

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 790 final

Brussels, November 30, 1982

PROPOSAL FOR A COUNCIL DIRECTIVE

on a derogation accorded to Denmark
relating to the rules governing turnover tax and
excise duty applicable in international travel

(submitted to the Council by the Commission)

COM(82) 790 final

C. J. F. 12

EXPLANATORY MEMORANDUM

Annex VII, Part V, paragraph 1 of the Act of Accession granted a derogation to Denmark relating to the application of certain provisions of Council Directive 69/169/EEC of 28 May 1969⁽¹⁾, as amended by Directives 72/230/EEC of 12 June 1972⁽²⁾, 78/1032/EEC⁽³⁾, 78/1033/EEC⁽³⁾, 81/933/EEC⁽⁴⁾, and 82/443/EEC⁽⁵⁾, on the harmonisation of provisions laid down by law, regulation or administrative action relating to the rules governing turnover tax and excise duty applicable in international travel. The Council was to decide before 31 December 1975 whether and how far a prolongation of this derogation appeared necessary, taking into account the extent to which economic and monetary union, and particularly progress in tax harmonisation, had been achieved. By directives of 20 January 1976⁽⁶⁾, 18 January 1977⁽⁷⁾ and 19 December 1977⁽⁸⁾, the Council accorded three prolongations of the derogation, respectively up to and including 31 December 1976, 31 December 1977 and 31 December 1982.

The Danish Government has expressed concern at the economic consequences which full application of the existing directives on travellers' allowances would present, because of the particularly high level of excises in Denmark, and has requested a further prolongation.

The last prolongation of the derogation was accorded by the Council in 1977, for a five-year term and included provision for certain relaxations in the existing Danish rules. During this period, the Commission has

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- (1) O.J. No L 133, 4.6.1969, p. 6
(2) O.J. No L 139, 17.6.1972, p. 28
(3) O.J. No L 366, 28.12.1978, p. 28 and 31
(4) O.J. No L 338, 25.11.1981, p. 24
(5) O.J. No. L 206, 14.7.1982, p. 35
(6) O.J. No. L 21, 29.1.1976, p. 9
(7) O.J. No. L 23, 27.1.1977, p. 50
(8) O.J. No. L 336, 27.12.1977, p. 21

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presented annual reports⁽¹⁾ on the evolution of the prices of alcoholic drinks and tobacco products in Denmark and Germany, on the evolution of fares for travellers and on the fiscal policy of the Danish Government.

The fifth report of the Commission, (COM(82) 673) submitted to the Council on 26 October 1982, includes a general review of the overall changes during the first four and a half years of the five-year derogation period. The report concludes that, during this period, the tax levels in Denmark and Germany have moved somewhat closer together, and that the weakening of the Danish crown relative to the DM has also been a factor tending to reduce the price advantages for Danish travellers making purchases in Germany. As a consequence, the price gaps for most products covered by this report have been substantially reduced, by comparison with the situation at the end of 1977. On the other hand, due largely to the mixed excise on spirits, introduced in May 1980 following the Court ruling of 27 February 1980 against the Danish two-tier alcohol taxation, the price gap for many spirits - particularly expensive spirits - remains substantial.

The report also notes, however, that shopping excursions by bus are continually increasing, suggesting that a large proportion of the cross-border trips originating in Denmark continue to be made largely in order to avoid Danish taxes, and that planned increases in the Danish excises will offset to some degree the progress made in reducing the price gaps. (The imposition of VAT on the fares for bus excursions may tend to slow down the growth in this traffic).

The Commission is naturally concerned that, almost ten years after Denmark's accession to the Community, Danish residents continue to be denied the allowances normally granted to travellers elsewhere in the Community. This is, to say the least, an unfortunate situation, and one which should be brought to an end as quickly as possible. On the other hand, the

(1) COM(79) 774
COM(80) 33
COM(80) 880
COM(81) 806
COM(82) 673

Commission acknowledges that, given the present price differentials for excise products between Denmark and Germany, and in view of the present economic situation in Denmark, full alignment on the Community allowances on 1 January 1983 - as had been foreseen when the derogation was last prolonged in 1977 - would have unacceptable budgetary and economic consequences.

In these circumstances, the Commission feels obliged to propose that the derogation be again prolonged. However, the Commission is firmly of the view that this prolongation should be accompanied by a programme of progressive liberalisation of the present Danish rules, so that the adjustment remaining to be made to the Community rules at the end of the derogation period should be relatively modest. The alternative to such a programme is the virtual institutionalisation of the derogation, which the Commission regards as unacceptable.

