



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.12.2007
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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

in accordance with Article 19(1) of Council Directive 2003/96/EC (waste oils)

1. INTRODUCTION

Article 19(1) of Council Directive 2003/96/EC¹ restructuring the Community framework for taxation of energy products and electricity (hereafter referred to as the “Energy Tax Directive” or the "Directive"), stipulates that, in addition to the provisions set out in the previous articles, (in particular in Articles 5, 15 and 17), the Council acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further tax exemptions or tax reductions for specific policy considerations.

The Commission must examine any requests received from Member States. It must then either present a proposal to the Council or, alternatively, inform the Council of the reasons why it does not propose to authorise the measure.

In the context of a broad review of derogations expiring in the Energy Taxation Directive by the end of 2006, Italy, Ireland, Austria, Portugal and the United Kingdom, all submitted specific requests for authorisation to derogate, from 2007 onwards, from the requirements of the Directive in regard to waste oils reused as fuel, either directly after recovery, or following a recycling process. These requests were registered in the Directorate General for Taxation and Customs Union².

By letter of 19 December 2006, all the Member States concerned were invited to re-examine their requests and, in the event that they were to be maintained, to submit full environmental arguments justifying the environmental benefits of the intended measures. In response to this invitation, additional information was provided by Ireland, Italy, Austria, Portugal and the United Kingdom³. On 3 October 2007, Italy substantially restricted the scope of its request⁴.

The purpose of this communication is to inform the Council of the reasons why the Commission does not propose to grant the authorisations requested.

2. SUMMARY OF THE REQUEST

2.1. The request submitted by Italy

The request submitted by the Italian authorities refers to favourable tax treatment of mineral oils used as fuel provided that they are obtained from the regeneration process of waste oils; mineral oils of such origin are subject to only 50 % of the corresponding tax rate.

The request is justified for environmental and economic reasons. According to the Italian authorities, the objective of the measure is to offset the additional costs related to the specific production process of the mineral oils in question, including the costs of collection of waste

¹ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for taxation of energy products and electricity (OJ L 283 of 31.10.2003 p. 51; Directive last amended by Directives 2004/74/EC and 2004/75/EC (OJ L 157 of 30 April 2004, p. 87 and p.100).

² Letters registered on 18 September 2006 (Austria), 16 October 2006 (the United Kingdom and Portugal), 17 October 2006 (Italy) and 14 December 2006 (Ireland).

³ On 14 March 2007 (Ireland), on 3 May and on 29 May 2007 (Italy), on 27 June 2007 (Austria), on 2 April 2007 (Portugal) and on 24 January and on 22 June 2007 (the United Kingdom).

⁴ This modification was registered with the Directorate General for Taxation and Customs Union on 5 October 2007.

oils, the costs of regeneration and subsequent treatment of the by-products, such as desulphurisation (which is required due to the high sulphur content of such by-products). The Italian authorities also underline the importance of the measure with respect to the high collection costs due to the mountainous nature of the Italian territory, the type of the enterprises involved (small and medium enterprises) and the rather old technical equipment available.

The Italian authorities stress that the measure is in line with the provisions of Directive 75/439/EEC⁵ and the priority given to regeneration and that it is an important element of the integrated policy stimulating collection and regeneration of waste oils. In this context, the Italian authorities point to the very high collection rates of waste oils achieved by Italy.

The request foresees that the derogation will end on 31 December 2012.

2.2. The request submitted by Ireland

Ireland would like to apply an exemption from duty to waste oils which are reused as fuel, either directly after recovery or following a recycling process.

The purpose of the measure is to reduce the cost associated with providing a fuel recovery option and thus provide an incentive towards the collection of waste oils. In Ireland's view, without favourable tax treatment, operators would face an increase in collection and compliance costs. The Irish authorities furthermore stress that regeneration of waste oils is uneconomic and cannot be considered as an environmentally sound option in Ireland due to the small size of the market and its geographic isolation from larger Member States. According to Ireland, any regenerated base oils produced in Ireland would have to be exported to a lubricant oil manufacturer abroad as there are no such facilities available in Ireland. The additional transport costs would further worsen the economic viability of regeneration and increase the burden that waste oils represent for the environment.

