COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 402 final

Brussels, 5 July 1982

Proposal for a

FOURTEENTH COUNCIL DIRECTIVE

on the harmonization of the laws of the Member States relating to turnover taxes - Deferred payment of the tax payable on importation by taxable persons

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(submitted to the Council by the Commission)

COMMISSION OF THE EUROPEAN COMMUNITIES

CORRIGENDUM

Concerns only the English

COM(82) 402 final /3

Brussels, 19 July 1982

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CORRIGENDUM

4th consideration of the preamble, 6th line, the second mention of "EEC Treaty" should read "ECSC Treaty".

page 3 of the proposal Article 1(2), 3rd line, the mention "EEC Treaty" should read "ECSC Treaty".

FOREWORD

In its outline programme for 1982-83, the Commission stressed the special importance it attached to the building and consolidation of the internal market. To this end, it declared its intention of submitting to the Council within the near future a series of proposals designed to remove barriers to trade within the Community. The attached proposal concerning the deferred payment of the value added tax payable on importation by taxable persons forms part of this series.

EXPLANATORY MEMORANDUM

Introduction

1. In its programme for the simplification of value added tax procedures and formalities in intra-Community trade, [1] transmitted to the Council on 20 May 1981, the Commission declared its intention of presenting a proposal for harmonizing the arrangements for deferring the payment of the tax payable by taxable persons on imports from Member States on the basis of periodic tax returns.

2. Parliament has for its part urged the Commission to take such a step in a number of recent resolutions, particularly in that adopted on 17 September 1981.

At its meeting on 29 and 30 June 1981, the European Council itself reached the conclusion that a concerted effort should be made to strengthen and develop the Community's internal market.

3. As it has indicated on several occasions, the Commission considers that such an effort can be fully successful only within the framework of an overall programme covering all the legislation applicable in intra-Community trade. The present proposal in the tax field should therefore be regarded as one element in this overall programme.

4. Article 23 of the Sixth VAT Directive of 17 May 1977, [2] which incorporates the wording of the Commission proposal, merely stipulates, as regards the obligations of persons liable for tax on importation :

(i) that it is up to Member States to lay down the detailed rules for the making of declarations and payments in respect of the importation of goods;

(ii) that Member States may provide that the tax payable on importation of goods by taxable persons or persons liable to tax or certain categories of these two need not be paid at the time of importation, on condition that the tax is mentioned as such in a periodic return.

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[1] OJ No C 244, 24.9.1981, p. 4

[2] OJ No L 145, 13.6.1977, p. 1

5. Analysis of national legislative provisions shows that, while in principle the rule is that tax should be paid at the time of importation, this rule is relaxed to varying degrees by a range of simplified procedures applied to certain categories of taxable persons.

These procedures, which are designed to enable payment to be deferred until after importation, are in some cases tax-related and in others customs-related.

(a) The tax-related procedures are applied primarily, with greater or lesser variations, by the Benelux countries and by the United Kingdom and Ireland. The essence of these arrangements, which are those described in the second paragraph of Article 23 of the Sixth Directive, is to leave to taxable persons the responsibility for the calculation, declaration and payment of the tax due on importation. This responsibility is part and parcel of the obligations incumbent on taxable persons in respect of the transactions which they carry out within the country: the amount of the tax due on importation, calculated by the taxable persons themselves, must be shown in their tax returns both as tax due to the State and as deductible tax, except where the right to deduct input tax is excluded.

(b) The customs-related procedures, used by the other Member States, involve the transposition of customs rules into the tax sphere, covering also intra-Community trade. In the case of customs duties and agricultural levies, these rules have in fact been harmonized by Council Directive 78/453/EEC of 22 May 1978.[1] These procedures, whereby payment of tax on importation is deferred, generally for 30 days, involve more unwieldy administrative machinery than the tax-related procedures,even though they too preclude the need for payment to be made at the time of importation for each transaction. They necessitate an "entry in the accounts" for each transaction, i.e. an official act by which the competent authorities establish the amount of the import duties. The tax due on importation must be paid to the customs authority and be shown as a deduction on the periodic tax returns submitted by the taxable person to the tax authority in respect of all of his activities which are subject to VAT.

