

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;

⁽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⁾,

⁽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.*

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

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:

- the competent authorities of the Member State of departure authorize the consignor in advance not to complete these boxes,
- the same authorities are notified of the name and address of the consignee, his excise number and the country of destination as soon as they are known or at the latest when the products reach their final destination.'

6. The following Article shall be inserted:

'Article 15b

1. With regard to the spot checks provided for in Article 19 (6), the competent authorities in a Member State may request the competent authorities of another Member State for information in addition to that set out in Article 15a. The provisions governing data protection in Directive 77/799/EEC (*) shall apply to such exchanges of information.

2. Where information is exchanged pursuant to paragraph 1 and internal legislation in a Member State stipulates that the persons concerned by the exchange of information must be consulted, such legislation may continue to be applied.

3. The information necessary to carry out spot checks under paragraph 1 shall be exchanged by means of a uniform control document. The form and content of that document shall be established in accordance with the procedure laid down in Article 24.

(*) OJ No L 336, 27. 12. 1977, p. 15.'

7. The following paragraph shall be added to Article 18:

'6. This Article shall also apply to products subject excise duty moving under duty-suspension arrangements between two tax warehouses located in the same Member State via the territory of another Member State.'

8. Article 19 shall be amended as follows:

(a) in paragraph 1, the following subparagraph shall be inserted after the second subparagraph:

'The competent authorities of the Member State of dispatch and destination may stipulate that the information contained in the copies of the accompanying document intended for them is to be sent by computerized means;'

(b) in paragraph 2, the following two subparagraphs shall be inserted after the first subparagraph:

'Notwithstanding the above provisions, Member States of dispatch may provide for a copy of the return copy to be sent immediately to the consignor by fax so that the guarantee may be

released quickly. This shall not affect the obligation to return the original pursuant to the first sentence.

Where products subject to excise duty move frequently and regularly between two Member States under duty suspension arrangements, the competent authorities of those Member States may, by mutual agreement, authorize the procedure for discharging the accompanying document to be simplified by means of summary or automated certification.;

(c) paragraph 4 shall be replaced by the following:

'4. Products subject to excise duty that are dispatched by an authorized warehousekeeper established in a Member State for exportation via one or more other Member States shall be permitted to move under the duty-suspension arrangements as defined in Article 4 (c). Those arrangements shall be discharged by an attestation drawn up by the customs office of departure from the Community confirming that the products have indeed left the Community. That office must send back to the consignor the certified copy of the accompanying document intended for him.'

9. In Article 21 (2) the second subparagraph shall be replaced by the following:

'Without prejudice to any provisions they may lay down in order to ensure that this Article is implemented properly and to prevent any fraud, evasion or abuse, Member States shall ensure that these marks or markings do not create obstacles to the free movement of products subject to excise duty.'

10. In Article 23 the following paragraph shall be inserted:

'1a. The armed forces and organizations referred to in paragraph 1 shall be authorized to receive products from other Member States under excise-duty suspension arrangements under cover of the accompanying document referred to in Article 18 provided that the document is accompanied by an exemption certificate. The form and content of the exemption certificate shall be determined in accordance with the procedure laid down in Article 24.'

11. Article 24 shall be amended as follows:

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

'2. The measures necessary for the application of Articles 5, 7, 15b, 18, 19 and 23 shall be adopted in accordance with the procedures laid down in paragraphs 3 and 4.;

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

'5. In addition to the measures referred to in paragraph 2, the Committee shall examine the matters referred to it by its chairman, either on his own initiative or at the request of the representative of a Member State, concerning the application of Community provisions on excise duties.'

Article 2

Directive 92/81/EEC is hereby amended as follows:

1. Article 2 shall be amended as follows:

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

'1. For the purposes of this Directive, "mineral oil" shall cover:

- (a) products falling within CN code 2706;
- (b) products falling within CN codes 2707 10, 2707 20, 2707 30, 2707 50, 2707 91 00, 2707 99 11 and 2707 99 19;
- (c) products falling within CN code 2709;
- (d) products falling within CN code 2710;
- (e) products falling within CN codes 2711, including chemically pure methane and propane but excluding natural gas;
- (f) products falling within CN codes 2712 10, 2712 20 00, 2712 90 31, 2712 90 33, 2712 90 39 and 2712 90 90;
- (g) products falling within CN code 2715;
- (h) products falling within CN code 2901;
- (i) products falling within CN codes 2902 11 00, 2902 19 90, 2902 20, 2902 30, 2902 41 00, 2902 42 00, 2902 43 00 and 2902 44;
- (j) products falling within CN codes 3403 11 00 and 3403 19;
- (k) products falling within CN code 3811;
- (l) products falling within CN code 3817;

(b) paragraph 4 shall be replaced by the following:

'4. References in this Directive to codes of the combined nomenclature shall be to those of the version of the combined nomenclature in force on 1 October 1994'.

