel oil and competing products.
- 5.20 The first Commission report on excise duty rates (COM(95)285 final of 13 September 1995) states that the specific requirement to review the treatment of heavy fuel oil by reference to sulphur content should be covered in the overall review of the treatment of heating fuels, following a consultation process. This process is now intended to culminate in the Commission's new approach to taxation of energy products.

Conclusion

- 5.21 Although, the Commission has not yet come forward with a proposal for a Community arrangement for taxation of low-sulphur heavy fuel oil and competing products, there is no justification for extending the existing derogation applied to low sulphur heavy fuel oil by Luxembourg and Belgium in its present form. All derogations given in this area to other Member States are limited in that they must respect the Common Community minimum rates. The same provision should be made in respect of Luxembourg and Belgium as they have now had four years to adapt to the Internal Market. The Commission concludes that the derogation should be extended on the condition that the common minimum rates are respected and until such time as agreement is reached on a common Community framework for the taxation of energy products, including arrangements for taxation of low sulphur heavy fuel oil and competing products or at the latest until 31 December 1998.

Reduction in the rate of duty on diesel fuel and heating gas-oil to encourage the use of more environmentally friendly fuels

- 5.22 Under Council Decision 92/510/EEC of 19 October 1992, Denmark and Greece are allowed to *"apply 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, cetane 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". From information available to the Commission the provision is not applied in Greece. In Denmark however three classifications exist; Normal Diesel, Light Diesel and Ultra Light Diesel. Normal diesel is taxed at the highest rate. Ultra light diesel is taxed as light diesel, except when used in local passenger transport vehicles where the tax is reimbursed under the relevant derogation.

- 5.23 In the Accession Treaty, Finland obtained a derogation to apply "*reduced excise duty rates on diesel fuel and gas oil*". The rate applied may at no time be below the minimum rates laid down in Council Directive 92/82/EEC. Via the same Accession Treaty, Sweden obtained a derogation allowing it to apply "*reduced tax rates for diesel and light heating oil in accordance with environmental classifications*". It is worth noting that none of these derogations are explicitly limited in time. For diesel and heating gas oil, Finland applies a normal rate and a lower "ecological" rate. Sweden operates three environmental classifications on diesel, class 3 being the most expensive (ECU 329 per 1000 litres) and class 1, the cheapest +/- ECU 50 below the rate applied to class 3. For heating gas oil Sweden only applies one rate.

Conclusions

- 5.24 The Commission concludes that the derogation given to Greece allowing it to apply lower rates on environmentally cleaner diesel, be abolished since it is not used. The identical Danish derogation should be limited in time, as should the Swedish and Finnish derogations concerning diesel and light heating fuel. The Commission concludes that the derogations should be extended, on the condition that the common minimum rates are respected, until 31 December 1998 or such earlier time as agreement is reached on a common Community framework for the taxation of energy products. This will include arrangements for taxation of diesel and heating oil according to environmental classification and competing products.

Taxation of gasoline according to environmental classification

- 5.25 Environmental factors have already been taken into account within the existing mineral oil tax framework. For example there is different treatment of leaded and unleaded petrol where there is an ECU 50 per 1000 litres differential between the minimum rates for these products. Furthermore, Member States are obliged, under Article 4 of the rates Directive (92/82/EEC), to apply a lower rate of duty to unleaded petrol than to leaded petrol. At the time the Directive was adopted, Member States agreed to be guided by the objective of maintaining a differential in favour of unleaded petrol of ECU 50 per 1000 litres, though this differential is not legally binding on the Member States. There are also parallel measures such as the requirement for all new cars to be fitted with catalytic converters. The tax differential on leaded and unleaded petrol has been used as an example of the use of fiscal instruments in transport and environmental policy.

- 5.26 As previously mentioned, Member States must apply a tax differential between leaded and unleaded petrol. As a result of this policy and the increasing use of catalyst equipped cars, all Member States have experienced a substantial reduction in the use of leaded petrol and an increased use of unleaded grades. Such developments have effects on revenue yield as well as the environment.
- 5.27 Recent experience within Member States has indicated that new unleaded gasoline products have been introduced into the market. Some Member States feel that the tax should reflect the quality of the product, whether that be based on the presence or absence of lead or on different environmental criteria. "Lead Replacement Gasoline" and similar fuels are examples of new products developed for use in older cars not fitted with catalytic converters and which would normally use leaded petrol.
- 5.28 To reflect differing environmental categories and to protect their revenues, four Member States currently have the power to apply differential rates on petrol. Council Decision 96/273/EEC of 22 April 1996, allows Sweden and the United Kingdom to *"apply 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"*. Ireland has now been granted a similar facility under Council Decision 96/418/EC dated 27 June 1996. Finland in its Accession treaty was allowed to *"apply reduced excise duty rates on reformulated unleaded and leaded petrol"*. Finland must also respect the minimum rates. Furthermore, all of them, are obliged, under Article 4 of the Rates Directive (92/82/EEC), to apply a lower rate of duty to unleaded petrol than to leaded petrol. All the derogations are limited to 31 December 1996.
- 5.29 Sweden applies two rates on unleaded petrol according to its environmental classification. The difference between the two classes is ECU +/-7 per 1000 litres (ECU 456 compared to ECU 462). The United Kingdom applies a reduced rate on 95 octane unleaded petrol, while higher octane unleaded gasoline including Lead Replacement Gasoline is liable at an intermediate rate between the leaded and unleaded rates. Finland applies a normal rate and an "ecological" rate on both leaded and unleaded gasoline. On leaded petrol the tax differential is ECU 8 per 1000 litres (ECU 532 compared to ECU 524) and on unleaded petrol the differential is also 8 per 1000 litres (ECU 457 compared to ECU 449).
- 5.30 At a Community level no explicit definition of environmental categories has yet been agreed although the Commission has recently put forward a draft Directive laying down technical specifications on health and environmental grounds for fuels to be used in petrol and diesel vehicles. These could be used by Member States as the basis for differential levels of taxation to encourage, by fiscal means, the marketing of cleaner fuels. Until these are implemented, there is a risk of distortion of competition and fragmentation of the Internal Market.

Conclusions

- 5.31** The Commission concludes that the derogations given to the United Kingdom, Sweden and Ireland concerning differentials on unleaded petrol should be extended. The Finnish derogation concerning leaded and unleaded petrol should be limited in time. The derogations may apply until such time as agreement is reached on a common Community framework for the taxation of energy products, including arrangements for taxation of gasoline according to its environmental classification and competing products or at the latest until 31 December 1998.

