# OPINION OF ADVOCATE GENERAL MISCHO
delivered on 21 March 2002 [1]

## Introduction

1. Reference has been made to the Court by the Tribunale di Trento (District Court, Trento, Italy) for a preliminary ruling in a case concerning alcohol products moving under a duty-suspension arrangement.

## The Community provisions applicable

2. Under Article 3(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products [2] ('the Directive'), the provisions of the Directive apply to alcohol and alcoholic beverages.

3. Article 4(a) of the Directive defines an 'authorised warehousekeeper' as a natural or legal person authorised by the competent authorities of a Member State to produce, process, hold, receive and dispatch products subject to excise duty in the course of his business, excise duty being suspended under a tax-warehousing arrangement. According to Article 4(c), 'suspension arrangement' means a tax arrangement applied to the production, processing, holding and movement of products, excise duty being suspended.

4. Under the terms of Article 15(3) of the Directive:

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

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

1 — Original language: French.
2 — OJ 1992 L 76, p. 1.

5. Under Article 18(1) of the Directive, notwithstanding the possible use of computerised procedures, all products subject to excise duty moving under duty-suspension arrangements between Member States must 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 must be established in accordance with the procedure laid down in Article 24 of the Directive.

6. Article 19(4) of the Directive stipulates that '[w]here the products subject to excise duty which are moving under the duty-suspension arrangement as defined in Article 4(c) are exported, this arrangement should be discharged by an attestation drawn up by the customs office of departure from the Community confirming that the product has indeed left the Community. That office must send back to the consignor the certified copy of the accompanying document intended for him'. According to Article 19(5), '[i]f there is no discharge, the consignor shall inform the tax authorities of his Member State within a time-limit to be fixed by those tax authorities. The time-limit may not, however, exceed three months from the date of dispatch of the goods.'

7. Article 20 of the Directive is worded as follows:

'1. Where an irregularity or offence has been committed in the course of a movement involving the chargeability of excise duty, the excise duty shall be due in the Member State where the offence or irregularity was committed from the natural or legal person who guaranteed payment of the excise duties in accordance with Article 15(3), without prejudice to the bringing of criminal proceedings.

Where the excise duty is collected in a Member State other than that of departure, the Member State collecting the duty shall inform the competent authorities of the country of departure.

2. When, in the course of movement, an offence or irregularity has been detected without it being possible to determine where it was committed, it shall be deemed to have been committed in the Member State where it was detected.

3. Without prejudice to the provision of Article 6(2), when products subject to excise duty do not arrive at their destination and it is not possible to determine where the offence or irregularity was committed, that offence or irregularity shall be deemed to have been committed in the Member State of departure, which shall collect the excise duties at the rate in force on the date when the products were dispatched unless within a period of four months of the date of dispatch of the

products evidence is provided which is considered satisfactory by the competent authorities of the correctness of the transaction or of the place where the offence or irregularity was actually committed.

4. If, before the expiry of a period of three years from the date on which the accompanying document was drawn up, the Member State where the offence or irregularity was actually committed is ascertained, that Member State shall collect the excise duty at the rate in force on the date when the goods were dispatched. In this case, as soon as evidence of collection has been provided, the excise duty originally levied shall be refunded.'

**The main proceedings and the questions referred for a preliminary ruling**

8. Distillerie Fratelli Cipriani SpA ('Cipriani') has been active in the alcohol distilling business for a number of years. As an authorised warehousekeeper of dispatch under Article 15(3) of the Directive, between December 1996 and November 1997 Cipriani carried out various operations involving the movement under the duty-suspension arrangements of alcohol products intended for export to non-Community countries via one or more Member States. These products were dispatched under cover of the accompanying administrative documents ('AADs') provided for in the Directive.

9. The Italian tax authorities requested the German authorities to investigate a number of AADs under the arrangements for administrative cooperation in matters of excise duties. The investigation revealed that the stamps attesting to the goods' having left the territory of the Community affixed to these AADs had been falsified. As this amounted to an irregularity under the national provisions applicable, the Ufficio Tecnico di Finanza di Trento, by a notice served on 16 March 1998, sent Cipriani a demand for the payment of ITL 6 448 573 296 by way of excise duty (at the rate in force on the date of dispatch of the products) on 20 consignments of neutral alcohol of molasses moving under the duty-suspension arrangements. For the same reasons, two further notices were served on Cipriani on 6 April 1998, demanding payment of ITL 19 044 116 432 and ITL 947 034 352 respectively, relating to an additional 62 consignments of neutral alcohol of molasses.

