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*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a European Parliament and
Council decision on computerising the movement and surveillance of excisable
products
(15291/2002 – C5-0014/2003 – 2001/0185(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Piia-Noora Kauppi

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

At the sitting of 24 September 2002 Parliament adopted its position at first reading on the proposal for a European Parliament and Council decision on computerising the movement and surveillance of excisable products (COM(2001) 466 – 2001/0185 (COD)).

At the sitting of 30 January 2003 the President of Parliament announced that the common position had been received and referred to the Committee on Economic and Monetary Affairs (15291/2002 – C5-0014/2003).

The committee had appointed Piia-Noora Kauppi rapporteur at its meeting of 18 December 2001.

It considered the common position and draft recommendation for second reading at its meetings of 17 February 2003 and 25 March 2003.

At the latter it adopted the draft legislative resolution by 33 votes, with 1 abstention.

The following were present for the vote: Christa Randzio-Plath, chairman; José Manuel García-Margallo y Marfil, Philippe A.R. Herzog and John Purvis, vice-chairmen; Piia-Noora Kauppi, rapporteur; Generoso Andria, Roberto Felice Bigliardo, Armonia Bordes, Hans Udo Bullmann, Bert Doorn (for Ingo Friedrich), Harald Ettl (for Giorgos Katiforis), Jonathan Evans, Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Lutz Goepel (for Renato Brunetta), Lisbeth Grönfeldt Bergman, Mary Honeyball, Othmar Karas, Christoph Werner Konrad, Werner Langen (for Brice Hortefeux), Astrid Lulling, Thomas Mann (for Hans-Peter Mayer), Ioannis Marinos, David W. Martin, Miquel Mayol i Raynal, Peter Michael Mombaur (for Mónica Ridruejo), Fernando Pérez Royo, Elly Plooij-van Gorsel (for Karin Riis-Jørgensen), Alexander Radwan, Bernhard Rapkay, Olle Schmidt, Peter William Skinner, Ieke van den Burg (for Pervenche Berès) and Theresa Villiers.

The recommendation for second reading was tabled on 25 March 2003.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council decision on computerising the movement and surveillance of excisable products (15291/2002 – C5-0014/2003 – 2001/0185(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (15291/2002 – C5-0014/2003),
 - having regard to its position at first reading¹ on the Commission proposal (COM(2001) 466²) and amended proposal (COM(2002) 757³) to Parliament and the Council,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Economic and Monetary Affairs (A5-0088/2003),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C not yet published.

² OJ C 51, 26.2.2002, p. 372

³ OJ C not yet published.

Amendment 1
Recital 4a (new)

(4a) A computerised system for the intra-Community movement and monitoring of excisable goods (EMCS) should be compatible and - if technically possible - merged with the new computerised transit system (NCTS), so as to facilitate administrative and commercial procedures.

Justification

This amendment reinstates amendment 1 from the first reading, taking into account the drafting changes proposed by the Commission in its amended proposal.

Amendment 2
Recital 6a (new)

(6a) In developing the national components, Member States should apply the principles laid down for electronic government systems and should treat the economic operators in the same way as in the other fields where computer systems are set up. In particular, they should allow the economic operators, especially the small and medium-sized enterprises active in this sector, to use these national components at a cost as cheap as possible and they should promote all measures aimed at preserving their competitiveness.

Justification

This amendment reinstates the issue covered by amendment 2 from the first reading.

Amendment 3
Recital 10a (new)

(10a) Before the computerised system for the intra-community movement and monitoring of excisable goods is operational, and given the problems which have been experienced, the Commission, in collaboration with Member States, and taking account for the views of the trade sectors concerned, should look at ways to improve the current paper-based system.

Justification

This amendment reinstates the issue covered by amendment 4 from the first reading.

Amendment 4
Article 3, paragraph 1a (new)

1a. The Commission shall ensure that in work on the Community components of the computerised system every attention is paid to reusing as much of the new computerised transit system (NCTS) as possible and ensuring that the EMCS system is compatible with, and - if technically possible - integrated into, the

NCTS with the objective of creating an integrated computer system for the surveillance both of intra-Community movements of excisable goods and of movements of excisable goods and goods subject to other duties and charges coming from or going to third countries.

