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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)


Rapporteur: Benjamin PATTERSON

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
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A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

 = Consultation procedure requiring a single reading

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

 = Cooperation procedure (first reading)

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

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By letter of 27 November 1990 the Council consulted the European Parliament, pursuant to Article 99 of the EEC Treaty, 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).

At the sitting of 10 December 1990 the President of Parliament announced that he had referred this proposal to the Committee on Economic and Monetary Affairs and Industrial Policy as the committee responsible and the Committee on Agriculture, Fisheries and Rural Development, the Committee on Transport and Tourism and the Committee on the Environment, Public Health and Consumer Protection for their opinions.

At its meeting of 20 September 1990 the Committee on Economic and Monetary Affairs and Industrial Policy had appointed Mr Patterson rapporteur.

At its meetings of 25-27 September 1990, 5-7 November 1990, 18-20 December 1990, 5-7 February 1991, 18-20 March 1991, 24-25 April 1991 and 14 May 1991 it considered the Commission proposal and draft report.

At the last meeting it adopted the draft legislative resolution unanimously.

The following took part in the vote: Beumer, chairman; Desmond, vice-chairman; Fuchs, vice-chairman; Patterson, rapporteur; Barton, Peter Beazley, Bofill Abeilhe, Cassidy, Caudron, Christiansen, Colom I Naval, Cox, de Donnea, Dührkop Dührkop (for Hoff), Fitzgerald (for Lataillade), Friedrich, Herman, Metten, Read, Rogalla, Seal, Siso Cruellas, Stevens, Tongue, van der Waal (for Ruiz Mateos) and Wettig.

The explanatory statement will be presented orally in plenary sitting.

The opinions of the Committee on Agriculture, Fisheries and Rural Development and of the Committee on Transport and Tourism are attached.

The Committee on the Environment, Public Health and Consumer Protection decided not to deliver an opinion.

The report was tabled on 14 May 1991

The deadline for tabling amendments will be announced in plenary sitting.

A

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

Commission text (1)

Amendments

(Amendment No. 1)
Article 1(1)

1. This Directive lays down the arrangements for excise duties and other indirect taxes which are levied directly or indirectly on the consumption of products, except for value added tax and taxes established by the institutions of the European Communities.

1. This Directive lays down the arrangements for excise duties and other indirect taxes which are levied directly or indirectly on the consumption of products, except for value added tax and taxes established by (3 words deleted) the European Communities.

(Amendment No. 2)
Article 1(2)

2. The particular provisions relating to the rates and structures of duty on products subject to excise duty are contained in Directives ...

Deleted

(Amendment No. 3)
Article 2

This Directive, as well as the Directives referred to in Article 1(2), shall apply within the customs territory of the Community as defined in Council Regulation (EEC) No. 2151/84.

This Directive (10 words deleted) shall apply within the customs territory of the Community as defined in Council Regulation (EEC) No. 2151/84.

For full text see COM(90) 0431 final - OJ No. C 322, 21.12.1990, p. 1.

(Amendment No. 4)
Article 3 a (new)

For the purposes of this Directive, the following definitions shall apply:

a) authorized warehousekeeper: a natural or legal person authorized by the competent authorities of a Member State, in the course of exercising his profession, to produce, process, store, receive and dispatch products subject to excise duty under the duty-suspension arrangements in the context of the warehousing system.

b) warehouse: any place in which an approved warehouse, in the course of exercising his profession, produces or stores, under the duty-suspension arrangements, products subject to excise duty under certain conditions laid down by the competent authorities of the Member State in which the warehouse is situated.

c) duty-suspension arrangements: the arrangements applying to the production, processing, storage and movement of products in respect of which excise duty has been suspended.

d) registered operator: a natural or legal person other than an authorized warehousekeeper authorized by the competent authorities of a Member State to receive, in the course of exercising his profession, products subject to excise duty originating in another Member State under the duty-suspension arrangements; such operators shall not, however, be permitted to store or dispatch the products under the duty-suspension arrangements.

e) non-registered operator: a natural or legal person other than an authorized warehousekeeper who is entitled, in the course of exercising his profession, to receive, on an occasional basis, products subject to excise duty originating in another Member State under the duty-suspension arrangements; such operators shall not be permitted to store or dispatch the products under the duty-suspension arrangements. A non-registered operator shall, prior to the dispatch of goods, guarantee payment of the excise duty to the fiscal authorities of the recipient Member State.

