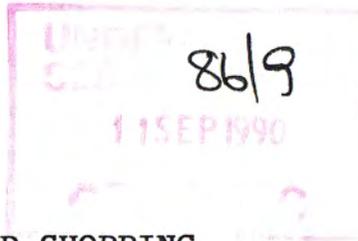


FROM: BRIAN PORTER
ECONOMIC AND SOCIAL DIVISION
7 September 1990

1. Mr F G McConnell *Hand*
2. Mr Hallett

cc Mr Dowdall DFP
Mr Spence *MA 119*
Mr Thomas
Mr Bell
Mr Blackwell
Mr Dodds



IC(90)4: CROSS BORDER SHOPPING

I attach a brief on the ramifications of the 48 hour rule judgement.

2. As to the steering brief, you may wish to remind the Secretary of State that, since the issue was discussed at the last Conference, Irish Ministers have been reported as insisting on enforcement of the 48 hour rule until the EC grants generous derogations from EC indirect tax law - the 36 hour rule, etc. The UK negotiating position on such derogations is, of course, a matter for the Chancellor, but the Secretary of State will wish to impress upon the Irish his, and border Traders', dismay that they should continue to use the illegal 48 hour rule as a bargaining counter.

3. The Secretary of State has specifically asked for the attached Irish Times article to be preserved for his briefing folder and you may therefore wish to highlight it.

BRIAN PORTER
Economic and Social Division

BVH/ESL2/640

CROSS BORDER SHOPPING - 48 HOUR RULE ET AL

Line to Take

Express serious disquiet at reported Irish intentions to maintain 48 hour rule until derogation from EC tax law is granted by the Commission (see Irish Times report of 24 July, attached). It cannot be defensible to continue to disregard what was a categorical judgement by the European Court. The UK regard fulfilling ECJ judgements speedily and fully as a matter of great importance. It is manifestly inappropriate to associate the illegal 48 hour rule with progress in negotiations for an approved derogation.

Aware of mounting dismay amongst border community and traders at behaviour of Irish Government.

36 Hour Rule

Such a proposal offers very little advance on 48 hour rule for Northern traders, and certainly does not appeal to me. Understand, in any case, that proposals for derogations have been remitted to a Commission working group which is the proper forum to take discussion forward. This is formally the Chancellor's responsibility.

BVH/ESL2/632

CROSS BORDER SHOPPING

Background

There is some evidence, however belated, of growing resentment in border areas at the Irish failure of abandon the 48 hour rule. In a recent letter to the Minister of State the Clerk of Newry and Mourne DC conveyed the terms of a Council resolution urging removal of the rule. The manager of the large Buttercrane Shopping Centre in Newry wrote on behalf of traders complaining about the 48 hour rule and the dangers of a 36 hour rule. We have responded in familiar terms, drawing attention to the Secretary of State's representations to the Irish. The Consumer's Association of Ireland has offered to pay the legal costs of anybody challenging the 48 hour rule.

Irish Times: 24 July 1990 (article attached)

This reports Mr Reynold's account of the ECOFIN meeting of 23 July at which he proposed an Irish 36 hour rule derogation to last until Community indirect tax rates were harmonised. However, despite the headline "Brussels accepts principle of 36 hour Border shopping rule", Mr Reynolds is unable to say anything more concrete than that ECOFIN had given "a very positive response" to his proposal. The UKRep report of the meeting says only that the Irish proposal along with a number of others have been remitted to a working group. Customs report that no progress has been made because of the summer break.

BVH/ESL2/632

ECJ Judgements

The UK and ROI have an equally good record for compliance with ECJ judgements and there is therefore, little mileage to be made from this. The tables below, taken from the Commission's seventh annual report on the application of Community law covering to the end of 1989, show that whereas the UK has the second best record for the lowest number of references to the ECJ and Ireland is in fifth place, both are equal second with Denmark for the least number of unexecuted judgements. The 48 hour rule case is not, of course, included.

TABLE I: REFERENCES TO ECJ

TABLE II: NUMBER OF
UNEXECUTED ECJ JUDGEMENTS

1978-89 TOTAL

1.	Denmark	16	1.	Luxembourg	0
2.	UK	27	2=.	Denmark	1
3.	Netherlands	28	2=.	Ireland	1
4.	Luxembourg	31	2=.	UK	1
5.	Ireland	36	5.	Netherlands	4
6.	Germany	54	6.	France	6
7.	Greece	62	7.	Greece	8
8.	France	96	8.	Germany	12
9.	Belgium	108	9.	Belgium	13
10.	Italy	200	10.	Italy	37

Ranking excludes Spain and Portugal (figures only since 1986)