10. The file shows that it was not until after the notices demanding the payment of excise duty had been served by the Italian tax authorities that Cipriani became aware of the falsification of the stamps on the AADs. The notices were served after the expiry of the period of four months from the date of dispatch laid down in Article 20(3) of the Directive.

11. Cipriani then brought an action before the national court, arguing that no excise duty was payable as there was no proof

that the products had been released for consumption on the territory of the Member State of departure (Italy). It also disputed the applicability of the national provision implementing Article 20 of the Directive, on the ground that excise duty may be charged only if liability for an irregularity or offence is established, as well as the entitlement of the Italian authorities to recover the tax, on the ground that they had not provided evidence that they had been unable to establish the actual destination of the products. Cipriani made the same pleas in respect of the two demands for payment served in April 1998.

12. The Ministry of Finance argued that the falsification of the AADs was tantamount to the release of the products for consumption on Italian territory and thus constituted an improper discharge from the duty-suspension arrangements, so that duty became payable. Moreover, the obligation to pay the duty fell upon Cipriani, as the consignor and guarantor, and the Italian Republic had power to demand payment. In addition, according to the Ministry of Finance, the burden of proving the correctness of the operation or proving where the products were released for consumption lay upon the consignor and gave the Italian authorities power to recover the duty once the four-month period had expired, inasmuch as it was the State of departure and the State in which the irregularity or offence had occurred. After expiry of that period the consignor could no longer provide that evidence in order to contest the jurisdiction of the State to collect the tax.

13. As the outcome of the case before it depended upon the interpretation of the Directive, the national court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Where products destined for export via one or more Member States are moved under the suspension arrangement defined in Article 4(c) of Council Directive 92/12/EEC of 25 February 1992 but fail to reach their destination, and it is impossible to ascertain where the irregularity occurred or where the offence took place, is Article 20(3) of that Directive to be interpreted as meaning that the Member State of departure may collect the excise duties only if the party that has guaranteed payment has been promptly put in a position to ascertain that there has been no discharge from the suspension arrangement, in such a way as to enable that party to provide, within the four-month period following the date of dispatch of the products, satisfactory evidence of the correctness of the operation or of the place where the irregularity in fact occurred or where the offence was in fact committed?

(2) In the event that Question 1 is answered in the affirmative, does the same interpretation also hold good, in the same circumstances, where the Member State of departure is also the Member State where the offence was committed or where the irregularity

occurred, or, in such a case, does the presumption set out in Article 20(2) of Directive 92/12/EEC apply? If that presumption applies, may evidence be furnished of the correctness of the operation or of the place where the irregularity in fact occurred or where the offence was in fact committed, and is such evidence subject to the time-limit laid down in Article 20(3)?

(3) In the event that Question 1 is answered in the negative, is Article 20(3) of Council Directive 92/12/EEC of 25 February 1992 to be interpreted, in the same circumstances, as meaning that a party that has guaranteed payment of excise duty and has not been promptly put in a position to ascertain that there has been no discharge from the suspension arrangement is entitled to furnish evidence of the correctness of the operation or of the place where the irregularity in fact occurred or where the offence was in fact committed even after the expiry of the four-month period following the date of dispatch of the products?'

## Opinion

*First question*

14. In its first question, the national court essentially seeks to know whether, if the operation has not been successfully completed, the competent authorities entitled to collect the excise duty must first notify the consignor of the fact that the suspension arrangement has not been discharged in order that he may be able to provide, within the four-month period laid down in Article 20(3) of the Directive, evidence of the correctness of the operation or of the place where the offence was in fact committed.

15. Cipriani considers that the consignor should be so notified and cites the judgment in *Lensing & Brockhausen* [3] in which the Court interpreted the Community transit provisions applicable when the consignment has not been produced at the office of destination. Like the Commission, Cipriani stresses the analogy between the Community transit procedure and the movement of goods under excise duty suspension arrangements.