(Amendment No. 5)
Article 4(1)

1. The chargeable event for the excise duty levied on the products subject to excise duty shall be production on the territory of the Community or importation onto the territory of the Community from third countries.

1. The chargeable event for the excise duty levied on the products subjects to excise duty shall be production on the customs territory of the Community or importation onto the customs territory of the Community from third countries.

(Amendment No. 6)
Article 5(1)(ca) (new)

without prejudice to the provisions of paragraphs (a) and (c), tobacco products shall be excluded from mail order selling as defined in Article 28 of Directive ... (1)

1) The Directive referred to relates to the general VAT arrangements.

(Amendment No. 7)
Article 5a (new)

Products on which excise duty and Value Added Tax have been paid in one Member State and which have been acquired by an individual final consumer may in principle be moved to any other Member State without liability to further control or taxation.

(Amendment No. 8)
Article 6(2)

2. The production and holding of products subject to excise duty, where the latter has not been paid, shall be subject to checks carried out under the system of tax warehouses, hereinafter called "warehouses".

2. The production and holding of products subject to excise duty, where the latter has not been paid or otherwise accounted for, shall be subject to checks carried out under the system of tax warehouses, hereinafter called "warehouses".

(Amendment No. 9)
Article 7

The opening of warehouses shall be subject to authorization by the competent authorities of the Member States.

The opening of warehouses shall be subject to authorization by the competent authorities of the Member States.

The holders of such authorization shall be known as authorized warehousekeepers.

The holder of such authorization shall be known as authorized warehousekeepers.

Member States shall make available, annually, a list of warehousekeepers to whom they have given such authorization.

(Amendment No. 10)
Article 11

1. Movement under the duty-suspension arrangement of products subject to excise duty shall take place between authorized warehousekeepers. The product shall then be deemed to be remaining under the warehousing system.

1. Without prejudice to the provisions of Articles 9 and 11a, movement under the duty-suspension arrangements of products subject to excise duty shall take place between authorized warehousekeepers.

2. The identification of products subject to excise duty moving under the duty-suspension arrangements shall be ensured by sealing, by capacity where the means of transport is capable of being recognized as suitable for sealing, or by individual package in other cases.

2. Warehousekeepers authorized by the competent authorities of a Member State, in accordance with the provisions of Article 7, shall be authorized for national and intra-Community movement operations.

3. Warehousekeepers authorized by the competent authorities of a Member State, in accordance with the provisions of Article 7, shall be deemed to be authorized for national and intra-Community movement operations.

4. 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 8.

This guarantee shall be valid throughout the Community.

5. By way of derogation from the provisions of the first sentence of paragraph 1, it shall be possible for the consignee not to be an authorized warehousekeeper. In such cases payment of the excise duty shall be made as soon as the products arrive at the consignee, under the conditions laid down by the competent authorities.

(Amendment No. 11)
Article 11 bis (new)

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 8, or, where necessary, by a joint guarantee provided by the consignor and the transporter.

The characteristics of the guarantee shall be determined at Member State level; it shall be valid throughout the Community.

4. The liability of the authorized warehousekeeper of dispatch and, where relevant, the transporter shall apply only after delivery of the products to the consignee and dispatch of the accompanying document mentioned in Article 12, under the conditions set out in Article 13(2).