The Irish authorities also point out that the policy supporting the recovery of waste oils into fuels has the further advantages that it would reduce the need for imports to cover Irish energy requirements.

Finally, Ireland also considers that given the uncertainty resulting from the ongoing revision of EC waste legislation⁶, it would be premature to amend, at this stage, national practices that were authorised in the past by means of a derogation.

The request does not foresee any specific date of termination

2.3. The request submitted by Austria

The Austrian authorities would like to apply a tax exemption to waste oils reused as fuel either directly after recovery or following a recycling process. The measure is justified on environmental policy grounds. Its objective is to support the collection of waste oils. According to the Austrian authorities, taxing waste oils used for heating purposes would lead

⁵ Council Directive 75/439/EEC of 16 June 1976 on the disposal of waste oils, OJ L 194, p. 23, as amended.

⁶ Cf. Commission proposal for a Directive of the European Parliament and of the Council on waste [COM(2005)667 final of 21 December 2005].

to higher amounts of such waste being illegally disposed off in the environment. The Austrian authorities stress the minimal environmental impact of thermal treatment of waste oils in the mineralogical process in authorised installations. Moreover, there is already a specific charge levied on the disposal of waste oils and thus, according to the Austrian authorities, excise duty would represent a double imposition.

The Austrian authorities also stress that the EU waste oils legislation is currently undergoing important changes and thus at this stage it is premature to change the national instrument framework.

The request does not foresee any date of termination.

2.4. The request submitted by Portugal

Portugal would like to apply a tax exemption to waste oils which are reused as fuel, either directly after recovery or following a recycling process and where the reuse is subject to duty.

The objective of the measure is to support an industrial sector which is under development and not yet consolidated. Therefore, the measure aims at creating both fiscal and economic conditions to ensure that the activities of collection, treatment, regeneration and recycling of waste oils will become economically viable.

In the opinion of the Portuguese authorities, the expiry of the derogation that they have enjoyed in the past will act as disincentive for this activity, with potentially negative consequences for the environment.

The request foresees a date of termination by 31 December 2012.

2.5. The request submitted by the United Kingdom

The United Kingdom would like to apply an exemption to waste oils which are reused as fuel, either directly after recovery or following a recycling process, and where the reuse is subject to duty.

The United Kingdom maintains that there are minimal benefits to be derived from the shift to the standard tax treatment compared to the costs and other consequences associated with the expiry of the derogation.

The United Kingdom is concerned that its policy of maximising the collection and reuse of waste oils could be compromised should favourable tax treatment no longer apply. In the opinion of the UK authorities, imposing excise duty on waste oils, when used for combustion purposes, could impact on the demand for waste-derived fuels and on the price the market would be able to bear. Moreover, the United Kingdom insists that that there would also be increased compliance costs for the industry. In its view, there is a risk that, in order to remain profitable, collectors would be obliged to charge for collecting waste oil with the result that the illegal disposal of such products would increase with consequential negative consequences for the rate of collection and for the environment.

Furthermore, the United Kingdom stresses the increase in administrative and collection costs particularly for small waste oil burners affected with the expiry of the derogation.

According to the United Kingdom, there would also be difficulties calculating duty on waste derived fuels because of the presence of additives and other mineral oils, components which have already been subject to excise duty. In order to avoid double taxation, the United Kingdom states, it would be necessary to establish a refund system in order to avoid double taxation.

Additionally, the United Kingdom is concerned about the impact of reviewing the fiscal treatment of waste oils at a time when the future of the waste oil market is so uncertain: The industry is still adjusting to the introduction of the EC Waste Incineration Directive⁷, whilst the ongoing review of EC waste legislation Directive has potential implications for strategic decisions on waste oils.

Finally, the United Kingdom is of the opinion that the derogation has any material effect on the operation of the internal market.

The request foresees a date of termination by 31 December 2011.