16. In that judgment, the Court held that the rules applicable to Community transit should be interpreted as meaning that the Member State to which the office of departure belongs may recover import duty only if it has indicated to the principal that he has three months in which to furnish proof of the regularity of the transit oper-

3 — Case C-233/98 [1999] ECR I-7349. See Article 11a inserted by Commission Regulation (EEC) No 1429/90 of 29 May 1990 amending Regulation (EEC) No 1062/87 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure (OJ 1990 L 137, p. 21).

ation or of the place where the offence or irregularity was actually committed.

17. Both Cipriani and the Commission argue that this principle should be extended to the excise-duty suspension arrangements, given the points of resemblance between the latter and the Community transit procedure.

18. However, it should be noted that the Community transit procedure differs from the excise duty Directive in two important respects.

19. Firstly, the Community transit procedure provides that, where a consignment has not been produced at the office of destination, that office must notify the office of departure. It is then the responsibility of the latter to inform the principal.

20. As opposed to this, Article 19(4) of the Directive provides that the customs office of departure from the Community must send back a certified copy of the accompanying document directly to the consignor and not to the competent office of the Member State of dispatch.

21. This copy must be sent back at the latest within 15 days following the month of receipt of the AAD by the customs office of departure. If that is not done within that time-limit — which means that there has been no discharge — it is the consignor who must so inform the tax authorities of his Member State within a time-limit to be fixed by those tax authorities. Under Article 19(5) of the Directive, this time-limit may not exceed three months from the date of dispatch of the goods.

22. Thus, the consignor is the first to be informed of the non-discharge of the duty suspension arrangements and it is he who must transmit the information to the competent tax authorities of his Member State. Accordingly, the logic of the system makes it unnecessary for the competent tax authorities to notify the economic operator.

23. Secondly, within the context of the Community transit procedure, the relevant provision, namely Article 11a of Regulation No 1062/87, itself provides that where the office of departure notifies the principal that the consignment has not been produced at the office of destination and the place where the offence or irregularity occurred cannot be established, the notification must also indicate the time-limit by which proof of the regularity of the transit operation or of the place where the offence or irregularity has actually been committed must be furnished to the office of departure.

24. As the system introduced by the Directive does not provide for the establishment of such a time-limit, which would in any event be inconsistent with the internal logic of the Directive, inasmuch as it calls for direct communication between the office of departure from the Community and the consignor, the competent tax authorities of the Member State of departure do not have to notify the consignor or fix a time-limit running from the date of notification.

25. But does that rule still apply in the circumstances envisaged in the national court's first question, that is to say, where the mechanism provided has failed to function properly because the copy of the AAD sent back to the consignor has been falsified and the consignor was not in a position to know that it was false? This brings me to the third question, which is so closely bound up with the first question that it seems preferable to deal with it before the second, in conjunction with the first.

*Third question*

26. Essentially, in posing this question the national court is seeking to learn whether the four-month time-limit within which a trader must furnish proof of the correctness of the operation or of the place where the irregularity or offence was committed can be relied on against a trader who was not informed in good time that there had been no proper discharge from the suspension arrangement.

27. First of all, it should again be recalled that the consignor is normally informed of the existence of an offence or irregularity when the copy of the AAD intended for him is not sent back by the customs office of departure.

28. If the document is not received, he can only conclude that the goods have not arrived at their destination and must immediately seek to clarify the situation. Since, in these circumstances, he will be aware of the probable existence of an offence within the four-month period from the date of dispatch, the Directive requires him also to furnish proof of the correctness of the operation or of the place where the offence or irregularity was in fact committed within that time-limit.

29. However, the circumstances of the present case are quite different. Thus, the party concerned received an AAD that bore the usual stamps and signatures, which led it to believe that everything was in order and no further action was needed.

30. In this respect, the order for reference makes clear that Cipriani had no reason to doubt the authenticity of the document. It concludes that it was objectively impossible for Cipriani to apprise itself of the existence of an irregularity, namely the falsification of the stamps on the AAD.

31. It follows that, in this particular case, the trader bore no responsibility for the fact that it was not until after the expiry of the four-month period that he discovered the existence of an irregularity, upon receiving a demand for excise duty from the competent national authorities, a demand dispatched after the period had expired.

