

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(92) 426 final

Brussels, 9 October 1992

PROPOSAL

FOR A

COUNCIL DIRECTIVE

amending Council Directive 92/12/EEC

of 25 February 1992

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

1. This proposal for a Directive simplifies and clarifies - without altering their content or substance - certain Articles of Council Directive 92/12/EEC¹ of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products.

II. COMMISSION PROPOSAL

2. Article 1 of this proposal clarifies that certain territories of Member States are to be treated as third countries for fiscal purposes.
3. Article 2 of this proposal is a simple clarification with a view to a better understanding of the legal text.
4. Article 3(a) of this proposal makes it clear that the intra-Community movement of products subject to zero-rate excise duty takes place between tax warehouses, so ensuring that such products are covered by the movement arrangements provided for in Directive 92/12/EEC.
5. Articles 3(b), 4, 5(c) and 6 of this proposal establish a legal framework for the submission to the Committee on Excise Duties of purely technical draft simplification measures which take account of the specific circumstances surrounding certain movements of products subject to excise duty, (particularly in the case of a change of consignee), which relate to verification by the consignor on the status of the consignee, which relate to delivery of products under Community transit arrangements and which provide for certain arrangements in respect of administrative cooperation.
6. In order to simplify administrative procedures, Article 5(a) of this proposal provides for an accompanying document not to be used where computerized procedures are employed.

1 OJ No L 76, 23.3.1992.

7. Article 5(d) of this proposal stipulates that, where the dispatch of products subject to excise duty gives rise to a declaration to the effect that those products are to be placed under the internal Community transit procedure by means of the single administrative document, that document has the same legal effect as the accompanying document for excise duty purposes referred to in Article 18 of Directive 92/12/EEC. This will mean, inter alia, that there will be no need for documents to be substituted, thus simplifying documentary procedures, where products subject to excise duty move between Member States via EFTA countries.
8. Article 6 of this proposal provides, also in respect of products subject to zero-rate excise duty, for the duty to be collected by the Member State of destination where it is not possible to determine where the offence or irregularity was committed and the products do not reach their destination.
9. Article 7 of this Directive specifies that the procedures relating to Articles 15 and 15a (new) of Directive 92/12/EEC shall be laid down in accordance with the procedure foreseen in paragraphs 3 and 4 of Article 24.
10. Article 8 of this proposal provides, finally, that when products subject to excise are under a suspension arrangement (tax or customs duty) before 24.00 on 31 December 1992, the excise duty on them shall be deemed to be suspended after that date.

PROPOSAL FOR A COUNCIL DIRECTIVE
amending Council Directive 92/12/EEC
of 25 February 1992 on the general arrangements
for products subject to excise duty and on the holding,
movement and monitoring of such products

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,¹

Having regard to the opinion of the Economic and Social Committee,²

Whereas it is necessary, in order to give full effect to the provisions of Council Directive 92/12/EEC of 25 February 1992 to stipulate the territories of the Member States which must be treated as third countries for fiscal purposes.

Whereas it should be made clear that the intra-Community movement of products subject to zero-rate excise duty is also to take place between tax warehouses;

Whereas draft simplification measures of a purely technical nature relating in particular to a change of consignee, to verification by the consignor of the status of the consignee and to certain arrangements for administrative cooperation should be submitted to the Committee on Excise Duties;

Whereas, in order to simplify administrative procedures, an accompanying document should not be used where computerized procedures are employed.

Whereas, in order to simplify documentary procedures, in the event of the dispatch of products subject to excise duty giving rise to a declaration to the effect that those products are to be placed under the internal Community transit procedure by means of the single administrative document, it should be established that that document is equivalent to an accompanying document for excise-duty purposes;

Whereas in the event of products subject to excise duty not arriving at their destination and it not being possible to determine where the offence or irregularity was committed, it

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should be established that the excise duty is to be collected by the Member State of destination;

Whereas, finally, provision should be made, in the case of products subject to excise duty that are covered by suspension arrangements in 1992, that those products should be under suspension of excise duties thereafter if the suspension arrangements have not been discharged,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Article 5(2) of Council Directive 92/12/EEC the words "or territories referred to in Article 2(1)(2) and (3) or the Channel Islands" shall be added after the words "third countries".