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[1] Directive on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payment of import duties or export duties, OJ nº L 146, 2.6.1978, p. 19

6. This description shows that the Member States have felt, to varying degrees, a need to simplify the arrangements for collecting the tax payable by taxable persons on importation.

However, the scope of the simplified import tax procedures is limited, more particularly under certain national provisions by the guarantees required or by a restrictive definition of the taxable persons eligible to benefit from such procedures.

7. The Community must therefore establish a system for the payment of tax on importation which ensures maximum simplification without undermining the necessary safeguards against tax evasion.

8. The Commission considers that such simplification can best be achieved through the "deferred payment" option provided for in the second paragraph of Article 23 of the Sixth Directive, which is already the practice in five Member States.

The "deferred payment" method offers undeniable advantages, both for taxable persons and for the administration itself :

- formalities applied at the time of importation can be reduced to a minimum. There is no longer any reason for the "entry in the accounts" of each import operation, which has to be made by the authorities under existing customs procedures. Under the procedure proposed, taxable persons are responsible, under the supervision of the relevant VAT office, for calculating the tax due and declaring it on their overall tax return, claiming deduction of the tax where appropriate.
- the importation formalities in the Member State of destination of the goods can be confined simply to submission of the required documents and, where appropriate, the fulfilling of transit procedures.
- imports and transactions within the country are covered by a single return and a single payment to a single authority.

9. This simplification should therefore appreciably reduce the cost of the formalities involved in import operations.

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10. For the purpose of combating fraud, the national authorities may carry out the following checks :

- a check on import documents;
- a spot check on goods when they cross a frontier;
- a check on firms' accounts.

In addition, the introduction of mutual assistance by the national authorities, as regards both the exchange of information[1] and the enforced recovery of claims,[2] gives the Member States what should be an effective means of combating fraud in connection with imports of goods within the Community.

11. The introduction of the proposed deferred payment method will necessitate re-definition of the relationship between the customs authorities for the purpose of tax controls on imports. In particular, a rigorously applied information procedure might be introduced between the two administrations, the customs office transmitting import documents to the VAT office responsible for the taxable persons. The organization of such procedures is a matter for the Member States. However, the Commission would make the following observations :

- the burden on the customs authority would not be thus increased since, as a counterpart their duties will be considerably lightened by the fact that they will no longer collect the tax themselves; they will therefore be able to allocate more resources to other tasks;

- the tax authorities will be given a larger role; as the imports are carried out by taxable persons whose activities within the country are supervised by them, it may be assumed that these authorities are in the best position to carry out these checks with due regard for the need to combat tax evasion.

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1 Directive 79/1070/EEC, OJ No L 331, 27.12.1979, p. 8

2 Directive 79/1071/EEC, OJ No L 331, 27.12.1979, p. 10

12. Equality of tax treatment between imported goods and goods supplied within the country is safeguarded because both are taxed in accordance with Article 2 of the Sixth Directive, which lays down the scope of VAT, and with Articles 10 and 11 of that Directive, which deal with the chargeable event, the chargeability of tax and the taxable amount. The present proposal does not alter this situation.

In practice, however, the arrangements for paying the tax due on imports and on supplies within the country may give rise to differences of treatment between them, stemming from the varying lengths of time elapsing between the chargeable event of taxable transactions (importation and delivery within the country) and the date on which the tax must actually be paid to the Treasury.

In any case, the effect of such differences can be no more than marginal since it is due simply to the cash-flow facility which taxable persons may or may not enjoy owing to the abovementioned lapses of time. It might therefore be measured in terms of the interest obtainable on moneys left in the hands of taxable persons between the tax point and the date of payment to the State.

Given the present economic situation in the Community, this aspect, even if it is of only marginal importance, cannot be disregarded when Community legislation is framed for the payment of tax on importation.

The problem is particularly difficult to pin down in practical terms. To begin with, two factors must be taken into account : on the one hand, the time allowed for paying the tax due on importation and the tax due on goods supplied within the country and, on the other, the time allowed in the contract between buyer and seller for payment for the goods (the price of which includes the tax within the country).

