

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(92) 6 final

Brussels, 23 January 1992

Amendment to the proposal for a

COUNCIL DIRECTIVE

on the general arrangements for products subject to excise duty
and on the holding and movement of such products

(presented by the Commission pursuant to Article 149(3)
of the EEC-Treaty)

EXPLANATORY MEMORANDUM

On 27 September 1990 the Commission presented to the Council a proposal for a Directive on the general arrangements for products subject to excise duty and on the holding and movement of such products.¹

The Economic and Social Committee gave its opinion on the matter on 30 January 1991.²

The European Parliament gave its opinion on 12 June 1991,³ acting on the basis of a report prepared by the Committee on Economic and Monetary Affairs and Industrial Policy. On that occasion, twenty-six amendments to the report were adopted by Parliament. The amendments are aimed inter alia at extending the concept of "authorized warehousekeeper", at requiring Member States to draw up each year a list of their authorized warehousekeepers, at describing the procedures for providing documentation and at redesigning the arrangements for the reimbursement of excise duty.

The Commission has taken up eight of the amendments adopted by Parliament, and these are the subject of this amended proposal.

1 OJ No C 322 of 21 December 1990, p. 1.

2 OJ No C 69 of 18 March 1991, p. 25.

3 OJ No C of, p.

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ORIGINAL PROPOSAL

TITLE I
GENERAL PROVISIONS

Article 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.

2. The particular provisions relating to the rates and structures of duty on products subject to excise duty are contained in Directives ... (1)

AMENDED PROPOSAL

TITLE I
GENERAL PROVISIONS

Article 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 European Communities.

2. Unchanged

Article 3a (new)

For the purposes of this Directive:

(a) "authorized warehousekeeper" means the natural or legal person authorized by the competent authorities of a Member State to produce, process, hold, receive and dispatch, in the exercise of his occupation, products subject to excise duty under the duty-suspension arrangements as they apply under the tax-warehousing system;

(b) "tax warehouse" means any place at which products subject to excise duty are produced or held by an authorized warehousekeeper in the exercise of his occupation under the duty-suspension

arrangements, subject to certain conditions laid down by the competent authorities of the Member State in which the tax warehouse is situated;

(c) "duty-suspension arrangements" means the tax arrangements applying to the production, processing, holding and movement of products under suspension of duty;

(d) "registered operator" means the natural or legal person who does not rank as an authorized warehousekeeper and who is authorized by the competent authorities of a Member State to receive in the exercise of his occupation products subject to excise duty under the duty-suspension arrangements and originating in another Member State. A registered operator may not, however, hold or dispatch the products under the duty-suspension arrangements;

(e) "non-registered operator" means the natural or legal person who does not rank as an authorized warehousekeeper and who is authorized to receive on an occasional basis in the exercise of his occupation products subject to excise duty under the duty-suspension arrangements and originating in another Member State. A non-registered operator may not hold or dispatch the products under the duty-suspension arrangements. Prior to the dispatch of goods, he shall guarantee payment of the excise duty to the tax authorities of the Member State of destination.

Article 4

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.

2. Excise duty shall become chargeable when the products are released for consumption. Release for consumption shall mean the making available, to a natural or legal person, on the territory of a Member State, of any products subject to excise duty, when the product leaves any arrangement under which payment of duties and taxes is suspended.

3. The rate of excise duty to be applied shall be the rate in force on the date on which the duty becomes chargeable. The excise duty shall be levied and recovered according to the rules laid down by each Member State, with the time-limit for payment to apply without distinction between national products and those of other Member States.

Article 4

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

2. Unchanged

3. Unchanged

TITLE III
MOVEMENT OF GOODS

Article 11

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

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.

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 national and 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.

TITLE III
MOVEMENT OF GOODS

Article 11

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

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

3. The risks inherent in Intra-Community movement shall be covered by the guarantee provided by the authorized warehousekeeper of dispatch and prescribed in Article 8 or, where appropriate, by a joint and several guarantee provided by the consignor and the carrier. The guarantee, the characteristics of which shall be determined by the Member States, shall be valid throughout the Community.

4. The liability of the authorized warehousekeeper of dispatch and, where applicable, that of the carrier may be discharged only after delivery of the products to the consignee and return of the accompanying document referred to in Article 12, under the conditions laid down in Article 13(2).