32. It might, of course, be objected that, according to the case-law of the Court relating to customs duties,[4] it is for the economic operator, and not the public purse, to bear the risk of the other party to the contract failing to perform. This also holds true where the operator has been deceived by false certificates.

33. It should, however, be pointed out that these decisions concerned a different issue, namely whether the operator could avoid paying duty in the circumstances described.

34. At issue in the present case is whether, in such a situation, the economic operator retains his basic procedural rights. The question of his obligation to pay does not arise until later. Accordingly, there is no reason to extend the application of these decisions to the present case. The fact that the operator continues, according to these judgments, to bear the financial risk inherent in the transactions in question has nothing to do with the treatment of his procedural rights.

35. I therefore share the view expressed both by the Commission and by the Portuguese Government and Cipriani, who have all argued that a period that has already expired by the time the operator, whose diligence and good faith are not in dispute, is informed of the existence of an irregularity or offence can scarcely be described as reasonable.

36. Indeed, it is apparent from settled case-law that, even in the absence of specific procedural rules, the fundamental principle of respect for the rights of defence requires that a person liable to be adversely affected by a measure must have been placed in a position effectively to make known his views.[5]

37. As the Commission rightly points out, this is also the case if the measure in question is taken by a national authority implementing Community law under circumscribed powers.

4 — See, for example, Joined Cases 98/83 and 230/83 *Van Gend & Loos* v *Commission* [1984] ECR 3763 and Case C-446/93 *SEIM* [1996] ECR I-73.

5 — Case C-462/98 P *Mediocurso* v *Commission* [2000] ECR I-7183.

38. It follows that, if it was objectively impossible for an operator who has guaranteed payment of excise duty promptly to learn of the existence of a suspected irregularity or offence, he cannot be subjected to the time-limit for which Article 20(3) of the Directive provides.

39. Accordingly, such an operator must be accorded a new time-limit which runs from the moment at which the tax authorities have officially informed him that the suspension arrangement had not been properly discharged.

40. In this connection, I should point out, as does the Commission, that it is not the actual existence of a time-limit that poses a problem. Indeed, both the effectiveness of tax law and legal certainty require that, after a reasonable period of time, an operator who has been unable to produce the proof required by the legislation should no longer be entitled to object to the payment of excise duty. Otherwise there would be no prospect of collecting the duty.

41. Nor is the length of the period the source of difficulty. As explained above and, moreover, as argued by the Commission, in other circumstances, having to produce the necessary proof within four months is not an unreasonable requirement, even though it should be borne in mind that, in practice, an operator will have less time than that at his disposal, since the time taken by the goods to reach the consignee and the fact that the Directive allows the latter a certain amount of time within which to return the AAD must be taken into account.

42. Thus, the real problem posed by Article 20(3) of the Directive is the date from which the four-month period starts to run.

43. The Commission believes it can solve this problem by means of an interpretation of the Directive. In other words, the Directive should not be considered invalid but only, as it were, incomplete and therefore capable of being interpreted in a manner consistent with the fundamental principle of respect for the rights of defence.

44. In support of this view the Commission puts forward two arguments.

45. Firstly, it points out that a literal application of the Directive results in the imposition of a time-limit which, considering the realities of business life, will usually have expired before the operator has been able to respond. Such an interpretation would call into question the effectiveness of Article 20(3) of the Directive.

46. According to settled case-law, one of the rules for interpreting Community law is that the interpretation should be consistent with the provision having practical effect. Thus, the provision must be interpreted in such a way as to preserve its effectiveness.

47. Secondly, according to the Commission, it has also consistently been held that a provision must be so interpreted as to make it consistent with the Treaty and hence, *a fortiori*, with the fundamental principles of Community law, which include respect for the rights of defence.

48. These arguments, however attractive they may seem, are nevertheless only ostensibly indisputable. They clearly indicate what might be considered desirable, but not necessarily what is feasible.

49. In fact, from the case-law [6] to which the Commission refers it follows that a provision should be given an interpretation compatible with the principle of effectiveness and with fundamental rights, whenever possible.

50. On the other hand, these precedents, which concern disputes relating to provisions less clear than the one now at issue, do not tell us when this must be deemed to be the case.

