

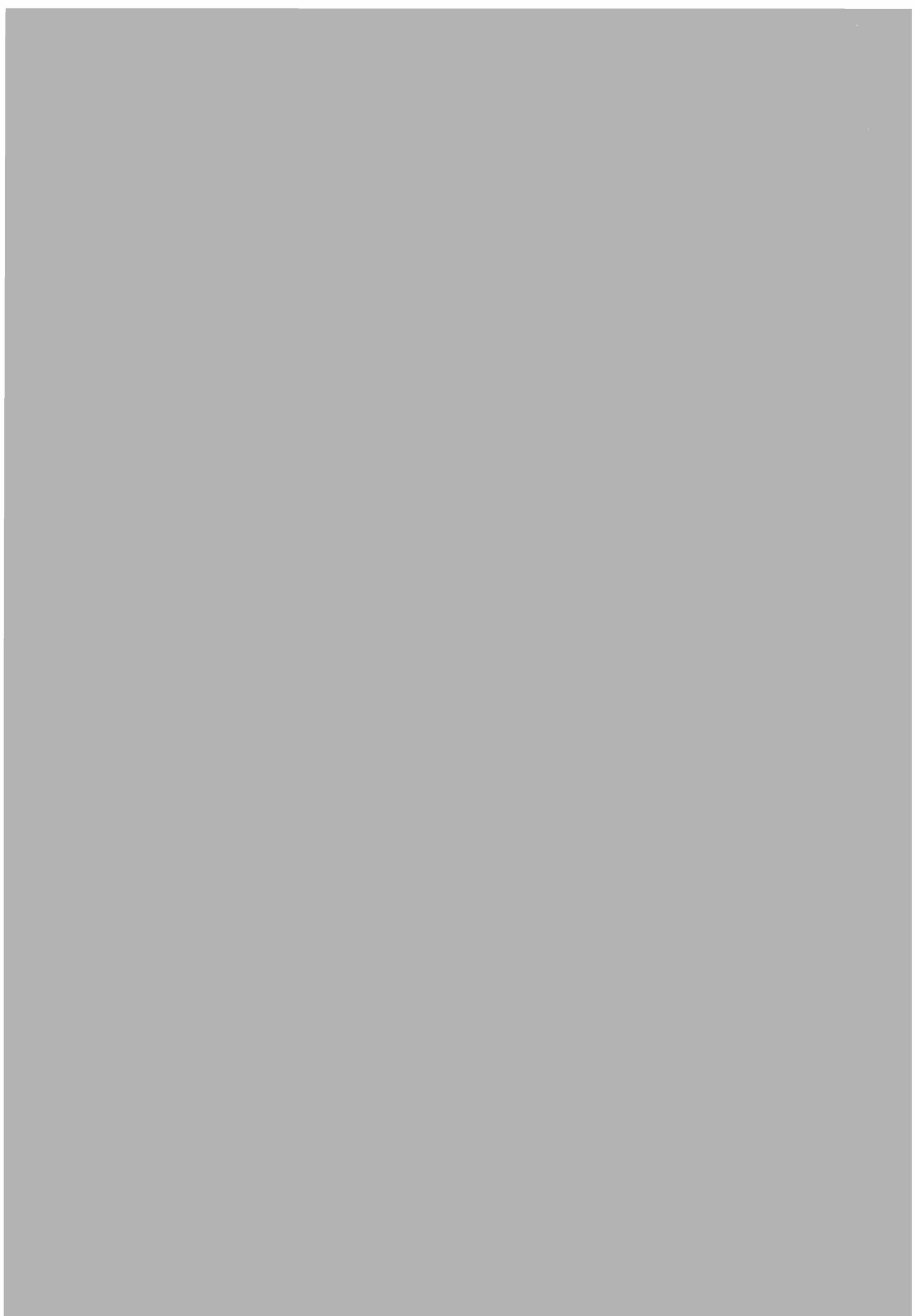


Bulletin of the European Communities

Commission

THE DEVELOPMENT OF EUROPEAN TAX-LAW

HISTORICAL OUTLINE





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BULL. EC 1-1959

Fiscal problems

23. The services of the Commission have begun the study of certain aspects of the fiscal legislation of the six countries which bear on the application of the Treaty. These services have established preliminary contacts with public or private international organizations studying similar problems.

In this connection, the Commission is particularly interested in reforms of direct and indirect taxation and, in particular, the reform of the turnover tax already announced by the German Federal Republic.

BULL. EC 2-1959 -

BULL. EC 3-1959

Fiscal problems

37. In the fiscal field a first meeting with governmental experts was held during June. This meeting, which was devoted mainly to indirect taxation, made it clear that all delegations were anxious to produce practical solutions to the problems raised by the application of the Treaty and to establish a real Common Market. The experts, taking as their starting point a working paper prepared by the Commission, made a preliminary study of the drawbacks which would arise if the present differences in the systems of turnover tax were maintained. A working party was instructed to make a special study of this problem with a view to harmonization at a later date (Article 99). Other more immediate questions were raised and will also be the subject of special study in collaboration with experts from the various countries. These questions include:

- Calculation of compensatory taxes on imports and drawbacks on export duties, several concrete cases of which have been laid before the Commission; the Commission has asked for explanations from the governments concerned (Articles 95 to 97);
- Transformation of customs duties of a fiscal nature into internal taxes; this has also engaged the atten-

tion of the Commission in connection with various measures taken by certain Member States (Articles 17 and 95).

38. In a field which more particularly concerns direct taxation, comparative studies have been made covering, amongst other things, the fiscal conditions governing the foundation of companies, increases of capital, free movement of securities, stock exchange activities, etc. The conclusions to be drawn from these studies in connection with the movement of capital will be set out by the appropriate services within the Commission.

Generally speaking, as fiscal problems are to be studied essentially from the economic angle, the Commission intends that all necessary contacts shall be maintained or established with the appropriate public or private institutions.

BULL. EC 4-1959 -

BULL. EC 5-1959

Fiscal problems

27. On 29 and 30 October, tax experts of the Member States examined at the invitation of the Commission certain draft solutions worked out by the latter with a view to harmonising legislation on turnover taxes. The working party will meet again at the beginning of December to finalize proposals on the basis of the Commission's drafts.

28. Another group of experts met on 27 and 28 October in Brussels to study how Articles 95 and 97 of the Treaty should be applied. These are the articles laying down the rules to which internal charges levied by Member States must conform if they affect the products of other Member States; they also cover drawback on internal charges when commodities are exported from one Member State to another. The experts recognized the need, pending harmonisation of legislation on turnover taxes, to fix a common method by which compensatory charges on imports and drawback on exports should be calculated. They agreed to furnish the Commission with a practical explanation of the methods by which this calculation is made for certain products in their respective countries. Prior consultation in

the event of any modification of compensatory charges on imports or drawbacks on exports was also discussed at the meeting of 27 and 28 October. This question will be taken up again at a future meeting.

BULL. EC 1-1960

Fiscal problems

33. The Commission has organized two meetings of the working party composed of its representatives and of fiscal experts from the six Governments which has been instructed to study the problem of how turnover taxes can be harmonised (Article 99 of the Treaty). The working party has studied the present obstacles to the good functioning of the Common Market, and the first steps towards removing them. The result of these initial studies is contained in a report which will be submitted to the plenary meeting of government experts on fiscal matters planned for the beginning of 1960.

34. The working party instructed to examine the conditions for the implementation of Articles 95 to 97 of the Treaty has also met. The working party has agreed in principle that, pending a harmonisation of the provisions governing turnover tax, it will be necessary to work out common rules for the calculation of compensatory import duties and export rebates, in order to take account of the differing systems in the various countries. Each Member State will submit to the Commission an explanation of the method by which this calculation is made for a number of leading products selected by the working party.

The working party will meet in the near future to study these explanations and will probably be able to draw useful conclusions for its future work.

BULL. EC 2-1960

FISCAL PROBLEMS

35. The working party instructed to study the problems involved in the harmonization of indirect taxes other than turnover taxes held its first meeting in January 1960. Two questions of principle and one specific case were discussed in the course of the meeting.

The meeting first attempted to work out some principles concerning the application of the concept of "indirect protection", referred to in Article 95 of the Treaty. Though they felt that this concept is not easy to define exactly, the national delegations drew up criteria of a general nature which might serve as a guide for dealing with various specific cases.

36. The other question of principle discussed concerned the application of Articles 95 and 96 to consumer taxes. In this connection the delegations reviewed the question whether the average rates referred to in Article 97 of the Treaty should be applied, on imports as well as on exports, for indirect taxes other than turnover taxes. Discussion of this question will be resumed at a later meeting.

37. In addition to these questions of principle, the meeting examined the specific case in which the Benelux countries had converted customs duties of a fiscal nature on wine into an excise duty. Since the problem is to know whether this excise duty is likely to afford indirect protection to beer, and thus come under the provisions of Article 95 (2) of the Treaty, the meeting attempted to find some elements of appreciation which might help the Commission in the decisions which it will later be called upon to take in the matter.

BULL. EC 3-1960 -

BULL. EC 4-1960

Fiscal problems

44. The staff of the Commission has given increasing attention to the problem of how turnover taxes can be harmonized.

Three working parties, set up after meetings of senior government officials of the Member States, have been instructed to work out the basis for harmonization. They will give careful consideration to the following practical possibilities :

a) Maintenance of existing municipal legislation, the control of goods at the frontier being, however, abolished in view of countervailing duties on imports and the granting of drawbacks on exports — these checks could be transferred to the accounting offices of import and export firms;

b) Adoption of a single general tax levied at the stage immediately before the goods reach the retailer — this could be combined with a small additional tax on retailers, related to the requirements of each Member State;

c) Adoption of a common tax levied at the production stage and combined with an autonomous tax levied at the distributive stage;

d) Adoption of an added value tax combined, where necessary, with a tax levied at the distributive stage.

45. The Commission has recognized that, pending harmonization of turnover taxes, it will be necessary to settle the conditions underlying the application of Article 97 of the Treaty introducing a supplementary provision to the basic rule in Article 96 in order to offset the internal fiscal charge, which contains the provision that, in States where turnover tax is calculated by a cumulative multistage system, countervailing duties may be levied on imports and drawback granted on exports on the basis of the average rates for specific products or groups of products.

Since the entry into force of the Treaty, several Member States have amended the rates of countervailing duties and drawbacks. In view of the psychological effects, the Commission feels that such measures are harmful to the progressive establishment of the common market.

The European Commission considers that, so long as turnover taxes cannot be harmonised, there is need for close co-operation between the governments if the advantages gained from the initiation of the Common Market are not to be endanger-

ed. It is in this spirit and in expectation of this harmonization that the European Commission has proposed to the Council a provisional solution under which the Member States would refrain from modifying the present situation unless they had convinced the Commission by previous consultation of the particular reasons justifying the modification they propose.

46. A working party consisting of senior government officials of the Member States has recently begun to study the problems raised by indirect taxes other than turnover taxes. These are charges such as excise duty, where there are often considerable differences between Member States and where harmonization would, therefore, be most important.

The question of turning customs duties into excise duties and of the unfortunate psychological effects on public opinion which can result, was raised once again. In this connection, the specific case in which the Benelux States turned fiscal duties on wine into excise duties was examined. The Commission felt that it was mainly a question of whether this excise duty could give indirect protection to other beverages. On the basis of the information gathered by its staff, the Commission decided that there was not sufficient evidence of a violation of Article 95 (2) to justify invoking the procedure under Article 169. Also the staff of the Commission have been instructed to find solutions which, taking into account the proposals being made for the implementation of the common agricultural policy, appear to be economically necessary.

47. The Commission is also studying the economic repercussions of direct taxes in the European Economic Community. It intends to prepare proposals which will lead to some harmonization of legislation where this is considered necessary. The Commission has already put in hand various studies in sectors which seem to be of particular interest from this angle. An example which may be quoted is the influence of taxation on the movement of capital, on agriculture, on public enterprises, on amortization and on the supply of energy.

BULL. EC 5-1960

Fiscal problems

40. At the Council meeting of 20 and 21 June the representatives of the Governments of Member States, assembled in the Council, approved the Commission's proposals for dealing with difficulties in applying Articles 95, 96 and 97 of the Treaty, which deal with drawbacks in respect of exports and compensatory charges in respect of imports (1). In view of the psychological and economic results which may be caused by changes in the compensatory charges and in the rates of drawback, the Commission put forward proposals for the adoption of rules calculated to make it easier to apply these articles in a Community spirit. Member States agreed that in principle they would not change existing rates without first giving reasons for the changes proposed. It has been accepted that changes in these rates may be made only for technical tax reasons and not for purposes connected with economic, commercial and monetary policy. When a Member State intends to make changes in the rates, the draft amendments will be submitted to the Commission at least two months before they are promulgated. A simple, rapid procedure will be worked out to enable the Commission and the other Member States to examine the reasons put forward.

(1) See Bulletin 4-60, Chapter II, Sec. 45.

Finally, it was agreed to speed up work already in hand by which a common method would be fixed for calculating drawback and compensatory charges; one advantage of this would be the simplification of supervision, which is at present difficult because of the differences in the methods used.

BULL. EC 6/7-1960

Fiscal problems

26. In connection with the work for the harmonization of the finance and fiscal policies of the member countries the Commission has set up an academic committee under the chairmanship of Prof. Neumark and composed of eminent men of learning. This committee will study :

a) Whether and to what extent disparities existing at the moment between the financial systems of the Member States are hampering or even preventing the institution of a common market establishing and guaranteeing conditions corresponding to those of an internal market;

b) To what extent and by what means these disparities should and could be mitigated or remedied.