For these reasons, the attached draft Council directive proposes in Article 1 a five-year prolongation of the derogation, with provision for progressive and substantial relaxations, either in the quantitative limits, or in the rules governing the period to be spent abroad in order to qualify for the allowances. It will be seen, in particular, that it is proposed that minor steps will be taken in the first two years of the proposed derogation period and after that the quantitative limits will be phased out quite rapidly. The normal quantitative limits should apply from 1 January 1986 for cigarillos, cigars, normal smoking tobaccos, and beer, whereas the limit for cigarettes and hand-rolling tobacco (at present 60 pieces and 100 g respectively) should be increased to 200 pieces and 250 g from the same date. In Article 2 it is proposed that the medium-term programme as proposed in Article 1 to align Denmark to the harmonised Community rules may be taken up for re-examination after one and a half years, if at that time the state of the Danish economy and balance of payments requires a postponement of the application of all or part of the above mentioned realignment steps.

Annexed is a table comparing the existing Danish allowances for goods covered by the derogation with the normal Community allowances.

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ANNEX

| <u>Excise goods at present covered by the derogation</u> | <u>Current (1982) allowances for a Danish resident returning after less than 48 hours abroad (Directive 77/800/EEC)</u> | <u>Normal Community allowances (Directive 69/169/EEC)</u> |
|--|---|---|
| Cigarettes | 60 | 300 |
| or | | |
| Cigarillos (cigars of a maximum weight of 3 gm) | 20 | 150 |
| or | | |
| Cigars | 20 | 75 |
| or | | |
| Smoking tobacco | 100 gm | 400 gm |
| Distilled beverages and spirits of an alcoholic strength exceeding 22 % volume | Nil | 1.5 litres |
| Beer | 2 litres | No quantity limit |

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Articles 99 and 100 thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Annex VII, Part V 1 (a) to Article 133 of the 1979 Act of Accession, Denmark was granted a derogation regarding the application of certain provisions of Council Directive 69/169/EEC of May 28, 1969 on the harmonisation of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel ⁽¹⁾, as last amended by Directive 82/443/EEC ⁽²⁾; whereas this derogation was last extended by Directive 77/800/EEC ⁽³⁾ adopted pursuant to Annex VII, Part V 1(c) of the said Act of Accession;

Whereas the Danish Government has requested a further period in which to apply the harmonised rules stemming from Directive 69/169/EEC;

(1) OJ No L 133, 4.6.1969, p. 6

(2) OJ No L 206, 14.7.1982

(3) OJ No L 336, 27.12.1977, p. 21

Whereas the tax system at present applied in Denmark does not yet allow the full application of such rules in Denmark without the risk of serious economic consequences;

Whereas, therefore, Denmark should be provisionally authorised to apply exceptional arrangements; whereas, however, in order to facilitate adaptation, provision should be made for the progressive adaptation of these arrangements to the harmonised Community rules,

HAS ADOPTED THIS DIRECTIVE :

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Article 1

1. Notwithstanding Directive 69/169/EEC, Denmark is hereby authorised, in respect of exemption for imports of tobacco products, alcoholic beverages (distilled beverages and spirits of an alcoholic strength exceeding 22 % volume) and beer to apply the following quantitative limits, where such goods are imported by travellers resident in Denmark, after a stay in another country :

- until 31 December 1985, when the stay is less than 48 hours, and
- from 1 January 1986 to 31 December 1987, when the stay is less than 24 hours:

| | Until 31.12.83 | From 1.1.84 to 31.12.84 | From 1.1.85 to 31.12.85 | From 1.1.86 to 31.12.86 | From 1.1.87 to 31.12.87 |
|--|-------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Cigarettes | 60 | 60 | 140 | 200 | 240 |
| or | | | | | |
| Cigarillos (cigars of a maximum weight of 3 gm) | 20 | 40 | 60 | - | - |
| or | | | | | |
| Cigars | 20 | 30 | 40 | - | - |
| or | | | | | |
| Smoking tobacco where the tobacco particles have a width of at least 1.5 mm | 100 gm | 200 gm | 300 gm | - | - |
| or | | | | | |
| other smoking tobacco (fine cut) | 100 gm | 100 gm | 200 gm | 250 gm | 300 gm |
| Distilled beverages and spirits of an alcoholic strength exceeding 22 % vol. | Nil | Nil | 0.35 litre | 0.35 litre | 0.7 litre |
| Beer | 2 litres | 4 litres | 6 litres | - | - |

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2. Where the traveller is returning from a stay in a third country, the allowances may in no circumstances exceed those laid down in Article 4 (1), column I of Directive 69/169/EEC.

Article 2

If, in the light of the levels of Danish excise rates then obtaining and of the expected evolution of the Danish economy and balance of payments over the period 1985-1987, Denmark presents, by June 30, 1984, a request to postpone the application of all or part of the subsequent changes provided for in Article 1, the Council, acting unanimously on a proposal from the Commission, may grant such postponement for a limited period.

Article 3

Denmark shall communicate to the Commission the texts of the measures which it adopts in order to comply with this Directive.

Article 4

This Directive is addressed to the Kingdom of Denmark.

Done at Brussels,

For the Council
The President