Other types of environmental taxes on fuel

- 5.32** Under Council Decision 95/585/EEC of 22 December 1995, Denmark may until 31 December 1996; *"apply differential rates of excise duty to 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"*. To tackle the same problem other Member States have used other measures, such as for example, setting standards on station equipment instead of using a tax incentive. The purpose behind the Danish request is to provide an incentive for owners of petrol stations to install return systems for petrol fumes. The initiative is a part of a whole strategy to limit the exhaust of volatile organic compounds (VOCs) to the atmosphere.

Conclusion

- 5.33** The Commission concludes that the derogation given to Denmark concerning fuel delivered from certain filling stations should continue until such time as agreement is reached on a common Community framework for the taxation of energy products, including arrangements for taxation of gasoline according to its environmental classification and competing products or at the latest until 31 December 1998.

6. REVIEW OF THE DEROGATIONS EXISTING IN THE REGIONAL POLICY SECTOR

The existing situation

- 6.1 Three Member States have applied for and been granted regional derogations.
- 6.2 Council Decision 92/510/EEC allowed France to exempt mineral oils consumed on the island of Corsica from excise duty until 31 December 1994. When the derogation expired, the French administration put forward a new request to prolong the derogation until 31 December 1996. Since neither the Commission nor any other Member State requested that the matter be discussed at Council level within the obligatory two month period, the derogation was prolonged tacitly until the end of 1996. In practice France reimburses 6.63 FF./hl (Normal rate on unleaded petrol = 357,23 FF./hl) when gasoline is put to consumption on the island of Corsica or the gasoline is delivered on Corsica to private pleasure craft.
- 6.3 Council decision 92/510/EEC allows Italy to exempt mineral oils consumed in the regions of Val d'Aosta and Gorzia from excise duty. In practice the Italian administration limits the exemption by imposing an annual quota. The same decision also allowed Italy to exempt mineral oils consumed in the regions of Udine and Trieste from excise duty until 31 December 1994. This is also limited by an annual quota. When the derogation expired, the Italian administration put forward a new request to extend the derogation until 31 December 1998. Since neither the Commission nor any other Member State requested that the matter be discussed at Council level within the obligatory two month period the derogation was extended tacitly until the end of 1998.
- 6.4 Recently the Italian administration has identified a threat to their mineral oils revenue from the importation of low taxed fuel from Slovenia. To reduce the problem the Italian authorities submitted a request for a derogation allowing them to apply reductions in the rate of duty on gasoline delivered in the Region of Friuli-Venezia Giulia. The derogation was granted until 31 December 1996 in Council decision 96/273/EEC of 22 April 1996.
- 6.5 Council decision 95/585/EC allows Portugal to apply reductions in the rate of excise duty on fuel oil consumed in the autonomous region of Madeira until 31 December 1996. This reduction may not be greater than the additional costs incurred in transporting the fuel to that region.

Competition aspects

- 6.6 As already mentioned, as a general principle an exemption from excise duty for certain undertakings, products or the production of certain goods in a Member State constitutes a state aid within the meaning of Article 92(1) of the treaty, provided that it is capable of distorting competition and affecting trade between Member States. Article 92 stipulates that state aid is incompatible with the common market and thus prohibited, unless it may be approved by the Commission pursuant to one of the exemption clauses in Article 92(2) or (3). In Article 92 one of the most important exemption clauses is regional aid.
- 6.7 The existing derogations do not require that the Member States involved respect the community minimum rates. Although, some of the regions dealt with here are eligible for receipt of support from structural funds, there seems to be little evidence that the economy would suffer significantly if the regions in question were allowed to apply reduced rates that respected the Community minimum rates. From an Internal Market viewpoint and considering that the derogations have existed for some years, it seems reasonable that they should be amended to require Community minimum rates to be observed.

Conclusion

- 6.8 The Commission concludes that these derogations should be extended or limited in time to 31 December 1998 provided they respect the Community minimum rates. The Commission will then review the existing regional derogations and submit proposals to the Council concerning their future by 31 December 1998.

7. DEROGATIONS GRANTED FOR OTHER POLICY REASONS

The existing situation

- 7.1 There are a number of other derogations involving a variety of policy reasons, many of which have social origins.
- 7.2 Greece and the Netherlands have derogations allowing them to exempt from taxation the use of fuel in respect of desalination plants. (Council Decision 92/510/EEC of 19 October 1992). In practice both Member States apply total exemptions. At present no distortion of the functioning of the Internal Market, deriving from the application of these derogations has been identified.
- 7.3 Greece has a derogation allowing them to exempt fuel used in vehicles belonging to the President, the National Police Force and the Metropolitan Bishop from excise duty. Within certain quantitative restrictions taxis in France are allowed tax-free fuel. Ambulances in Italy only have to pay a reduced excise duty on fuel. The armed forces in Greece, Italy and the Netherlands are exempt from excise duty. Lighthouses in Ireland and the United Kingdom are exempt from tax on fuel. Fuel in motor vehicles used by the disabled in Ireland is exempt (in practice within an annual quota). Fuel used in pumps to drain flooded land in Belgium, Italy and the Netherlands is exempt.
- 7.4 Council decision 92/510/EEC, allows France, in the framework of certain policies aimed at assisting areas suffering from depopulation, to exempt mineral oil products from excise duty. In practice France reimburses the excise duty on motor fuels used for commercial purposes by companies registered in a commune with less than 3000 inhabitants and where part of the turnover comes from retail business. The annual consumption per enterprise must be within an annual ceiling of 1500 litres.
- 7.5 It seems difficult to justify some of these derogations on pure economic grounds. Most could be more efficiently replaced by other means of support which would be more transparent and simpler to administer. Areas such as Government vehicles, ambulances, national forces and lighthouses appear to fall within this category. It could, also, be argued that the principle should be that Governments are only entitled to the same exemptions as other sectors. Moreover, although in most areas any budgetary impact will be minimal, as the Government both pays and receives the revenue, there is, nevertheless a risk, that derogations lead to an inefficient use of resources because they send the wrong price signals to those agencies that consume the fuels.