It can easily be shown, with different examples of the length of time allowed the buyer by the seller for goods supplied within the country, that one and the same method of paying the tax on importation may either favour imports at the expense of goods supplied within the country, or have the opposite effect.

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1st example : 1st case : suppliers within the country do not allow their customers any grace period, but require payment on delivery;

2nd case : tax on imports allowed to be deferred for 30 days.

In the first case the taxable customer bears the burden of the tax until it is actually deducted, which takes place only when the net tax due to the State in respect of all of his activities is paid. Depending on the Member State and the taxation system in force, the tax return period usually ranges from one month to three months. If the goods are supplied at the very beginning of a three-month tax period, the purchaser will have borne the tax throughout that period. However, this sum remains available to the seller for the same period; he can earn interest on it, and this may be taken into account by the contracting parties in fixing the price of the goods supplied within the country.

In the second case the tax due on importation is not paid until 30 days following importation. In this case, the importer bears the cash-flow disadvantage associated with the tax not, as in the first instance for three months but only for two months. It might therefore be concluded that there is some disadvantage to supplies made within the country.

Such a conclusion is untenable, for the following reasons :

- it ignores the fact that the cash-flow burden borne by the buyer that results from the payment of the tax to the seller at the beginning of the tax return period constitutes, for the seller, a cash-flow facility. The contracting parties are therefore at liberty to take account of this situation when fixing the price of the goods;

- it cannot be applied generally since it depends primarily on the payment period laid down by the seller, which may vary according to economic sector, the importance of the customer, etc. Moreover, immediate payment is very rare in business practice. A different example shows how conversely, imports declared on the same three-monthly return may be at a disadvantage.

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2nd example : - 1st case : the seller allows the purchaser three months in which to pay. The goods are supplied at the beginning of the tax return period.

- 2nd case : the importer is allowed 30 days in which to pay the tax.

The situation is the reverse of the first example. In the first case the purchaser pays the tax to the seller only at the time when it is deducted in his periodic tax return. He therefore bears no cash-flow burden. Nor does the seller in this example, since he pays the tax to the Treasury as soon as it is received from the buyer.

In the second case, while the importer benefits from 30 days credit, he must bear the cash-flow burden of the tax during the two months between the date of payment and the date of actual deduction.

There is no need to give further examples to show that the situations on the ground can be extremely varied. However, despite this diversity, it is generally imports which tend to be placed at a disadvantage since, as has already been noted :

- where a cash-flow burden is borne by the buyer, this may be offset in contractual relations by the advantage gained by the seller;
- where a cash-flow disadvantage is borne by an importer, only the State, in any event, can enjoy the corresponding benefit.

By introducing the proposed deferred payment arrangements into all national bodies of legislation, the tax imbalance working to the disadvantage of imports can be corrected. Furthermore, at macro-economic level, the introduction of harmonized deferred payment arrangements bringing all intra-Community imports under an identical procedure will eliminate the differences of treatment now affecting imports into some Member States as a result of the different payment periods applicable and the contractual practices adopted by firms.

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Commentary on the Articles

13. Whereas the second paragraph of Article 23 of the Sixth Directive as it now reads gives Member States an option, this proposal would make it compulsory for Member States to allow deferred payment.

For this purpose, it defines:

- the imported goods to which the deferred payment arrangements apply;
- the taxable persons eligible to benefit from the deferred payment arrangements;
- the formal conditions to which this method of paying the tax due on importation is subject.

Concerning Article 1

14. The deferred payment arrangements for imported goods, are restricted to Community goods within the meaning of the EEC Treaty (article 9(2)) and the ECSC Treaty. This limitation stems from the fact that the proposal is designed to strengthen the Community internal market. However, there is no reason to prevent Member States from allowing deferred payment in respect of goods imported from non-member countries.

Provision must therefore be made for the option that such arrangements may be either maintained or introduced in respect of these imports.