The Committee met for a preliminary exchange of views in Brussels on 21 and 22 July. A number of points were discussed in detail, especially the question whether competition between the six countries could be distorted by either the existing differences in the total of fiscal charges or the different breakdown between direct and indirect taxes in each Member State. Further, the problem of whether direct taxation could be harmonized and, if so, to what extent, was discussed.

27. The staff of the Commission has continued its work on the subject of the harmonization of turnover tax. Two of the three study groups composed of fiscal experts of each Member State have met twice in Brussels.

Study group B has examined in detail a number of points which are essential to understand the theory of turnover tax levied at the stage prior to retail trading. The discussion was in particular concerned with the system to be applied to investment goods.

Study group C has considered in detail the possibilities for the introduction of taxation at the final stage of production as a common system. It will shortly study the theories of a multistage production tax and of an added value tax.

The working party instructed to study the problems arising from Articles 95 and 96 of the Treaty has concerned itself with elaborating a common method of calculation for import and export turnover taxes.

A comparison of the methods and techniques applied in the Community countries has revealed that fundamental differences exist between them and shown the need for a common method to facilitate the supervisory work of the Commission and to give better guarantees to the Member States if one of them alters its existing rates. A certain number of common criteria have been worked out and they will be retained when the method is finalized.

The working party instructed to study indirect taxes other than turnover tax has taken note of the initial studies completed by the Commission and has recognized the need for a certain harmonization of these taxes, with a priority for consumer taxes.

The studies must be carried out product by product and the very special structure of excise duties must be borne in mind. Certain excise duties such as those on salt, tobacco, beer, sugar, coffee and tea will be given priority consideration.

BULL. EC 8/9-1960 -

BULL. EC 10-1960

Fiscal problems

25. The joint work of the staff of the Commission and the fiscal experts of the six countries for the harmonization of turnover tax has made notable progress.

Study group A has been instructed ⁽¹⁾ to examine whether physical controls at the frontiers between the Member States can be abolished. On the assumption that they can, existing national legislation would be maintained but the checking of goods at the frontier for the purpose of levying compensatory charges on imports and export drawbacks would be replaced by checks on the accounts of the importing or exporting enterprises. Group A has discussed from many points of view the advantages and disadvantages of such a solution, and expects to finalize its conclusions at its next meeting.

Study group B, which is studying what would happen if the Member States introduced a system of turnover tax levied at the stage prior to retail trading, has almost finished its work and will soon be able to draw up its report.

Study group C has recently finished its technical enquiry into the mechanisms of the various systems of taxation at the production stage, which might be adopted as the common system (tax levied at the final stage of production only, multistage production tax, added value tax). The group's report is being drafted.

The reports of the three study groups will be laid before the Working Party for the harmonization of turnover tax.

26. The Commission has continued its examination of the measures taken by the Italian Government in the field of compensatory taxes and drawbacks on turnover tax. After the discussions which officials of the Commission had had in Rome with the Italian authorities, a multilateral meeting was held in Brussels on 26 and 27 October and the government experts of the six countries were informed of this and asked to state their opinion.

The Commission has laid down the method by which it wishes examination of the matter to be resumed as soon as possible.

This question was discussed in Brussels between the Commission and M. Trabucchi, the Italian Minister of Finance, on 5 December 1960, when it was agreed that a thorough study be made of ten items in respect of which the rates had recently been increased in Italy. A multilateral meeting on the matter will be organized towards the middle of January 1961, and will be attended by experts from the six Member States.

⁽¹⁾ A working party was set up in May 1959 to study the possibilities of harmonizing turnover tax. It is served by study groups (A, B and C).

BULL. EC 1-1961 -

BULL. EC 2-1961

Fiscal problems

12. As part of the work being done on the harmonization of turnover taxes Study Group B held its fourth meeting on 9 and 10 January 1961. The Group had been instructed to examine the possibility of introducing in the six countries a single general tax levied at the stage prior to retail trading (and combined, possibly, with a low tax on retailers on the basis of a national system). At this meeting the Group thoroughly examined the fiscal system to be applied to investment goods and more particularly the effects on prices that might be produced by taxes on these goods (cumulative effect of the tax) and on the rate of the tax (budgetary effect). The Group also drafted a large part of the report setting out the results of its work.

Study Group A, which is examining the possibility of abolishing physical controls at frontiers ⁽¹⁾, will hold its second meeting at the end of February. The Group expects to be able to draw the conclusions from its studies at this meeting.

A fifth meeting of Study Group C (instructed to study a common added-value tax combined, if necessary, with a tax levied at the marketing stage) has been arranged for March. ⁽¹⁾

13. On 12 and 13 January tax measures taken in Italy were examined by the multilateral meeting referred to in the last Bulletin.

It will be remembered that the Italian Government had taken measures in the field of countervailing charges on imports and drawbacks on exports affecting 200 tariff headings.

Analysis of the cost price of several products of the Italian mechanical engineering industry was carried out to pinpoint the incidence of the turnover tax during their manufacture. The experts of the five countries gave their agreement in principle to the comments previously formulated by the Commission's staff, particularly those on the method and the calculations used by the Italian Government to fix the rate of drawback and countervailing charges in the mechanical engineering field.

A second discussion between the Commission and the Italian Minister of Finance — the first was held on 5 December — took place in Rome to discuss the results of the multilateral meeting.

14. As a sequel to the complaint lodged by the Belgian Government concerning the abnormal prices of certain textile products imported from Italy, a group of experts from the six member countries met in Brussels on 31 January 1961 to study the fiscal side of this problem.

This complaint, which calls into question the rates at which the manufacturing tax is reimbursed when certain yarns are exported, was examined from the purely technical angle.

The Commission's staff are of the opinion that a solution to the problem is likely to be found shortly.

15. The Fiscal and Financial Committee, the establishment of which was referred to in Bulletin 6 & 7/60 has continued its studies. At the second meeting, in December,

⁽¹⁾ See Bulletin 10/60, Chapter III, sec. 25.

the Committee discussed the problems resulting from the disparities between the financial systems of the Member States and the advisability or even the necessity of reducing these disparities.

Among these problems may be mentioned the criteria which the Member States must adopt in their fiscal and financial policy if they are not to impede the development of the Common Market; the principles in force in the country of origin and in the country of destination of goods exported; the advisability of adapting the various direct taxes; double taxation, etc.

A first draft report will be discussed at the next meeting of the Committee.

BULL. EC 3-1961

Fiscal problems

The harmonization of turnover taxes

24. On 22 and 23 February Study Group B of Working Party No. 1 (harmonization of turnover taxes) examined the draft report proposed by the Fiscal Problems Directorate as an introduction to the reports of Study Groups B and C. In this draft preliminary report it has been possible to deal separately with certain points of a general nature and certain technical aspects common to the various fiscal systems examined in the reports of Study Groups B and C. A new draft report will be drawn up and will take into account the observations made. It will be examined at a future meeting. Study Group A has finished its review made on the assumption that physical controls at the frontiers are abolished. A draft report for Working Party No. 1, reflecting the various opinions of the delegations, will be drawn up by the staff of the Commission and will be discussed at a future meeting.

Compensatory charges and drawbacks on exports

25. The Commission has continued its discussions with the Italian Government for a satisfactory settlement, in accordance with the provisions of Article 97, of the situation created by Italian measures concerning the raising of compensatory charges and those concerning drawbacks on exports.

BULL. EC 4-1961

Fiscal problems

18. On 20 and 21 February there was a meeting of Working Party No. II which is to study where common regulations could be drawn up for the calculation of countervailing charges on imports and drawbacks on exports referred to in Articles 95 to 97 of the Treaty. (It will be remembered that this Working Party was set up

by the meeting of representatives of the Commission and government experts on fiscal matters, which was held in Brussels on 22 June 1959.) ⁽¹⁾

The thorough deliberations of the Working Party have brought to light ideas acceptable to all the delegations, although some delegations have registered reservations on certain points.

The results and conclusions reached by the Working Party will be laid before a plenary meeting to be attended by the heads of the fiscal administrations in the Member States.

It has not yet been possible to solve the problems stemming from the measures taken by the Italian Government in the field of countervailing charges and drawbacks on turnover taxes. ⁽²⁾

The careful examination of certain important products for which the rates have been raised, undertaken at a meeting on 12 and 13 January with the appropriate experts of the six Member States, has shown that in the opinion of the Commission and the five other Member States these rates exceed the limits fixed in Articles 95 and 96 of the Treaty.

On this basis two further conversations took place on 27 January and 8 March between the Commission and M. Trabucchi, the Italian Minister of Finance. After another multilateral meeting with the representatives of the six countries on 17 March, at which certain possibilities of solution were discussed without leading to a result, it was decided to submit the matter to a meeting with the Ministers of Finance, which the Commission would arrange for this purpose.

19. At a meeting of the Ministers of Finance held in Düsseldorf on 20 and 21 March ⁽³⁾ some problems of fiscal harmonization within the Common Market were studied. It was decided that the Commission would organize a meeting with the senior officials concerned with this matter in the Member States in order to examine the possibilities of harmonizing the taxes on capital movements and the methods employed in direct taxation to establish the basis of taxation. This meeting will also deal with fiscal problems concerning certain special fiscal arrangements applicable to holding companies.

⁽¹⁾ See Bulletin 3/59, Chapter III, sec. 37.

⁽²⁾ See Bulletin 10/60, Chapter III, sec. 26.

⁽³⁾ See above, Chapter IV, sec. 12.

BULL. EC 5-1961

Fiscal problems

Harmonization of turnover taxes

25. The sixth meeting of Study Group B under Working Party I (harmonization of turnover taxes) was held on 14 April, with the support of government experts. A document dealing with taxes on the supply of services was completed. The draft of a general introduction (first part of the Study Groups' general report) setting forth the objectives aimed at in harmonizing these taxes was discussed in detail.

BULL. EC 6-1961

Fiscal problems

Harmonization of turnover taxes

31. The Study Group B (set up by Working Party I on the harmonization of turnover taxes ^(*) and instructed to study the possibility of introducing into the six countries a single general tax levied at the stage prior to retail trading) is examining certain general problems which also bear on the harmonization systems under consideration in Study Groups A (abolition of physical controls at frontiers) and C (establishment of a single general tax at the production stage and of an added value tax).

At its sixth and seventh sessions, held on 14 April and 9 and 10 May, Study Group B carried out the following work : a study of the advisability of harmonizing taxes on the supply of services in conjunction with the systems of taxing deliveries of goods examined by Study Groups B and C; preparation of a general introduction to the report of the three Study Groups A, B and C (containing the examination of the main problems common to the different taxation systems studied); preparation and completion of the report on the work of Study Group B.

Study Group B is to meet again on 13 and 14 June.

Italian measures on export drawbacks and countervailing charges on imports

32. The problem raised by the Italian Government's measures of September 1960 in the field of drawbacks on exports and countervailing charges on imports was again discussed at a meeting of the Ministers of Finance and of the Under-Secretaries of State for Finance of the six countries, which took place in Brussels on 8 May under the chairmanship of Mr. von der Groeben, a Member of the Commission.

Giving the reasons for which a conciliation agreement was desirable, Mr. von der Groeben at the same time detailed the proposals which, in his opinion, would make such an agreement acceptable.

If it were not possible to reach an agreement on the basis of these proposals, the Commission would have to resort to the procedure laid down in the second paragraph of Article 97, according to which the Commission may address appropriate directives or decisions to the Member States.

"Transmission" tax

33. The Belgian Government has applied to the Commission for its consent to an increase in the rates of the "transmission" tax on imports following the increase of the same tax within the country as part of the application of the statute known as the "loi unique". The Commission's examination was carried out by virtue of the agreement reached by the EEC Council of Ministers on 21 June 1960, according to which each Government was to consult the Commission before altering the rates of export drawbacks or of countervailing charges on imports.

Taking into account that an increase in the rate of the "transmission" tax on imports is, as a rule, proportional to the increase of the same tax within the country, the Commission made no objection to this measure.

^(*) See Bulletins 2/61, Chapter III, sec. 12, and 4/60, Chapter II, sec. 44, in which the objectives of the various Working Parties are set out.

BULL. EC 7/8-1961

Fiscal problems

Italian measures on export drawbacks and countervailing charges on imports

36. All the Member States have accepted the proposal drawn up by the Commission for a broad settlement of the problems raised by the measures in the field of export drawbacks and countervailing charges on imports taken by the Italian Government in September 1960.

It is useful to recall the origin and development of the matter :

In three decrees promulgated in July and August 1960 the Italian Government had increased for about 800 customs items the countervailing charges on imports and the export drawbacks in connection with the turnover tax. Though the measures were in principle consonant with the provisions of the Treaty, it was open to question whether they were so in practice, since the new rates seemed too high.

As stated in previous Bulletins ⁽¹⁾, the Commission's staff undertook the examination of these measures in order to check that the rates did not exceed the ceiling provided for in Articles 95 and 96 of the Treaty. Meetings were held with government experts from the different countries at which a number of customs items were subjected to very thorough examination and it became clear that it was very difficult to prove with accuracy to what extent the new provisions went beyond this ceiling.

On the basis of the calculations made, however, both the Commission's staff and the government experts came to the conclusion that the ceiling had been exceeded, particularly for the items for which the rates were fixed at about 6%. Consequently the question was discussed at the political level and talks were held with the Italian Minister of Finance. After a meeting on 10 May 1961 at which the Member States were represented either by the Minister or by the Under-Secretary of State for Finance, the Commission made final proposals to the Member States for a broad settlement of the problem in question. These proposals were accepted by all the Member States.