Conclusions

- 7.6** The Commission concludes that the derogation allowing Greece and the Netherlands to exempt the use of fuel in desalination plants from taxation should be limited until 31 December 1998. The Commission will monitor the competitive aspects of the derogations and will submit proposals to the Council concerning the future of these derogations by the end of 1998.
- 7.7** The Commission concludes that the remaining derogations in this area should be abolished.

8. REVIEW OF THE FUNCTIONING OF THE ARTICLE 8(4) PROCEDURE

The existing situation

8.1 In the vast majority of cases the Council has given its explicit decision on the requests put forward by various Member States. However, in accordance with Article 8(4) of Directive 92/81/EEC the Council is deemed to have authorised the exemptions or reductions proposed if within two months of the other Member States being informed neither the Commission nor any Member State has requested that the matter be considered by the Council. Since no Member State nor the Commission requested that the matter be raised within the two month period the following requests are considered to have been adopted from the following dates:

1. For reductions in or exemptions from excise duty for waste oils which are re-used as fuel, either directly after recovery or following a recycling process for waste oils, and where the re-use is subject to duty:
 - in Ireland from 16 November 1993;
 - in the United Kingdom of Great Britain and Northern Ireland from 25 April 1994;
 - in the French Republic from 8 June 1994;
 - in the Federal Republic of Germany from 8 June 1994;
 - in the Portuguese Republic from 8 June 1994;
 - in the Kingdom of Spain from 15 August 1994.
2. For mineral oils consumed in the regions of Udine and Trieste in the Italian Republic from 1 January 1995 for a period of 4 years.
3. For reductions in excise duty rates on petrol consumed on the island of Corsica in the French Republic from 23 February 1995 until 31 December 1996.

Concerns

8.2 These tacit or implicit decisions create serious legal problems. In particular there may be a lack of discussion and justification and it is impossible to publish an unwritten act. One way of avoiding this would be to require a proper and explicit decision of the Council on a proposal of the Commission before any exemption or reduction of excise duties is granted. This would, however, mean that the Council would have to consider a considerable number of individual requests. This leads to consideration of how the decision making process could be improved without damaging the principle of transparency. One possibility is to grant the Commission, assisted by the Member States in the form of the Committee established under Article 24 of Council Directive 92/12/EEC, (and which takes decisions on the basis of majority voting as laid down in Article 148(2) of the Treaty), the power to approve requests for a strictly limited period.

The Council could then be asked periodically to decide whether such authorisation should be abolished, modified or extended in time.

- 8.3 To aid the Commission and Member States to evaluate derogations, moreover, Member States should always assess as accurately as possible, in the notification sent to the Commission, the expected impact of the measures they intend to apply.

Conclusions

- 8.4 The Commission recognises the need for Member States to continue to have the ability, for very specific policy considerations, to obtain derogations from the general excise regime. Such derogations in the form of exemptions or reductions in the rates of excise duty should only be considered, however, when Member States have provided the Commission with sufficient background material including an evaluation of the consequences of such exemptions or reductions. The Commission will then examine the requests in the light of the functioning of the Internal Market, fair competition and environmental protection policies.
- 8.5 Future derogations should always be limited in time and subject to regular review. To ensure that the system can operate smoothly, individual requests received from Member States should be dealt with according to the procedure as outlined in Article 24 of Council Directive 92/12/EEC of 25 February 1992. The Council should then review every three years, all derogations which have been granted 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 for a further period.
- 8.6 The Commission will make proposals to amend Article 8 of Directive 92/81/EEC to enable this new approach to operate. The proposals will be put forward as an integrated part of the new general approach to the taxation of energy products before the end of 1996.

ANNEX A

**AUTHORISATIONS GRANTED AND REQUESTS MADE UNDER ARTICLE 3.4 OF
DIRECTIVE 92/81/EEC**

REPUBLIC OF AUSTRIA

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
⇒ exemption from excise duty for LPG used as motor fuel in local public transport vehicles			ACT OF ACCESSION JO C 241 du 29/8/94
⇒ exemption from excise duty on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process; and the re-use of which is subject to duty, until 31/12/96.			Article 1.4 of Council Decision 95/585/EC of 22 December 1995
⇒ exemption from excise duty for natural gas and methane, until 31/12/96			Article 1.2 of Council Decision 96/273/EC of 22 April 1996

BELGIUM

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
<ul style="list-style-type: none"> ⇒ 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) of Directive 92/81/EEC, ⇒ for navigation in private pleasure craft 			<p style="text-align: center;">Council Decision of 19/10/1992 (92/510/EEC)</p>
<ul style="list-style-type: none"> ⇒ until 31 December 1994 reduction in the rate of duty on heavy fuel oil to encourage the use of more environmentally friendly fuels provided that such an incentive is specifically linked to sulphur content and provided that the weighted average rate of duty charged on heavy fuel oil respects the minimum rate of duty on heavy fuel oils as provided for in Community law: in no case can the reduced rate fall below ECU 6,5 per tonne. ⇒ Extension of the above-mentioned Decision until entry into force of the Community arrangements for low-sulphur heavy fuel oil and competing products (at the latest 31.12.96) 			<p style="text-align: center;">Council Decision of 13/12/1993 (93/697/EEC)</p> <p style="text-align: center;">Council Decision of 22/12/95 (95/585/EC)</p>

DENMARK

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
<p>⇒ 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,</p> <p>⇒ for local public passenger transport vehicles,</p> <p>⇒ 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, cetane 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,</p> <p>⇒ In respect of air navigation other than that covered by Article 8(1)(b) of Directive 92/81/EEC</p>			<p>Council Decision of 19/10/92 (92/510/EEC)</p>
<p>⇒ 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, until 31/12/96.</p>			<p>Article 1.2 of Council Decision 95/585/EC of 22 December 1995.</p>

FEDERAL REPUBLIC OF GERMANY

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
⇨ 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,			Council Decision of 19/10/1992 (92/510/EEC)
⇨ An exemption from excise duty for waste oils which are re-used as fuel, either directly after recovery or following a recycling process for waste oils, and the re-use of which is subject to duty.	COM (94) 493 of 17/11/94	"Tacit Agreement" (08/06/1994)	

KINGDOM OF SPAIN

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
⇒ for LPG, used as motor fuel in local public transport vehicles,			Council Decision of 19/10/1992 (92/510/EEC)
⇒ An exemption from excise duty for waste oils which are re-used as fuel, either directly after recovery or following a recycling process for waste oils, and the re-use of which is subject to duty.	COM (94) 493 of 17/11/94	"Tacit Agreement" (15/08/1994)	