1. By way of derogation from the provisions of Article 11(1), and in cases where the level of excise duty is determined without reference to the final selling price, it shall be possible for the consignee to be a professional operator other than an authorized warehousekeeper. Such a non-authorized warehousekeeper may, in the course of exercising his profession, receive products subject to excise duty originating in other Member States under the duty-suspension arrangements. He shall not, however, be permitted to store or dispatch such products under the duty-suspension arrangements.

2. An operator falling within the above category may, prior to receipt of the goods, request to be registered by the fiscal authorities of his Member State.

In order to be registered, an operator shall fulfil the following requirements:

a) he shall guarantee payment of the excise duties in accordance with the conditions laid down by the fiscal authorities of his Member State, without prejudice to the provisions of Article 11(4);

b) he shall keep a record of product deliveries;

c) he shall present the products whenever required to;

d) he shall cooperate with all checks and controls.

Operators in this category shall pay the excise duties following receipt of the goods and in accordance with the procedures laid down by each Member State.

3. Should the operator mentioned in paragraph 1 of this article not be registered with the fiscal authorities of his Member State, he must comply with the following requirements:

a) he shall, prior to dispatch of the goods, lodge a declaration with the fiscal authorities of the recipient Member State and guarantee payment of the excise duties, without prejudice to the provisions of Article 11(4);

b) he shall pay the excise duties required by the recipient Member State following receipt of the goods, in accordance with the procedures laid down by that Member State;

c) he shall cooperate with all checks aimed at enabling the administration of the recipient Member State to verify actual reception of the goods and payment of the excise duties required in respect of them.

4. Subject to the provisions of paragraph 2 and 3 of this article, the provisions of this directive relating to the movement of products subject to excise duty under the duty-suspension arrangements shall apply.

5. Member States may decide that the provisions of this article shall not apply when the level of excise duty can only be determined by reference to the final selling price.

(Amendment No. 12)
Article 11 ter (new)

A fiscal representative may be designated by the authorized warehousekeeper. This fiscal representative shall be based in the recipient Member State and shall be authorized by its fiscal authorities. When acting on behalf of the consignee, he shall comply with the following rules:

a) he shall guarantee payment of the excise duty in accordance with the conditions laid down by the fiscal authorities of the recipient Member State, without prejudice to the provisions of Article 11(4);

b) he shall pay the excise duty required by the recipient Member State following receipt of the goods, in accordance with the procedures laid down by that Member State;

c) he shall keep a record of product deliveries and inform the fiscal authorities of the recipient Member State of the destination of the goods.

(Amendment No. 13)
Article 11(quarter) (new)

6. Before the 1 January 1997, the Council shall, on the basis of a report by the Commission, re-examine the provisions of articles 11-11(ter), and, if necessary shall, after consultation with the European Parliament and acting on a proposal from the Commission, adopt amendments to align the national conditions laid down.

(Amendment No. 14)
Article 12(1)

1. Notwithstanding the possible use of computerized procedures, all products subject to excise duty moving under the duty-suspension arrangements between the territories of different Member States shall be accompanied by a document drawn up by the authorized warehousekeeper of dispatch, being either an administrative document such as that set out in Annex 1, or a commercial document containing the particulars listed in Annex 2.

1. Notwithstanding the possible use of computerized procedures, all products subject to excise duty moving under the duty-suspension arrangements between the territories of different Member States shall be accompanied by a document drawn up by the authorized warehousekeeper of dispatch, being (13 words deleted) a commercial document containing the particulars listed in Annex 1. In cases where the level of excise duty is determined with reference to the final selling price, the final selling price in the country of consumption shall be shown in the accompanying commercial document.

(Amendment No. 15)
Article 13

1. A copy of the accompanying administrative document or a copy of the commercial document shall be returned without delay for discharge, and not later than in the month which follows receipt, by the consignee to the consignor.

2. If there is no discharge, the consignor shall inform the competent authorities thereof.

1. The fiscal authorities of each Member State shall be informed by the operators of the goods dispatched and received, by means of the document mentioned in Article 12. There shall be three copies of this document:
- one copy to be kept by the consignor;
- one copy for the consignee;
- one copy to be returned by the consignee to the consignor for discharge.