Under the terms of this compromise the Italian Government undertakes to reduce as soon as possible the rates affected by the measures in question. The changes are as follows :

The rates of 8 and 7.5 will be reduced to 6.5;

The rate of 7 will be reduced to 6.25;

The rate of 6.5 will be reduced to 6;

The rate of 6 will be reduced to 5.5;

The rate of 5.5 will be reduced to 5.25

(the rates of 5 and less will remain unchanged).

In return the Commission and the five member countries undertake not to raise again the question of the rates of the countervailing charges and the drawbacks covered by the above reduction measures, save in important cases when there is reason to expect that such intervention would lead to a substantial alteration in the rates.

The Commission welcomes this settlement, which it considers as satisfactory, and which bears witness to the determination of the Member States to reach a solution in a Community spirit even in very "difficult" cases.

⁽¹⁾ See Bulletins N^o 3/61, Chap. III, Sec. 25; 4/61 Chap. IV, Sec. 18; 6/61, Chap. I, Sec 32.

BULL. EC 9/10-1961

Fiscal problems

28. The Commission has invited the representatives of the Governments to discuss on 5 October next disparities between direct taxes or between taxes on capital transactions likely to provoke distortions which could influence trade and the movement of capital and investments in the Community.

The representatives of the Governments will be invited to give their opinion on the advisability of setting up working parties to determine the distortions which these disparities may cause and suitable measures to remedy them. These working parties would have the further task of studying how far and by what criteria the basis for the assessment of direct taxes and the level of taxes on capital transactions could later be approximated and whether it might not be desirable to adopt a common policy concerning certain special fiscal systems applying to holding companies.

29. A third meeting of Working Party No. III, which is responsible for studying the application of Articles 95 to 97 to indirect taxes other than turnover tax, was held in Brussels on 4 July. With one exception the Government experts accepted in principle the Commission's argument that Article 97 is applicable only to multi-stage turnover taxes, since it mentions no others.

This Article, which in this case makes the provisions of Articles 95 and 96 more flexible, must therefore be strictly applied for other indirect taxes. The ceiling will thus have to be precisely fixed and any calculation of averages forbidden.

The Working Party then examined the way in which Article 95 should be applied. There was also a general discussion of the problem of harmonization of taxes on tobacco.

Lastly, as regards the implementation of Article 95 (3) under which the Member States are to abolish or amend, not later than the beginning of the second stage, fiscal measures imposing on the products of other Member States taxes in excess of those on domestic products, the experts agreed to supply an inventory of the measures which might be considered as falling under this paragraph.

BULL. EC 11-1961

Fiscal matters

Belgian and Dutch measures concerning export drawbacks and countervailing charges on imports

32. The Belgian and Dutch Governments having informed the Commission that they were planning to introduce further increases in the "transmission" tax on imports and drawbacks on exports⁽¹⁾, a multilateral meeting with government experts from the member countries was called on 20 September in Brussels. The chief purpose of this meeting was to interpret the notion of fiscal technique as it results from the agreement reached in the Council of Ministers on 21 June 1960.

(1) See Bulletin 6/61, sec. 33.

At the same time the government experts gave an interim opinion on the calculations furnished by the Belgian and Netherlands Governments to justify the rates envisaged; their final opinion was to reach the Commission before 5 October. This meeting followed bilateral consultations between the Commission and the Governments concerned.

(It will be recalled that the Commission had examined an application from the Belgian Government to increase the rate of "transmission" tax on imports in accordance with the agreement reached on 21 June in the Council, and had made no comment on this measure.)

H a r m o n i z a t i o n o f t u r n o v e r t a x

33. The fifth meeting of Study Group C (for the study of a common added-value tax combined, if necessary, with a tax levied at the marketing stage) took place on 21 and 22 September.

The meeting was to have taken place in March, but was postponed to permit the completion of the work of Study Group B (on the possibility of introducing in the six countries a single general tax levied at the stage prior to retail trading : tax at the wholesale stage). This Group has completed its report on the system of taxation in question.

Group C has drawn up its report on a single tax at the production stage to be charged in one operation, i.e. when the finished product leaves the manufacturing stage (tax on the last stage of production).

(It will be recalled that the three Study Groups (A, B and C) were set up in April 1960 after a meeting of high officials of the national administrations and that their task was to find a basis for the harmonization of turnover taxes.)

T h e F i s c a l a n d F i n a n c i a l C o m m i t t e e

34. On 14 and 15 September the Fiscal and Financial Committee met to discuss the first part of the report drawn up by its chairman Professor Neumark. This part deals more particularly with the general aspects of the harmonization of public finances in the Member States, including disparities in overall fiscal burdens and disparities by tax and type of tax.

The Committee discussed the recommendations to be made to the Commission on the harmonization of the various types of taxes. It will deal with the second part of the report and the recommendations in December.

BULL. EC 12-1961

Fiscal problems

H a r m o n i z a t i o n o f d i r e c t t a x e s

25. On 5 October 1961 a meeting of the heads of the tax administrations of the Member States was held in Brussels under the chairmanship of M. von der Groeben, a Member of the Commission of the Ministers of Finance. The meeting dealt with problems arising as a result of the establishment of the Common Market in connection with direct taxes and charges on capital movements.

It was decided at the meeting to set up three working parties. One to deal with problems of the basis of assessment of direct taxes on enterprises, one to study the possibility of a common fiscal policy vis-à-vis non-member countries, in particular the fiscal treatment of investments from these countries in the EEC, and the third to consider the harmonization or adjustment of charges on capital movements.

BULL. EC 1-1962

Fiscal problems

25. Further to the meeting of heads of taxation departments of the Member States, held in Brussels on 5 October 1961 under the Chairmanship of M. von der Groeben, a member of the Commission ⁽¹⁾, two Working Parties were convened by the Commission for 12 and 13 December 1961.

At their first meeting, the Working Parties will draw up a programme of practical work for 1962. Following the plan of a working document drafted by the Commission's staff, Working Party No. 1 will examine the problems of appreciation of assets, stocks, amortization and trading losses. Working Party No. 2 will consider :

- 1) The taxation of investments made within the six countries by countries outside the Common Market, and vice-versa;
- 2) Tax treatment of investments of one member country in another member country.

Various points arise under these headings : application of the parent company-subsidary privilege for subsidiaries abroad; utilisation of tax advantages offered by certain " tax haven " countries for the enterprises of the Common Market; abolition of double taxation by bilateral conventions or by unilateral means; tax treatment of investments in developing countries.

⁽¹⁾ See Bulletin No. 12/61, Chap. IV, sec. 25.

BULL. EC 2-1962

Fiscal problems

Harmonization of direct taxes

21. The first meetings of the two Working Parties set up at the meeting of the heads of the tax administrations on 5 October 1961 ⁽¹⁾ were held on 12 and 13 December 1961. The first working party has the task of studying the basis of assessment of direct taxes in the member countries — particularly the problems of amortization, of stocks, of operating deficits and of appreciation of assets. It settled its programme of work, which provides first of all for an examination of the rules applicable to amortization and to appreciation of assets. The second working party is to examine the fiscal problems stemming from the investments made in the Common Market by non-member countries; it has decided to begin by assembling all useful information on this subject.

Harmonization of turnover taxes

22. The three Study Groups (A, B and C) of Working Party No. 1 ⁽²⁾, which are studying the various systems in connection with the harmonization of turnover taxes, met from 26 to 31 October and from 4 to 7 December 1961.

The reports of each of these Study Groups have been put into final form and are shortly to be submitted to the Working Party.

⁽¹⁾ See Bulletins No. 12/61, Chap. IV, sec. 25 and 1/62, Chap. VIII, sec. 25.

⁽²⁾ See Bulletin No. 4/60, Chap. II, sec. 44.

To make the combined report more complete, it was decided that there should be a chapter dealing with the problems which will be raised by the transition from one of the present taxation systems to one of those contemplated by Study Groups B and C.

The combined report will also include a comparative table of the main elements in the various tax systems which it is intended to harmonize.

A further meeting will begin on 15 January 1962. At this meeting the finishing touches will be put to the work of the Study Groups and the combined report will be submitted to Working Party No. 1.

Common method of calculating countervailing charges on imports and drawback on exports

23. The government experts in Working Party No. 2 met on 8 December 1961 to consider and finalize the technical side of a draft directive of the EEC Council concerning a method to be used by Community countries in calculating countervailing charges on imports and drawback on exports. Prepared by the Commission's staff on lines approved at an earlier meeting with the same experts (1), this draft will be tabled later at a full session of the directors of the tax administrations in the member countries.

Adjustments of countervailing charges on imports and drawback on exports proposed by Belgium and the Netherlands

24. When, at a meeting on 20 September 1961 (2), the new Belgian and Netherlands measures dealing with countervailing charges on imports and drawback on exports were examined, certain differences of opinion emerged. These concerned the interpretation of the decision taken by the Representatives of the Member States meeting in the Council on 21 June 1960. Agreement on this question is expected at a forthcoming meeting of the heads of tax departments.

Article 95 (third paragraph) and the Member States

25. At a meeting on 8 December the experts of Working Party No. 3 discussed the obligations incumbent on Member States under the third paragraph of Article 95 of the Treaty, which stipulates that the Member States must, not later than at the beginning of the second stage, abolish or amend any provisions which impose on the products of other Member States any internal charge in excess of those applied to like domestic products, or any internal charge which affords indirect protection.

(1) See Bulletin No. 4/61, Chap. IV, sec. 18.

(2) See Bulletin No. 11/61, Chap. IV, sec. 32.

BULL. EC 3-1962

Fiscal problems

Harmonization of turnover taxes

22. The three Study Groups (A, B and C) of Working Party N^o. 1, which are studying the various systems of turnover taxation with a view to their harmonization, held their final meeting from 15 to 18 January 1962. They adopted a General Report outlining action which might be taken to eliminate, in connection with each of the systems studied, the disadvantages of the present situation, especially with respect to countervailing charges on imports and drawbacks for exports in intra-Community trade. The General Report also suggests, for each system, what could be done to abolish these compensation devices and so break down tax frontiers between the member countries and avoid obstacles in the way of development towards a true common market. This Report will be examined by the Directors General of national tax departments in the near future.

BULL. EC 4-1962 -

BULL. EC 5-1962

Fiscal problems

Italian measures relating to countervailing charges on imports and drawback on exports

24. In February the Commission noted the measures introduced by the Italian Government to apply the compromise solution of 30 June 1961 on the reduction of certain countervailing charges and drawbacks in the matter of turnover tax (Presidential decree of 10 February 1962, based on the law of 25 January 1962, delegating powers).

As stated in Bulletin 7-8/61, Chap. 5, sec. 36, the Italian Government, by three Presidential decrees, had increased these countervailing charges and drawbacks for a great number of tariff headings with effect from September 1960.

After negotiations conducted by the Commission, the Italian Government agreed, on 30 June 1961, to reduce the rates of these new countervailing charges and drawbacks as follows :

The 8 and 7.5 rates would be reduced to 6.5

The 7 rate would be reduced to 6.25

The 6.5 rate would be reduced to 6

The 6 rate would be reduced to 5.5

The 5.5 rate would be reduced to 5.25

(Rates of 5 or under would remain unchanged).

These new measures have been in force since 10 February 1962.

Harmonization of direct taxation

25. On 26 and 27 February 1962, Working Parties IV and V set up at the meeting of the heads of taxation departments on 5 October 1961 held their second meeting in Brussels. (1)

Working Party IV, which is studying the basis of assessment of direct taxes in the member countries, continued its work on rules concerning depreciation and the calculation of appreciation. It studied the list of assets on which depreciation can be allowed for and worked out a questionnaire on the depreciation systems authorized in some industrial sectors (iron and steel, shipbuilding, textiles, motor

(1) See Bulletin No. 12/61, Chap. IV, sec. 25; Bulletin No. 1/62, Chap. VIII., sec. 25; Bulletin No. 2/62, Chap. VI, sec. 21.

vehicles) as well as a questionnaire on the tax treatment of appreciation and depreciation of assets.

Working Party V, which is dealing with questions of taxation on investments from non-member countries in Community countries, has drawn up a questionnaire on the tax system to be applied to subsidiaries or other permanent establishments set up in one or more member countries by a parent company situated in a non-member country. Replies to this questionnaire must cover both the treatment applied under general legislation and the treatment resulting from international tax conventions.

The Working Party also took up the question of the countries known as "tax havens".

Harmonization of taxes on the movement of capital

26. On 26 March 1962 the first meeting of Working Party VI, also set up on 5 October 1961, was held in Brussels. It is instructed to make proposals for the harmonization or approximation of taxes on the movement of capital.

The meeting studied the general problems involved in the harmonization of these taxes and laid down a programme of work. It was agreed to begin by an examination of taxes on contributions of capital and also of stamp duties on the movement of capital. Taxes on stock exchange operations will be studied later.

BULL. EC 6-1962

Italian Law No. 103

27. The Commission has informed the Italian Government by letter of the progress of work concerning Law No. 103 which provides for a lump-sum refund of customs duties and indirect charges applicable to exports of certain engineering products. It will be recalled that the Italian Government, in order to meet the objections raised by the Commission and Member States against the system of lump-sum refunds instituted by Law No. 103, had decreed a 35 % cut in total refunds ⁽²⁾. In the above-mentioned letter the Commission noted the Italian Government's assent to a further study of the system of refunds as it still stood in order to determine how far it conformed with the fiscal provisions of the Treaty. The Commission also considers that if the system of refunds is maintained intact with respect to exports to non-member countries, this will constitute an aid falling within the scope of Articles 92 et seq. of the Treaty and should therefore also be examined in that context.