HELLENIC REPUBLIC

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
<ul style="list-style-type: none"> ⇨ 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, 			<p style="text-align: center;">Council Decision of 19/10/1992 (92/510/EEC)</p>
<ul style="list-style-type: none"> ⇨ Exemption from the excise duty on mineral oils for fuels intended to be used to power the official vehicles of the Ministry of the Presidency, the national police force and the metropolitan bishops. 			<p style="text-align: center;">Council Decision of 13/12/93 (93/697/EEC)</p>

REPUBLIC OF FRANCE

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
<ul style="list-style-type: none"> ⇒ 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 			Council Decision of 19/10/1992 (92/510/EEC)
<ul style="list-style-type: none"> ⇒ An exemption from excise duty for waste oils which are re-used as fuel, either directly after recovery or following a recycling process for waste oils, and the re-use of which is subject to duty. 	COM (94) 493 of 17/11/94	"Tacit Agreement" (08/06/1994)	
<ul style="list-style-type: none"> ⇒ Extension of Decision 92/510/EEC for Corsica, until 31/12/96 	COM (95) 46 of 27/02/95	"Tacit Agreement" (23/02/1995)	
<ul style="list-style-type: none"> ⇒ Request for an exemption for certain biofuels produced from a limited range of raw materials grown only on set aside land¹ dated 23.03.95. 	COM (95) 248 of 9/06/95		
<ul style="list-style-type: none"> ⇒ Request for an exemption on LPG and natural gas when used as fuel in public transport. The exemption will be given within the limits of an annual quota. The measure is part of a programme to reduce pollution, limited to 31 December 1998.² 	COM (96)		

¹ Commission Communication to the Council. The request causes substantial problems. The Commission requests the matter be brought before Council, in accordance with Article 8(4) of Directive 92/81/EEC.

² FR: The request was registered in the Secretariat General on 1/04/96.

FINLAND

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
⇒ Exemption from excise duty on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process for waste oils and the re-use of which is subject to duty, until 31/12/96.			Article 1.6 of Council Decision 95/585/EC of 22/12/95
⇒ reduced rates for diesel and low sulphur gasoil. ⇒ reduced rates on reformulated unleaded and leaded petrol. ⇒ exemption from excise duty for methane and LPG for all purposes; ⇒ exemption from excise duty for mineral oils used for private pleasure craft.			ACT OF ACCESSION (JO C 241 of 29.8.94)

REPUBLIC OF ITALY

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
<ul style="list-style-type: none"> ⇨ 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 			<p style="text-align: center;">Council Decision of 19/10/1992 (92/510/EEC)</p>
<ul style="list-style-type: none"> ⇨ Until 31 December 1994, exemption from excise duty on mineral oils used as fuel in the production of alumina in Sardinia 			<p style="text-align: center;">Council Decision of 13/12/1993 (93/697/EEC)</p>

ITALY (cont'd)

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
⇒ Extension on reduction or exemption from excise duty for mineral oils consumed in the regions of Udine and Trieste	COM (94) 493 of 17/11/94	Tacit extension until 31/12/98	
⇒ Exemption 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, until 31 December 1996.			Article 1.3 of Council Decision 95/585/EC of 22/12/95
⇒ Reduction of excise duty rates for petrol consumed on the territory of Friuli-Venezia Giulia, until 31 December 1996			Article 1.1 of Council Decision 96/273/EC of 22/04/96
⇒ Extension on the exemption from excise duty on mineral oils used as fuel in the production of alumina in Sardinia, until 31 December 1996.			Article 1.1 of Council Decision 96/273/EC of 22/04/96

IRELAND

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
<ul style="list-style-type: none"> ⇒ 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. 			Council Decision of 19/10/1992 (92/510/EEC)
<ul style="list-style-type: none"> ⇒ Exemption from excise duty on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process for waste oils, and the re-use of which is subject to duty. 	COM (94) 493 of 17/11/94	"Tacit Agreement" (16/11/1993)	
<ul style="list-style-type: none"> ⇒ 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, until 31 December 1996. 	COM (96) 156 of 15 April 1996		Council decision of 27.6.1996 (96/418/EC)

GRAND-DUCHY OF LUXEMBOURG

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
⇒ in local public transport vehicles ⇒ for LPG, natural gas and methane			Council Decision of 19/10/92 (92/510/EEC)
⇒ Until 31 December 1994, reduction in the rate of duty on heavy fuel oil to encourage the use of more environmentally friendly fuels provided that such an incentive is specifically linked to sulphur content and provided that the weighted average rate of duty charged on heavy fuel oil respects the minimum rate of duty on heavy fuel oils as provided for in Community law; in no case can the reduced rate fall below ECU 6,5 per tonne			Council Decision of 13/12/93 (93/697/EEC)
⇒ Extension of the above-mentioned decision until entry into force of the Community arrangements for low-sulphur heavy fuel oil and competing products (at the latest 31.12.96) .			Article 1.1 of Council Decision of 22/12/95 (95/585/EC)

**KINGDOM OF THE
NETHERLANDS**

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
<ul style="list-style-type: none"> ⇒ 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. 			<p>Council Decision of 19/10/92 (92/510/EEC)</p>

PORTUGAL

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
⇒ in respect of air navigation other than that covered by Article 8(1)(b) of Directive 92/81/EEC			Council Decision of 19/10/92 (92/510/EEC)
⇒ exemption from excise duty on LPG, natural gas and methane when used as fuel for local public transport			Council Decision of 13/12/93 (93/697/EC)
⇒ An exemption from excise duty for waste oils which are re-used as fuel, either directly after recovery or following a recycling process for waste oils, and the re-use of which is subject to duty.	COM (94) 493 of 17/11/94	"Tacit Agreement"	
⇒ Reduction in excise duty on fuel oil consumed in the autonomous region of Madeira. ³			Article 1.5 of Council Decision 95/585/EC of 22/12/95

³ PT: This reduction may not be greater than the additional costs incurred in transporting the fuel oil to that region.

