Proposal for a Council Directive on fiscal marking of gas oils

(94/C 15/11)

COM(93) 352 final

(Submitted by the Commission on 16 December 1993)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the Community measures envisaged by this Directive are not only necessary but also indispensable for the attainment of the objectives of the internal market; whereas these objectives cannot be achieved by Member states individually; whereas, furthermore, their attainment at Community level is already provided for in Council Directive 92/81/EEC (1) and in particular Article 9 thereof; whereas in consequence this Directive conforms with the principle of subsidiarity;

Whereas Council Directive 92/82/EEC (2) lays down provisions in respect of the minimum rates of excise duty applicable to certain mineral oils and in particular to the different categories of gas oil;

Whereas the proper functioning of the internal market now requires that common rules be established for fiscal marking of gas oil which has not borne duty at the full rate applicable to gas oil used as propellant;

Whereas Council Directive 92/12/EEC (3) lays down provisions on the general arrangements for products subject to excise duty and in particular Article 24 thereof provides for the establishment of an Excise Committee which may examine matters concerning the application of Community provisions on excise duties;

Whereas it is appropriate that certain technical matters relating to the specification of products to be used for fiscal marking of gas oil should be dealt with under the provisions of this Article;

Whereas it is necessary that the rules laid down in this Directive and their application be reviewed periodically on the basis of a Commission report,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Except where specifically provided for, Member States shall apply a fiscal marker in accordance with the provisions of this Directive to all gas oil falling within CN code 2710 00 69 which has been released for consumption as defined by Article 6 of Directive 92/12/EEC and which has been subject to excise duty at a rate other than the rate of duty applicable in Article 5.1 of Directive 92/82/EEC.

Article 2

The marker shall consist of a well defined combination of chemical additive to be added under fiscal supervision before the gas oil concerned is to be released for consumption.

The marker to be used shall be established in accordance with the procedure laid down in Article 3.

Article 3

The Commission shall be assisted by the committee, laid down in Article 24 of Directive 92/12/EEC, composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

(1) OJ No L 316, 31. 10. 1992, p. 12.
(2) OJ No L 316, 31. 10. 1992, p. 19.
(3) OJ No L 76, 23. 3. 1992, p. 1.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 4

Except as shall be otherwise permitted in Community law, any vessel, delivery pump or other container or outlet which contains any gas oil marked in accordance with this Directive shall be clearly identified to the effect that such gas oil is not to be used for combustion in the engine of a road going motor vehicle or kept in the fuel tank of such a vehicle.

Member States shall provide that the use of marked gas oil in such circumstances is to be considered as an offence under the national law of the Member State concerned. Each Member State shall take the measures required to give effect to all the provisions of this Directive and shall, in particular, determine the penalties to be imposed in the event of failure to comply with those measures; such penalties shall be commensurate with their purpose and shall have adequate deterrent effect.

Article 5

No person shall add to any mineral oil any marker other than those provided for in Community law or in the national law of Member States.

Article 6

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 1994.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The method of making such a refernce shall be laid down by the Member States.

2. The Member States shall inform the Commission of the main provisions of national law which they adopt to comply with this Directive.

Article 7

This Directive is addressed to the Member States.