15. Concurring with current practice in several Member States, the Commission considers, again in the interest of simplification, that the right to defer payment of tax should also be granted in respect of the tax payable by taxable persons upon the entry for home use of goods previously placed under one of the arrangements provided for in Article 16(1)(A) of the Sixth Directive or under arrangements for transit or temporary admission. Under that Article, imports of goods which are intended to be produced to customs and placed in temporary storage or placed under free zone arrangements, customs warehousing arrangements, or other warehousing arrangements, as the case may be, are exempt from VAT, subject to certain conditions. However, tax must be charged once the goods, ceasing to be exempted under one of these procedures, are entered for home use in the country of importation. Given the similarity between imports proper and the entry for home use of goods previously placed under an Article 16 procedure or under another procedure, the Commission feels that deferred payment should be permitted in respect of the tax payable on these latter operations, provided that the necessary conditions are met.

16. To be eligible for the deferred payment arrangements, imported goods must be intended to be used for purposes of the taxed transactions of taxable persons. There is no question of claiming eligibility in respect of the exempted activities of a taxable person or, indeed, his personal activities. Since these are activities which bear the ultimate tax burden, there are no reasons of equity militating in favour of deferred payment. Furthermore, in some cases there might be greater risks of evasion.

17. The special method of payment provided for by this proposal may in principle be used only by taxable persons established within the country who submit periodic returns to the competent authorities in respect of their taxable activities.

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The following persons, then, are eligible for this method of payment:

(a) Persons liable for value added tax who have a permanent establishment within the country

This condition is embodied in the national law of those countries that permit this method of payment. It is designed to restrict use of this method to traders who have had to declare their activity and are therefore subject to the supervision of the competent authority through the various obligations binding on persons liable to tax under the domestic system, as laid down by the Member States pursuant to Article 22 of the Sixth Directive. This condition therefore gives the competent authorities the same safeguards for combating tax evasion as those they possess in the home context.

The mutual assistance arrangements established within the Community framework could allow a greater latitude to be envisaged in this matter. With the exchange of information between authorities and the possibility of enforcing the recovery of tax claims, Community legislation might incorporate the condition that establishment need not necessarily be in the country of importation but could be in any Member State. This provision would have the practical effect of appreciably simplifying tax formalities, particularly in frontier traffic. However, since the mutual assistance system in a recent innovation which needs to be seen in operation for a time, and there are particular dangers of fraud in those sectors involving final consumption, the Commission considers that the obligation to permit use of the deferred payment arrangements should apply only in respect of imports by taxable persons established within the country of importation. The Commission considers that, initially, it is sufficient to leave it to Member States to decide whether to grant, under conditions laid down by them, the right of deferred payment to taxable persons established in a country other than that of importation. It should be noted that this measure is currently applied by several Member States, subject to certain conditions, and that it may be maintained under paragraph 7 in Article 1.

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(b) Taxable persons who submit periodic returns

The simplification sought can be achieved only if the deferred payment arrangements are used as widely as possible. Accordingly, they should be open not only to large undertakings, which are the least inconvenienced by frontier formalities, but also to medium-sized and even small companies.

Clearly, however, this method of payment cannot be accorded to taxable persons covered by certain special schemes for small businesses. The procedure proposed provides for the tax due on importation to be shown on the taxable person's periodic return in the "tax due" column and, where appropriate, in the "tax deductible" column. It is therefore a prior condition of this procedure that the taxable person be subject to the normal value added tax arrangements that require him to comply with the obligations laid down in Article 22(4) and (5) of the Sixth Directive, namely to submit a periodic return showing all the information needed to calculate the tax that has become chargeable and the deductions to be made and, of course, the net amount of tax.

The deferred payment arrangements are not therefore available to taxable persons covered by the special schemes described in Articles 24 and 25 of the Sixth Directive, insofar as they do not submit periodic returns meeting the requirements of Article 22(4).

This exclusion is of only technical importance and should not appreciably affect the practical scope of the deferred payment arrangements. It is difficult to imagine firms covered by schemes other than the normal VAT scheme really being concerned with intra-Community trade. For those that do import goods, this exclusion would serve as an incentive to opt for the application of the normal VAT scheme, perhaps in a simplified form.

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18. The following comments must be made about the formal conditions required for implementing the deferred payment arrangements.