⁽²⁾ See Bulletin 4/62, Chap. III, sec. 17.

BULL. EC 7-1962

Fiscal problems

Harmonization of turnover taxes

35. A plenary session organized by the Commission with the heads of national tax departments was held in Brussels on 10 May. M. von der Groeben, a member of the Commission, took the chair.

The meeting examined the reports of the sub-groups of Working Party No. I concerning the various systems on which the harmonization of turnover taxes might be based. After a broad exchange of views, the Chairman announced his intention of asking the Commission to make proposals to the Council in the near future in pursuance of Article 99 of the Treaty. These proposals would

be based on the reports of the sub-groups and of the Fiscal and Financial Committee (see below).

Fiscal and Financial Committee

36. On 11 May the heads of national tax departments and the members of the Fiscal and Financial Committee met under the chairmanship of M. von der Groeben ⁽¹⁾ for an initial exchange of views on the Committee's preliminary draft report. The Committee had been asked by the Commission to examine the economic and financial aspects of the problems involved for the six countries in the harmonization of taxation.

Professor Neumark, the Chairman of the Committee, explained the main points of the draft report. After reminding his audience that the report still had to be

⁽¹⁾ See Bulletin 11/61, Chap. IV, sec. 34.

completed, particularly with respect to company dividends and taxes, he emphasized the aims of fiscal harmonization, with special reference to turnover tax, where it is very urgently needed.

After the Chairman's statement, there was a discussion between the various delegations and the members of the Fiscal and Financial Committee. The draft report will be finalized at a Committee meeting early in June.

37. The meeting of 11 May also discussed a plan for a uniform method of calculating the average rates of countervailing charges on imports and drawbacks on exports laid down in Article 97 of the Treaty.

This plan was approved by all the delegations except one, which expressed reservations in principle. Certain delegations requested textual amendments and these will be examined at a later meeting with government experts.

Application of the decision of 21 June 1960 (Adjustments of countervailing charges on imports and drawback on exports proposed by Belgium and the Netherlands)

38. There have been differences of interpretation on the decision taken by the Representatives of the Governments of Member States meeting in the Council on 21 June 1960 ⁽¹⁾. The Commission has therefore thought it worthwhile to issue a working document examining the few most likely practical cases which will call for the adjustment of countervailing charges on imports and drawback on exports and to indicate a possible solution for each of them with due regard to the terms of the decision ⁽²⁾.

This working document was discussed at the meeting held on 10 May ⁽³⁾. On the whole, the delegations approved it, though some expressed reservations that will be examined later, after which the Commission will lay proposals for an agreement before the Council.

Elimination of discriminatory provisions in excise duties and turnover taxes — planned adjustments of countervailing charges and drawback by the Netherlands Government

39. Working Parties No. II (calculation of countervailing charges on imports and drawback on exports) and No. III (harmonization of indirect taxes other than turnover taxes) set up by the Directorate of Fiscal Problems met on 17 and 18 May 1962 to discuss the following points :

- a) Elimination of discrimination in excise duties;
- b) Elimination of discrimination in turnover taxes, as required by Article 95, third paragraph, of the Treaty;
- c) Adjustments to countervailing charges on imports and drawback on exports planned by the Netherlands Government for 1 June 1962.

⁽¹⁾ See Bulletin 2/62, Chap. VI, sec. 24.

⁽²⁾ See Bulletin 5/60, "The Council".

⁽³⁾ See previous section.

With respect to point (a), the Commission submitted to the delegations two working documents dealing with excise duties on beer and sugar. It was agreed that certain Member States would shortly make proposals on the basis of these studies for the elimination or adjustment of any provisions in their legislation which might put imported sugar or beer at a disadvantage with respect to domestic products.

At the request of various Member States, a detailed study is to be made of other cases of discrimination in the matter of excise duties. Any discrimination in taxing wine and spirits will have to be studied at a future meeting.

As for point (b), relating to particular cases of discrimination brought up by Member States or by the Commission, several Member States have declared that a decision in conformity with the Treaty would soon be taken. Other cases of discrimination, however, are to be examined again by the Member States concerned.

With respect to point (c), the delegations had no major objections to the measures envisaged by the Netherlands Government though they reserved their judgement on how far such adjustments are compatible with the decision of the Representatives of the Governments of Member States meeting in the Council on 21 June 1960.

BULL. EC 8-1962

Fiscal problems

Indirect taxation on insurance contracts

26. Government experts and Commission representatives met on 25 June 1962 to discuss for the first time indirect taxation on insurance contracts.

The object of this meeting was to inquire how to eliminate existing restrictions on the freedom to supply insurance services owing to the different tax systems to which the sector is subject.

For once the freedom to supply services has been established competition between insurance concerns of the individual Member States is liable to be distorted, and the situation aggravated by the differences in tax treatment accorded to the same class of business in the six Member States. Double taxation in any one class can also amount to a restriction on the supply of services.

The meeting examined the following points :

- i) Abolition of double or multiple taxation,
- ii) Harmonization of tax burdens, i.e. tax assessment, rates of tax and tax reliefs.

The experts agreed to meet once more before the end of the year to study in greater detail the various possible ways of eliminating the drawbacks arising from differences in existing statutory requirements.

BULL. EC 9/10-1962

Fiscal problems

Harmonization of turnover taxes

38. The reports of the six sub-groups of Working Party No. 1, concerning various methods for the harmonization of turnover taxes, were examined at a plenary session in Brussels on 16 May 1962 ⁽²⁾, when the chairman, M. von der

⁽²⁾ See Bulletin 7-62, Chap. V, sec. 35.

Groeben, announced that a directive on the subject would be prepared by the Commission's staff.

This has since been drafted. It reflects to a large extent the views expressed by the heads of taxation departments present at the meeting on 10 May 1962, to whom it will be referred at a meeting on 13 September, before being examined by the Commission.

Fiscal and Financial Committee

39. The Fiscal and Financial Committee met in Paris on 7 and 8 July 1962, when Professor Neumark took the chair for the last time. The object of this meeting was to finalize the Committee's report, giving due weight to the comments made by the heads of taxation departments at a meeting on 11 May ⁽¹⁾.

The Committee decided, inter alia, to draw up a time-table and order of priority for reforms, which would be carried out in three stages.

The Commission should receive this report by October of this year.

Countervailing duty on wool worsted in the Federal Republic of Germany

40. A countervailing duty of 4 % on carded or combed wool was already imposed in the Federal Republic of Germany before the Treaty came into force. Since this duty is well in excess of the charges applied directly or indirectly to similar domestic products, and therefore incompatible with the principles set out in Articles 95 and 97 of the Treaty, the Federal Republic of Germany, in accordance with Article 95 (3), was called upon to amend or abolish this countervailing duty by the beginning of the second stage at the latest.

Since the Federal Republic had still not taken the necessary steps by 30 July 1962, the Commission issued a directive on that date, under the terms of which the Federal Republic is obliged to amend the countervailing duty in question in principle within three months of the date of communication of the directive.

(1) See Bulletin 7-62, Chap. V, sec. 36.

BULL. EC 11-1962

Fiscal problems

Harmonization of turnover taxes

23. A joint meeting of the Commission and the heads of the national tax departments was held in Brussels on 13 September 1962 to study the problem of the harmonization of turnover taxes pursuant to Article 99 of the Treaty. The chair was taken by M. von der Groeben, member of the Commission and President of the group on competition.

The meeting took cognizance of the draft directive prepared by the Commission for gradually harmonizing legislation on turnover taxes.

A draft directive for submission to the Council will shortly be the subject of a Commission decision.

Application of Articles 95 to 97 of the Treaty

24. Since the Government of the Federal Republic of Germany has failed to conform with the provisions of Articles 95 and 97 of the Treaty with regard to the countervailing on imports of worsted yarn, and has not undertaken to do so within the set time-limit, the Commission has issued a directive ⁽¹⁾ requesting the Federal Government to amend the duty on worsted yarn from EEC Member States within three months of the date of communication of the directive. The new rate of duty must be such that the internal charges directly or indirectly levied on imported worsted yarn are on average no greater than those directly or indirectly levied on similar domestic products. The three months are up on 14 November of this year.

At its meeting in Brussels on 17 September Working Party No. 11, responsible for studying the application of Articles 95 to 97 of the Treaty to turnover taxes, examined the current rate of the countervailing duty on worsted yarn in Germany.

The Working Party also completed its technical review of the common method of calculating countervailing duty on imports and drawback on exports. It was again obvious that opinions on the method still differ.

⁽¹⁾ See page 2215 of No. 82 of the official gazette of the European Communities of 20 September 1962.

The Commission has not yet pronounced on the question as a whole nor on the application of the decision by the representatives of the government of Member States meeting in Council on 21 June 1960 ⁽¹⁾. This decision, which was also discussed at the meeting on 17 September 1962, limits the possibility for Member States of adjusting the rates of turnover tax on imports and drawback on exports.

⁽¹⁾ See Bulletin 5-60, Chap. III, The Council.

BULL. EC 12-1962

Harmonization of laws on turnover taxes

27. The Commission has drafted a directive on the harmonization of Member States' laws concerning turnover taxes, which it has submitted to the Council in accordance with Article 99 of the Treaty of Rome ⁽¹⁾.

The Commission's draft is based on studies by the Fiscal and Financial Committee and working parties which have examined several kinds of single-stage turnover tax possibly suitable for harmonization, namely a single general tax levied at the stage prior to retail trade, a common tax imposed at the production stage and a single added-value tax. Each of these systems might be combined with a retail sales tax imposed by the Member States independently.

The Commission considers preferable and feasible a final system of added-value tax, down to the wholesale stage inclusive, combined if need be, according to the requirements and customs of the countries, with a supplementary tax imposed independently at the retail stage.

⁽¹⁾ The draft is published in the supplement to this Bulletin.

Such a system, to be introduced in the Member States not later than the end of the transition period, would exclude neither the manipulation of the harmonized taxes in relation with an expansionary and anti-cyclical policy of the Community nor that of the supplementary independent taxes as part of social, economic and budgetary policy at national level.

BULL. EC 1-1963

Tax problems

Harmonization of direct taxes

33. On 13 and 14 November 1962 Working Parties Nos. IV and V set up by the meeting of 5 October 1961 between heads of tax departments in the six countries met in Brussels for the third time. (1)

Working Party No. IV, which is studying the basis of assessment of direct taxes in member countries, examined the delegations' replies to the questionnaires concerning tax arrangements for amortization in certain industrial sectors and for asset appreciation and depreciation. Notes from the delegations concerning measures taken to offset monetary depreciation and to encourage investment were also examined. The Commission's staff were instructed to prepare for the next meeting an overall comparative report bringing out existing disparities and enabling their importance to be assessed.

Working Party No. V, which is examining the tax problems raised by investments in the Community by non-member countries, studied the delegations' replies to the questionnaire on tax arrangements for subsidiaries or permanent establishments set up in one or more member countries and depending on a company domiciled in a non-member country. The Commission's staff were instructed to draft an overall comparative report for the next meeting from which the effects of existing disparities between tax arrangements in the member countries could be appraised, particularly disparities arising from conventions on double taxation with certain non-member countries.

Elimination of discriminatory turnover tax provisions

34. At a meeting on 26 October 1962 the ad hoc working party of experts from the Commission and from the member countries once again examined possible cases of discrimination stemming from disparities between turnover taxes collected inside the country and when imports are made.

This meeting revealed that a number of questions will have to be considered again in the near future, in particular taxation of solid and liquid fuels in the Netherlands. In addition, countries concerned are to submit to the Commission as soon as possible proposals for amendments to their legislation on specific points : for Belgium in respect of imports for government or public bodies and the taxation of imports of slaughtered animals and of meat and fats; for the Federal Republic of Germany with regard to taxation at the import stage of farm products for which counter-vailing charge rates are too high. The arrangements for imports into the Federal Republic of Germany carried out by the distributor using his own means of transport — imports which are in fact taxed twice because of the method of defining delivery used in Germany — were also examined at this meeting. The delegations from the various member countries feel that these arrangements should be tidied up.

Harmonization of indirect taxes on capital movements

35. The second meeting of the working party engaged on this task was held on 26 and 27 November 1962 in Brussels, and a number of criteria were agreed on for the harmonization of these taxes throughout the EEC.

The aim must be to enable capital to move freely and to eliminate any tax discrimination or double taxation arising from differing laws. The Commission's staff considers that where stamp duty is levied on capital subject to registration tax, it could be incorporated into the latter.

As for the registration tax itself, the Commission's technical staff considers that it might be collected according to the following principles :

(1) See Bulletin No. 12-61, Chap. IV, sec. 25.

The country in which the tax is collected would be the one in which the company is domiciled. In principle all companies, whatever the nature of their operations, would be subject to the tax. Capital subscribed on the incorporation of a company or subsequently would be liable to tax, as would both company mergers and reserves capitalized.

The tax basis would be net subscriptions, it being understood that a conveyancing tax could be levied on land or buildings by the country in which they were situated.

These criteria will be further examined at another meeting of the Working Party which is likely to be held early in 1963.

The Fiscal and Financial Committee winds up its work

36. The Fiscal and Financial Committee consisting of leading specialists from the six countries under the chairmanship of Professor Neumark, was set up by the Commission at its meeting of 5 April 1960 to study the impact of differences in taxation systems on the integration process. It finished its work recently and reported back to the Commission.

The Commission will shortly publish the report as a brochure in the four Community languages. It will be obtainable from the Community's agents or the central sales office of the publishing services of the European Communities.