However, the competent authorities of each Member State may authorize the existence of further copies of this document, i.e.:

- one copy, if necessary for the competent authorities of the Member State of origin;

- one copy, if necessary, for the competent authorities of the recipient Member State.

2. Where products subject to excise duty are moved under the duty-suspension arrangements to an authorized warehousekeeper or to a registered or non-registered operator, a copy of the commercial document, duly annotated, shall be returned by the consignee to the consignor no later than two months following receipt of the goods by the consignee.

The copy for return to the consignor shall include the following information required for discharge:

a) the address of the office of the financial authorities on which the consignee is dependent;

b) the date and place of receipt of the goods;

c) a description of the goods received, to permit verification as to whether the goods sent correspond to the description on the document;

d) the reference or registration number issued by the competent authorities of the recipient Member State;

e) the authenticated signature of the consignee.

3. If there is no discharge, the consignor shall inform the fiscal authorities of his Member State within a deadline to be fixed by those authorities. This deadline shall, at all events, be no later than three months after the date of dispatch of the goods.

(Amendment No. 16)
Article 15(2)

Any Member State using national identification marks or tax identification markings shall be required to make them available to manufacturers and traders of other Member States.

Any Member State using national identification marks or tax identification markings shall be required to make them available free of charge to manufacturers in the other Member States and to manufacturers and traders in cases where the level of excise is not determined by reference to the final selling price.

(Amendment No. 17)
Article 15(2a) (new)

2a. The granting of a period for payment shall be permitted. The detailed arrangements shall be laid down in accordance with the procedure under Article 20.

(Amendment No. 18)
Article 16

1. The products subject to excise duty released for consumption, may, at the request of any consignor, and by derogation from Article 11(1), be the subject of a release from or of a return into the duty-suspension arrangements and of a reimbursement of excise duties in the Member State of release for consumption, when the products are actually destined to be released for consumption in another Member State, or in the circumstances laid down in Article 18.

2. In the case of duly-established exceptional circumstances preventing the application of the provisions of paragraph 1, the Member State in which the release for consumption took place shall reimburse the amount wrongfully paid, in request, showing the payment of the excise duties in the Member State in which the actual release for consumption took place.

1. The products subject to excise duty released for consumption may, at the request of any operator in the course of exercising his profession, be the subject of a reimbursement of excise duties by the fiscal authorities of the Member State of release for consumption, where the products are destined to be released for consumption in another Member State.

2. The following rules apply to the implementation of the provisions of paragraph 1 of this article:

a) the consignor shall, prior to dispatch of the goods, lodge a request for reimbursement with the competent authorities of his Member State and shall produce proof of payment of the excise duties. However, the competent authorities shall not be permitted to make reimbursement dependent on mandatory submission of the document proving initial payment issued by those authorities themselves;

b) the movement of the goods mentioned in subparagraph a) above shall be accompanied by the document mentioned in Article 12(1);

c) the consignor shall submit to the competent authorities of his Member State the copy for return of the document mentioned in subparagraph b) above, duly annotated by the consignee and accompanied by a document certifying payment of the excise duties in the Member State of consumption, or, alternatively, containing the following information:
- the address of the relevant office of the fiscal authorities of the recipient Member State;
- the date of acceptance of payment by the above office, together with the reference or registration number of the payment.

3. The fiscal authorities of each Member State shall lay down the verification procedures to apply to reimbursements made within their territory. Member States shall ensure that the amount paid in reimbursement of excise duty does not exceed the amount of the original payment.

(Amendment No. 19)
Article 17

Without prejudice to the provisions of Titles II, III, and IV the Member States shall determine the conditions, including the guarantee, which shall be valid throughout the Community, under which the release from or returning into the duty-suspension arrangements, the ensuing reimbursement, as well as reimbursement a posteriori are applied. However, the reimbursement must be made within a period of one month from the day of the release from or return into the duty-suspension arrangements as provided for in Article 16(1), or from the day that the request for reimbursement is lodged as provided for by Article 16(2).