Justification

This amendment reinstates amendment 7 from the first reading, taking into account the drafting changes proposed by the Commission in its amended proposal.

Amendment 5

Article 4, paragraph 1, subparagraph (aa) (new)

(aa) the development of a security policy of the highest standard possible in order to prevent unauthorised access to data and to guarantee the integrity of the system;

Justification

This amendment reinstates amendment 9 from the first reading, taking into account the drafting changes proposed by the Commission in its amended proposal.

Amendment 6

Article 9

The countries that have applied for membership of the European Union shall be kept informed by the Commission of the development and deployment of the computerised system and may take part in the tests to be carried out.

The countries that, have applied for membership of the European Union shall be kept informed by the Commission of the development and deployment of the computerised system and may, ***if they so desire***, take part in the tests to be carried out.

Justification

The Council has taken on board the first part of amendment 11 making information to the applicant countries compulsory. In a spirit of compromise, this amendment seeks to make sure that participation is open to the applicant states, rather as making it mandatory as proposed at first reading.

EXPLANATORY STATEMENT

Background to the Proposal

At its first reading, the European Parliament supported the main thrust of the Commission proposal, which seeks to modernise the outdated system in place for monitor shipments of products subject to excise duties.

Under legislation adopted within the 1992 programme, these products are to be taxed in the country of destination which means that they are shipped untaxed across the EU. However, as it was no longer possible to easily control shipments of excisable goods when the internal borders came down, a system of administrative controls based on a flow of documents and forms was introduced through the excise movement directive (92/12/EEC) and subsequent acts. In order to keep track of shipments and in order to ensure that untaxed goods do not go astray, each shipment of excisable goods must be accompanied by a form, the so called AAD (or Administrative Accompanying Document), which provides tax authorities with information about the shipment and the entities involved in the delivery. Traders are required to lodge a financial guarantee to cover the risk inherit in the movements of untaxed goods, which is only released once the recipient sends notification that the goods have arrived.

This system is universally unpopular as users find it overly bureaucratic and cumbersome to administer. Also, traders face a considerable risk of heavy financial liabilities when things go wrong. For the Member States, excise duty fraud is a tremendous problem and the current system simply cannot prevent fraud sufficiently.

The aim of the Commission proposal is to make the system completely computerised by creating a real-time computerised messaging system to track movements. The system will link traders with each other via the national administrations, the European Commission and OLAF. It is generally referred to as EMCS (the Excise Movement and Control System). The Commission originally estimated that it would take five years, at a cost to the EU Budget of € 35 million, to get the system up and running. Annual running costs for the Community components would after that be about € 4 000 000.

Procedural Remarks

Before turning to the substance of the proposal, your rapporteur would like to say a few words about the procedure following the first reading in the European Parliament.

Just as has been the case with an number of dossiers in the field of administrative co-operation in tax matters, the legal basis chosen by the Commission was initially contested in the Council. During discussions during the Spanish and Danish Presidencies, your rapporteur has learnt that the Council apparently for the most part worked on the assumption that the legal basis would eventually be changed from Article 95 (co-decision) to Article 93 (consultation).

With matters pertaining to legal bases generally is settled at Coreper or ministerial level, the Council Working Group reached agreement on the substance of the proposal. However, as the working hypothesis was that the legal basis would change, the matter was effectively dealt with as a consultation procedure. It would appear from the final outcome, as well as from

anecdotal evidence from people closely involved with the dossier, that little or no attention as a result was paid to the EP's position. In addition, the rapporteur has had no contacts with the presidency on this dossier.

Interestingly enough, on 20 December 2002, the Commission, which has consistently supported the Parliament's right of co-decision in this area, presented an amended proposal taking on board 10 of the 11 amendments adopted by the Parliament at first reading.

However, Coreper had already reached an agreement on the content as well as the legal basis on 4 December 2002. The Council Common Position was then adopted as an 'A Point' at the Ecofin in January 2003.

Critical Appraisal of the Council Common Position

Not surprisingly, very few of Parliament's amendments are to be found in the Council Common Position, despite the fact that they were almost all supported by the Commission. It appears that 11 Member States in the end supported the original legal basis proposed by the Commission, while 4 (D, IRL, L and UK) could not agree that the proposal is "purely non fiscal".