UNITED KINGDOM

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
<ul style="list-style-type: none"> ⇨ 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. 			Council Decision of 19/10/92 (92/510/EEC)
<ul style="list-style-type: none"> ⇨ An exemption from excise duty for waste oils which are re-used as fuel, either directly after recovery or following a recycling process for waste oils, and the re-use of which is subject to duty. 	COM (94) 493 du 17/11/94	"Tacit Agreement" (25/04/1994)	
<ul style="list-style-type: none"> ⇨ 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. 			Council Decision of 22/04/96 (96/273/EC)

SWEDEN

REQUEST	DECISION PROPOSAL	NO DECISION TAKEN AT COUNCIL	DECISION TAKEN AT COUNCIL
<ul style="list-style-type: none"> ⇒ reduced excise duty rate for mineral oils used for industrial purposes, ⇒ exemption from excise duty for biologically produced methane and other waste gases. ⇒ reduced tax rates for diesel and light heating oil in accordance with environmental classifications. 			ACT OF ACCESSION (JO C 241 du 29.8.94)
<ul style="list-style-type: none"> ⇒ Exemption from excise duty on aviation gasoline used for private pleasure flying, until 31 December 1996 ⇒ 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, until 31 December 1996. 			Council Decision of 22/04/96 (96/273/EC)
<ul style="list-style-type: none"> ⇒ Request to apply a reduced excise duty rate for mineral oils used for industrial purposes, beyond what has already been authorised in the Treaty of Accession.⁴ The exemption should be formulated so that Sweden can apply the reduced excise duty on mineral oils used for industrial purposes both by using a lower rate than the general level and by using a reduced rate for enterprises with very high consumption of energy. The rates charged will not be less than the minimum rates set in Directive 92/82/EEC. Limited until 31 December 1996. 	COM (96)		

⁴ SE: Request registered in the Secretariat General on 28/03/96

ANNEX B

**DEROGATIONS PROVIDED FOR IN ARTICLE 8 PARAGRAPHS 1.b) AND 2.b)
AND IN ARTICLE 8 PARAGRAPH 4 OF COUNCIL DIRECTIVE 92/81/EEC
OF 19 OCTOBER 1992 ON THE HARMONISATION OF THE STRUCTURES
OF EXCISE DUTIES ON MINERAL OILS**

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I - CATEGORY: TRANSPORT

M.S.	AIR TRANSPORT	WATERBORNE TRANSPORT
AT	a) Exempt	a) Exemption for navigation on the River Danube and on Lake Constance
BE	a) Exemption limited to jet fuel (Kerosene) b) Exemption in respect of air navigation other than that covered by Article 8.1.b) (Article 1.1 of Council Decision 95/510/EEC of 19 October 1992)	a) Exemption limited to gas oil and kerosene b) Exemption for navigation in private pleasure craft (Article 1.1. of Council Decision 92/510/EEC of 19 October 1992)
DE	a) Exemption for code CN 2710 0031 and for kerosene falling within codes CN 2710 0037 and 2710 0051	a) Exempt.
DK	a) Exemption limited to jet fuel (Kerosene) b) Exemption in respect of air navigation other than that covered by Article 8.1.b) (Article 1.3 of Council Decision 92/510/EEC of 19 October 1992)	a) Recovery of excise duty
EL	a) Exempt	a) No exemptions b) Exemption for navigation in private pleasure crafts not registered in Greece (Article 1.4 of Council Decision 92/510/EEC of 19 October 1992)
ES	a) Exempt	a) Exempt
FIN	a) Exempt b) Reduction in respect of air navigation other than that covered by Article 8.1.b) (Accession Act).	a) Exemption b) Reduction for private pleasure craft (Accession Act)

I - CATEGORY: TRANSPORT (cont'd)

M.S.	AIR TRANSPORT	WATERBORNE TRANSPORT
FR	a) Exemption on mineral oils supplied for use as fuels for the purpose of air navigation other than private pleasure flying. Article 8.1.(b) b) Derogations Article 8.4	a) Exemptions or reductions in rates applied to mineral oils supplied for the purposes of navigation on inland waterways other than in private pleasure craft. Article 8.2.(b) b) Derogations Article 8.4
IT	a) Exempt b) Exemption in respect of air navigation other than that covered by Article 8.1.b) (Article 1.3 of Council Decision 92/510/EEC of 19 October 1992)	a) Exempt
IRL	a) Exemption limited to jet fuel (Kerosene) b) Exemption in respect of air navigation other than that covered by Article 8.1.b) (Article 1.6 of Council Decision 92/510/EEC of 19 October 1992)	a) Exempt b) Reduction for navigation in private pleasure craft (Article 1.7 of Council Decision 92/510/EEC of 19 October 1992)
LUX	a) Exemption limited to jet fuel (Kerosene)	a) Exemption limited to gas oil and kerosene
NL	a) Exempt	a) Exempt, except for light oils, where a marker has not been added
PT	a) Exempt (codes NC 27100026 and 2710005) b) Exemption in respect of air navigation other than that covered by Article 8.1.b) (Article 1.11 of Council Decision 92/510/EEC of 19 October 1992)	a) No exemption

I - CATEGORY: TRANSPORT (cont'd)

M.S.	AIR TRANSPORT	WATERBORNE TRANSPORT
UK	<p>a) Exemption limited to jet fuel (Kerosene) "AVGAS" charged at half rate</p> <p>b) Exemption in respect of air navigation other than that covered by Article 8.1.b) (Article 1.12 of Council Decision 92/510/EEC of 19 October 1992)</p>	<p>a) Exemptions or reductions in rates applied to mineral oils supplied for the purposes of navigation on inland waterways other than in private pleasure craft. Article 8.2.(b)</p> <p>b) Derogations Article 8.4</p>
SE	<p>a) Exempt</p> <p>b) Excise exemption for petrol used in private pleasure flying (Article 1.3 of Council Decision 96/273/EC of 22.4.1996)</p>	<p>a) No exemption</p> <p>b) For navigation in private pleasure craft (Article 1.12. of Council Decision 92/510/EEC of 19 October 1992).</p> <p>a) Exempt</p>