The report outlines the general principles which the Committee considers should govern the tax harmonization generally agreed to be indispensable. The Committee also recommends a number of reforms which are summarized below ⁽¹⁾ :

The same type of general tax on all income combined should be introduced in all the Member States; the structure of tax scales would be the same even if the actual rates were different.

Company tax should be uniform in type and rate in all the EEC countries and undistributed profits taxed more heavily than distributed. The rate applicable to undistributed profits should be roughly equal to the maximum income tax rate (about 50%). Distributed profits should be taxed at about half this rate, with a minimum of 15%.

Dividends and interest of all kinds should be taxed at source. In the case of the former this would really be no more than a sort of advance payment of the income tax due by a shareholder in his capacity as a private person. The tax on dividends distributed to EEC residents owning nominal or bearer shares and, in the latter case, disclosing their identity would be from 10% to 20%, and would not necessarily be the same in all Member States; a uniform rate of at least 25% should be applied to dividends distributed to other persons.

Special regulations should be issued for dividends accruing to companies, so as to prevent double taxation unwarranted from the economic point of view.

To supplement income tax, a general net value tax based on uniform principles, should be charged. Only the personal fortune of individuals should be taxed in this way, and the rate should be modest.

The structure, and possibly also the levels, of death duties should be harmonized. At present these are levied at different rates and according to more or less different principles in the six countries.

The following is proposed with regard to turnover tax : any existing cumulative gross turnover taxes levied at all stages should be abolished; a tax on added value with deductions corresponding to the taxes paid on previous purchases should be levied as a basic tax in all the Member States at all stages save the retail stage. Both the structure (particularly with regard to exemptions) and the rate of this tax should be uniform. It would be supplemented by a tax on retail trade, which could differ from country to country. When all these reforms have been completed, fiscal frontiers will have to be abolished in respect of turnover taxes.

As for special consumer taxes (excise duties), three groups should be distinguished :

⁽¹⁾ Prepared by M. Neumark.

a) *Certain consumer taxes in the strict sense of the term*, which do not exist in all the Member States and whose effect on the budget is very limited, should be abolished.

b) Taxes which do not come under a) and which are genuine consumer taxes will, for the time being, continue to be levied by the various Member States on different terms and at different rates. Tax frontiers and the present system for refunding taxes and levying countervailing charges will be maintained for such imposts as long as the abolition of these frontiers is not thought desirable or necessary.

c) For *taxes on goods which can be used either for consumption or as means of production*, one of the following solutions could be applied when the turnover tax has been reformed :

- i) They could be embodied in the new added value tax.
- ii) They could be deducted from this added value tax.

Such taxes on capital movements as are an obstacle to the free movement of capital will have to be eliminated : where they are considered useful for other than fiscal reasons they could be replaced by dues, in the strict sense, at moderate rates. If it proved impossible to abolish certain types of tax on capital movements, an effort should be made to unify them.

With regard to the motor vehicle tax, it will probably not be possible to avoid an alignment of the actual tax burden, which differs considerably at present in the different countries, even if complete unification is not an overriding necessity. For the tax on mineral oils, the Fiscal and Finance Committee has not been able to make detailed proposals, since the nature and the rate of this tax will depend to a great extent on the general energy policy chosen for the Community. The same is true to some extent of transportation taxes, for which the Committee considers harmonization measures absolutely necessary for reasons given in detail in the report.

Existing double taxation conventions will have to be amended to conform with the OECD standard convention. Subsequently the aim should be a multilateral convention in this field. At the final stage, it will be appropriate to introduce a collective arrangement for settling disputes amicably and common jurisdiction for double taxation cases.

A number of supranational measures of financial compensation are indispensable if only because the tax reform measures proposed will have an uneven, and to some extent divergent, impact on the budgets of Member States. Apart from this, it is proposed to set up a fund reserved for the Community as such which will be maintained, after the completion of the customs union, by revenue from the common customs tariff and possibly from other sources.

The measures of tax harmonization proposed are only part — albeit a very important part — of a financial policy to meet the requirements of a genuine common market. In addition to these measures, some co-ordination and harmonization of the fundamental principles guiding the Member States' financial policies will be necessary. For this purpose an agreement will have to be reached on the main economic and social objectives the Community intends to pursue and on how far the attainment of these objectives can be fostered through certain financial measures and institutions.

BULL. EC 2-1963 -

BULL. EC 3-1963

Fiscal problems

Harmonization of turnover taxes

25. In January the draft directive on harmonization of turnover taxes was discussed for the first time in the European Parliament's Internal Market Committee, which appointed M. Deringer as rapporteur.

Elimination of discriminatory provisions in indirect taxation

26. The experts from the Commission and the Member States have continued their work on eliminating provisions discriminating between home products and similar products imported — in respect of turnover and other indirect taxes.

In connection with this work the Italian Government has advised the Commission that the discriminatory taxation provisions in Italy were withdrawn as from 1 January 1963.

BULL. EC 4-1963

Taxation

19. Meeting in Brussels on 25 February, the Working Party on countervailing charges on imports and drawback on exports discussed the following matters relating to turnover taxes.

a) Discrimination resulting from the rate of countervailing charges on imports of farm produce into Germany. The Federal Government proposes to reduce the rate of these charges from 4 % to 2 % and 2.5 %. To enable the Working Party to assess the tax burden on these products the Federal Government submitted calculations made by the Management Institute of the Agricultural Research Centre at Brunswick-Völkenrode. A general discussion on these calculations ensued.

b) Instances of discrimination in the taxation of oil products in the Member States. The Working Party found that there were discriminatory aspects in Dutch legislation. No such discrimination of a strictly fiscal nature could be observed in the other countries. However, the Working Party considered that their legislation might be re-examined in the general context of energy policy.

c) Progress report on legislative or administrative measures taken by Member States to abolish discriminatory practices falling under Article 95, third paragraph, of the Treaty.

d) Prior consultation of the Commission by the Belgian and Dutch Governments under the decision of 21 June 1960 concerning the modification of countervailing charges on imports and drawback on exports of certain classes of products.

BULL. EC 5-1963

Taxation problems

Meeting of Ministers of Finance

28. On 25 and 26 March the Community Ministers of Finance met in Baden-Baden to examine a draft directive for harmonizing Member States' laws on turnover taxation. In the light of the comments and suggestions made, the Commission's staff will prepare further studies to assist the Ministers in reaching a decision.

Application of Articles 95 and 97 of the Treaty

29. Drawback of tax on exported goods and particularly of turnover tax where this is collected by the cumulative multistage method is a problem which the Commission has been studying in recent years and which has once again been brought to the fore in connection with the plans now being discussed in Federal Germany regarding countervailing charges on imports.

In accordance with the Commission's directive of 30 July 1962 ⁽¹⁾, the Bundestag has passed a law cutting the countervailing charge on worsteds from 4 % to 1 %. The Bundestag has also decided to lower the countervailing charges from 4 % to 2.5 % or 2 % for certain farm products. However, reductions for certain products have been rejected by the Bundestag, and for these the Commission proposes to continue examination of the question in the light of the Treaty.

On the other hand, the Bundestag has decided to increase the countervailing charge on imports of certain products — mainly of the textile, leather, paper and steel industries — from 4 % to 6 % or, where appropriate, from 6 % to 8 %. In accordance with the decision taken in the Council on 21 June 1960, the Commission and the other member countries will be consulted before these adjustments are promulgated. The Commission had drawn the Federal Government's attention to the need for such consultation.

Abolition of discrimination in turnover taxation

30. In pursuance of Article 95(3) of the Treaty, Belgium and Italy have in recent months abolished certain discriminatory practices noted by the Commission in conjunction with Government experts or have tabled legislation to this effect.

(1) See official gazette of the European Communities, No. 83, 20 September 1962.

BULL. EC 6-1963

Tax problems

Harmonization of direct taxes

23. On 1 and 2 April, Working Party No. 4 of the Fiscal Problems Directorate completed its work of comparing regulations on depreciation, on appreciation of assets, on the valuation of stocks and the carrying forward of losses.

The Commission's staff is to elaborate the preliminary draft of a report from the Working Party in which the various measures considered will be analyzed and those which are neutral in their effects will be distinguished from those which are not quite neutral and which for this reason are liable to exert an influence on the proper functioning of the common market. It was also agreed to stress the provisional nature of the report's conclusions: it will not be possible to reach final conclusions till all the taxes payable by firms and companies have been reviewed.

The draft report will be submitted to the Working Party before transmission to Government tax authorities.

Federal Republic's Turnover Equalization Tax

24. On 19 April the staff of the Commission had a preliminary discussion with representatives from the Member States concerning the Turnover Equalization Tax in the German Federal Republic. The Federal Parliament had on 15 March approved increases in the rate of tax.

The meeting was attended by representatives from the High Authority of ECSC, and dealt with two main points :

- a) The compatibility of the increases with the decision taken on 21 June 1960 by the representatives of the Governments of Member States, meeting in the Council. This decision laid down the principle that countervailing charges and drawbacks could be changed only for technical reasons, and not in pursuance of economic, monetary or commercial policy;
- b) The question whether the increases might not lead to distortions of competition.

Discussion of these points was to be resumed on 10 May, though the main item on the agenda will be an examination of the various rates of Turnover Equalization Tax and their compatibility with the principles of Articles 95 and 97. This will be done on the basis of figures which the Federal Government will by then have submitted in support of its case. Reductions in the rate of Turnover Equalization Tax on certain farm products — approved at the same time by the Bundestag — will also be considered.

BULL. EC 7-1963

Taxation problems

Harmonization of direct taxes

28. Working Party No. V of the Directorate for tax problems is studying certain fiscal problems arising from investments by non-member countries in the Community (1). On 20 May it examined papers submitted by the Commission's staff which discussed, *inter alia*, the effects of conventions between Community countries and certain non-member countries designed to eliminate double taxation. The Working Party decided to add examples expressed in figures, with an inventory of individual cases noted by the authorities of how profits were attributed to companies with international links.

Italian Law No. 103

29. Examination has continued of the problem raised by flat-rate drawbacks paid to Italian exporters of certain mechanical engineering products under Law No. 103.

The Commission has formed the opinion that the method for computing the incidence of indirect taxes on products of the Italian mechanical engineering industry as described by the Italian Government is not compatible with Article 96 of the Treaty. Noting that the principles on which this method is based have also been used to determine the tax component of the drawbacks granted under Law No. 103, the Commission has decided to initiate the procedure provided for in Article 169 against the Italian Government alleging infringement of Article 96.

Since under the terms of Law No. 103 flat-rate drawbacks on exports are allowed only for the Italian mechanical engineering industry, and since these drawbacks disturb competitive conditions in the Common Market and therefore cause distortions in the meaning of Article 101 of the Treaty, the Commission has decided also to take action as provided for in that Article.

Modification of turnover equalization tax in the Federal Republic of Germany

30. As a result of steps taken by the Commission the Bundestag on 15 March 1963 lowered the equalization tax from 4 % to 1 % for worsteds and from

(1) See Bulletin 1-63, sec. 35.

4 % to 2 ½ or 2 % for numerous agricultural products. The 4 % rate remains unchanged for certain important tariff headings (cattle, pigs and dairy produce).

At the same time the Bundestag increased from 4 % to 6 % or from 6 % to 8 % the turnover equalization tax on a considerable number of products of the leather, paper, textiles and steel industries. All these modifications came into force on 1 June 1963.

Some of the considerations underlying these increases were discussed in accordance with the consultation procedure between the appropriate offices of the Commission and experts from the Member States (see Bulletin No. 6, sec. 24).

Prior consultation. - It was agreed that under the decision of 21 June 1960 the Governments are obliged to consult the Commission and the other Member States before changing their equalization taxes, even if the initiative for such changes in tax legislation comes from their Parliaments.

Reasons for the increases. - Consideration was given to the question whether the increases had been made for technical reasons. The Commission formed the opinion that there were good grounds to assume technical reasons in the cases where changes in equalization taxes resulted from changes in domestic taxation or from changes in the conditions under which goods were produced whereby a modification had been brought about in the tax burden on domestic products. According to another view all changes can be regarded as technical which are intended to balance taxes on domestic and imported goods.

Economic effects. - There was some discussion on the question whether these tax increases could lead to distortions of competition in the sectors concerned. It was pointed out that similar structural difficulties existed in the same industrial sectors in the other Member States. However, a close study will be needed before any conclusion can be reached, in particular as regards the applicability of Article 101.

At the second consultation meeting on 10 May the main subject studied was whether these measures are compatible with Articles 95 and 97 of the Treaty. The Member States and the Commission raised a number of objections to the method of calculation and to some of the individual calculations submitted by the Federal Government. Not all these points could be settled, and a further meeting was called for the beginning of June.

In a letter dated 30 May the Commission informed the Government of the Federal Republic that with regard to the disputed term "technical considerations" it considered there were strong arguments for the interpretation according to which changes in equalization taxes were permissible only if they resulted from changes in domestic tax rates or in the conditions under which goods were produced.

Pending further studies the Commission reserved its position on the question whether, because of their economic effects, the increases were compatible with the provisions of the Treaty.

The Council also discussed these matters at its session of 30 and 31 May, after the French Government had requested that its memorandum on the increases of German turnover equalization tax be placed on the agenda. The Council took note of the Commission's letter to the Federal Government and decided to consider at one of its coming meetings in what way the decision of 21 June 1960 should be interpreted.

BULL. EC 8-1963

Taxation

Harmonization of turnover taxes

29. An "ad hoc" panel attached to the working party on the harmonization of turnover taxes has been set up to work out the basic principles for a common

system of added value taxation that will meet the requirements of the draft directive on the harmonization of turnover taxes in the Community.

