II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 30 March 1987

amending Directive 75/716/EEC on the approximation of the laws of the Member States relating to the sulphur content of certain liquid fuels

(87/219/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 100 and 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Directive 75/716/EEC (4) obliges Member States to take all necessary steps to ensure that gas oils can be marketed in the Community only if their sulphur content does not exceed certain limits;

Whereas the said Directive provides that the Commission may, as appropriate, draw up suitable proposals, in particular to amend the sulphur content limits of gas oils, as a function, *inter alia,* of the levels of air pollution due to sulphur dioxide;

Whereas successive action programmes of the European Communities on the environment (5) stress the importance of preventing and reducing air pollution;

Whereas, in addition, the Community became, by virtue of Decision 81/462/EEC (6) a contracting party to the Convention on long-range transboundary air pollution, which provides in particular for the development of strategies and policies to limit and, as far as possible, gradually reduce and prevent air pollution;

Whereas, in view of the damaging effects on the environment of sulphur dioxide emissions including those arising from the use of gas oil, there is an urgent need to reduce these emission levels wherever this can be achieved;

Whereas it is appropriate to fix a new maximum level for the sulphur content of gas oils as laid down in Directive 75/716/EEC;

Whereas Member States should also be able to require a specified level lower than the maximum provided for in certain defined circumstances;

Whereas the operation of this Directive should be reviewed after an appropriate period of time;

Whereas reducing pollution by sulphur serves to further one of the Community's objectives regarding the protection and improvement of the environment; whereas, however, the necessary powers for this purpose are not expressly provided for in the Treaty and Article 235 must therefore also be invoked,

(1) OJ No C 205, 14. 8. 1985, p. 3.
(2) OJ No C 283, 10. 11. 1986, p. 108.
(3) OJ No C 344, 31. 12. 1985, p. 22.
(4) OJ No L 307, 27. 11. 1975, p. 22.
(5) OJ No C 112, 20. 12. 1973, p. 1, OJ No C 139, 13. 6. 1977, p. 1 and OJ No C 46, 17. 2. 1983, p. 1.
(6) OJ No L 171, 27. 6. 1981, p. 11.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 75/716/EEC is amended as follows:

(1) Articles 1 and 2 are replaced by the following:

'Article 1

1. For the purposes of this Directive, gas oil shall mean any petroleum product falling under subheading 27.10 C I of the Common Customs Tariff (10 December 1984 edition) or any petroleum product which, by reason of its distillation limits, falls into the category of middle distillates intended for use as fuel and of which at least 85 % by volume, including distillation losses, distils at 350 °C.

2. Paragraph 1 shall not apply to gas oils:

— used by shipping,

— contained in the fuel tanks of inland waterway vessels or of motor vehicles travelling from one zone to another or crossing a frontier between a third country and a Member State,

— intended for processing in the refining industry.

Article 2

1. Member States shall take all necessary steps to ensure that gas oils can be marketed in the Community only if their sulphur compound content, expressed in sulphur, does not exceed 0,3 % by weight as from 1 January 1989.

2. Should environmental requirements or the state of desulphurization technology change appreciably or should the economic situation in the Community as regards the supply of crude oil change substantially, the Commission may, on its own initiative or at the request of a Member State, propose amendments in accordance with the conditions laid down by the Treaty, to the sulphur content indicated in paragraph 1.

3. If, as the result of a sudden change in the supply of crude oil or petroleum products, it becomes difficult for a Member State to apply the limit on the maximum sulphur content of gas oil, that Member State may, after informing the Commission, authorize a higher limit within its territory for a period of four months. The Council, acting by a qualified majority on a proposal from the Commission, may extend this period.'

(2) Articles 4 to 7 are replaced by the following:

'Article 4

Without prejudice to Article 5, the Member States may not, as from the date of application laid down in Article 2, due account being taken of Article 3, prohibit, restrict or impede the marketing of gas oils, on the grounds of sulphur content, provided they comply with the requirements of this Directive.

Article 5

1. Member States may require the use of gas oils with a sulphur content equal to 0,2 % by weight:

— within the zones they have determined under Article 4 of Council Directive 80/779/EEC of 15 July 1980 on air quality limit values and guide values for sulphur dioxide and suspended particulates [1]; as last amended by the Act of Accession of Spain and Portugal,

— wherever Article 5 of the same Directive is applicable,

— where damage to the environment or to the national heritage caused by total sulphur dioxide emissions requires the sulphur content of gas oil to be fixed at a lower value than that provided for in Article 2.

2. Member States shall inform the other Member States and the Commission of any measures which they contemplate taking in respect of paragraph 1 and of their grounds for taking them.

Marketing of any gas oil with a sulphur content of less than 0,2 % may not be prohibited.

Article 6

The Commission shall monitor the effects of applying this Directive.

Three years at the latest after the notification [2] of this Directive, in the light of any new information available on the atmospheric sulphur dioxide pollution levels recorded, on progress towards defining air quality objectives, on the state of the environment and on the harmful effects of air pollution, and on condition on the gas oil market, the Commission shall submit a report to the Council accompanied by an appropriate proposal with a view to the establishment of a single value.

The Council, acting in accordance with the provisions of the Treaty, shall decide on the Commission proposal before 1 December 1991.

Article 7

1. Member States shall take the necessary measures to check by sampling the sulphur content of gas oils which are marketed.

2. The reference method adopted for determining the sulphur content of gas oils which are marketed is defined by method IP 336. The statistical interpretation of the results of the checks made to determine the sulphur content of the gas oils marketed shall be made according to standard ISO 4259 (1979 edition).

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[1] OJ No L 229, 30. 8. 1980, p. 30.

[2] This Directive was notified to the Member States on 2 April 1987.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1988. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 30 March 1987.

For the Council

The President

P. DE KEERSMAEKER