II - CATEGORY: INDUSTRIAL AND COMMERCIAL SECTOR

M.S.	
DE	a) Exemption on samples of mineral oils intended for analysis (Article 1.2 of Council Decision 92/510/EEC of 19 October 1992).
DK	a) 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 (Article 1.3 of Council Decision 92/510/EEC of 19 October 1992).
IT	a) Exemption on mineral oils used as fuel in the production of alumina in Sardinia (Article 1.3 of Council Decision 93/697/EEC of 13 December 1993) (Extended until 31.12.96 by Article 1.1 of Council Decision 96/273/EC of 22.4.1996). b) Reduction on fuel oil, for the production of steam, and for gas oil, used in ovens for drying and 'activating' molecular sieves in Reggio Calabria, until 31 December 1996 (Article 1.3 of Council Decision 95/585/EC of 22 December 1995).
IRL	a) Exemption for the production of alumina in the Shannon region (Article 1.7 of Council Decision 92/510/EEC of 19 October 1992).
NL	a) Exemption on samples of mineral oils intended for analysis (Article 1.10 of Council Decision 92/510/EEC of 19 October 1992).
SE	a) Reduction for mineral oils used for industrial purposes (Accession Act). b) Request to apply a reduced excise duty rate for mineral oils used for industrial purposes, beyond that already authorised in the Treaty of Accession. The exemption should be formulated so that Sweden can apply the reduced excise duty on mineral oils used for industrial purposes both by using a lower rate than the general level and by using a reduced rate for enterprises with a very high consumption of energy, until 31 December 1996. The rates charged will not be less than the minimum rates set out in Directive 92/82/EEC.

III - CATEGORY: ENVIRONMENTAL POLICIES

M.S.	
AT	<ul style="list-style-type: none"> a) Exemption for LPG used as motor fuel in local public passenger transport vehicles (Accession Act). b) Exemption on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process, and the re-use of which is subject to duty, until 31 December 1996 (Article 1.4 of Council Decision 95/585/EC of 22 December 1995). c) Exemption from excise duty for natural gas and methane until 31/12/96 (Article 1.2 of Council Decision 96/273/EC of 22.4.1996)
BE	<ul style="list-style-type: none"> a) Partial exemption for gas oil used in local public passenger transport vehicles (Article 1.1 of Council Decision 92/510/EEC of 19 October 1992). b) For LPG, natural gas and methane (Article 1.1 of Council Decision 92/510/EEC of 19 October 1992). c) Reduction for low-sulphur heavy fuel ($\leq 1\%S$) (Article 1.1 of Council Decision 93/697/EEC and Article 1.1 of Council Decision 95/585/EC of 22 December 1995).
DE	<ul style="list-style-type: none"> a) Exemption on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process, and the re-use of which is subject to duty (COM (94) 493 final of 17.11.1994 - <i>Tacit Agreement of 8.6.94</i>) b) For the use of waste hydrocarbon gases as heating fuel (Article 1.2 of Council Decision 92/510/EEC of 19 October 1992).
DK	<ul style="list-style-type: none"> a) Exemption for LPG, gas and ultra-light gas oil used for local public passenger transport vehicles (Article 1.3 of Council Decision 92/510/EEC of 19 October 1992). b) 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 (Article 1.3 of Council Decision 92/510/EEC of 19 October 1992). c) 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, until 31 December 1996 (Article 1.2 of Council Decision 95/585/EC of 22 December 1995).
EL	<ul style="list-style-type: none"> a) For local public passenger transport vehicles (Article 1.4 of Council Decision 92/510/EEC of 19 October 1992). b) Exemption for LPG and methane used for industrial purposes (Article 1.4 of Council Decision 92/510/EEC of 19 October 1992). c) 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 (Article 1.4 of Council Decision 92/510/EEC of 19 October 1992).

III - CATEGORY: ENVIRONMENTAL POLICIES (cont'd)

M.S.	
ES	<ul style="list-style-type: none"> a) Exemption for liquid petroleum gas used as motor fuel in local public transport vehicles (Article 1.5 of Council Decision 92/510/EEC of 19 October 1992). b) Exemption on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process, and the re-use of which is subject to duty (COM (94) 493 final of 17.11.1994 - <i>Tacit Agreement of 15.8.94</i>).
FIN	<ul style="list-style-type: none"> a) Exemption on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process, and the re-use of which is subject to duty, until 31 December 1996 (Article 1.6 of Council Decision 95/585/EC of 22 December 1995). b) For methane and LPG used for all purposes (Accession Act). c) Reduced rates for diesel and low sulphur gasoil (Accession Act). d) Reduced rates on reformulated unleaded and leaded petrol (Accession Act).
FR	<ul style="list-style-type: none"> a) Exemption on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process, and the re-use of which is subject to duty (COM (94) 493 final of 17.11.1994 - <i>Tacit Agreement of 8.6.94</i>). b) Exemption for fuels used by taxis within the limits of an annual quota (Article 1.6. of Council Decision 92/510/EEC of 19 October 1992). c) Request for exemption for LPG and natural gas within the limits of an annual quota when these are used as fuels for public transport, in the framework of reducing pollution.
IT	<ul style="list-style-type: none"> a) Reduction for vehicles used as local public passenger transport vehicles (Article 1.8 of Council Decision 92/510/EEC of 19 October 1992). b) For methane used as fuel in motor vehicles (Article 1.8 of Council Decision 92/510/EEC of 19 October 1992). c) For use of waste hydrocarbon gases as fuel (Article 1.8 of Council Decision 92/510/EEC of 19 October 1992).
IRL	<ul style="list-style-type: none"> a) Reduction for vehicles used as local public passenger transport vehicles (Article 1.7 of Council Decision 92/510/EEC of 19 October 1992). b) LPG, natural gas and methane used as motor fuel (Article 1.7 of Council Decision 92/510/EEC of 19 October 1992). c) Exemption on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process, and the re-use of which is subject to duty (COM (94) 493 final of 17.11.1994 - <i>Tacit Agreement of 16.11.93</i>). d) Application of differential rates on unleaded petrol corresponding to different environmental categories (Council Decision 96/418/EC of 27.6.1996).

