



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.11.1996
COM(96) 548 final

96/0266 (CNS)

Proposal for a

COUNCIL DIRECTIVE

**amending Council Directive 92/12/EEC
on the general arrangements for products subject to
excise duty and on the holding movement and
monitoring of such products.**

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION.

Article 26 of Directive 92/12/EEC¹ together with the Act of Accession of Austria, Finland and Sweden² (which refers to the same article) provide a derogation from a general principle of the internal market in permitting Denmark, Sweden and Finland to charge their national excise duties on certain goods which individuals acquire excise duty paid in other Member States and import for their own personal use. The goods concerned are alcoholic drinks and tobacco products which exceed various quantities. The derogation applies "until 31 December 1996 and subject to a review mechanism similar to that laid down in Article 28(1) of Directive 77/388/EEC³.

However, for the reasons set out below, this proposal for a Directive seeks to extend the period of validity of the derogation while at the same time progressively liberalising the quantities of the goods concerned.

II. BACKGROUND.

The derogation under Article 26 of Directive 92/12/EEC should be viewed in the context of events both at the time of its adoption and subsequently. It was adopted as part of the preparations for the removal of fiscal controls at frontiers on 31 December 1992, and therefore originally concerned only Denmark.

As an important source of revenue, and also for health reasons, that Member State had traditionally charged excise duties on alcoholic drinks and tobacco products at rates much higher than the Community norm. Consequently, Denmark had - from the date of its accession to the Community - benefited from derogations permitting it to grant less generous travellers' allowances than the general Community level.

Within the context of the 1992 exercise, it was clear that in the absence of a similar derogation in a Europe without frontiers, Denmark would be forced either to cut its rates of duty on these products, or accept a significant increase in purely tax-induced cross-frontier shopping by its citizens.

The Council therefore adopted Article 26 of Directive 92/12/EEC as a means of easing the problems which would result from an immediate total removal of excise limitations on 31 December 1992. The derogation was limited in time until 31 December 1996, and was made subject to review.

At the time of adoption of the proposal, in February 1992, the Commission declared not only its intention to submit a proposal by the end of 1993 gradually to increase the quantitative limits laid down in Article 26, but also that - being aware of the problems which the new tax arrangements might cause for Member States after 1992 - it would take a flexible approach to their resolution, in particular as regards the specific arrangements

¹OJ No L 76, 23.3.92, p. 1.

²OJ No C 241, 19.8.94, p.339, IX. TAXATION § 3/392L 108.

³OJ No L 76, 23.03.1992, p.11.

for Denmark. For its part, Denmark declared that it would gradually raise the limits of the allowances it granted, "in line with the approximation of the excise duty rates".

It should also be noted that, at the time of the text's adoption, the Commission's proposals to approximate the rates of excise duty on alcoholic drinks were still under consideration by Council. They were not adopted until the Autumn of 1992, when the Commission's proposals were heavily amended, in particular as regards the proposed minimum rates of duty on alcoholic drinks.

During 1993, negotiations commenced for the accession of Sweden and Finland. The excise duty rates applied in those countries to alcoholic drinks and tobaccos have traditionally been higher even than Denmark's, and the problems envisaged from a total removal of excise limitations immediately on accession were similar to those faced by Denmark in 1992. Consequently, a derogation was agreed in the Treaty of Accession, permitting Sweden and Finland to apply fiscal limitations to a rather wider range of alcohol and tobaccos than Denmark but (by virtue of a reference to Article 26 of Directive 92/12/EEC), under exactly the same conditions. In the light of these developments, the Commission changed its declared intention of proposing increases in the Danish allowances during 1993.

The next development was provided by Article 8 of Directive 92/84/EEC and Article 4 of Directive 92/79/EEC. Under those provisions, "every two years, and for the first time not later than 31 December 1994, the Council, acting on the basis of a report and where appropriate a proposal from the Commission" was to examine the minimum rates laid down in the Directives concerned and adopt the necessary measures. The Commission's first report under those provisions did not, however, make any proposal for increases in any of the minimum rates.