51. Indeed, the Commission's own arguments raise doubts in this respect.

52. Thus, the Commission contradicts itself by asserting that, in normal circumstances, there can be no objection to the literal application of Article 20(3) of the Directive, while insisting, as part of its argument based on effectiveness, that in many instances such an interpretation would result in that provision remaining a 'dead letter'.

53. In any event, the fact that in a certain number of cases the regulations can be applied seems to me irrelevant, however large that number may be. The fact that the incompatibility of the provision with fundamental rights is due merely to its incompleteness or to some other factor is of no consequence as far as the existence of the incompatibility and its seriousness are concerned. Whether the violation of fundamental rights is the result of what is present in or missing from the provision is immaterial as far as the extent of the incompatibility is concerned.

6 — Case 15/81 *Schul* [1982] ECR 1409 and Case C-135/93 *Spain* v *Commission* [1995] ECR I-1651.

54. A serious violation of fundamental rights may well be the result of the legislature simply making no provision for a possibly uncommon situation. Thus, the Court has already held a provision to be unlawful because of something for which it made no provision rather than on account of any part of its text. [7]

55. It should also be pointed out that the solution proposed by the Commission on the basis of the arguments analysed above is far from being beyond reproach from the standpoint of respect for fundamental rights. Thus, the Commission suggests the application of the normal rule, namely, a period of four months from the dispatch of the products, provided that the operator has been informed, in one way or another, of the existence of an offence or irregularity before that period has expired. On the other hand, if he was not informed until afterwards, then, according to the Commission, he should be granted a period of four months starting from the date on which he actually learned of the offence or irregularity.

56. It is immediately obvious that this solution results in a considerable difference in the treatment of operators, depending on when they learned of the irregularity or offence. There appears to be no justification for this differential treatment.

7 — Joined Cases 117/76 and 16/77 *Ruckdeschel and Others* [1977] ECR 1753.

57. Thus, altogether, an operator who was informed one week before the expiry of the four-month period following the date of dispatch of the goods would have only one week in which to furnish the proof required by the legislation. On the other hand, an operator notified one week later, just after the period had expired, would have four months in which to furnish the same proof.

58. The Commission offers no argument that might justify such differential treatment, and indeed there is none that springs to mind.

59. Does this mean that in the present case there is no room for interpretation and that the Court can only conclude that Article 20(3) of the Directive is invalid? That, indeed, is my view.

60. The solution proposed by the Commission is tantamount to adding a subparagraph which would treat the situation with which this case is concerned as an exception to the general rule.

61. This, it seems to me, would be going well beyond what is normally meant by interpretation. Indeed, the provision in

question could not be more clear and, in the present case, the meaning of the words themselves is unmistakable. The legislature did not make the distinction proposed by the Commission and there is nothing to indicate that that was its intention.

62. The situation would be different if it had made a distinction that called for clarification. This would certainly have led us into the realm of interpretation. By contrast, it is not for the Court, under the pretext of interpretation, to usurp the role of the legislature by introducing into the provision in dispute distinctions which the legislature has not made.

63. The ancient Roman adage 'Ubi lex non distinguit nec nos distinguere debemus' remains as relevant as ever.

64. I therefore consider that the Commission's attempt to 'interpret' this provision rather than acknowledge its invalidity is doomed to fail.

65. Admittedly, the national court refers only to the interpretation of the provision and not to its validity. However, it is apparent from settled case-law that the Court is entitled to rephrase a question in order to furnish the national court with an answer that will help it to settle the dispute. In the present case, such an answer can only be given by considering the validity of the provision in question, even though the national court refers only to its interpretation.

66. Since it is the responsibility of the Court to identify the points of Community law necessary to give the national court a helpful answer, it cannot be bound, in this respect, by the choice made by the national court to frame a question in terms of interpretation rather than in terms of appraisal of validity. [8]

67. It follows that the national court must refrain from applying Article 20(3) of the Directive because of its incompatibility with the fundamental principle of respect for the rights of defence, an incompatibility that cannot be removed by taking the consistent interpretation approach proposed by the Commission.

68. As this incompatibility is not due to the fixing of a time-limit as such, but to the choice of its *dies a quo*, it is consequently for the national court to make the period

8 — See, to that effect, Case 16/65 *Schwarze* [1965] ECR 877 and Case 145/79 *Roquette* [1980] ECR 2917.

granted to the operator by the Directive for furnishing the necessary evidence start from the date on which he received notification from the tax authorities, for example through a tax demand, that the arrangement had not been properly discharged.