This panel of Commission representatives and government tax experts met for the first time in Brussels on 13 - 14 May. They examined closely some of the basic principles proposed and studied the definition of "added value tax", "transactions liable to tax", "goods" and "deliveries". A Community standpoint was worked out on these points and on the question of how deductions will be made under the common system ("tax from tax" deduction).

At the second meeting, held on 24 and 25 June, the panel considered the definition of "persons liable to tax". A discussion took place of the problems which would arise if farmers and farm workers were brought within the scope of the Community turnover tax. The panel will endeavour to reach agreement on this important question as well.

BULL.EC 9/10-1963

Taxation problems

The Standing Committee of heads of revenue departments, which was set up on the initiative of the Finance Ministers, met for the first time on 16 July 1963 in Brussels under the chairmanship of M. von der Groeben, member of the Commission and President of the Competition Group. The Committee discussed problems connected with the directive on the harmonization of turnover taxes now before the Council. The Committee instructed the *ad hoc* panel attached to the Working Party on the harmonization of turnover taxes (1) to study and work out in coming months the details of the common added-value tax system planned. Attention will be paid to budgetary and business repercussions and the impact on social policy of such a new system.

International double taxation, methods of collection and supervision and special consumption taxes were also discussed. The Committee decided that the work, now well advanced, on taxes on capital movements should be speeded up and if possible completed by the end of 1963. In association with the relevant government departments, the Commission's staff will prepare material to enable the Committee at its next meeting to decide on priorities and draw up a programme of work.

Modification of the Federal Republic's turnover equalization tax

32. Multilateral consultation on the compatibility of increases in the Federal Republic of Germany's turnover equalization tax with Articles 95 et seq. continued in Brussels on 4 and 5 July. At this, the third of such meetings, the Commission's experts and the Member States' representatives found that, broadly speaking, the increases were in fact compatible with the Treaty in so far as the increased rates had been fixed so that they still fell below the effective burden, as calculated by the Federal Republic, borne by the various products. The examination of the other rates will be continued at a later date on the basis of further calculations to be submitted by the Federal Government. Consideration of the economic or other reasons which have led the Federal Republic to increase the rates was also resumed on the basis of a decision of 21 June 1960 taken by the member countries' representatives meeting in the Council.

The Commission's staff has prepared a memorandum on the interpretation of this decision which has been submitted to the Council and will be studied at one of its forthcoming meetings.

(1) See Bulletin No. 8-63, Chap. III, sec. 29.

Harmonization of turnover taxes

33. On 5 November 1962 the Commission laid before the Council a proposal for a directive on the harmonization of turnover taxes (1). In accordance with Article 100 of the Treaty, the Council referred the proposal to the European Parliament and the Economic and Social Committee.

The Parliament will examine the draft on the basis of the Internal Market Committee's report (Rapporteur, M. Arved Deringer). This Committee, which has competence as regards the substance of the directive, itself consulted the Parliament's Economic and Financial Committee and its Social Committee.

The Internal Market Committee's report proposes that the draft be approved subject to certain amendments, the most important of which are as follows :

- a) "The Member States shall introduce not later than 31 December 1967" (instead of 31 December 1969) "a common system of added-value taxation embracing all stages up to and including wholesale trade". (The Committee feels that the two stages proposed in Article 1 of the draft for transition to the common system are not needed.);
- b) "The structure and implementing procedure of the common system of added-value taxation shall be agreed by the Council not later than 31 December 1964, on a proposal of the Commission";
- c) "Before the end of 1967, the Commission shall submit to the Council proposals on the way in which, and within what period, the harmonization of turnover taxation must attain its final objective, namely elimination of taxation frontiers and the absolute neutrality of taxation in respect of the origin of goods and services. The Council shall take a decision on these proposals before the end of the transition period. In its proposals the Commission must take into account not only the relationships, varying as they do from Member States to Member State, between direct and indirect taxes, and the impact of any change in taxation systems on budgetary and fiscal policies, but also the influence of taxation systems in general on competitive and social situations in the Community".

On 2 July the Economic and Social Committee rendered an opinion on the draft, containing the following main points :

- a) It endorsed the proposal to abolish the present multistage cumulative taxes and to replace them by a Community added-value tax system;
- b) It adopted no definite standpoint on the way in which this tax should be collected, that is to say on whether the tax should be paid fractionally or not;
- c) The Community system should be settled as quickly as possible and should be brought into force not later than the end of the transition period (31 December 1969);
- d) The Committee feels that the first paragraph of Article 1 should be amended so that the single-stage tax which is to be substituted for the present cumulative multistage taxes should be based on the proposed Community added-value tax, so as to avoid the adaptation measures chosen by the Member States conflicting on essential points with the Community system;
- e) Lastly, the Committee takes the view that Article 4 of the directive should give priority in the immediate future to the problem of eliminating physical controls at frontiers, without prejudice to the elimination of countervailing charges on imports and drawbacks on exports in trade between Member States.

Discussion of the directive will begin shortly in the Council, and a resolution adopted by the German Bundestag on 24 April and transmitted to the Commission is of interest :

"1. The Bundestag has taken note of the draft, prepared by the EEC Commission, of a directive to be adopted by the Council of the European Economic Community on the harmonization of Member States' legislation on turnover taxation.

(1) See Bulletin No. 12-62, Chap. V, sec. 27.

b) That there be published before 30 June 1964 a document explaining the main features and scope of the future common added-value taxation system.

The change should be made in a single operation, since a series of changes would be injurious to the economy and to administration and would also bring with it the danger that even wider disparities might develop between the taxation systems in force in the Member States.

4. The Bundestag calls on the Federal Government to facilitate the implementation of the EEC Commission's proposals having due regard to the amendments proposed in paragraph 3.

The Bundestag strongly urges all the committees and institutions of the European Economic Community to take energetic steps to eliminate any obstacles to the creation of an economic union having the features of a domestic market."

A similar resolution was adopted by the Bundesrat (Upper House).

An *ad hoc* panel, comprising tax experts of the Commission and of the Member States, which is attached to Working Party No. 1 on the harmonization of turnover taxes (see Bulletin No. 8-63), met in Brussels on 9-10 July 1963. The panel, which is working out the basic principles of a common system of added-value taxation, discussed definitions of several elements in this form of taxation.

The next meeting of the panel is scheduled for October.

BULL.EC 11-1963 -

BULL.EC 12-1963

Taxation problems

Modification of turnover equalization tax and export refunds in the Federal Republic of Germany

25. At a meeting of Government experts in Brussels on 30 September and 1 October 1963 the consultation concerning increases in turnover equalization taxes in the Federal German Republic was in its essentials concluded⁽¹⁾.

The Government experts from the Member States also studied the increases which the Federal Republic intends to introduce in rates of export refunds. The calculations submitted by the Federal Republic in accordance with the consultation procedure were fully discussed and a second meeting on these measures is planned for early November 1963.

⁽¹⁾ See Bulletin 7-63, Chap. IV, sec. 30 and 9/10-63, Chap. IV, sec. 32.

Harmonization of direct taxes

26. Working Party No. IV of the Fiscal Problems Directorate which was instructed to examine bases of assessment for direct⁽¹⁾ taxes devoted its meeting of 8 October 1963 to the examination of a draft report prepared by the Commission's staff. At its next meeting the Working Party will finalize this report and transmit it to the Standing Committee of heads of National Revenue Departments for their approval.

⁽¹⁾ See Bulletin No 1-63, Chap. IV, sec. 33 and Bulletin No. 6-63, Chap. III, sec. 23.

Harmonization of turnover tax

27. At its plenary session of 17 October 1963 the European Parliament passed a resolution embodying its formal opinion, drafted by the Internal Market Committee, on the turnover tax directive⁽²⁾. Before the vote M. von der Groeben, a member of the Commission, stressed the importance which the Commission attached to the abolition of tax frontiers between the Member States⁽³⁾. On a proposal from M. Dichgans (Germany, Christian Democrat) mention was made in the preamble that the Parliament hoped to see tax controls at internal frontiers disappear at the same time as customs frontiers.

28. The ad hoc Working Party of tax experts from the Member States and Commission officials, which is working out the principles and details of a common system of added value tax⁽⁴⁾, held a further meeting on 15 and 16 October 1963. The Working Party will transmit a progress report to the Standing Committee of heads of Revenue Departments.

(2) The most important proposals concerning amendments to the EEC Commission's draft directive have already been given in Bulletin 9/10-63, Chap. IV, sec. 33.

(3) Extracts from M. von der Groeben's remarks are published in the editorial to this Bulletin.

(4) See note (1) above.

BULL.EC 1-1964

Taxation

Standing Committee of heads of revenue departments

47. This Committee met again in Brussels on 29 October 1963, when it was chiefly concerned with preparing the ground for discussion of the turnover-tax directive in the Council. It was decided to set up a working party on financial statistics. The Commission also informed the Committee of the progress of studies relating to taxes on capital movements, direct taxes borne by companies and double taxation among the member countries.

There was another meeting of the Standing Committee in Brussels on 22 November, when discussion centred on various aspects of the common added-value tax proposed by the Commission in its draft directive on the harmonization of turnover taxes. Before the Committee was a report by the competent working party on "Some

important problems relating to the structure and implementation of a common system of added-value tax". There was detailed discussion of the problems arising from the definition of the concept and nature of an added-value tax and its field of application, from the various possible tax-on-tax deduction methods (particularly with respect to the tax burden on investment goods), from tax exemptions and differentials and from the taxation of services, agriculture and very small businesses. The results of the discussion will be embodied in a report to member Governments and dealt with at the next meeting of Finance Ministers in the middle of January 1964.

Taxation of tobacco products

On 13 November 1963 there was a meeting of Government experts in Brussels, at which the taxation of tobacco products was discussed. After commenting on the discrimination within the meaning of Article 95 of the Treaty that can occur under certain tax procedures currently applied, the meeting had a broad exchange of views on the harmonization of the consumer taxes on these products.

More concrete proposals on this question will be discussed at another meeting.

BULL. EC 2-1964

Taxation problems

Modification of turnover equalization tax and export refunds in the Federal Republic of Germany

26. At the end of multilateral consultations which, because of the scope of the modifications and divergent interpretations of certain essential principles, lasted several months (1), the Commission transmitted to the Federal Government in December 1963 its opinion concerning changes in the rates of turnover tax and in the rates of export refunds in the Federal Republic of Germany. It informed the Federal Government that, apart from certain products the examination of which was not yet completed, it had found nothing in the course of consultations on the new rates of turnover tax and export refunds to indicate that they did not comply with Articles 95 to 97, though there were some reservations as to the method used for computing them.

The Commission also examined from the angle of Articles 101 and 102 the measures taken by the Federal Republic of Germany to increase the turnover equalization tax and the measures contemplated for an increase in export refunds.

As to the increase of turnover equalization taxes, the Commission has deemed it desirable, before deciding whether the procedure of Article 101 should be applied, to request the Federal Government and the other Governments to submit their comments.

With respect to the changes contemplated in the rate of refunds, the Commission has drawn the Federal Government's attention to the fact that Article 102(1) lays upon it an obligation to consult the Commission, since these measures, in the Commission's view, appear liable to cause distortions.

Under the 1960 Agreement the Commission also takes the view that the measures are inadequately motivated and has therefore asked the Government to reconsider those which have not yet been put into effect.

Italian Law No. 103

27. In June 1963 the Commission initiated the procedure of Article 169 against the Italian Republic, alleging that Law No. 103 constituted an infringement of Article 96 of the Treaty (2).

In September 1963, the Italian Government informed the Commission that in view of the disequilibrium of the Italian trade balance it intended to adopt new measures to replace Law No. 103, which was to expire on 31 December 1963. At the same time it requested the suspension of the procedure opened under Article 169.

The conversations which had in the meantime been held between the Italian Government and the Commission had not yielded satisfactory results, and the Commission therefore decided in December 1963 to continue the procedure opened against the Italian Republic under Article 169.

Apart from this procedure the Commission also drew the attention of the Italian Government to its obligations under Article 102 of the Treaty in respect of the measures which may be taken to supersede Law No. 103.

(1) See Bulletin Nos. 5-63, Chap. II, sec. 29; 6-63, Chap. II, sec. 24; 7-63, Chap. IV, sec. 30; 9/10-63, Chap. IV, sec. 32; 12-63, Chap. III, sec. 25 and 1-64, Chap. IV, secs. 47 and 48.

(2) See Bulletin No. 7-63, Chap. IV, sec. 29.

BULL. EC 3-1964 -

BULL. EC 4-1964

Taxation problems

Standing Committee of heads of revenue departments

28. At its meeting of 20 February 1964 the Committee discussed the amendments proposed by the Finance Ministers, at their meeting in Rome on 9-10 February 1964, to the Commission's draft directive on the harmonization of turnover taxes. In accordance with these proposals and those of the European Parliament and the Economic and Social Committee, the two stages of harmonization previously planned were to be combined in one.

The Standing Committee discussed the principles of a common added-value tax which were to be submitted to the Council with the amended draft directive. It also established the broad lines for further work in the sphere of direct taxes and double taxation among the member countries. Finally it discussed the Commission's studies on the taxation of means of transport and transport services.

New Italian measures to replace Law No. 103

29. On 28 January 1964 the Commission informed the Italian Government by letter that the new Bill which had been communicated to the Commission and which would grant drawbacks of internal taxes on exports of the mechanical engineering industry, was essentially an extension of Law No. 103 and therefore incompatible with the obligations of Article 96 of the Treaty. The Commission therefore asked the Italian Government to withdraw the Bill or, at least, to take the necessary measures to prevent the granting of drawbacks until the Court of Justice had given a decision on its compatibility with the Treaty ⁽¹⁾.