In order to enable the national authorities to organize the checks that they consider necessary for administering the deferred payment arrangements, it is proposed that the arrangements may not be applied without prior authorization by the tax office to which taxable persons submit their returns in respect of their transactions subject to VAT within the country.

As a means of simplifying frontier formalities, the Commission, not showing the thinking behind some current national measures, does not consider it appropriate at the present stage to adopt deferred payment as the automatic method of payment which all taxable persons should be able to use without obtaining prior authorization. On the contrary, the Commission believes that provision should be made for a prior application procedure whereby:

- taxable persons could opt either for deferred payment or for payment at the time of importation, it being stipulated that their choice will apply to all their import transactions;

- the tax authorities could examine the case of every taxable person intending to take advantage of the deferred payment arrangements. Plainly, however, the authorities should not be at liberty to refuse authorization to a taxable person who meets the objective conditions discussed in point 17 unless he has committed serious breaches of customs legislation or the legislation relating to turnover taxes. There can therefore be no question of the authorities exercising an absolute discretion which might prejudice the harmonization and simplification sought.

The authorization is to be issued by the authorities within two months of the application being submitted and is granted for an unlimited period.

It must also be possible to withdraw the authorization for the same reasons as those justifying refusal to issue it.

It goes without saying that, where the conditions for granting it cease to apply, the authorization is no longer valid.

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The authorization is to be applicable to imports made as from the date of issue.

When the import formalities are carried out, the importer is responsible for providing proof of authorization by producing to the customs authorities a copy of the attesting document.

This prior authorization procedure might be considered too cumbersome by some Member States. As already pointed out, the law in some countries does not provide for such a procedure : instead, the deferred payment arrangements apply automatically to all or to certain imports made by taxable persons. While it does not wish to propose that such a solution be generally adopted, the Commission feels that there is nothing to prevent Member States from maintaining or introducing more liberal provisions than those described above.

19. The Commission would stress that the introduction of deferred payment arrangements can under no circumstances be subject to the provision of a guarantee of any kind. Given the safeguards surrounding this method of payment, there would be no point in providing for a guarantee. Furthermore, such a requirement might deter taxable persons from using a procedure whose primary purpose is precisely to facilitate the movement of goods within the Community.

20. It goes without saying that where the deferred payment arrangements are not used - for example, if the taxable person has not requested, is not entitled to or has been refused authorization, or simply if it was not possible to use the authorization at the frontier crossing - payment of the tax due on importation will continue to be made under the conditions laid down by the Member States.

Concerning Article 2

21. The questions surrounding this proposal have already been aired several times in the various Community institutions: in Parliament, which has on several occasions called for the introduction of deferred payment arrangements in intra-Community trade; in the Economic and Social Committee; and in the Council, which already has before it the above-mentioned proposal for a resolution concerning the strengthening of the internal market.(1) The Commission therefore considers it perfectly realistic for the deferred payment arrangments to come into force in all the Member States on 1 January 1984.

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(1) Memo from the Commission to the Council dated 14.10.1981 - COM(81) 572 final

22. The discussions between the Commission's staff and the national authorities have shown that one of the major objections raised by some Member States is of a budgetary order.

23. The tax paid by taxable persons at the time of importation or within the time limits laid down under the abovementioned customs procedures is only deducted later, when the tax return is submitted by the taxable person; this time-lag may produce for the State a cash-flow facility which, at the end of the fiscal year, is recorded as revenue collected, thereby helping to balance the budget.

Simply by the way it works (payment and deduction of the tax due on importation when the tax return is submitted), a deferred payment system, without altering the amount of tax payable to the Treasury by taxable persons, would threaten this cash-flow facility.

The implications for Member States' budgets of removing this facility depend on the following factors:

- the length of the tax return periods within the country. These periods vary, according to Member State, from one to three months. To this must be added the time which elapses between the expiry of the tax period itself and the actual payment, which must be made between 10 and 40 days later, depending on the Member State. Clearly, the total length of these periods influences both the amount of the advance made to the State and its average duration, since the tax paid on importation cannot be deducted until the end of the tax period during which the payment is made;

- the length of the payment periods currently allowed by Member States under customs procedures;

- the amount of the imports in respect of which Member States currently allow customs-type deferred payment compared with the amount of imports which may be covered by the provisions of the Directive.