2. The following Article shall be inserted:

'Article 2a

1. Only the following mineral oils shall be subject to the control and movement provisions of Directive 92/2/EEC:

- (a) products falling within CN codes 2707 10, 2707 20, 2707 30 and 2707 50;
- (b) products falling within CN codes 2710 00 11 to 2710 00 78. However, for products falling within CN codes 2710 00 21, 2710 00 25 and 2710 00 59, the control and movement provisions shall only apply to bulk commercial movements;
- (c) products falling within CN codes 2711 (except 2711 11 00 and 2711 21 00);

d) products falling within CN code 2901 10;

e) products falling within CN codes 2902 20, 2902 30, 2902 41 00, 2902 42 00, 2902 43 00 and 2902 44.

2. If a Member State finds that mineral oils other than those referred to in paragraph 1 are intended for use, offered for sale or used as heating fuel or motor fuel or are otherwise giving rise to evasion, avoidance or abuse, it shall advise the Commission forthwith. The Commission shall transmit the communication to the other Member States within one month of receipt. A decision as to whether the products in question should be made subject to the control and movement provisions of Directive 92/12/EEC shall then be taken in accordance with the procedure laid down in Article 24 of Directive 92/12/EEC.

3. Member States may, under bilateral arrangements, dispense with some or all of the control measures set out in Directive 92/12/EEC in respect of some or all of the above products, in so far as they are not covered by Article 2 of Directive 92/82/EEC. Such arrangements shall not affect Member States which are not party to them. All such bilateral arrangements shall be notified to the Commission, which shall inform the other Member States.'

3. The following Article shall be inserted:

'Article 7a

Member States may refund excise duty already paid on contaminated or accidentally mixed mineral oils sent back to a tax warehouse for recycling.'

4. Article 8 shall be amended as follows:

(a) in paragraph 1, the following point shall be added:

'(d) mineral oils injected into blast furnaces for the purposes of chemical reduction as an addition to the coke used as the principal fuel.'

(b) in paragraph 2, the first sentence shall be replaced by the following:

'2. Without prejudice to other Community provisions, Member States may apply total or partial exemptions or reductions in the rate of duty to mineral oils or to other products intended for the same uses which are used under fiscal control.'

5. The following Article shall be inserted:

'Article 8a

1. Mineral oils released for consumption in a Member State, contained in the standard tanks of commercial motor vehicles and intended to be used as fuel by those same vehicles as well as in special containers and intended to be used for the operation,

during the course of transport, of the systems equipping those same containers shall not be subject to excise duty in any other Member State.

2. For the purposes of this Article:

“standard tanks” shall mean:

— the tanks permanently fixed by the manufacturer to all motor vehicles of the same type as the vehicle in question and whose permanent fitting enables fuel to be used directly, both for the purpose of propulsion and, where appropriate, for the operation, during transport, of refrigeration systems and other systems.

Gas tanks fitted to motor vehicles designed for the direct use of gas as a fuel and tanks fitted to the other systems with which the vehicle may be equipped shall also be considered to be standard tanks,

— tanks permanently fixed by the manufacturer to all containers of the same type as the container in question and whose permanent fitting enables fuel to be used directly for the operation, during transport, of the refrigeration systems and other systems with which special containers are equipped,

“Special container” shall mean any container fitted with specially designed apparatus for refrigeration systems, oxygenation systems, thermal insulation systems or other systems.’

Article 3

In Directive 92/82/EEC, Article 2 shall be replaced by the following:

‘Article 2

1. The mineral oils covered by this Directive are:

— leaded petrol falling within CN codes 2710 00 26, 2710 00 34 and 2710 00 36;

— unleaded petrol falling within CN codes 2710 00 27, 2710 00 29 and 2710 00 32;

— gas oil falling within CN code 2710 00 69;

— heavy fuel oil falling within CN codes 2710 00 74 to 2710 00 78;

— liquid petroleum gas falling within CN codes 2711 12 11 to 2711 19 00;

— methane falling within CN code 2711 29 00;

— kerosene falling within CN code 2710 00 51 and 2710 00 55.

2. References in paragraph 1 to combined nomenclature codes shall be those of the combined nomenclature in force on 1 October 1994.’

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 1995. They shall forthwith inform the Commission thereof.

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

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER