

Opinion of the European Economic and Social Committee on the 'Proposal for a Council directive amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products'

(COM(2004) 227 final)

(2005/C 120/19)

On 24 May 2004, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 October 2004. The rapporteur was Mr Wilkinson.

At its 412th plenary session (meeting of 27 October 2004), the European Economic and Social Committee adopted the following opinion by 84 votes in favour and 11 votes against, with 5 abstentions.

1. Introduction

1.1 Before the Internal Market came into operation there were wide differences in the systems and rates applied to excisable goods resulting from historical and cultural differences between Member States. Directive 92/12/EEC agreed to harmonise the general arrangements for products subject to excise duty ⁽¹⁾ and on the holding, movement and monitoring of such products ⁽²⁾.

1.2 Article 27 of this Directive required that before 1 January 1997 the Council should re-examine the provision of Articles 7, 8, 9 and 10 and adopt any necessary amendments ⁽³⁾. This deadline of 1 January 1997 proved to be too early to give a valid verdict on the difficulties that had been experienced, and continue to be experienced, in applying these Articles.

1.3 Since the directive came into force the interest in moving those excisable products on which tax had already been paid, which are regulated by Articles 7 to 10 of the Directive, has grown considerably. This led, at the request of traders,

⁽¹⁾ The goods are manufactured tobacco, mineral oils and alcoholic beverages.

⁽²⁾ Generally excisable products moving within the EU do so under 'duty suspension' between 'tax warehouses' in the Member States under cover of agreed documentation. Excise duty is paid in the Member States where the products are in due course released for consumption.

⁽³⁾ Excisable goods already released for consumption in a Member State, and thus on which excise duty has been paid in that Member State, may also be moved within the EU. It is movements of this type that are regulated by the provisions of Articles 7 to 10.

to the introduction by some Member States of some simplified procedures. Also there have been many complaints from the public in the way in which the Articles concerned have been applied.

1.4 The Commission considers that there is now enough understanding of the problems that exist in the various categories of movement that are involved ⁽⁴⁾ to propose necessary amendments.

2. General comments

2.1 The operation of the single market with respect to goods subject to excise duty has been complicated in its details, with a consequent uncertainty on how the regulations should be applied in some cases, and has imposed significant administrative burdens on the businesses involved. The Commission proposals cover commercial transactions, sales to private individuals and distance sales and aim to clarify, simplify and harmonise existing rules on intra-EU movements on which excise tax has already been paid in a Member State for the products concerned and to liberalise such movements so that EU consumers can enjoy more benefits from the Internal Market. The Committee welcomes both these objectives.

2.2 Because of the value of Member States' revenues from excise duties ⁽⁵⁾, and because of the differences in the ways in which Member States enforce the regulations, it has been difficult for the Commission to agree amendments with Member

⁽⁴⁾ The categories are products moved between Member States for commercial purposes (other than 'distance sales'), which are defined as all purposes other than personal use by private individuals, products purchased directly by private individuals for their own use, and distance sales.

⁽⁵⁾ The total value to Member States EU GDP in 2001 (15 MS) was in excess of EUR 8,8 billion and the average EU excise revenues as a percentage of GDP was 2,72 %.

States. It is noted that the 10 'new' Member States were not involved in the discussions with the Commission that led to the proposals. The Committee recognises the need for Member States to use excise duties as part of their revenues raising, but doubts that these proposals will change consumer habits to the extent that they will affect overall revenues substantially.

2.3 For goods subject to excise duty, consumer prices are often affected greatly by the tax rates applied. This is particularly true for manufactured tobacco products and for alcoholic beverages⁽¹⁾. There has been some reduction in the differences between excise duty rates applied in Member States since the start of the single market; but until the rates applied are subject to at least a significant measure of harmonisation the motive to seek better bargains in this area will persist and organised criminal activities will also continue in the area.

2.4 EU citizens expect to benefit from the single market in all sorts of ways, but the right to purchase any products wherever they wish in the EU at the local prices is an important benefit. To deny citizens this right does not encourage them to see the EU in a positive light.