In the result, the minimum rates which will apply on 31 December 1996, will remain lower than might have been expected when the deadline was set in February 1992. Moreover, Denmark's undertaking to raise the limits it applies under Article 26 "in line with the approximation of excise duty rates" has consequently never been called into operation. It will be recalled, however, that Denmark reduced its rates of duty on beer and wine in preparation for the 1992 exercise.

That said, the provision in question is an obvious derogation from a major principle of the internal market - the unfettered right of its citizens to transport goods for their own use throughout the Community without incurring liability to new duty charges. The scope of the derogation should therefore be severely restricted to the minimum necessary to prevent unacceptable upheaval.

In deciding where that minimum lies, account should be taken of the fact that, on the one hand Denmark has known for many years that the development of the Community as required by the Treaty implied inevitable problems should it not bring its excise rates more into line with the Community norm and, on the other hand, Sweden and Finland must be taken to have been aware from the outset of the problems they would face in this field.

The Commission has kept the operation of the limitations under review from the outset, observing the policing of the limitations at ports, airports and land boundaries as well as consulting the administrations of the Member States concerned and the trading interests most affected.

Although approaches to control varied from Member State to Member State - Denmark applying no policing along its land frontier, whereas Sweden's approach to policing on the short ferry crossing from Denmark was quite high profile - it seems clear that the limitations are generally controlled unobtrusively, and with minimum disturbance to the travelling public.

Domestic producers and importers alike have expressed a wish to see restrictions retained for some time, so as to avoid a sudden increased diversion of traffic and distortion of competition as a result of purely tax-induced cross-frontier shopping. Administrations have indicated that an immediate reduction of national excise rates sufficient to remove the attraction of cross-frontier shopping is - because of the loss of revenue it would entail, as well as for health and social reasons - politically difficult.

The Commission accepts that it may be difficult for the countries concerned to accept a complete end to the existing derogation at the end of this year. However, it would stress, on the one hand, the legitimate expectation of Nordic citizens that the restrictions will end - or at least be considerably liberalised - on 31 December 1996 and, on the other hand, the paradox that Sweden and Finland in particular permit very extensive duty-free shopping on ferries between their two countries.

For those reasons, while the Commission considers that an extension of the derogation's period of validity should be accorded to Denmark, Sweden and Finland, in order to give them further time to adjust to the full implications of the Internal Market, at the same time it considers that the extension should be of short duration and accompanied by a gradual liberalising of the quantitative restrictions permitted by that provision.

III. COMMISSION PROPOSAL.

The Commission proposes that the existing Article 26 be entirely replaced by a provision under which Denmark Sweden and Finland may continue to limit the quantities of excise goods which individuals may import without further payment of excise duty. Under the proposal, the quantities concerned are to be gradually increased until 30 June 2002, when all allowances will be abolished and only the guide levels laid down in Article 9 of the Directive will apply. The progressive liberalisation of the allowances is to be accompanied by an immediate reduction . from 36 hours to 24 hours - of the minimum period which residents must have travelled outside the territories of their countries before they may benefit from any allowance.

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monitoring and movement of such products.**

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,

Having regard to the opinion of the European Parliament,⁴

Having regard to the opinion of the Economic and Social Committee,⁵

Whereas Council Directive 92/12/EEC⁶ lays down the general arrangements for the holding movement and monitoring of products subject to excise duty;

Whereas Article 26 of that Directive provides a derogation permitting Denmark to apply excise duty to alcoholic drinks and tobacco products exceeding certain quantities when they have been acquired excise duty paid in other Member States by individuals who import them for their own use;

Whereas the Act of Accession⁷ provides, also by reference to Article 26 of Directive 92/12/EEC, that Sweden and Finland may apply excise duty to a more extensive list of alcoholic drinks and tobacco products under the same conditions;

Whereas the derogations were accorded because in a Europe without frontiers where excise rates vary widely, an immediate total removal of excise limitations would have caused an unacceptable diversion of trade and revenue and distortion of competition in the Member States concerned, which have traditionally applied high excise duties to the products concerned both as an important source of revenue, and for health reasons;

Whereas, the derogations were granted "until 31 December 1996 and subject to a review mechanism similar to that laid down in Article 28(1) of Directive 77/388/EEC";⁸

Whereas, however, on 31 December 1996 minimum rates of excise duty applied throughout the Community will be lower than had been expected when the derogations

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⁶OJ No L 76, 23.3.1992, p. 1.