69. I add that, to deal with this problem in future, it will be for the Community legislature, where appropriate, to draw the consequences of the judgment of the Court.

70. In the light of the above, it is proposed that the first and third questions referred for a preliminary ruling be answered as follows:

'The fundamental principle of respect for the rights of the defence requires that an operator who has guaranteed payment of the excise duties but was not in a position to ascertain, within the four-month period following the date of dispatch of the goods, that the suspension arrangement had not been properly discharged, must be officially notified of that fact by the competent authorities and that the four-month period for providing evidence of the correctness of the transaction or of the place where the offence or irregularity was actually committed starts to run only from the time of such notification. Article 20(3) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products is invalid in so far as it does not afford such an operator the opportunity to provide that evidence.'

*Second question*

71. The national court's second question is essentially aimed at determining whether the opportunity for the operator to prove the correctness of the transaction or of the place where the offence or irregularity was committed, afforded by Article 20(3) of the Directive, also exists where Article 20(2) applies.

72. In other words, in the present case it is, as it were, a question of the cumulative application of paragraphs 2 and 3 of Article 20.

73. This calls for a systematic examination of Article 20 of the Directive.

74. The purpose of that article is to prevent conflicts of jurisdiction between Member States seeking to tax the products forming

the subject-matter of the offence. It therefore designates a competent State in each of the situations envisaged.

75. Article 20(2) thus lays down a general rule for the case in which an offence or irregularity has been detected without it being possible to determine where it was committed, namely, that the competent Member State shall be that in which the offence was detected.

76. Article 20(3), on the other hand, applies only when another condition is fulfilled, namely, the non-arrival of the goods at their destination. In this case, it is the State of departure that is deemed to be competent.

77. Thus, as the Commission points out, if both provisions were applied to the same case, two Member States would be found competent to levy tax on the goods in question. This would lead to a conflict of jurisdiction if the Member State in which the offence was detected was not the same as the Member State of departure of the goods, whereas the two rules for assigning jurisdiction in paragraphs 2 and 3 of Article 20 are intended precisely to prevent or, in any event, resolve such conflicts.

78. The fact that, in the present case, the two provisions would designate the same Member State, namely Italy, does not mean that they can be applied cumulatively, without regard for their wording and the system of the Directive.

79. It is therefore appropriate to determine which of these two provisions is alone applicable to the case before the national court.

80. In its referral order, the national court states that the goods in question did not arrive at their destination, as required by Article 20(3). The conditions of application of that provision are therefore fulfilled and, consequently, paragraph 2 does not apply in this case.

81. It is therefore merely for the sake of completeness that I make the following observations.

82. Paragraphs 1 and 2 of Article 20 both address the situation in which an offence or irregularity has been committed in the course of a movement. Within this context, paragraph 1 concerns the situation in which the place of the said offence or

irregularity is known and paragraph 2 the situation in which it is not.

83. The very logic of these paragraphs therefore rules out the possibility of proving the correctness of the transaction and hence the application of the provisions of Article 20(3) of the Directive relating to such proof. The essential condition of application of paragraphs 1 and 2 of that article is the existence of an irregularity or an offence.

84. In the light of the above, it is proposed that the second question be answered as follows:

'Where the goods in question have not arrived at their destination, Article 20(2) of the Directive does not apply.'

## Conclusion

85. For these reasons, it is proposed that the questions referred by the Tribunale di Trento be answered as follows:

*First and third questions*

The fundamental principle of respect for the rights of the defence requires that an operator who has guaranteed payment of the excise duties but was not in a position to ascertain, within the four-month period following the date of dispatch of the goods, that the suspension arrangement had not been properly discharged, must be officially notified of that fact by the competent authorities and that the four-month period for providing evidence of the correctness of the transaction or

of the place where the offence or irregularity was actually committed starts to run only from the time of such notification. Article 20(3) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products is invalid in so far as it does not afford such an operator the opportunity to provide that evidence.

*Second question*

Where the goods in question have not arrived at their destination, Article 20(2) of the Directive does not apply.