2.5 As the Commission points out, the type of duty paid movement covered by the Articles in question mainly involved private individuals or small traders, who do not have substantial financial resources or commercial infrastructure. It is important that all measures agreed should be clear, simple to understand and, so far as possible, simple to apply. They must also be realistic and enforceable.

2.6 In a true internal market the rules on tobacco products should also be liberalised. However, the Committee recognises that in deciding what goods to include in the amended directive Member States will have to consider all the implications fully and that this might lead them to exclude some products.

2.7 It also notes that mineral oils are seldom moved other than commercially. It is thus clear that the proposals as formulated would mainly affect movements of alcoholic drinks.

⁽¹⁾ For manufactured tobacco products shop prices are about 3,7 times greater in the highest taxed Member State than in the lowest taxed. Excise duty rates applied to alcoholic beverages vary between highest and lowest taxing Member State by 15,9 times for beer and 'intermediate products' and by 9,2 times for spirit drinks. No such comparison can be given for wine products, since wine is not taxed at all in 12 of the 25 Member States and a minimal tax of 2 euro-cents per bottle is applied in 2 further Member States.

2.8 The Committee greatly welcomes the fact that many of the proposals are based on advice and requests from the business organisations involved in these matters and that they take cognisance of the effects on smaller enterprises.

3. Specific comments

3.1 **Article 7.** This essentially covers who should pay excise duties under various circumstances, administrative formalities, sales to passengers on intra EU journeys by ship or aircraft and the way in which losses of duty paid goods occurring on intra EU journeys should be handled.

3.1.1 The Committee welcomes the clarifications and harmonisation that the Commission's proposals will bring. It also greatly welcomes the recognition that the massive amount of administrative work required to comply fully under the existing rules needs to be reduced. The Committee supports the Commission's call for Member States to permit simplified procedures to be introduced by simple bilateral administrative agreements between Member States.

3.2 **Article 8.** This Article concerns products acquired by a private individual for their own use. The major point of issue here is the need for the goods concerned to be carried personally by the individual concerned.

3.2.1 The Committee welcomes the Commission's proposal to liberalise the system currently applied to distance purchases by private individuals so that the individual would no longer need to transport the goods purchased personally.

3.2.2 The Committee understands that the new proposal that the individual would personally have to make arrangements for the goods to be delivered to another Member State (and that these arrangements could not be made by the vendor) accords with the current general rules on VAT applied to distance purchases. However, it is hard to see how it could be enforced. For example, presumably the vendors could recommend a local agent who would arrange the transport, thus meeting the legal need not to make the arrangements themselves; but the effect would be the same. It should be made clear that this sort of advice under the amended directive would not be against the rules.

3.3 The proposal to abolish the 'indicative limits' ⁽¹⁾ as possible evidence on whether goods are for private or commercial use is welcomed by the Committee. The public generally take these figures as quantitative limits and too often the limits have been interpreted very narrowly in some Member States. The Committee recognises that removing these limits may make it harder to combat smuggling activities, but the limits have never been intended as more than one indication of whether a movement was for commercial rather than personal use; nor are they of themselves sufficient evidence legally.

3.3.1 However, the Committee suggests that it would not be inappropriate to apply some sort of quantitative restrictions to distance purchases (i.e. when the goods are not transported by the individuals concerned themselves).

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3.4 **Article 9.** The proposals covering the movement for personal use of mineral oils are most unlikely to cause significant problems.

3.5 **Article 10.** The Committee welcomes the proposed clarification of where excise duty is payable.

4. Summary

4.1 The Committee welcomes the proposals made by the Commission in this complex and sensitive area.

4.2 The proposals are realistic; the clarifications and simplifications are most welcome, the harmonisation is necessary and the liberalisation will be warmly welcomed by EU citizens since the benefits of the single market will be reinforced.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

⁽¹⁾ Indicative limits are now 800 cigarettes, 10 litres of spirits, 90 litres of wine and 110 litres of beer.