The Italian Government replied to the letter stating that it could not accept the Commission's view. It proposed, however, gradually to reduce the drawbacks provided for in the Bill.

The Commission once more informed the Italian Government, in answer to this proposal, that it could not give its assent, since such drawbacks were incompatible with the provisions of Article 96 of the Treaty, but that it was ready to consider, as in the past, any other possibility offered by the Treaty.

Harmonization of taxes on capital movements

30 Working Party No. VI on indirect taxes on capital movements met in Brussels on 27-28 January and examined a draft directive on the harmonization of these taxes. The directive would abolish stamp duty in the Member States on owner's and loan capital and harmonize company tax (*droit d'apport*). A draft amended in the light of the various delegation's comments will shortly be submitted to the Standing Committee of heads of revenue departments.

Harmonization of taxes on insurance contracts

31. On 31 January 1964 Working Party No. VII on taxes on insurance contracts met in Brussels to examine certain points in a proposed arrangement to avoid, in the sphere of taxes on insurance contracts, distortion and double taxation, which may arise in insurance through the introduction of freedom to supply services. The solution consists in harmonizing the rules on territorial divisions and on taxable contracts and the basis of assessment. A draft directive will be submitted in the next few months to the Standing Committee of heads of revenue departments.

32. On 30 January Working Party No. V on international taxation matters examined the terms of reference for its future work.

Rules applicable to undertakings

Proposal for a regulation concerning exemption by classes

33. The Commission proposed to the Council that it issue a regulation empowering the Commission to absolve from the ban of Article 85(1) of the Treaty certain classes of agreements between undertakings, decisions by associations of undertakings or

⁽¹⁾ See Bulletin 2-64, Chap. V, sec. 27.

concerted practices. Exemption would be allowed by a Commission regulation and would apply from the time the regulation came into force. It would be for the firms concerned to ascertain whether their agreements were affected. The Commission would no longer need to take a large number of separate decisions. Moreover, many firms would adjust their agreements to the standard conditions laid down in the Commission's regulation or would draw up new agreements on this model. In this way the Commission would be relieved of a considerable amount of administrative work and firms would obtain prompt decisions. Until such time as the Council has issued the proposed regulation, the existing procedure remains unchanged.

BULL. EC 5-1964 -

BULL. EC 6-1964

Taxation questions

Harmonization of turnover taxes

37. The Ministers of Finance of the Member States, meeting on 2-3 April 1964 in Luxembourg, discussed among other things the problem of harmonizing turnover taxes. They expressed their determination to press forward the harmonization of turnover tax systems. The discussion bore mainly on the draft prepared by the Commission's staff of a directive amended in the light of the comments made by the bodies consulted and the progress made during the studies. The main lines and the implementing procedures for a common added-value tax system, as proposed by the Commission, are given in the annex to this directive (see also Bulletin 1-64, Chapter IV, section 47). The Commission will now proceed with the final drafting of the amended directive, which it will submit in the near future to the Council.

International taxation questions

38. Working Party No. V on international tax questions met on 9-10 April. It considered the question of how far the provisions of the OECD Standard Convention for the avoidance of double taxation with respect to direct taxes could be embodied in a multilateral convention planned by the EEC Member States. The Working Party is unanimous that the new convention must depart from the provisions of the Standard Convention as little as possible, for the sake of good relations with the other OECD countries and with other non-member countries. It is only where economic and fiscal alignment in the Member States is such as to allow of major simplifications that any departure from the text of the Standard Convention can be envisaged.

The Working Party studied first of all the provisions on "Personal scope", "Taxes covered", "General definitions" and "Fiscal domicile".

BULL. EC 7-1964

Tax problems

Standing Committee of heads of revenue departments

38. The Standing Committee of heads of revenue departments met in Brussels at the end of May, after an interval of three months, under the chairmanship of M. von der Groeben, a member of the EEC Commission.

The first point on the agenda was harmonization of turnover taxes in the Common Market. Following the favourable reception given to the Commission's amended draft directive on turnover taxes by the Ministers of Finance at their meeting in Luxembourg on 2 and 3 April, the Standing Committee discussed in detail the problems arising from a change of the system in five of the six Member States, especially in

connection with the ultimate object of the harmonization of turnover taxes, which is the abolition of tax frontiers. The point was raised that the far-reaching alignment of rates of turnover tax and exemptions which would inevitably ensue from such abolition would produce a state of affairs the consequences of which for national budgets and fiscal systems would call for very careful study. In order to carry out this study as quickly as possible the Standing Committee set up an ad hoc Working Party to examine the effects of abolishing tax frontiers on the proportion of direct to indirect taxes, budgets and taxation systems in the Member States, the terms of competition and social conditions in the Community.

The Standing Committee then took note of the interim results of Working Party IV on harmonization of direct taxation, which has completed the first part of its study of the bases for assessment of corporation taxes and proposed that the detailed, descriptive part of this Working Party's first report should be published.

After a brief exchange of views regarding continuation of the work on company profits tax, the Committee discussed the harmonization of capital transaction taxes and insurance taxes, for which the Commission is shortly to submit draft directives.

BULL. EC 8-1964

Taxation

Tax on added value

Amended proposal for a Council directive

30. On 12 June the Commission submitted to the Council an amended proposal for a directive on the harmonization of Member States' legislation on turnover taxes ⁽¹⁾. The initial proposal was sent to the Council on 5 November 1962. The amendments take into account recommendations made by the Parliament and the Economic and Social Committee and progress made in studies on the subject carried out with government tax experts. The most important amendments relate to the following points:

a) The common added-value tax system is to be introduced not in two phases but in a single operation, and the appropriate laws must be promulgated by the Member States before 1 January 1968 to enter into force at the end of the transitional period.

The Commission for its part will submit to the Council before the end of 1968 proposals showing how and when the final objective of the harmonization of turnover taxes is to be reached: the abolition of import charges and export refunds in trade among the Member States, while guaranteeing in the meantime the neutrality of such charge as regards the origin of goods and services.

b) The time-limit for submitting a second directive on the structure and implementation details of the common added value system has been brought forward to 1 April 1965.

c) Some of the major characteristics of the system have been clarified:

i) The tax on added value will be in the nature of a general tax on consumption exactly proportionate to the price of goods and services;

ii) It will be levied according to the system of "fractional payment";

iii) The value added will be determined by means of "tax-on-tax deductions".

In order to stress that the scope of the added-value tax should be extended as widely as possible, the Commission worded Article 2 of the amended draft in such a way that taxation extends in principle up to the retail trading stage inclusively, though this does not prevent the Member States from making it operative if need be only up to the wholesale stage inclusively, nor from providing certain facilities for small businesses.

(1) See supplement to Bulletin 7-64.

Opinion addressed to the Member States

31. The Commission also sent the Member States a formal opinion ⁽¹⁾ informing them in broad outline of the structure of the common system and procedures for applying it so that they can decide on the draft directives laid before the Council with the full knowledge of the general principles involved.

Harmonization of direct taxes

32. Working Party No. IV, which deals with the basis of assessment for direct taxes — particularly those on the profits of enterprises — held its 6th and 7th meetings in Brussels on 22 April and 8 June.

After finalizing its report on the basis of assessment for profit taxes, the Working Party adopted its new programme in conformity with the instructions given by the Standing Committee of Heads of Revenue Departments. The Working Party decided to study taxation of retained and distributed profits, the procedure for deductions at sources of tax on distributed profits, procedure on parent companies and subsidiaries and investment companies, procedure relating to directors, capitalization of reserves and mergers.

International taxation matters

33. Working Party No. V met on 9 and 10 June to continue its examination of the OECD draft convention on double taxation on income and property with a view to the conclusion of a multilateral convention among the Six.

To this end the Working Party adopted a first group of articles on persons and taxes to be covered by the convention, general definitions, the concepts of fiscal domicile and permanent establishment, without any important amendments having to be made.

In particular, as regards the application of the convention to any new taxes that may be introduced in the member countries, and as regards the settlement of conflicts between definitions in the convention and in national legislation, the possibility of including in the text the concept of a "Standing Committee of Heads of Revenue Departments" as a consultative and co-ordinating body was discussed. This proposal is now being studied.

The Working Party also began to investigate the problem of "triangular" relations in the matter of industrial or commercial income. This is a completely new problem that has never been examined in traditional bilateral conventions; it will therefore have to be studied in the context of multilateral relations in the light of fiscal domicile and of permanent establishment.

Changes in countervailing charges and drawbacks in the Netherlands and Belgium: Working Party No. II

34. At a meeting of Working Party No. II held in Brussels on 15 and 16 June in the framework of the prior consultation procedure laid down by the decision of the Representatives of the Member States' Governments on 21 June 1960, Belgium and the Netherlands made proposals, with supporting reasons, for changing or abolishing certain countervailing charges and drawbacks and introducing others. The compatibility of the proposals with the Treaty and with the above decision was discussed. The results of the examination were afterwards submitted to the Commission, which informed the Belgian and Dutch Governments of its decision on 1 July.

The same meeting concluded the technical examination of measures recently taken in the same field by the Federal German Government in respect of worsted yarn, oil products and boats.

⁽¹⁾ See official gazette of the European Communities, No. 111, 13 July 1964.

Indirect taxation of insurance contracts

35. Working Party No. VII met for the fourth time on 22 June. It will be recalled that its instructions are to create the conditions necessary in the field of indirect taxation for the liberalization of insurance services.

The Working Party examined the draft directive comprising rules on territoriality which should make it possible to avoid double taxation in the field of indirect taxes affecting insurance contracts and to reduce considerably the risk of distortion of competition. The proposed rules will mean that the taxing country will be determined without reference to the place where the contract is signed or to the place where the insurer has his business. Consequently, tax considerations will no longer influence the insured party in the choice of his insurer.

BULL. EC 9-1964 -

BULL. EC 10-1964 -

BULL. EC 11-1964

Taxation questions

Standing Committee of heads of revenue departments

7. The Committee held its eleventh meeting in Brussels on 17 September 1964, under the chairmanship of M. von der Groeben, member of the EEC Commission.

It approved a report concerning assessment of a common tax to be applied in the member countries if tax frontiers are abolished. The Committee proposed to the Commission that this report should be laid before the Council of Ministers.

Its purpose is to give the Council a general picture of the foreseeable financial and budgetary repercussions of the application of a common added-value tax system. The implementing details for this system are now being examined by an "ad hoc" panel, whose task is to prepare the draft of a second directive which the Commission should be submitted to the Council before 1 April 1965 ⁽¹⁾.

At the same meeting, the Standing Committee decided to set up a working party to "compare the differing tax burdens borne by certain economic sectors".

Harmonization of indirect taxes on capital movements

8. Working Party No. VI met in Brussels on 3 July 1964 and finalized a draft directive on the harmonization of indirect taxes on capital movements. After examination by the Commission this draft will be laid before the Council before the end of the year.

⁽¹⁾ See Article 3 of the first directive on the harmonization of Member States' legislation on turnover taxes, Bulletin No. 8-64, Chap. I, secs. 30 and 31.

BULL. EC 12-1964

Taxation

International taxation

13. Working Party No. V ("International taxation") met in Brussels on 6 and 7 October 1964.

It resumed its study of the OECD's model convention for the avoidance of double taxation with respect to direct taxes. It is planned to complete the first reading at the 24-25 November meeting, except for the articles concerning dividends, interest

and royalties, which will be considered in more detail after the points arising in all the other articles of the convention have been examined.

Harmonization of taxes on capital contributions

14. At a meeting in Berlin ⁽¹⁾, the EEC Ministers of Finance studied a report on the harmonization of taxes on capital contributions to limited companies. It also considered the Hallstein Plan to speed up European customs and economic union.

Proceedings against Italy concerning Law No. 639

15. On 9 October the Commission filed a suit in the Court of Justice concerning Italian Law No. 639 of 5 July 1964.

This law supersedes Law No. 103 ⁽²⁾ of 10 March 1955, relating to standard-rate refunds on the exportation of engineering products. The new law, like its predecessor, provides that certain engineering products shall qualify on exportation for a flat-rate refund of customs duties and internal indirect charges and taxes other than turnover tax. The list of items in question has 473 headings.

For products exported to EEC member countries, these refunds are to be gradually scaled down:

- i) By 60% from 1 January 1964 to 30 June 1964;
- ii) By 65% until 31 December 1964;
- iii) By 75% until 31 December 1965;
- iv) By 80% from 1 January 1966 onwards.

The Commission had already initiated procedure under Article 169 in respect of Law No. 103 ⁽³⁾.

⁽¹⁾ See also sec. 21.

⁽²⁾ See Bulletin 4-64, Chap. III, sec. 29.

⁽³⁾ Ibid., 2-64, Chap. V, sec. 27.

BULL. EC 1-1965

Taxation

Profit taxes

17. Working Party No. IV, which is studying profit taxes, met in Brussels on 10 November 1964.

It continued its examination of the structure and rates of company taxation, considering in particular the taxation of distributed profits and the problem of taxing at source the yield on capital.

Methods were discussed of reducing the total taxation on dividends, either by applying two different rates of tax on company profits or by granting shareholders tax credits. The studies made by the Working Party will be summarized in a report to follow that on the basis of assessment, which is already complete.

Harmonization of tax legislation (comparison of tax burdens)

18. Working Party No. VIII (Comparison of tax burdens in the Member States), set up by the Standing Committee of heads of revenue departments at its meeting of 17 September 1964, held its first meeting on 12 November 1964 in Brussels.