III - CATEGORY: ENVIRONMENTAL POLICIES (cont'd)

M.S.	
EUX	<ul style="list-style-type: none"> a) Only LPG, natural gas and methane for local public passenger transport vehicles (Article 1.9 of Council Directive 92/510/EEC of 19 October 1992). b) For LPG, natural gas and methane (Article 1.9 of Council Decision 92/510/EEC of 19 October 1992). c) Reduction for low-sulphur heavy fuel ($\leq 1\%S$) (Article 1.1 of Council Decision 93/697/EEC and Article 1.1 of Council Decision 95/585/EC of 22 December 1995).
NL	<ul style="list-style-type: none"> a) For LPG, natural gas and methane (Article 1.10 of Council Decision 92/510/EEC of 19 October 1992).
PT	<ul style="list-style-type: none"> a) Exemption for LPG, methane and natural gas for local public passenger transport vehicles (Article 1.4 of Council Decision 93/697/EEC of 13 December 1993). b) Exemption on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process, and the re-use of which is subject to duty (COM (94) 493 final of 17.11.1994 - <i>Tacit Agreement of 8.6.94</i>).
UK	<ul style="list-style-type: none"> a) For vehicles used for local public passenger transport (Article 1.12 of Council Decision 92/510/EEC of 19 October 1992). b) For LPG, natural gas and methane used as motor fuel (Article 1.12 of Council Decision 92/510/EEC of 19 October 1992). c) Exemption on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process, and the re-use of which is subject to duty (COM (94) 493 final of 17.11.1994 - <i>Tacit Agreement of 25.4.94</i>). d) Application of differential rates on unleaded petrol corresponding to different environmental categories (Article 1.4 of Council Decision 96/273/EC of 22.4.1996).
SE	<ul style="list-style-type: none"> a) Exemption for biologically produced methane and other waste gases (Accession Act). b) Request for application of differential rates on unleaded petrol corresponding to different environmental categories (Article 1.3 of Council Decision 96/273/EC of 22.4.1996). c) Reduced rates for diesel and light heating oil in accordance with environmental classifications (Accession Act).

IV - CATEGORY: REGIONAL POLICIES

M.S.	
FR	<p>a) Reimbursement of 6.63F/hl for gasoline for consumption on the island of Corsica or gasoline delivered from the harbours of Corsica to private pleasure craft, until 31 December 1994 (Tacit extension until 31.12.96 - COM (95) final of 27.02.95). (Article 1.6 of Council Decision 92/510/EEC of 19 October 1992).</p>
IT	<p>a) For consumption in the regions of Val d'Aosta and Gorizia (Article 1.8 of Council Decision 92/510/EEC of 19 October 1992).</p> <p>b) For consumption in the regions of Udine and Trieste, until 31 December 1994 (Article 1.8 of Council Decision 92/510/EEC of 19 October 1992). (Tacit extension until 31.12.98 - COM (95) 493 final of 17.11.94).</p> <p>c) Reduction in the rate of duty for petrol consumed on the territory of "<i>Friuli-Venezia Giulia</i>" (Article 1.1 of Council Decision 96/273/EC of 22.4.1996).</p>
PT	<p>a) Reduction in the rate of duty on fuel oil consumed in the autonomous region of Madeira, until 31 December 1996. This reduction should not be greater than the additional costs arising from the transport of the goods in question to the place of consumption (Article 1.5 of Council Decision 95/585/EC of 22 December 1995)</p>

V - CATEGORY: OTHER POLICIES

M.S.	
BE	a) For motors used for the drainage of flooded land (Article 1.1 of Council Decision 92/510/CE of 19 October 1992).
EL	a) Exemption for the armed forces of the State (Article 1.4 of Council Decision 92/510/CE of 19 October 1992). b) Exemption for fuels used to power the official vehicles of the Ministry of the Presidency, the national police force and the metropolitan bishops (Council Decision 93/697/EC of 13 December 1993). c) For desalination plants (Article 1.4 of Council Decision 92/510/EEC of 19 October 1992).
FR	a) Exemption in the framework of certain policies aimed at assisting areas suffering from depopulation (Article 1.6 of Council Decision 92/510/EEC of 19 October 1992).
IT	a) Reduction of 50% on normal rate (petrol and LPG) for ambulances (Article 1.8 of Council Decision 92/510/EEC of 19 October 1992). b) Exemption for the national armed forces that are part of the NATO forces (Article 1.8 of Council Decision 92/510/EEC of 19 October 1992). c) Exemption for motors used for the drainage of flooded land (Article 1.8 of Council Decision 92/510/EEC of 19 October 1992).
IRL	a) For the operation of lighthouses (Article 1.7 of Council Decision 92/510/EEC of 19 October 1992). b) For motor vehicles used by the disabled (Article 1.7 of Council Decision 92/510/EEC of 19 October 1992).
NL	a) For the national armed forces (Article 1.10 of Council Decision 92/510/EEC of 19 October 1992). b) Reduction for motors used for the drainage of flooded land, (Article 1.10 of Council Decision 92/510/EEC of 19 October 1992). c) Reduction only on gas oil used by desalination plants (Article 1.10 of Council Decision 92/510/EEC of 19 October 1992).
UK	a) For the operation of lighthouses, (Article 1.12 of Council Decision 92/510/EEC of 19 October 1992).

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 Article 8 (4) of Directive 92/81/EEC.

Proposal for a
COUNCIL DECISION

96/0263 (CNS)

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 Article 8 (4) of 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 oils¹ and in particular Article 8 (4) thereof;

Having regard to the proposal from the Commission²;

Having regard to the opinion of the European Parliament³;

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

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 taxation law or to introduce exemptions or reductions and to which the procedure provided for under the said Article 8 (4) should be applied;

Whereas, the other Member States have been informed thereof;

¹ OJ No L 316, 31.10.1992, p. 12 Directive as amended by Directive 94/74/EC (OJ No 365, 31.12.1994, p. 46).

²
³

Whereas, all of the exemptions and reductions referred to in Article 1 shall continue to have effect until 31 December 1998 for specific policy considerations provided they do not give rise to distortions in competition or interfere with the working of the internal market;

Whereas, all the exemptions and reductions referred to in Article 2 shall cease to have effect from 31 December 1996;

Whereas, all the exemptions and reductions referred to in Article 3 shall be abolished with effect from 1 January 1997;

Whereas, the reductions or exemptions will be regularly reviewed by the Commission to ensure their compatibility with the operation of the internal market and other objectives of the Treaty;

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;

HAS ADOPTED THIS DECISION:

Article 1

In accordance with the provisions of Article 8 (4) and Article 8 (6) of Directive 92/81/EEC and notwithstanding the obligations imposed by Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils⁽⁴⁾, the following Member States are authorised to apply or to continue to apply the reductions in rates of excise duties or exemptions from excise duty herein specified until 31 December 1998:

1. in the Kingdom of Belgium:

- for 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 the rate of duty charged on heavy fuel oil shall respect the minimum rate of duty on heavy fuel oils as provided for in Community law, in force.