The Council considers that it has taken on board five of the eleven amendments. Your rapporteur can, for reasons set out below, only partly agree with that figure. A closer examination would suggest that the Council has taken on board two minor drafting amendments in full, and one substantive amendment in part.

Two central amendments from the first reading were amendments 1 and 7 which sought to ensure that the new EMCS is fully compatible, and ideally integrated with the New Computerised Transit System (NCTS) which is also being launched. Your rapporteur considers that this is a vital requirement in order facilitate the daily life for operators and traders alike.

The Council considers that it has taken these two amendments on board by adding a statement to the Council's minutes in which it merely takes note of discussions to that effect. This is clearly insufficient, and your rapporteur has thus retabled those two amendments, which are, after all, supported by the Commission. She has adapted the wording of them somewhat to reflect the drafting suggestions set out in the Commission's amended proposal.

Another central issue for the rapporteur was to ensure that the Member States did not fall for the temptation to pass on the relatively high setting up costs to the traders. She therefore proposed two amendments (2 and 8) seeking to protect in partilcuar SMEs from being forced to participate in a costly system, by introducing an obligation for the Member States to develop a standardised application which is free for all should be introduced in the proposal. Again, this was supported by the Commission but rejected by the Council. The latter felt that this should be left to the Member States to decide. Your rapporteur considers that this is an important issue of principle that should be decided at the European level in order, not least, to guarantee an equal treatment of firms from the different Member States. She has therefore retabled the two amendments.

The Parliament also adopted an amendment (11) seeking to involve the applicant countries

much more closely in this important project. It therefore proposed to make it an obligation for the Commission to keep them informed, furthermore, that the applicant countries should participate in the work already before accession. The Council has accepted this in part: while agreeing that information shall always be provided, it considered that it was "not useful" to make participation mandatory prior to accession. In a spirit of compromise, your rapporteur is proposing an amendment to make clear that they may participate if they so desire, but that they are under no obligation to do so.

Under the Commission proposal it would take at least five years before the system is operational, but as the paper-system can no longer cope with today's realities, the Parliament introducing a new recital urging the Commission to consult with industry to see what can be done to improve the present system in the meantime. This is once again an amendment supported by the Commission, but not taken over by the Council. Given that the Council has also extended the setting up period from five to six years, your rapporteur considers this question all the more important and has therefore reinstated this amendment, too.

Her final amendment concerning security aspects is another one from the first reading, supported by the Commission, but not taken over by the Council.

Finally, there was one amendment (10) from the first reading which was supported by neither the Commission, nor the Council.

In short, as the new system will be much less vulnerable to fraud, it was proposed to allow Member States to lower (in certain cases) the guarantee that traders are required to lodge for each shipment. Given the fact that shipments can be monitored in real time, it seems that there is a valid case to lower the guarantee amounts as the risk of fraud will be much smaller.

Your rapporteur has, at least initially, decided not to reinstate this amendment, as she has some sympathy for the Commission's argument that it would de facto require an amendment of Directive 92/12/EEC, and that it thus may be outside the scope of this proposal.

In addition, as Directive 92/12/EEC is based on Article 93 of the Treaty (consultation procedure -unanimity), amending it in this context might make the application of Article 95 to the present proposal impossible. She also recognises the difficulties in securing support for an amendment not supported by the Commission.

Before deciding whether to reinstate this amendment, she would like to ask the Commission to comment on this issue, and whether it would be able to commit itself to consider this matter as part of the review foreseen in the new amendment 3.

Conclusion

Your rapporteur welcomes the fact that the Council has adopted a common position on this matter, and not changed the legal basis. Whilst regretting the fact that the Council has almost completely ignored Parliament's amendments, she is nonetheless pleased by the rapid progress made.

Given the very positive communication from the Commission, and certain elements of the Council common position, she considers that it should be possible to reach an agreement on

the above outstanding issues, which are of key importance to this Parliament, without having to go through a conciliation procedure. That must be avoided so that work on this important system can start as soon as possible.