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The combination of these various factors will have a different budgetary impact on each of the Member States concerned.

However, three particular situations can be singled out :

- a Member State uses for internal transactions a long tax return period (three months), to which must be added a period for payment of 40 days, and allows tax due on importation to be deferred for 45 days. Up to now, this Member State enters in the accounts the import taxes for the financial year in which they are declared. At present, the tax declared during the last quarter is deducted from the following year's budget. Clearly, the implementation of the directive is likely to have budgetary consequences in this case ;

- a Member State uses for internal transactions a tax return period of one month to which must be added 10 to 20 days for payment itself and allows tax due on importation to be deferred for 30 days. In this case, the tax revenue for the financial year in which the directive comes into force will be reduced by the amount of tax collected under the previous system in December on imports made in November, insofar as this tax was not deducted until the following financial year. Calculation of the effect this will have on the budget should also take into account the fact that, generally speaking, the scope of the proposed deferred payment arrangements is wider than that of current customs procedures;

- a Member State operates a tax return period of one month for internal transactions and allows payment of tax due on importation to be deferred until the 15th of each month, and at the same time authorizes taxable persons to deduct the tax due on importation during a period from the tax return for that period, for which the net tax must also be paid on the 15th of the month. In this case, the budgetary impact is very slight or even nil and can result only from an extension of the scope of the proposed deferred payment arrangements compared with current customs procedures.

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24. According to the Commission's information, the Member States which could encounter budgetary problems are Denmark, France, Italy and the Federal Republic of Germany. However, Germany's situation is that described at (iii) above. In Greece, the deferred payment arrangements would be introduced at the same time as the common VAT system and would therefore not cause any budgetary problem for that Member State. Of the Member States that currently apply deferred payment arrrangements similar to those proposed, special mention should be made of Belgium, which allows this method of payment subject to the prior lodging of a guarantee. This guarantee will have to be abolished under the provisions proposed. Given the size of this guarantee (equal, for each taxable person, to one twelfth of the tax due on imports in the preceding year), this Member State may also be faced with a budgetary problem.

25. The Commission therefore considers that the Member States involved should be authorized to spread the budgetary effects of introduction of deferred payment arrangements over two fiscal years : 1984 and 1985. To achieve this they are to be allowed to limit application of the scheme for 1984 to half of the tax payable on imports normally eligible for deferred payment. The Member States will be responsible for laying down the detailed arrangements for implementing this transitional measure.

Proposal for a Fourteenth Council Directive on the harmonisation of the laws of the Member States relating to turnover taxes - Deferred payment of the tax payable on importation by taxable persons

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas the basic aim of the Treaty is to establish, within the framework of an economic union, a common market in which there is healthy competition and which is similar to a domestic market;

Whereas the obligations of persons liable to pay the value added tax due on importation in intra-Community trade must be laid down in the light of this objective, which is limited, in this context, only by the need to combat tax evasion within the Community;

Whereas the national provisions in force in some Member States call for simplification; whereas this simplification should take the form of an appreciable reduction in the cost involved in the declaration of imports and the payment of tax due, to the advantage of both those liable to tax and the competent authorities;

Whereas, while leaving to the Member States the general responsibility for laying down the detailed rules for the making of import declarations and the ensuing payments, it is necessary to establish harmonized arrangements for the payment of the tax due on imports by persons who are liable to value added tax on goods which satisfy the conditions laid down in Article 9(2) of the EEC Treaty or which, in the case of products wich are covered by the EEC Treaty, have been released for free circulatio, such imports representing the bulk of intra-Community trade;

Whereas, as the experience of certain Member States has shown, the deferred payment of the tax payable on importation under the conditions laid down in the second paragraph of Article 23 of Council Directive 77/388/EEC[1] best meets the requirements of simplification and of combating tax evasion; whereas deferred payment so defined means that the Member States authorize taxable persons not to pay the tax at the time of importation, on condition that this tax is mentioned as tax due in a return to be submitted under Article 22(4) of that Directive;