Without prejudice to the provisions of Titles II, III, and IV the Member States shall determine the conditions, including the guarantee, which shall be valid throughout the Community, under which (4 words deleted) returning into the duty-suspension arrangements, the ensuing reimbursement, as well as reimbursement a posteriori are applied. However, the reimbursement must be made within a period of one month from the day of receipt of the discharge from the consignee as provided for under Article 13 in the case of goods provided for in Article 16(1), or from the day that the request for reimbursement is lodged as provided for by Article 16(2), whichever is the later.

(Amendment No. 20)
Article 18

The products subject to excise duty shall be exempted from payment of excise duty where they are intended for diplomatic or consular representations, international organizations recognized as such by the authorities of the host country, and members of such representations and organizations within the limits laid down by the conventions establishing them or, in the Member States which are parties to the North Atlantic Treaty, for the armed forces of other States which are parties to that Treaty for the use of such forces or the civilian staff accompanying them or for supplying their messes or canteens where such forces take part in the common defence effort.

The products subject to excise duty shall be exempted from payment of excise duty where they are intended for diplomatic or consular representations, international organizations recognized as such by the authorities of the host country, and members of such representations and organizations within the limits laid down by the conventions establishing them or, in the Member States which are parties to the North Atlantic Treaty, for the armed forces of other States which are parties to that Treaty for the use of such forces or the civilian staff accompanying them or for supplying their messes or canteens where such forces take part in the common defence effort. The provisions of this Directive shall not affect agreements covering sales of goods subject to excise duty in duty-free shops at ports and airports, and on board aircraft in flight or vessels at sea.

(Amendment No. 21)
Article 20(1)

1. The Committee may examine any question relating to the application of this Directive, and of Directives (... (1)) on manufactured tobacco, alcoholic beverages and mineral oils, submitted to it by its chairman either on his own initiative or at the request of the representative of a Member State.

1. The Committee may examine any question relating to the application of this Directive, and of other Directives (delete this reference) on manufactured tobacco, alcoholic beverages and mineral oils, submitted to it by its chairman either on his own initiative or at the request of the representative of a Member State.

(Amendment No. 22)
Article 20(2)

2. After consulting the Committee, the Commission shall adopt the provisions necessary for the implementation of Titles II, III and IV of this Directive, and of Directives (... (2)) on manufactured tobacco, alcoholic beverages and mineral oils.

2. After consulting the Committee, the Commission shall adopt the provisions necessary for the implementation of Titles II, III and IV of this Directive, and of other Directives (delete this reference) on manufactured tobacco, alcoholic beverages and mineral oils.

(Amendment No. 23)
Article 21, first paragraph (a) (new)

They shall notify the Commission immediately of any provision of domestic law they adopt in the area governed by this Directive.

(Amendment No. 24)
Annex 1

ANNEX I

Delete ANNEX I

EXPLANATORY NOTE ON THE ACCOMPANYING ADMINISTRATIVE DOCUMENT

I. GENERAL REMARKS

...

II. HEADINGS

...

III. COMPLETION OF THE DOCUMENT

...

DRAFT LEGISLATIVE RESOLUTION

**embodying the opinion of the European Parliament
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**

The European Parliament,

- having regard to the Commission proposal to the Council (COM(90) 0431 final)¹,
 - having been consulted by the Council pursuant to Article 99 of the EEC Treaty (C3-0391/90),
 - having regard to the report of the Committee on Economic and Monetary Affairs and Industrial Policy and the opinions of the Committee on Agriculture, Fisheries and Rural Development and the Committee on Transport and Tourism (A3-0137/91),
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Calls for the conciliation procedure to be opened if the Council should intend to depart from the text approved by Parliament;
 5. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 6. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 322, 21.12.1990, p. 1.

B

EXPLANATORY STATEMENT

The explanatory statement will be presented orally in plenary sitting.

