

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE 92/108/EEC

of 14 December 1992

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 and amending Directive 92/81/EEC

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas it is necessary, in order to give full effect to the provisions of Directive 92/12/EEC <sup>(4)</sup> to stipulate the territories of the Member States which must be treated as third countries for fiscal purposes;

Whereas, when products subject to excise duty are dispatched between Member States via EFTA countries, specific conditions should be laid down concerning the declaration to the effect that those products are to be placed under the internal Community transit procedure by means of the single administrative document;

Whereas it should be made clear that the intra-Community movement of products subject to zero-rate excise duty which have not been released for consumption is also to take place between tax warehouses;

Whereas a change in the place of delivery should be allowed by means of a modification to the accompanying administrative document;

Whereas, no later than 1 April 1993, the authorities of each Member State should have an electronic data base containing a register of authorized warehouse keepers and a register of tax warehouses;

Whereas, in order to simplify administration procedures, an accompanying document should not be used where computerized procedures are employed;

Whereas an accompanying document should be used when products are moved under suspension arrangements by sea or air directly from one Community port or airport to another;

Whereas provision should be made so that products subject to excise duty which are covered by suspension arrangements in 1992 should be under suspension of excise duties thereafter if the suspension arrangements have not been discharged;

Whereas, finally, in order to ensure the smooth operation of Community provisions on excise duties on 1 January 1993, Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties, and in respect of value added tax <sup>(5)</sup> and Council Directive 92/81/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils <sup>(6)</sup> need to be amended,

<sup>(1)</sup> OJ No C 283, 31. 10. 1992, p. 8.

<sup>(2)</sup> Opinion delivered on 20 November 1992 (not yet published in the Official Journal).

<sup>(3)</sup> Opinion delivered on 24 November 1992 (not yet published in the Official Journal).

<sup>(4)</sup> OJ No L 76, 23. 3. 1992, p. 1.

<sup>(5)</sup> OJ No L 73, 19. 3. 1976, p. 18. Directive last amended by Directive 79/1071/EEC (OJ No L 331, 27. 12. 1979, p. 10).

<sup>(6)</sup> OJ No L 316, 31. 10. 1992, p. 12.

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

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

1. Article 5 (2) shall read as follows:

'2. Without prejudice to national and Community provisions regarding customs matters, when products subject to excise duty:

— 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 either under a Community customs procedure other than release for free circulation or are placed in a free zone or a free warehouse,

or

— are dispatched between Member States via EFTA countries under the internal Community transit procedure using the Single Administrative Document,

the excise duty on them shall be deemed to be suspended.

In cases covered by the second indent of the first subparagraph:

- box 33 of the single administrative document shall be completed with the appropriate CN code;
- it shall be clearly indicated in box 44 of the single administrative document that a dispatch of products subject to excise duty is involved;
- a copy of "copy 1" of the single administrative document shall be held by the consignor;
- a duly annotated copy of "copy 5" of the single administrative document shall be sent back to the consignor by the consignee.'

2. in Article 7 (2), the words 'intended for delivery' shall be replaced by the words 'or intended for delivery in another Member State';

3. Article 15 is amended as follows:

(a) the following subparagraph shall be added to paragraph 1:

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

(b) the following paragraph shall be added:

'5. An authorized warehousekeeper of dispatch or his agent may amend the administrative accompanying document to show an alternative place of delivery. The competent authority of dispatch must be notified immediately and the new place of delivery shall immediately be indicated on the reverse of the administrative accompanying document.'

4. in Title III, the following Article shall be added:

*Article 15a*

1. By 1 April 1993 at the latest, the competent authority of each Member State shall maintain an electronic data base which shall contain a register of persons who are authorized warehousekeepers or traders registered for excise purposes as well as a register of those premises authorized as tax warehouses.

2. The register shall contain the following information:

- (a) the identification number issued by the competent authorities in respect of the person or premises;
- (b) the name and address of the person or premises;
- (c) the category of goods which may be held or received by the person or on the premises;
- (d) the address of the competent authorities which may be contacted for further information;
- (e) the date of issue and, where appropriate, the date of cessation of validity of the identification number.

3. The data described in paragraphs 1 and 2 (a), (b), (c) and (d) shall be communicated to the competent authority of each Member State. In those cases where the data described in paragraph 2 (e) are not communicated automatically, they shall be provided at the specific request of any Member State. All data shall be used solely to identify the authorization or registration or otherwise of a person and premises.

4. The competent authority of each Member State shall ensure that persons involved in the intra-Community movement of products subject to excise duty are allowed to obtain confirmation of the information held under the terms of this Article.

5. Any information communicated in whatever form pursuant to this Article shall be of a confidential nature. It shall be covered by the obligation of professional secrecy and shall enjoy the protection extended to similar information under the national law of the Member State which received it.

6. By way of derogation from paragraph 5, the competent authority of the Member State providing the information shall permit its use for other purposes in the Member State of the applicant authority, if, under the legislation of the Member State of the requested authority, the information could be used in the Member State of the requested authority for similar purposes.'

5. Article 18 (1) is amended as follows:

'1. Notwithstanding the possible use of computerized procedures, all products subject to excise duty moving under duty-suspension arrangements between Member States, including those moving by sea or air directly from one Community port or airport to another, shall be accompanied by a document drawn

up by the consignor. This document may be either an administrative document or a commercial document. The form and content of this document, and the procedure to be followed where its use is objectively inappropriate, shall be established in accordance with the procedure laid down in Article 24.';

6. the following sentence shall be added as the final sentence of Article 20 (3):

'Member States shall take the necessary measures to deal with any offence or irregularity and to impose effective penalties.';

7. in Article 22 (2) (b), the phrase 'under cover of the document specified in Article 18 (1)' shall be replaced by the phrase 'in accordance with the provisions of Title III.';

8. the following Article shall be added in Title VII:

*Article 26a*

Products subject to excise duty that are under a suspension arrangement other than as specified in Articles 5 (2) and 18 (1) before 1 January 1993 and which has not been discharged, shall be deemed, after that date, to be under suspension of excise duty.

When the situation described in the first subparagraph involves the internal Community transit suspension arrangements, the provisions in force at the time when the products were placed under these arrangements shall continue to apply during the period when these products are under these arrangements, which shall be determined in accordance with the said provisions.

When the said situation involves national suspension arrangements, Member States shall determine the conditions and the formalities under which the suspension arrangements are discharged after 1 January 1993.';

9. the following Article shall be added in Title VII:

*Article 30a*

Directive 76/308/EEC is amended as follows:

1. The title shall be replaced by the following:

"Council Directive of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties, and in respect of value added tax and certain excise duties."

2. in Article 2

(a) letter "(e)" shall be replaced by "(f)",

(b) the following point shall be inserted after point "(d)":

"(e) the following excise duties:

- excise duty on manufactured tobacco,
- excise duty on alcohol and alcoholic beverages,
- excise duty on mineral oils."

*Article 2*

Directive 92/81/EEC is amended as follows:

1. In Article 2 (1):

— subparagraph (b) shall read as follows:

'(b) products falling within CN codes 2707 10, 2707 20, 2707 30, 2707 50, 2707 91 00, 2707 99 11 and 2707 99 19',

— subparagraph (g) shall be deleted.

2. Article 8 (8) shall be replaced by the following:

'8. Member States shall be free to give effect to exemptions or reductions in the rate of excise mentioned in this Article by refunding the excise duty paid.'

*Article 3*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1992. 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 a 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 4*

This Directive is addressed to the Member States.

Done at Brussels, 14 December 1992.

*For the Council*  
*The President*  
 N. LAMONT