⁷OJ No C 241, 19.8.1994, p. 339, IX. TAXATION § 3/392 L 0012.

⁸OJ No L 76, 23.03.1992, p.11.

were accorded, so that their abolition on that date will cause greater problems than had been envisaged;

Whereas, therefore, it is appropriate to provide further time for adjustment in these Member States by extending the deadline laid down in Article 26;

Whereas, however, the provisions of Article 26 represent a derogation from a fundamental principle of the internal market - the right of its citizens to transport goods purchased for their own use throughout the Community without incurring liability to new duty charges - so that it is necessary to limit its effects as far as possible;

Whereas it is therefore appropriate, on the one hand to provide for the gradual liberalisation of the quantitative restrictions which may be applied prior to their complete removal on 30 June 2002 and, on the other hand, to reduce from 36 hours to 24 hours the qualifying period set out in Article 26(2) 2nd indent, which demands a minimum stay outside the territory of the country before residents may benefit from any allowance;

Whereas, the Member States concerned may decide the precise details of the liberalisation process in the light of all relevant factors;

Whereas, however, the process should be subject to monitoring not later than the half way stage;

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

Article 26 of the Directive is replaced by the following:

1. Without prejudice to Article 8, until 30 June 2002, Denmark, Finland and Sweden shall be authorised to apply the specific arrangements laid down in paragraphs 2 and 3 of this Article to certain alcoholic drinks and tobacco products acquired in other Member States and brought into their territory by private individuals for their own use.
2. From 1 January 1997, Denmark, Finland and Sweden shall be authorised to continue to apply the same restrictions on the quantity of goods which may be brought into their territories without further excise duty payment as they applied on 31 December 1996. Those restrictions shall be progressively removed by the Member States concerned.
3. Where such goods are imported by persons resident within their territories, Denmark, Finland and Sweden shall be authorised to restrict the grant of admission without payment of duty to persons who have been absent from their territory for a period of more than 24 hours.
4. Before 31 December 1999, the Commission shall report to the Council and the Parliament on the operation of this Article.

Article 2

1. Member States shall bring into force the laws regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1997. They shall 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 covered by this Directive.

Article 3

This Directive is addressed to the Member States

Done at

For the Council.

STATEMENT OF IMPACT ON SMEs AND EMPLOYMENT.

The present proposal seeks to extend the period of validity of a derogation aimed at minimising diversion of trade and revenue, distortion of competition, and general disruption of business conditions arising from the removal of all frontier controls in Member States which have traditionally applied to alcoholic drinks and tobacco products rates of excise duty which considerably exceed the Community norm. At the same time it seeks to bring the Member States concerned progressively to the point of removing all frontier controls.

I. Administrative obligations on businesses arising from application of the present Directive:

- None.

II. What are the advantages for businesses?

- One purpose of the present Directive is to reduce the problems for business which might be associated with a sudden tax-related change in trading conditions. To the extent that such changes tend to be more difficult to bear for small and medium sized enterprises than for their larger competitors, the proposal caters to their needs.

III. Are there any drawbacks for businesses in terms of additional costs?

- Application of the present Directive will not impose additional costs on businesses.

IV. Effects on employment.

- No negative effects on employment are to be expected..

V. The two sides of industry have not been consulted

VI. No less binding alternative is available.

FINANCIAL STATEMENT.

Application of the present Directive will not produce an increase in Community own resources.

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DOCUMENTS

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