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REPORT

of the Committee on Economic and Monetary Affairs and
Industrial Policy

on the Commission proposal for a Council directive on the
general arrangements for products subject to excise duty and
on the holding and movement of such products
(COM(90) 0431 - C3-0391/90)

PART B: EXPLANATORY STATEMENT

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* = Consultation procedure requiring a single reading

**II = Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment

**I = Cooperation procedure (first reading)

*** = Parliamentary assent which requires the votes of a majority of the current Members of Parliament

B.

EXPLANATORY STATEMENT

1. INTRODUCTION

According to the Internal Market White Paper of 1985, this proposal "concerning the introduction of a linkage between national bonded warehouses for excise goods" should have been published in 1989, and adopted by Council in 1990. In the event, it only appeared in November 1990.

Since then, however, work on the draft directive has been intensive both in Parliament and in Council. Discussions in Parliament's Committee on Economic and Monetary Affairs and Industrial Policy and in the responsible Council working party have already resulted in several changes and refinements to the original Commission text. As far as possible, Parliament's committee has tried to base its deliberations on the latest available version.

This explains the very substantial amendments proposed to Article 3a (new), Articles 11, 11 bis and 11 ter, Article 13 and Article 16. Rather than try to amend texts which were already out of date, the committee has adopted as its own amendments the latest version under discussion in the Council working party, further amended where necessary.

Though this procedure is not entirely satisfactory, it has been made necessary by the late publication of the draft directive and the consequent tight timetable; and also by the provisions of Article 99 of the Treaty, which allow Parliament only one reading.

2. OUTLINE OF THE PROPOSAL

Principles

A new system for handling intra-Community movements of exciseable goods will come into effect on 1 January 1993. Unlike the system to be introduced for VAT, however, it will be a definitive, not a transitional system.

Like the transitional VAT system, however, it will apply the destination principle of taxation: i.e. the tax paid will be at the rate prevailing in the country of final consumption.

Also as in the case of the transitional VAT system, taxation and checking at internal Community frontiers will be abolished.

Products and taxes covered

The proposal covers hydro-carbon oils, tobacco products and alcoholic beverages. Only VAT and excise duties will be allowed on these products (but see proposed amendment 6).

Other products may be subject to duties, but only if this does not give rise to border checks/taxation.

The system

Excise will be liable once the goods are produced or once they enter the Community from a third country. This excise must normally be paid as soon as the goods are placed on the market for consumption, at the rate prevailing in that country.

Goods which have not yet been placed on the market for consumption will normally travel in bond (i.e. payment of duty will have been suspended), between authorized warehouses.

It will also be possible for goods to travel in bond to a registered operator (who does not have an authorized warehouse). Unlike warehousekeepers, an operator will not be able to store or redispach the goods in bond: i.e. the tax becomes payable on delivery.

Finally, "on an occasional basis", goods can be delivered to a non-registered operator. Not only will these not be able to store or redispach in bond, but they must also guarantee payment of tax before the goods are dispatched to them.

(These registered or non-registered operators are likely to be large or small shops, which might wish to purchase direct from another Member State without going through an authorized warehouse in their own country).

Policing

The draft directive provides that the goods must be accompanied either by an administrative or a commercial document (but see amendments 1, 17 and 28), of which there shall be three copies.

One copy will be kept by the sender ("consignor"). One will be kept by the recipient ("consignee"). And one will be returned by the recipient to the sender "for discharge". In addition, however, two further copies may be required, one each for the authorities in the Member States concerned.

Member States will be able, if they so wish, to introduce a system of tax stamps, provided that this does not give rise to any distortion of trade.

Detaxing/retaxing

What happens if goods have been released for consumption, and tax paid, in one Member State, and then it is decided to send them to another Member State for resale? In this case, it will be possible to return the goods into bond. The tax already paid will be reimbursed, provided a request has been lodged before the goods are dispatched.

Originally, the draft directive had envisaged an alternative system, under which it would have been possible to send the goods tax paid, and then reclaim the tax. This has not so far proved acceptable.

Excise Committee

This will consist of Member States' representatives, and be chaired by the Commission.

3. THE AMENDMENTS

Amendment 1 (Article 1(1)). The words "the institutions of" are not necessary.

Amendment 2 (Article 1(2)). There is no certainty that the draft directives listed here will in fact be adopted by the time the present directive comes into force. The paragraph should therefore be deleted (see also Amendment 3).

Amendment 3 (Article 2). Consequent upon Amendment 2.

Amendment 4 (Article 3 bis (new)). This amendment reproduces the text of the latest draft prepared by the Council presidency (with Commission assistance). It provides important definitions, in particular of warehousekeepers, and registered and unregistered operators.

Amendment 5 (Article 4(1)). Article 2 refers to "the customs territory of the Community". The phrase should also be used here.