O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on Agriculture, Fisheries and Rural Development
for the Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman: Mr Ferruccio PISONI

At its meeting of 19 and 20 December 1990, the Committee on Agriculture, Fisheries and Rural Development appointed Mr F. Pisoni draftsman.

At its meetings of 25 and 26 April 1991 it considered the draft opinion.

At the latter meeting, the opinion as a whole was adopted

The following took part in the vote: Colino Salamanca, chairman; F. Pisoni, draftsman (replacing Mottola); Blaney, Bocklet, Carvalho Cardoso, Dalsass, Domingo Segarra, Fantuzzi, Funk, Garcia, Görlach, Herman (for Ortiz Climent), Howell, Keppelhoff-Wiechert, Lane, Lüttge (for Rothe), Marck, N. Pisoni, Santos Lopez, Saridakis, Sierra Bardaji, Sonneveld, Vazquez Fouz, Verbeek.

1. The Commission's proposal concerns the general arrangements for the holding and movement of products subject to excise duty, such as manufactured tobacco, alcoholic beverages and mineral oils. It establishes the general principle, as far as the intra-Community movement of such products is concerned, that excise duties are payable in the country in which the products are actually consumed and where the tax revenue is generated.
2. Products may be moved on the basis of an accompanying administrative document between the various interconnected tax warehouses. The proposal lays down the various technical measures concerned with controls, authorization for operators, the necessary documents, measures to combat fraud, reimbursements aimed at avoiding double taxation and the establishment of a Committee on Excise Duties.
3. Save for any possible technical adjustments, the proposal can be adopted insofar as the clarity of the procedure can only benefit agricultural producers.
4. The rapporteur merely stresses that the controls should be implemented gradually so as to avoid imposing on production units new administrative and financial burdens that are not strictly necessary.
5. Subject to this reservation, the Committee on Agriculture supports this proposal.

O P I N I O N

(Rule 120 of the Rules of Procedure)
of the Committee on Transport and Tourism
for the Committee on Economic and Monetary Affairs
and Industrial Policy
Draftsman: Mr CORNELISSEN

At its meeting of 29 January 1991 the Committee on Transport and Tourism appointed Mr Cornelissen draftsman for the opinion.

At its meeting of 14 May 1991 the committee considered the draft opinion and adopted the following conclusions by 14 votes to 1 with 3 abstentions.

The following took part in the vote: Amaral, chairman; Topmann, Beazley, Christensen, vice-chairmen; Bourlanges, Coimbra Martins (for Iacono), Cornelissen, draftsman (for Fantini); Joanny, Lalor (for Marleix), Müller, Romera i Alcazar, Sapena Granell, Sarlis, Schlechter, Schodruch, Simpson, Stewart, Visser, Wijsenbeek.

For the explanatory statement see the opinion by Mr Cornelissen on the Commission proposal for an amended proposal for a Council directive on the approximation of the rates of excise duty on mineral oils (COM(89) 0526 final - Doc. C3-26/90) - report by Colom i Naval (Doc. A3-0138/91).

Conclusions:

The Committee on Transport and Tourism approves 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) subject to the following amendments:

Amendment No. 1

Commission text

Amendment

Article 3(2)

Add:

... value added tax, with the exception of surtaxes which the Member States may levy over and above the excise duties on mineral oils used in motor vehicles, provided that these surtaxes are intended to discourage the use of motor vehicles, encourage the use of public transport, or combat the environmental damage caused by the use of mineral oils in motor vehicles.

Amendment No. 2

Article 18

The products subject to excise duty shall be exempted from payment of excise duty where they are intended for diplomatic or consular representations, ... take part in the common defence effort.

The products subject to excise duty shall be exempted from payment of excise duty where they are intended for diplomatic or consular representations, ... take part in the common defence effort. The provisions of this directive shall not in any way affect existing agreements on the sale of products subject to excise duty in duty-free shops at ports and airports and on board aircraft in flight or vessels at sea up to 31 December 1997.