3. BACKGROUND TO THE REQUESTS

According to Article 2(1)(b) of the Energy Taxation Directive, waste oils, (along with other mineral oils) are considered to be "energy products" for the purposes of the Directive and are thus taxable when used as motor fuel or heating fuel. This principle had originally come into force in 1993 under the Mineral Oils Directive⁸. However, since, then, several Member States have been authorised to derogate from this general rule and exempt from excise duty waste oils reused as fuel, either directly after recovery or following a recycling process.

The derogations were extended for the last time until 31 December 2006, a date that was later incorporated into the Energy Tax Directive (Article 18 and Annex II).

In its June 2006 Communication *Review of derogations in Annexes II and III of Council Directive 2003/96/EC that expire by the end of 2006* (hereafter referred to as "the 2006 Communication")⁹ the Commission stated that favourable tax treatment of waste oils would, in its opinion, be inconsistent with Community fiscal and environmental policies, as it would favour waste oils over other directly competing energy products, and, at the same time, would favour one generic treatment of waste oils over others.

At the same time, the Commission invited the Member States to submit a duly justified request in accordance with Article 19 of the Directive if they were of the opinion that, for specific policy considerations, a further derogation was still necessary.

⁷ Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste (OJ L 332 of 28 December 2000, p. 91).

⁸ Council Directive 92/81/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils (OJ L 316 of 31.10.1992); Directive repealed together with Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils as from 31 December 2003 by means of Council Directive 2003/96/EC.

⁹ COM(2006) 342 of 30 June 2006 *Review of derogations in Annexes II and III of Council Directive 2003/96/EC that expire by the end of 2006*.

4. EVALUATION BY THE COMMISSION

At the outset, it must be pointed out that an authorisation under Article 19 of the Energy Taxation Directive may be needed to cover tax treatment of certain uses of energy products. However, such a need can only arise with regard to uses falling into the scope of that Directive. This does not apply to mineralogical processes as defined in Article 2(4), last indent, of the Directive. Thus, to the extent Austria or any other Member State refer to uses of the kind, their requests are devoid of object.

To the extent they concern use of waste oils as heating fuel or motor fuel within the scope of the Energy Taxation Directive, most of the arguments put forward by the applicant Member States are identical to those already dealt with in the 2006 Communication. Neither these arguments nor the more specific arguments put forward by the applicant Member States justify the granting of a derogation. Details are set out below.

To begin with, the Commission would underline that arguments merely based on consequences inherent in switching from the derogation to standard taxation, such as administrative burdens or compliance costs, cannot be accepted. Directive 2003/96/EC does not, as a general rule, provide for favourable treatment of waste oils used as heating fuel or motor fuel, as compared to standard taxation of such fuels. On the contrary, the derogations in favour of such use of waste oils have deliberately been limited in time (30th recital and Article 18 with annex II to the Directive). Therefore, arguments such as those invoked under the present heading cannot be viewed as corresponding to specific policy considerations for the purposes of Article 19 of the Energy Tax Directive.

Next, the interests and policies set out in Article 19 (1), third indent, oppose the granting of an authorisation.

As mentioned, favourable tax treatment may be justified on the basis of **environmental policy**, where applicable. As regards the use of waste oils as fuel, the Commission considers that such a justification does not exist, from today's perspective¹⁰. What matters under the environmental aspect is full collection of waste oils and subsequent treatment in conformity with the applicable rules, in particular Community legislation (cf. Articles 2 and 3 of Directive 75/439/EEC and the "*Thematic Strategy on the Prevention and Recycling of Waste*", adopted by the Commission in December 2005¹¹ and endorsed by the Council¹²). These criteria do not justify a tax treatment different from harmonised treatment when it comes to use as fuel. Indeed, the effects of suppressing or attenuating normal taxation under the Energy Taxation Directive are not limited to furthering appropriate collection. They also prevent that the environmental impact specific to the use as fuel be (fully) translated, in accordance with the criteria of that Directive. Potential problems in collection of waste oils should be addressed through measures targeted precisely at these problems, but not through specific advantages for use as fuel which are not in line with the general system of the Energy Taxation Directive. Whatever may be the tax treatment of non-fuels uses under national law, in particular of lubricants and hydraulic oils, suppression or attenuation of fuel taxation would thus represent an undue favour to this type of use.