Whereas, in any event, deferred payment cannot be authorized for taxable persons who, being subject to a special scheme, are not required to submit such returns;

Whereas Member States, to be in a position to combat tax evasion, need to know exactly which taxable persons use the deferred payment arrangements; whereas the best way to achieve this aim is to use a procedure of prior authorization; whereas it should be laid down that the authorization should only be refused or withdrawn when the honesty in tax matters of the person concerned appears to be open to question, in view of breaches of Customs legislation or of legislation relating to turnover taxes, as established under the administrative or judicial procedures in force in the Member States.

Whereas the use of the deferred payment arrangements should be limited to taxable persons established within the country for goods which they import for the purposes of their taxable activities;

Whereas Member States should be authorized to apply more liberal measures than the Community provisions, and in particular to extend those provisions to imports of goods which are not in free circulation at the time of their importation;

Whereas the introduction of the deferred payment arrangements may have consequences for the budgets of some Member States; whereas they should be authorized to spread these consequences over a period of time,

HAS ADOPTED THIS DIRECTIVE:

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[1] OJ n° L 145 from 13.6.1977, p. 1

Article 1

Article 23 of Directive 77/388/EEC is hereby replaced by the following :

"Article 23

Obligations in respect of imports

1. As regards imported goods, Member States shall lay down, subject to the following provisions, the detailed rules for the making of the declarations and payments.

2. As regards imports of goods which:

- satisfy the conditions laid down in Article 9(2) of the EEC Treaty

- or, in the case of products which are covered by the EEC Treaty, have been released for free circulation,

Member States shall authorize any taxable person who so requests not to pay the tax payable on importation at the time when the goods enter the territory of the country, provided that the tax is shown as tax payable and, where appropriate, as deductible on the first return submitted after the importation, pursuant to Article 22(4).

Member States shall apply the same provisions to any taxable person who so requests in respect of the tax payable upon the declaration for home use of goods which fulfil the conditions mentioned in the preceding sub-paragraph and which have been placed upon importation under one of the arrangements provided for in Article 16(1)(A) or under arrangements for transit or temporary admission.

The abovementioned authorization shall be issued only for goods intended to be used for the purposes of the taxable transactions of taxable persons.

3. For the purposes of paragraph 2, the person liable for payment of the tax within the meaning of Article 21(2) shall be the recipient of the goods designated on the documents relating to their importation or declaration for home use.

4. In order to be able to benefit from the provisions of paragraph 2, the taxable person must have a fixed establishment within the territory of the country in question.

5. The authorization referred to in paragraph 2 shall be issued in writing within two months of the application being submitted. It shall be granted for an unlimited period and shall be valid for any goods imported by the taxable person after it has been issued. A copy of the authorization must

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be produced to the competent authorities when the import formalities are carried out.

The authorization shall cease to be valid if the taxable person no longer meets the conditions laid down in the preceding paragraphs.

6. The issue of the authorization may not be subject to the provision of a guarantee of any kind whatever.

The competent authorities may refuse or withdraw authorization in respect of persons who have committed breaches of Customs legislation or of the legislation relating to turnover taxes involving fraud established under the administrative or judicial procedures in force in the Member States.

7. Member States may :

- extend the provisions of the foregoing paragraphs to imported goods which do not fulfil the conditions mentioned in the first subparagraph of paragraph 2;

- apply the provisions of the foregoing paragraphs to taxable persons not established within the territory of the country ;

- apply provisions which provide automatic authorization for all or certain taxable persons, in respect of all or a part of their imports.

The provisions applicable to taxable persons not established within the Community may under no circumstances be more favourable than those applicable to taxable persons established in a Member State."

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Article 2

1. Member States shall bring into force the provisions necessary to comply with this Directive as from 1 January 1984.

2. During the year 1984, those Member States for which implementation of this directive may have budgetary implications may limit the use of the deferred payment system mentioned in paragraph 1 to one half of the tax payable on imports qualifying for such deferred payment.

3. Member States shall inform the Commission of the provisions which they adopt for the purpose of implementing this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President