⁴ OJ No L 316, 31.10.1992, p. 12 Directive as amended by Directive 94/74/EC, OJ No 365, 31.12.1994, p. 46

2. 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,
- 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, cetane 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.

3. 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,
- for reductions in or exemptions from excise duty for waste oils which are re-used as fuel, either directly after recovery or following a recycling process for waste oils, and where the re-use is subject to duty.

4. in the Hellenic Republic:

- for local public transport vehicles,
- in respect of desalination plants,
- 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,
- for reductions in or exemptions from excise duty for waste oils which are re-used as fuel, either directly after recovery or following a recycling process for waste oils, and where the re-use is subject to duty.

6. in the French Republic:

- 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 reductions in or exemptions from excise duty for waste oils which are re-used as fuel, either directly after recovery or following a recycling process for waste oils, and where the re-use is subject to duty.

7. in the Italian Republic:

- in local public passenger transport vehicles,
- for waste hydrocarbon gases used as fuel,
- for consumption in the regions of Val d'Aosta and Gorizia,
- for methane used as fuel in motor vehicles,
- for a reduction in the rate of excise duty on mineral oils used as fuel in the production of alumina in Sardinia, provided that the rate of duty respects the minimum rates of duty on mineral oils as provided for under Community law,
- 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,
- for a reduction in excise duty on petrol consumed on the territory of Friuli-Venezia Giulia, provided that the rates 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 applied respect the minimum rates provided for under Community law.

8. in Ireland:

- in local public transport vehicles,
- for the production of alumina in the Shannon region,
- for LPG, natural gas and methane used as motor fuel,
- for reductions in or exemptions from excise duty for waste oils which are re-used as fuel, either directly after recovery or following a recycling process for waste oils, and where the re-use is subject to duty,
- 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.

9. in the Grand Duchy of Luxembourg:

- in local public 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 the rate of duty charged on heavy fuel oil shall respect the minimum rate of duty on heavy fuel oils as provided for in Community law in force.

10. in the Kingdom of the Netherlands:

- in respect of desalination plants,
- for LPG, natural gas and methane,

11. in the Republic of Austria:

- for LPG used as motor local public passenger transport vehicles,
- for an exemption from excise duty on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process for waste oils, and the re-use of which is subject to duty,
- natural gas and methane.

12. in the Portuguese Republic:

- to grant relief from excise duty for LPG, natural gas and methane when used as fuel for local public 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 reductions in or exemptions from excise duty for waste oils which are re-used as fuel, either directly after recovery or following a recycling process for waste oils, and where the re-use is subject to duty.

13. in the Republic of Finland:

- for an exemption from excise duty for methane and LPG for all purposes,
- for an exemption from excise duty on waste oils which are re-used as fuel, either directly after recovery, or following a recycling process for waste oils, and the re-use of which is subject to duty.

14. in the Kingdom of 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 and light heating oil 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.

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

- for local public passenger transport vehicles,
- for LPG, natural gas and methane used as motor fuel,
- 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 reductions in or exemptions from excise duty for waste oils which are re-used as fuel, either directly after recovery or following a recycling process for waste oils, and where the re-use is subject to duty.

Article 2

The following derogations shall cease to have effect from 31 December 1996.

1. in the Kingdom of Belgium:

- 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.

2. in the Kingdom of Denmark:

- in respect of air navigation other than that covered by Article 8(1)(b) of Directive 92/81/EEC.

3. in the Hellenic Republic:

- for use by the armed forces of the State,
- 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, cetane 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,
- to grant relief from the excise duty on mineral oils for fuels intended to be used to power the official vehicles of the Ministry of the Presidency, the national police force and the metropolitan bishops.

4. 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.
- in the framework of certain policies aimed at assisting areas suffering from depopulation,

5. in the Italian Republic:

- 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,
 - in respect of ambulances,
 - in respect of the national armed forces.
6. in Ireland:
- in motor vehicles used by the disabled,
 - in the operation of lighthouses,
 - 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.
7. in the Kingdom of the Netherlands:
- in respect of the national armed forces,
 - in respect of motors used for the drainage of flooded land,
 - on samples of mineral oils intended for analysis, tests on production or for other scientific purposes.
8. in the Portuguese Republic:
- in respect of air navigation other than that covered by Article 8(1)(b) of Directive 92/81/EEC.
9. in the Republic of Finland:
- for an exemption from excise duty for mineral oils used for private pleasure craft.
10. in the Kingdom of Sweden:
- for an exemption from excise duty on aviation gasoline and aviation kerosene used for private pleasure flying.
11. in the United Kingdom of Great Britain and Northern Ireland:
- for navigation in private pleasure craft,
 - 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 3

1. Council Decisions 92/510/EEC⁵, 93/697/EC⁶, 95/585/EC⁷, 96/273/EC⁸ and 96/418/EC⁹ are abolished with effect from 1 January 1997.

2. The following authorisations which were granted following requests made for specific policy considerations and which are to be deemed to have been tacitly decided by the Council after the expiry of the two month deadline provided for in Article 8.4 of Directive 92/81/EEC are abolished with effect from 1 January 1997:

That granted to Germany following its request of 15 March 1994 which was notified to Member States by the Commission on 7 April 1994.

That granted to Spain following its request of 17 May 1994 which was notified to Member States by the Commission on 17 June 1994.

That granted to France following its request of 13 December 1993 which was notified to Member States by the Commission on 7 April 1994.

That granted to France following its request of 23 November 1994 which was notified to Member States by the Commission on 19 December 1994.

That granted to Italy following its request of 15 March 1994 which was notified to Member States by the Commission on 5 April 1994.

That granted to Ireland following its request of 30 July 1993 which was notified to Member States by the Commission on 15 September 1993.

That granted to Portugal following its request of 11 March 1994 which was notified to Member States by the Commission on 7 April 1994.

That granted to the United Kingdom following its request of 20 January 1994 which was notified to Member States by the Commission on 24 February 1994.

Article 4

This Decision is addressed to the Member States.

Done at

⁵ of 19 October 1992, OJ L 316/31.10. 1992, p. 16

⁶ of 13 December 1993, OJ L 321/23.12. 1993, p. 29

⁷ of 22 December 1995, OJ L 327/30.12. 1995, p.33

⁸ of 22 April 1996, OJ L 102/24.04. 1996, p. 40

⁹ of 27 June 1996, OJ L 172/11.7.1996, p. 22

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