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.

Article 11a (new)

1. By way of derogation from Article 11(1), and in cases where the level of excise duty is not determined by reference to the final selling price, the consignee may be a professional operator who does not rank as an authorized warehousekeeper. A non-authorized warehousekeeper may, in the exercise of his occupation, receive products subject to excise duty under the duty-suspension arrangements and originating in another Member State. He may not, however, hold or dispatch such products under the duty-suspension arrangements.

2. An operator as referred to above may, prior to receipt of the goods, ask to be registered with the tax authorities of his Member State.

A registered operator shall comply with the following requirements:

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

(b) he shall keep a record of product deliveries;

(c) he shall present the products whenever so required;

(d) he shall consent to all checks and controls.

For such an operator, excise duty shall be chargeable on receipt of the goods and shall be paid in accordance with the procedures laid down by each Member State.

3. If an operator as referred to in paragraph 1 is not registered with the tax authorities of his Member State, he shall comply with the following requirements:

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

(b) he shall pay the excise duty chargeable in the Member State of destination on receipt of the goods, in accordance with the procedures laid down by that Member State;

(c) he shall consent to all checks enabling the administration of the Member State of destination to verify that the goods have actually been received and that the excise duty chargeable has been paid.

4. Subject to paragraphs 2 and 3 above, the provisions of this Directive relating to the movement of products subject to excise duty under the duty-suspension arrangements shall be applicable.

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

Article 11b (new)

A tax representative may be appointed by the authorized warehousekeeper. He shall be established in the Member State of destination and shall be authorized by the tax authorities of that Member State. When acting on behalf of the consignee, he shall comply with the following requirements:

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

(b) he shall pay the excise duty chargeable in the Member State of destination on 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 shall inform the tax authorities of the Member State of destination of the place to which the goods have been supplied.

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.

Article 13

1. The tax authorities of each Member State shall be informed by operators of goods dispatched and received by means of the document referred to in Article 12. This document shall be completed in triplicate:

- one copy to be retained 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 provide for the use of further copies of this document:

- one copy, where appropriate, for the competent authorities of the Member State of departure;
- one copy, where appropriate, for the competent authorities of the Member State of destination.

2. Where products subject to excise duty are dispatched under the duty-suspension arrangements to an authorized warehousekeeper or to a registered or non-registered operator, a copy of the commercial document duly endorsed shall be returned by the consignee to the consignor not later than in the calendar month following that in which the goods were received by the consignee.

The return copy shall contain the following particulars necessary for discharge:

- (a) the address of the office of the tax authorities responsible for the consignee;

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

(c) a description of the goods received in order to determine whether the consignment corresponds to the particulars given on the document;

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

(e) the authorized signature of the consignee.

3. If there is no discharge, the consignor shall inform the tax authorities of his Member State within a period to be determined by those authorities. That period may not, however, exceed three months after the date of dispatch of the goods.

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, on request, showing the payment of the excise duties in the Member State in which the actual release for consumption took place.

Article 16

1. Products subject to excise duty which have been released for consumption may, at the request of an operator in the exercise of his occupation, qualify for reimbursement of excise duty by the tax authorities of the Member State in which the products were released for consumption in cases where they are intended for consumption in another Member State.

2. For the purposes of paragraph 1, the following provisions shall apply:

(a) the consignor shall, prior to dispatch of the goods, submit an application for reimbursement to the competent authorities of his Member State and shall produce evidence of payment of the excise duty. However, the competent authorities may not make reimbursement dependent on the compulsory presentation of the document drawn up by those authorities and evidencing initial payment;

(b) the movement of the goods referred to at (a) shall take place on the basis of the document referred to in Article 12(1);

(c) the consignor shall present to the competent authorities of his Member State the return copy of the document referred to at (b) duly endorsed by the consignee and accompanied by a document certifying payment of excise duty in the Member State of consumption or giving:

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- the address of the relevant office of the tax authorities of the Member State of destination;

- the date of acceptance of payment by that office, together with the reference or registration number of the payment.

3. The tax authorities of each Member State shall lay down the control procedures for reimbursements effected within the national territory. Member States shall ensure that the amount of excise duty reimbursed does not exceed the amount actually paid.

1. 1990

2. 1991

3. 1992

4. 1993

5. 1994

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DOCUMENTS

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