Amendment 6 (Article 5(1)(ca) (new)). Particular problems arise in the collection of excise duties where the level of duty depends on the final selling price: e.g. in the case of cigarettes, where a proportion of the duty is 'ad valorem'. Collection of the correct duty therefore depends upon a price being agreed between traders and the tax authorities in advance. There is a danger that, if movements of goods can take place outside the system of bonded warehouses, either tax will be evaded (by calculating excise on a particular price and the "marking up"), or there will be a proliferation of tax debtors. The committee therefore decided that tobacco products should not be sold by mail order (Amendment 6); that Member States should have the option not to allow cigarettes to be sent to registered or unregistered operators (Amendment 11: addition paragraph 5 to new Article 11 bis); and that special arrangements should apply in documentation (Amendment 14); and that such products could be excluded from the tax stamp system (Amendment 16).

Amendment 7 (Article 5 bis (new)). The draft directive under consideration applies the principle of taxation in the country of consumption. It follows that, once an individual final consumer has purchased excisable goods and paid tax, the goods are in free circulation within the Community: i.e. there should be no further controls or excise duties. This principle (which also applies to Value Added Tax) is referred to by the Commission in the Explanatory Memorandum (paragraph 7). It should be explicitly incorporated into the text of the directive.

Amendment 8 (Article 6(2)). The settlement of excise duty liabilities is often the subject of credit arrangements. The phrase "or otherwise accounted for" should therefore be added.

Amendment 9 (Article 7). Lists of warehouses authorized within the terms of the directive should be available on request for traders (though an exception might be made for the estimated 40,000 warehouses in France handling wine!).

Amendment 10 (Article 11). The original Article 11 of the Commission proposal has now become three Articles in the presidency draft. Since they greatly clarify the various arrangements for the movement of excisable goods, they have been tabled as amendments 'in toto'. Article 11 now covers the arrangements as they affect authorized warehouses.

Amendment 11 (Article 11 bis (new)). See above. This Article covers the arrangements for registered and non-registered operators. A new paragraph 5 has been added by Parliament's Committee covering cigarettes (see Amendment 6 above).

Amendment 12 (Article 11 ter (new)). This new Article provides for fiscal representatives of authorized warehousekeepers.

Amendment 13 (Article 11 quater (new)). Parliament's Committee has added this new Article, which would provide for a revision of the arrangements made in Articles 11, 11 bis and 11 ter after some years' experience with the workings of the directive.

Amendment 14 (Article 12(1)). The proposed deletion covers the important matter of the document used for control of the movement of excisable goods. The Commission text proposes either an administrative document or a commercial document. However, it is unlikely that trade will take place without a commercial document of some kind; any administrative document would therefore be in addition to a commercial document. In order to avoid duplication of paperwork, it would seem sensible to conduct controls on the basis of commercial documents, which should contain the information provided for in Annex II of the Commission text. To help small firms, a "model" commercial document could be made available (this is, apparently, the reason for having an administrative document). (See also Amendment 24 - concerning the addition, see Amendment 6 above).

Amendment 15 (Article 13). The Council presidency text to this Article, which covers the number of copies and use of the control document, has been tabled as an amendment 'in toto'.

Amendment 16 (Article 15(2)). This amendment covers both the principle that tax stamps should be made available free of charge (other, of course, than the value of the excise duty); and the exclusion of cigarettes from the system (see Amendment 6 above).

Amendment 17 (Article 15 (2a) (new)). This provides for a period for payment of excise liabilities.

Amendment 18 (Article 16). Articles 16 and 17 cover the important issue of the commercial movement of goods between Member States on which excise has already been paid as a result of a release for consumption in one Member State. The greatest clarity is therefore important. The Council presidency text of Article 16 has therefore been tabled 'in toto', as representing the latest thinking on the subject and being a vast improvement of the original text.

Amendment 19 (Article 17). The right to return goods to bond should only apply to movements from one Member State to another. A right to return goods to bond could otherwise easily be abused as a way of recouping duty paid on goods released for consumption, but unsold. The phrase "actually destined" is, in this context, unsatisfactory: it should be not so much whether they are "destined" for another Member State as whether they actually arrive there that counts. This would be secured if reimbursement were conditional upon proof of arrival: i.e. discharge under Article 13.

Amendment 20 (Article 18). The draft directive is silent on the issue of duty-free sales of exciseable goods. In its reply to my written question no 2289/90, however, the Commission states that the proposals "essentially abolish export as a concept in intra-Community movement of goods". "Article 4(2) specifically states that duty and tax are due when the goods are released for consumption, that is when the goods leave any arrangements where the payment of tax or duty is suspended". There is therefore a presumption that, once the directive came into effect, duty free arrangements would automatically cease to exist. In the parallel case of the VAT system, however, the Commission undertook to carry out a study into the social and economic effects of an end to duty-free sales, in the light of which its future would be determined. This amendment similarly reserves the position, without prejudice.

Amendments 21 and 22 (Article 20). Consequent upon Amendments 2 and 3.

Amendment 23 (Article 21). This covers notification of changes to domestic law in the field covered by the Directive.

Amendment 24 (Annex I). Consequent upon Amendment 14.

