COUNCIL DIRECTIVE 94/74/EC

of 22 December 1994

amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, Directive 92/81/EEC on the harmonization of the structures of excise duties on mineral oils and Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils

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 [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas it is necessary to exclude the customs procedure for exports from the excise-duty suspension arrangements in order to be able, under the movement arrangements applied for excise-duty purposes, to protect against the risks inherent in the movement of products from their place of dispatch to the office at the point of exit from the Community;

Whereas, when the dispatch of products subject to excise duty gives rise to a declaration placing those products under an internal transit procedure or under the TIR or ATA Convention procedure, it is necessary to establish that such declaration serves as the accompanying document for excise-duty purposes;

Whereas, when products subject to excise duty are released for consumption in a Member State and are intended to be moved to that same Member State via the territory of another Member State, it is necessary to use the simplified accompanying document as provided for in Commission Regulation (EEC) No 3649/92 [4];

Whereas, it is necessary to indicate on the accompanying document any losses occurring in the course of intra-Community movement in order to ensure that that document is correctly discharged and to specify the forms and content of such annotation;

Whereas it is necessary to provide for an optional guarantee, in place of those currently in existence, to be provided by the transporter or owner of the products in order to limit the risks inherent in intra-Community movement;

Whereas it is necessary to provide for the possible waiving of the intra-Community movement guarantee for mineral oils transported by sea or by pipeline;

Whereas it is necessary to allow a new consignee or a new place of delivery to be shown by means of an amendment to the accompanying administrative document;

Whereas it is necessary to lay down the conditions that the consignor of mineral oils must meet if he is not to complete the box relating to the consignee on the accompanying document where the latter is not known at the outset;

Whereas it is necessary to provide for the possibility of additional measures being adopted regarding spot checks in order to increase administrative cooperation between Member States;

Whereas it is necessary to permit the information shown on the copies of the accompanying document intended for the competent authorities of the Member States of departure and destination to be transmitted by computerized means;

Whereas it is necessary to provide for the return copy to be transmitted to the consignor by fax in order to ensure that the operation is duly and speedily concluded;

Whereas it is necessary, for products subject to excise duty moving regularly between tax warehouses located in two Member States, to simplify the procedure for discharging the accompanying document;

Whereas it is necessary to stipulate that the use of tax marking or national identification marks must not affect any provisions laid down by Member States to ensure that current tax legislation is implemented properly and to avoid any fraud, evasion or abuse;

Whereas it is necessary to lay down the conditions under which the armed forces and other organizations may benefit from excise-duty exemption;

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(1) OJ No C 215, 5. 8. 1994, p. 19.
(2) Opinion delivered on 16 December 1994 (not yet published in the Official Journal).
(3) Opinion delivered on 20 October 1994 (not yet published in the Official Journal).
(4) OJ No L 369, 18. 12. 1992, p. 17.

Whereas it is important for the proper functioning of the internal market to define the products which come under the category of mineral oils;

Whereas it is necessary to define the products which come under the category of mineral oils and which are to be subject to the general excise control arrangements;

Whereas it is necessary to allow the refund of excise duties paid on contaminated or accidentally mixed mineral oils sent back to a tax warehouse for recycling;

Whereas it is necessary to grant compulsory exemption at Community level for mineral oils injected into blast furnaces for chemical reduction purposes in order to prevent distortions of competition arising from different taxation arrangements in Member States;

Whereas it is necessary to specify that mineral oils released for consumption in a Member State, contained in the fuel tanks of motor vehicles and intended to be used as fuel by such vehicles are exempt from excise duty in other Member States in order not to impede free movement of individuals and goods and in order to prevent double taxation;

Whereas it is necessary to update the CN codes relating to leaded and unleaded petrol in the light of the amendments made in the latest version of the Integrated Tariff of the European Communities [1];

Whereas, lastly, the amendments to the excise-duty application procedures provided for in this Directive for the purpose of ensuring the smooth functioning of the internal market cannot be made satisfactorily by the Member States individually and call, therefore, for approximation of the Member States' excise-duty legislation at Community level;

Whereas it is accordingly necessary to amend Directives 92/12/EEC [1], 92/81/EEC [2] and 92/82/EEC [3],

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 92/12/EEC is hereby amended as follows:

1. Article 5 shall be amended as follows:

(a) the first indent of paragraph 2 shall be replaced by the following:

'— are coming from, or going to, third countries or territories referred to in Article 2 (1), (2) and (3) or the Channel Islands and are placed under one of the customs suspensive procedures listed in Article 84 (1) (a) of Regulation (EEC) No 2913/92(*) or in a free zone or a free warehouse,

(*) OJ No L 302, 19. 10. 1992, p. 1.';

(b) in paragraph 2, the second indent shall be replaced by the following:

'— are dispatched between Member States via EFTA countries or between a Member State and an EFTA country under the internal Community transit procedure or via one or more non-EFTA third countries under cover of a TIR or ATA carnet,';

(c) in paragraph 2, the first part of the sentence of the second subparagraph shall be replaced by the following:

'In cases where the single administrative document is used:';

(d) the following new paragraph shall be added:

'3. Any additional details that have to be shown on the transport or commercial documents serving as transit documents and the changes that have to be made to adapt the discharge procedure where goods subject to excise duty move under a simplified internal Community transit procedure shall be established according to the procedure provided for in Article 24.'