¹⁰ The Commission points out that already back in 2000 it proposed to abolish the derogations for waste oils because of their contradiction with the Community environment policy (COM (2000) 678 of 15 November 2000).

¹¹ COM(2005) 666 of 21 December 2005.

¹² Council Conclusions, 27 June 2006 (10876/1/06 REV1).

In the same context, it cannot be argued, that such a favour contributes to improving the security of supply of the EU or some particular Member State. Each use of waste oils saves primary energy resources, be it for combustion purposes or for regeneration purposes (lubricating oils and hydraulic oils are otherwise produced from crude oil).

From the point of view of the **internal market and fair competition**, it must be pointed out that one of the main objectives of the Energy Tax Directive is to treat various competing energy products equally, in order to ensure that no distortions occur within the internal market. More favourable fiscal treatment of certain energy products can be applied only if justified, for example, on environmental grounds, which are not applicable here (cf. above). Furthermore, with respect to the argument put forward by the United Kingdom and according to which the derogation does not have any material effect on the operation of the internal market, the Commission would point out that on the contrary such an effect is highly likely. The detaxation provided by the United Kingdom can indeed attract artificial trade to the detriment of Member States where regeneration capacity is more developed. An illustration of active trade existing in this field is contained in the analytical document attached to the latest report on the implementation of Community waste legislation¹³.

The specific arguments put forward by the applicant Member States have to be seen in this context:

The Commission cannot accept the argument invoked by some Member States whereby a tax exemption for waste oil used as fuel favours the collection of waste oils because it increases the revenue arising from their use. The data available by the Commission do not allow the conclusion that a low collection rate in a Member States correlates to the existence of an excise duty on waste oils used as fuel. This suggests that the conditions of collection as such are decisive, when it comes to ensure high collection rates.

As regards the argument put forward by Ireland, relating to the small size of the national market and its geographic isolation from larger Member States, it must be pointed out that this may have an incidence on collection costs, but this is unrelated to the final use of the waste oils recovered.

Concerning the alleged difficulties invoked by the United Kingdom, namely of factoring out harmonised tax already borne by waste oils, the Commission considers that this aspect does not change the analysis either. By nature, waste oils are always contaminated through the combustion of motor fuels used as propellant in the engine together with the lubricant. However the excise element thus included in the price of the waste oils is marginal. Moreover, the Commission also has to reject the arguments put forward by Austria by reference to its national taxation on waste. The existence of national tax rules in the matter cannot justify a derogation from the system of harmonised taxation on energy products.

The Commission cannot either accept the argument raised by the United Kingdom and Ireland related to the review of EC waste legislation and the potential implications for strategic decisions on waste oil. Neither the existing Community legislation in the field of waste oils¹⁴

¹³ SEC(2006) 972 of 19 July 2006, in particular pp. 68 to 70 and 75.

¹⁴ Cf. footnote 5 above.

nor the recent Commission proposal in this field¹⁵ suggest that combustion of waste oils should be specifically favoured..

Italy's intention to support the regeneration industry, indirectly, through favourable tax treatment of recycled fuels produced, this time, as by-products of regeneration, does not justify a different analysis either. Indeed, regeneration plants are flexible and can adjust their products according to the market needs. Such an incentive directed at a by-product can increase the yield of distilled fuels at the expense of the base oil yield. The measure thus creates an incentive for the production of fuels and therefore goes beyond what is necessary in order to promote regeneration of waste oils into base oil.

5. CONCLUSION

To the extent the requests refer to uses within the scope of the Energy Taxation Directive, the Commission has examined the arguments put forward by the Member States concerned, in particular the arguments based on environmental aspects. It concludes that they do not justify the derogations sought for, from the general provisions of the Energy Taxation Directive against the criteria of Article 19 of this Directive.

The Commission therefore concludes that, to the extent the requests refer to uses within the scope of Directive 2003/96/EC, the conditions set out in Article 19 of that Directive are not fulfilled. Consequently, **the Commission does not propose the authorisations requested.**

¹⁵ Cf. footnote 6 above.