

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2017/74

of 25 November 2016

establishing a common fiscal marker for gas oils and kerosene

(notified under document C(2016) 7546)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene ⁽¹⁾, and in particular Article 2(2) thereof,

Whereas:

- (1) For the proper functioning of the internal market, and in particular to prevent tax evasion, Directive 95/60/EC provides for a common marking system to identify gas oils, falling within code 2710 00 69 of the Combined Nomenclature (CN), and kerosene, falling within CN code 2710 00 55, which have been released for consumption exempt from excise duty, or subject to a reduced excise duty rate. The first code has been split into CN codes 2710 19 43, 2710 19 46, 2710 19 47, 2710 19 48, 2710 20 11, 2710 20 15, 2710 20 17 and 2710 20 19, in order to take into account the sulphur content of gas oil and the presence of biodiesel in gas oil, and the second code has been transposed as CN code 2710 19 25 ⁽²⁾.
- (2) Commission Implementing Decision 2011/544/EU ⁽³⁾ established the product identified by the scientific name N-ethyl-N-[2-(1-isobutoxyethoxy)ethyl]-4-(phenylazo)aniline (Solvent Yellow 124) as the common fiscal marker provided for by Directive 95/60/EC, for the marking of gas oils and kerosene which have not borne duty at the full rate applicable to such energy products used as propellant.
- (3) Article 2 of Implementing Decision 2011/544/EU requires that Implementing Decision to be reviewed by 31 December 2016 at the latest, in the light of technical developments in the field of marking systems and taking into account the need to counteract fraudulent use of mineral oils exempted from excise duty, or subject to a reduced excise duty rate.
- (4) As part of the review process the Commission launched a call for expression of interest to present products suitable for use as a fiscal marker in gas oils and kerosene ⁽⁴⁾. The Commission seeks to identify a substance for marking which performs better in regard to a set of predefined criteria compared to the substance currently in use.
- (5) As the review is not yet completed, Solvent Yellow 124 should continue to be used as the common fiscal marker within the meaning of Directive 95/60/EC and subject to the conditions set out in that Directive.
- (6) This Decision does not release any undertaking from its obligations under Article 102 of the Treaty.
- (7) The opportunities offered by future developments in science should be taken into account by setting a time limit for the review of this Decision.

⁽¹⁾ OJ L 291, 6.12.1995, p. 46.

⁽²⁾ The codes of the combined nomenclature shall be those of Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 285, 30.10.2015, p. 1).

⁽³⁾ Commission Implementing Decision 2011/544/EU of 16 September 2011 on establishing a common fiscal marker for gas oils and kerosene (OJ L 241, 17.9.2011, p. 31).

⁽⁴⁾ OJ C 299, 11.9.2015, p. 28.

- (8) A review of this Decision should be undertaken at any time prior to this time limit if Solvent Yellow 124 is found to be giving rise to tax evasion or to be causing health or environmental damage or if a better performing substance than Solvent Yellow 124 is found by the Commission.
- (9) Implementing Decision 2011/544/EU should therefore be replaced.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Committee on Excise Duty,

HAS ADOPTED THIS DECISION:

Article 1

The common fiscal marker provided for by Directive 95/60/EC, for the marking of all gas oils falling within CN codes 2710 19 43, 2710 19 46, 2710 19 47, 2710 19 48, 2710 20 11, 2710 20 15, 2710 20 17 and 2710 20 19 as well as of kerosene falling within CN code 2710 19 25, shall be Solvent Yellow 124, as specified in the Annex to this Decision.

Member States shall fix a marking level of at least 6 mg and not more than 9 mg of marker per liter of mineral oil.

Article 2

This Decision shall be reviewed by 31 December 2021 at the latest, taking into account technical developments in the field of marking systems and the need to counteract fraudulent use of energy products exempt from excise duty or subject to a reduced excise duty rate.

An earlier review shall be undertaken if it is found that Solvent Yellow 124 is giving rise to tax evasion or causing health or environmental damage, or if a better performing substance than Solvent Yellow 124 is found by the Commission.

Article 3

Implementing Decision 2011/544/EU is repealed.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 25 November 2016.

For the Commission
Pierre MOSCOVICI
Member of the Commission

ANNEX

1. Identification according to the Colour Index: *Solvent Yellow 124*
 2. Scientific name: *N-Ethyl-N-[2-(1-isobutoxyethoxy)ethyl]-4-(phenylazo)aniline.*
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