Article 2

In Article 7(2) of Council Directive 92/12/EEC the words "intended for delivery" shall be deleted and the words "or intended for delivery in another Member State" added after the words "are delivered".

Article 3

Article 15 of Council Directive 92/12/EEC is hereby amended as follows:

- (a) the following subparagraph shall be added to paragraph 1:

"The provisions of the above subparagraph shall apply *mutatis mutandis* to the intra-Community movement of products subject to zero-rate excise duty."

- (b) The following paragraph shall be added:

"5. In order to take account of the specific circumstances surrounding certain types of movement of products subject to excise duty, it shall be necessary to derogate from certain provisions of Title III of this Directive, principally as regards a change of consignee.

The arrangements and formalities relating to certain alterations, and in particular to a change of consignee, shall be laid down in accordance with the procedure provided for in Article 24 of this Directive."

Article 4

In Title III of Council Directive 92/12/EEC the following Article 15a shall be added:

"Article 15a

The arrangements to enable traders and the competent authorities to verify the status of the consignee in the light of the rules governing the movement of products subject to excise duty shall be laid down in accordance with the procedure provided for in Article 24 of this Directive."

Article 5

Article 18(1) of Council Directive 92/12/EEC is hereby amended as follows:

- (a) in the first sentence the words "Notwithstanding the possible use" shall be replaced by the words "Except in the case of the use";
- (b) after the words "Member States" the following words shall be added: "including those moving by sea directly from one Community port to another";
- (c) after the final word in the paragraph the following shall be added: "as shall be the arrangements under which the accompanying document is replaced by a computerized procedure."
- (d) a new paragraph 1a shall be added:

"1a) where the dispatch of products subject to excise duty which are to move between Member States via EFTA countries gives rise to a declaration to the effect that those products are to be placed under the internal Community transit procedure by means of the single administrative document, that document shall be equivalent to that referred to above.

In that case:

- it shall be clearly indicated on the single administrative document that a dispatch of products subject to excise duty is involved;
- it will be necessary for a duly annotated copy of the single administrative document to be sent back by the consignee for discharge purposes in accordance with the procedure foreseen in Article 19 of this Directive."

Article 6

In Article 20(3) of Council Directive 92/12/EEC the following sentence shall be added after the final sentence:

"However, where the Member State of departure applies a zero-rate excise duty to products which do not arrive at their destination and it is not possible to determine where the offence or irregularity was committed, that offence or irregularity shall be deemed to have been committed in the Member State of destination, which shall collect the excise duties at the rate in force on the date when the products were dispatched."

Article 7

In Article 24(2) of Council Directive 92/12/EEC the figures "15, 15a" shall be inserted after "Articles 7".

Article 8

In Title VII of Council Directive 92/12/EEC the following Article 25a shall be added:

"Article 26a

Products subject to excise duty that are under a suspension arrangement other than specified in Articles 5(2) and 18(1a) before 1 January 1993 and which has not been discharged, shall be deemed, after that date, to be under suspension of excise duty.

When this involves the internal Community transit suspension arrangements, the provisions in force at the time when the products were placed under these arrangements shall continue to apply during the period when these products are under these arrangements which shall be determined in accordance with the said provisions.

When this involves national suspension arrangements, Member States shall determine the conditions and the formalities under which the suspension arrangements are discharged after 1.1.1993.

FINANCIAL STATEMENT

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

Statement of impact on SMEs and Employment

This proposed Directive modifying Council Directive 92/12/CEE dated 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring such products is necessary in the light of the abolition of fiscal frontiers and is part of all the measures taken in order to achieve the internal market.

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

None

2. What are the advantages for businesses?

- administrative benefits regarding change of consignee;

- a benefit for the consignor with verification of the status of the consignee.

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

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

4. Effects on employment:

None

5. The two sides of industry have not been consulted.

6. No less binding alternative is available with a view to abolishing tax frontiers.

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DOCUMENTS

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