2. In Article 7, the following paragraphs shall be added:

'7. Where products subject to excise duty and already released for consumption in a Member State are to be moved to a place of destination in that Member State via the territory of another Member State, such movements shall take place under cover of the accompanying document referred to in paragraph 4 and shall use an appropriate itinerary.

8. In the cases referred to in paragraph 7:

(a) the consignor shall, before the goods are dispatched, make a declaration to the tax

(1) OJ No C 143A, 24. 5. 1993, p. 560.
(2) OJ No L 76, 23. 3. 1992, p. 1. Directive as last amended by Directive 92/108/EEC (OJ No L 390, 31. 12. 1992, p. 124).
(3) OJ No L 316, 31. 10. 1992, p. 12. Directive as last amended by Directive 92/108/EEC (OJ No L 390, 31. 12. 1992, p. 124).
(4) OJ No L 316, 31. 10. 1992, p. 19.

authorities of the place of departure responsible for carrying out excise-duty checks;

(b) the consignee shall attest to having received the goods in accordance with the rules laid down by the tax authorities of the place of destination responsible for carrying out excise-duty checks;

(c) the consignor and the consignee shall consent to any check enabling their respective tax authorities to satisfy themselves that the goods have actually been received.

9. Where products subject to excise duty are moved frequently and regularly under the conditions specified in paragraph 7, Member States may agree bilaterally to authorize a simplified procedure in derogation from paragraphs 7 and 8.'

3. In Article 13, point (a) shall be replaced by the following:

'(a) provide a guarantee, if necessary, to cover production, processing and holding and a compulsory guarantee to cover movement, subject to Article 15 (3), the conditions for which shall be set by the competent authorities of the Member State in which the tax warehouse is authorized;'

4. In Article 14, the following paragraph shall be added:

'4. The shortages referred to in paragraph 3 and losses which are not exempted under paragraph 1 shall, in all cases, be indicated by the competent authorities on the reverse of the copy of the accompanying document referred to in Article 18 (1) to be returned to the consignor.

The procedure shall be as follows:

— in the case of losses or shortages occurring during intra-Community transport of products subject to excise duty that are under duty suspension arrangements, the competent authorities of the Member State in which those losses or shortages are established shall annotate the return copy of the accompanying document accordingly,

— on the arrival of the products in the Member State of destination, the competent authorities of that Member State shall indicate whether they are granting partial exemption or no exemption in respect of the losses established.

In the cases referred to above they shall specify the basis for calculation of the excise duty to be levied in accordance with paragraph 3. The competent authorities of the Member State of destination shall send a copy of the return copy of the accompanying document to the competent authorities of the Member State in which the losses were established.'

5. Article 15 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. Without prejudice to Articles 5 (2), 16, 19 (4) and 23 (1a), the movement of products subject to excise duty under suspension arrangements shall take place between tax warehouses.

The first subparagraph shall apply to the intra-Community movement of products subject to excise duty at a zero rate which have not been released for consumption.';

(b) paragraph 3 shall be replaced by the following:

'3. The risks inherent in intra-Community movement shall be covered by the guarantee provided by the authorized warehousekeeper of dispatch, as provided for in Article 13, or, if need be, by a guarantee jointly and severally binding on both the consignor and the transporter. The competent authorities in the Member States may permit the transporter or the owner of the products to provide a guarantee in place of that provided by the authorized warehousekeeper of dispatch. If appropriate, Member States may require the consignee to provide a guarantee.

If mineral oils subject to excise duty are transported within the Community by sea or by pipeline, Member States may relieve authorized warehousekeepers of dispatch of the obligation to provide the guarantee referred to in the first subparagraph.

The detailed rules for the guarantee shall be laid down by the Member States. The guarantee shall be valid throughout the Community.';

(c) paragraph 5 shall be replaced by the following:

'5. An authorized warehousekeeper of dispatch or his agent may amend the contents of boxes 4, 7, 7a, 13, 14 and/or 17 of the accompanying document to show a new consignee, who must be an authorized warehousekeeper or registered trader, or a new place of delivery. The competent authority of dispatch must be notified immediately and the new consignee or the new place of delivery shall immediately be indicated on the reverse of the accompanying document.';

(d) the following paragraph shall be added:

'6. In the case of intra-Community movement of mineral oils by sea or inland waterway, the authorized warehousekeeper of dispatch need not complete boxes, 4, 7, 7a, 13 and 17 on the accompanying document if, when the products are dispatched, the consignee is not definitively known, provided that: