

UK TRAVEL RETAIL FORUM

SUBMISSION TO THE COMMISSION'S PUBLIC CONSULTATION ON THE REVIEW OF COMMUNITY EXCISE LEGISLATION (DIRECTIVE 92/12/EEC)

INTRODUCTION

1. This submission is made by the UK Travel Retail Forum (UKTRF) in response to the consultation paper issued by the Commission on 20 January 2006. The UKTRF is a trade association representing most sectors of the UK travel retail industry. Its Members include airlines, airports, airline suppliers, agents and distributors, shop operators and a wide range of suppliers of alcohol, tobacco, confectionery and fragrance products; the full current Membership list is attached as an Appendix.
2. The UKTRF recognises that the principal purpose of this consultation is to identify and review the changes to Directive 92/12/EEC which will be necessary for the introduction of EMCS. However, we particularly welcome the Commission's intention to also consider new legal concepts to reduce and simplify excise obligations for traders, particularly those involved in cross-border business (paragraph 1.2 of the consultation paper). It is in this latter context that the UKTRF is making its submission.
3. The UKTRF is a full and active member of the European Travel Retail Council (ETRC) and fully supports the submission dated 24 April that the ETRC has itself made to this consultation, which outlines the problems experienced by mobile retail operators and recommends action to solve them. This issue is of particular importance to the UK travel retail business and hence the UKTRF is providing its own additional response to the consultation. The Commission will be aware that the European Community Shipowners Associations (ECSA) has also made a submission to the consultation along similar lines, which demonstrates the common interest that both the aviation and maritime sectors have in this area.

BACKGROUND

4. After the abolition of intra-EU duty and tax-free sales on 1 July 1999, the duty-paid sale of excise goods on board ships and aircraft (hereinafter collectively referred to as Mobile Retail Operators – MROs) became subject to the provisions of Directive 92/12/EEC. This Directive is principally concerned with the commercial movement of excise goods between Member States and was never intended to cover the retail sale of excise goods on board MROs.
5. Recognising that the strict application of all the provisions of the Directive would effectively prohibit any duty-paid sale of excise goods on board MROs, the Commission and Member States agreed, at administrative level, a number of derogations from the precise terms of the Directive. The most significant of these was that Member States may agree bilaterally to authorise a simplified procedure, whereby MROs may load excise goods under duty suspension in the Member State of departure and then pay the appropriate local excise duty direct to the Member State in whose territory the sale was actually made.

CURRENT SITUATION

6. Conceptually, the simplified procedure does provide a solution to the problems faced by MROs, in that they can in theory undertake on board sales of excise goods without the unnecessary administrative burdens involved in loading the goods on a duty-paid basis in the country of departure. However there is one fundamental problem – the use of the simplified procedure requires bilateral agreements between respective Member States and in practice these have generally not been implemented. A number of Member States still require duty-suspended excise goods carried by MROs to be offloaded and warehoused locally before they can be sold at the State's excise rates. This requirement for the double handling of the goods renders the simplified procedure uneconomic for many MROs, particularly those in the aviation sector, such that few, if any, airlines are currently able to undertake onboard sales of duty-paid excise goods.
7. Very few bilateral agreements have actually been signed between Member States, and even a number of these do not contain any specific provision for the clearance of duty-suspended excise goods on board the ship or aircraft, which is an essential requirement for MROs to successfully operate the simplified procedure. The need for bilateral agreements involves an extremely lengthy and uncertain process. For example, in June 2000 UK airline and maritime representatives, accompanied by UK Customs officials, met with Spanish Customs officials in Madrid to discuss a bilateral agreement, which would, inter alia, permit the clearance of duty suspended excise goods on board ships and aircraft. It was a very positive meeting and both the industry and UK Customs representatives confidently expected bilateral arrangements to be concluded within a few months. In practice despite many subsequent approaches from UK Customs, the Spanish authorities have refused to progress the issue further, and after six years there is still no bilateral agreement between the UK and Spain. As a result, UK airlines remain unable to use the simplified procedure on services to and from Spain, one of their principal markets.
8. The above is just one example of the complex and uncertain situation across the EU. In some Member States different arrangements even apply at regional airports and seaports within the same country, depending upon local Customs rules and interpretations. Conversely, one or two Member States do permit clearance on board, even without a bilateral. Indeed in their earlier review of Directive 92/12/EEC, the Commission recognised the difficulties for MROs in having to “apply a wide variety of different procedures for different Member States” (COM2004/0227 final).

THE NEED FOR CHANGE

9. The UKTRF therefore submits that the requirement for the simplified procedure to be authorised by bilateral agreement has totally failed to deliver a workable solution for MROs. The current arrangements effectively represent a barrier to trade for MROs, which must be removed without further delay. Almost seven years have now elapsed since the abolition of intra-EU duty and tax-free sales, yet many MROs, especially in the aviation sector, remain unable to undertake legitimate duty-paid sales of excise goods.

10. This situation can only be rectified by changes to Directive 92/12/EEC, such that a uniform, EU wide legal basis is provided for duty-paid sales made on board MROs. Both the ETRC and ECSA submissions to the consultation have made suggestions as to how this may be achieved, but the precise terms of implementation will be for the Commission and Member States to determine. However the UKTRF suggests that the changes to the Directive must include the following key elements:-
- (i) The unique status of MROs must be recognised and defined in law.
 - (ii) MROs must be able to load excise goods for onboard sale under duty suspension.
 - (iii) MROs should not be required to offload such goods from the vessel or aircraft prior to sale.
 - (iv) MROs must be required to pay the relevant excise duty on all onboard sales, either to the country of departure or the country of destination.
 - (v) As per the current administrative agreement, MROs themselves may decide which duty rate to apply to onboard sales – either that of the country of departure or of destination, provided that no sales are made in the territorial waters or airspace of the other country.
 - (vi) That traders own Electronic Point of Sale (EPOS) records be used in conjunction with EMCS requirements to guarantee that excise duty is paid on all onboard sales.

CONCLUSION

11. The UKTRF welcomes the Commission's indication that they are willing to consider changes to the current excise law for traders involved in cross-border business. The Commission have previously recognised that MROs do have a legitimate case for simplification of the rules governing the sale of excise goods, and we trust that this will now be followed by firm proposals for the requisite changes to Directive 92/12. The UKTRF will be pleased to provide further information as necessary and would welcome the opportunity of further discussion with TAXUD as appropriate.

Barry Goddard
Secretary General
27 April 2006