It discussed various methods that might be used to bring out clearly disparities between the tax burdens borne by different branches of industry and commerce.

The Working Party considered making a macro-economic comparison by economic sector and by "standard" enterprise. With respect to the standard enterprises, it was felt that a distinction should be made between the various legal forms of enterprise, and also by size and type (amount of capital, turnover and number of persons employed).

A plan concerning methods to be used is to be submitted to the Working Party at its next meeting. It will be drawn up with the help of specialists in the field.

The Statistical Office of the European Communities will co-operate in preparatory work.

Harmonization of turnover taxes

19. The draft directive for the harmonization of turnover taxes, now before the Council, provides in Article 3 that the Commission should submit the draft of a second directive by 1 April 1965, and a panel of experts from the national revenue departments and from the Commission has met several times for this purpose to work out the structure of a common added-value tax system and the relevant implementing procedures.

Good progress has been made in this technical field on the basis of texts drawn up by the Commission. In particular, problems in defining the concepts of deliveries of goods, supplies of services, tax domicile and tax scales have been thoroughly examined.

Several other meeting of this *ad hoc* panel will be held in order to press forward the work undertaken and complete the examination of the documents presented. The Commission will then be in possession of the necessary background information for the second directive, in the drafting of which the observations of the Member States will be borne in mind.

BULL. EC 2-1965 -

BULL.EC 3-1965

Taxation

Harmonization of turnover taxes

12. At its meeting of 12-14 January, the panel of experts from the national revenue departments and from the Commission ⁽²⁾ again considered the draft of a second directive on implementing procedures for a common added-value tax system.

The panel concluded its examination of the draft and attached commentaries. Both parts of the directive, together with a report, will be laid before the Standing Committee of heads of national revenue departments, which will meet on 25 February 1965 in Brussels to discuss the directive so that it can be submitted to the Council by the Commission before 1 April 1965.

International taxation matters

13. Working Party No. V on international taxation questions, which is studying the possibility of concluding a multilateral double taxation convention between the six member countries in the field of direct taxes met again in Brussels on 25-26 January 1965.

Using the OECD's Standard Convention for the avoidance of double taxation as a basis, the Working Party continued its discussion of the various kinds of income for which rules could be worked out and incorporated in the convention.

The main items discussed were the taxation of dividends and interest. Referring to the principles in the Standard Convention, the Working Party considered whether the right of taxation should go to the State of source or the State of residence and examined the question of privileges to be accorded to holdings at international level.

Abolition of tax frontiers

At one of their regular meetings, held on 25 January 1965 in Antwerp, the Ministers of Finance of the member countries considered the section in "Initiative 1964" dealing with the elimination of tax frontiers in the Common Market. Most of the Ministers took the view that the elimination of tax frontiers was a necessary objective if a true common market was to be created. The Netherlands delegation stated, however, that they could adopt no firm position on this matter until the economic and social consequences could be assessed.

(²) See Bulletin 1-65, Ch. IV, sec. 19.

BULL.EC 4-1965 -

BULL.EC 5-1965

Taxation

7. Meetings of the Standing Committee of heads of revenue departments

Harmonization of excise duties: The Standing Committee of heads of revenue departments met on 2 February 1965 to consider the question of excise duties within the EEC. It agreed that the Commission's staff, assisted by government experts, should define the aims to be achieved by the harmonization of excise duties, and that these aims should then be examined by Working Party No. III. The Standing Committee has asked the Working Party to establish an order of priority for the harmonization of these duties.

8. *Harmonization of turnover taxes*: At its meeting in Brussels on 25 February 1965, the Standing Committee of heads of revenue departments gave its opinion on the draft of a second directive on implementing procedures for a common added-value tax system ⁽¹⁾. The draft was submitted to the Council by the EEC Commission on 14 April 1965, as stipulated in Article 3 of the draft first directive for the harmonization of turnover tax legislation. ⁽²⁾

Revision of countervailing charges on imports into Belgium and drawbacks on exports

9. In accordance with the decision on prior consultation taken by the representatives of the member Governments in the Council of Ministers on 21 June 1960, the Belgian Government informed the Commission of the changes it proposes to make in its increases of transmission tax on imports and in drawbacks on exports.

These modifications were examined by Working Party No. II at a meeting in Brussels on 18 March 1965. The Working Party considered whether the new Belgian measures were compatible with the decision of 21 June 1960 and with Articles 95-97 and 102 of the Treaty. The discussion will be continued at a later meeting.

Profit taxes

10. Working Party No. IV, which is studying profit taxes, met in Brussels on 24 March 1965 to resume its examination of the taxation of distributed profits. With a view to possible reduction of the total taxation on dividends, the Working Party made a detailed comparison of the system of dual rates with that of tax credits. A document has been prepared and will be incorporated in a more general report on company taxation.

International taxation

11. Working Party No. V ("International taxation"), meeting on 16 and 17 March 1965, completed the first part of its study of the feasibility of a multilateral convention on the basis of the OECD's model convention for the avoidance of double taxation with respect to direct taxes.

The experts reached complete agreement on a large number of special problems that will arise when the present bilateral agreements on double taxation with respect to

⁽¹⁾ See Bulletin 3-65, Ch. II, sec. 12.

⁽²⁾ See Supplement to this Bulletin.

direct taxes are replaced by a multi-lateral convention. Certain problems in this transition that the Working Party was not able to solve, or at least not completely, will be considered at the next meeting, which is to be held at the end of May 1965 to prepare a report to the Standing Committee of heads of revenue departments.

BULL.EC 6-1965 -

BULL.EC 7-1965

Taxation

Indirect taxation

6. *Countervailing charges on imports and drawbacks on exports*. The working party responsible for these matters met in Brussels on 3 May to continue its discussions on the changes made by Belgium in countervailing charges and drawbacks on exports. It considered whether or not these measures were compatible with Articles 95 to 97 of the Treaty. Before they can adopt a final position on the subject, appropriate depart-

ments in the Commission will need a certain amount of technical information to be supplied by the Belgian experts. Since the measures concerned had already been put into effect, the consultation provided for under Article 102 of the Treaty did not take place, so that this aspect of the question could not be dealt with at the above-mentioned meeting.

A certain amount of economic information was nevertheless collected in order to make it easier for the departments concerned to discuss these measures later in the light of Article 101 of the Treaty.

7. *Excise duty: meeting of Finance Ministers of the Six.* The Finance Ministers of the six Member States met in Cannes on 3 and 4 May. They approved the terms of reference given by the heads of national revenue departments, during their meeting on 9 February, to a working party attached to the Commission (Directorate for Fiscal Matters), which will be responsible for harmonizing excise duties. One of the working party's tasks will be to distinguish between:

- a) duties that can be harmonized;
- b) those for which harmonization does not seem absolutely necessary;
- c) those that can be abolished;
- d) those that can be incorporated in the common added-value tax system.

In this connection, the working party will have to pay special attention to the budget requirements of Member States and to the need to do away with tax frontiers at some time in the future.

Some of the ministers stressed the budgetary and social difficulties which might arise from the harmonization of excise duties. They urged the working party to bear in mind the requirements of economic policy.

The Finance Ministers also held a brief exchange of views on how tax monopolies would affect the harmonization of excise duties.

Indirect taxes on capital contributions

8. The Economic and Social Committee approved on 25 May a proposal for a Council directive to harmonize indirect taxes on capital contributions and thus facilitate the free movement of capital within the Community ⁽¹⁾.

After recommending the Council to define rapidly the main lines of the Community's financial and tax policy, the Committee stated that it would like to see these taxes disappear completely, since they were hardly compatible with the demands of the modern economy and no longer fitted into a rational tax system.

It therefore expressed its satisfaction at the elimination of stamp duty and hoped that capital duty would be abolished soon; however, if this proved impossible, for budget reasons, capital duties should be harmonized at as low a level as possible, in order to obviate disparities between yield from shares and yield from debentures.

Direct taxes

9. *Profits taxes.* The working party dealing with these matters met in Brussels on 20 May. It continued discussions on taxes levied on distributed profits and on the possibility of relieving double taxation on company and shareholder. The working party devoted special attention to the problem of parent companies and subsidiaries; at its next meeting, it will endeavour to reach conclusions with a view to drawing up definite proposals on the harmonization of direct taxes on company profits.

(1) See Supplement to Bulletin 2-65.

BULL.EC 8-1965

Taxation

International taxation

9. The working party on international taxation held a meeting in Brussels on 24, 25 and 26 May 1965. During this meeting, the working party continued its discussions on the possibility of concluding a multilateral convention between the six Member States for the avoidance of double taxation in respect of direct taxes.

A list of certain fundamental problems and technical questions was drawn up and will shortly be referred to the Standing Committee of Heads of Revenue Departments.

Harmonization of indirect taxes other than turnover taxes

10. The working party on excise duties held a meeting in Brussels on 14 June 1965.

The working party discussed a Commission proposal for harmonizing excise duty on manufactured tobacco, priority being accorded to this problem on account of the fact that, in certain member countries, customs duties and taxes were linked.

The proposal did not meet with unanimous support. A draft directive will be prepared by the Commission and discussed by the working party at a later session.

BULL.EC 9/10-1965

Taxation

Harmonization of excise duties

8. The working party on excise duties met in Brussels on 5 July 1965 to discuss the Commission's proposals regarding future harmonization in this field. A report on these discussions will shortly be submitted to the Standing Committee of heads of revenue departments.

The working party met again on 6 July to discuss the technical details of a Community charge on fats, concerning which the Commission has already submitted a proposal to the Council of Ministers. The majority of delegations present were in favour of the charge being collected at the manufacturing stage, where proper assessment and collection would be easier.

Harmonization of direct taxes

9. On 12 and 13 July 1965, the working party on the basis of assessment for direct taxes on enterprises discussed a Commission document containing a draft programme for the harmonization of direct taxes.

This programme makes provision for the alignment of amortization methods and for prior consultation on measures to encourage industrial investment.

The document also raises the question of taxes deducted at source and profits tax on joint stock companies.

BULL. EC 11-1965

Taxation

International taxation matters

7. Working Party No. V (international taxation) held a meeting in Brussels on 7 and 8 September 1965.

A progress report has been drawn up and will be submitted to the Standing Committee of Heads of Revenue Departments. Appended to the report is a list of fundamental points on which the Working Party wishes to elicit opinions and directives with a view to drafting a multilateral convention to eliminate double taxation as regards direct taxes.

BULL. EC 12-1965

Taxation

Harmonization of direct taxes

10. A joint meeting of Working Parties IV (direct taxes) and V (international tax questions) was held in Brussels on 5 and 6 October to examine, on the basis of a document drafted by the Commission's staff, the question of the taxation of international mergers of companies. A progress report drawing on memoranda sent in by the various delegations to the secretariat of Working Parties IV and V is now being drafted and will probably be discussed towards the end of 1965.

BULL.EC 1-1966

Taxation

International taxation

11. Working Party No. V ("International taxation") held its 15th meeting in Brussels on 16 and 17 November 1965.

The meeting was devoted to final discussion of the interim report and annexes on the still outstanding questions of principle and to technical questions with a view to a multilateral convention for the avoidance of international double taxation with respect to direct taxes.

This report is now ready and it will be submitted to the standing Committee of heads of revenue departments.

The meeting resumed discussion of certain points in taxation methods and practices including the treatment of cases where the right to tax was claimed by several contracting states and the question of whether to include in the draft convention a clause concerning mutual assistance in the exacting of payment on final tax demands.

An agreement at present in force between the Benelux countries served as a basis for the discussions on this last point.

BULL.EC 2-1966

Taxation

Harmonization of turnover taxes

19. At its meeting of 25-26 November 1965 in Brussels, the *ad hoc* panel of experts from the national revenue departments and from the Commission, assisted by agricultural experts, studied matters relating to the inclusion of agriculture in the field of application of a common added-value tax. The panel discussed the system that should be established in accordance with Article 12(2) of the draft second directive on implementing procedures for an added-value tax system.

Italian export rebates for engineering products — EEC Commission v. the Republic of Italy ⁽¹⁾ — (Case 45-64)

20. The Court of Justice of the European Communities gave its ruling on 1 December 1965 in Case No. 45-64, brought by the EEC Commission against the Italian Republic over "drawback" payments on exports of engineering products. A very large range of products of interest to almost all branches of Italian engineering (precision instruments, electrical machinery, steam locomotives, jet aircraft, etc.) are eligible on export from Italy for a payment described as a "drawback" of taxes on production; this is computed at a flat rate per kilogramme of the various products or classes of products concerned.

In October 1964 the Commission asked the Court of Justice for an interpretation of the Treaty on this point. The Commission held that Italy was violating Article 96 of the Treaty by accepting as eligible for drawback certain charges which could not be considered as imposed on the products, and by fixing the amount on a flat-rate basis, which was equivalent to adopting average rates.

In its ruling, the Court first rejected the procedural objections raised by the Italian Republic and confirmed that the application by the Commission of Article 169, at the stage prior to judicial proceedings, was valid and proper. On the substance of the case, the Court found that Article 96 allows the payment of "drawback" only in respect of taxes imposed directly (i.e. on finished products) or indirectly

⁽¹⁾ See bulletin 12-64, Chap. III, sec. 15.

(i.e. on raw materials or semi-finished products entering into the process of manufacture). This condition is not satisfied in the case of the Italian taxes objected to by the Commission, such as company registration charges, stamp duty, mortgage charge, charges on government concessions, and taxes on motor vehicles and advertising. On this point therefore, Italy has infringed the Treaty.

As regards the refund of other taxes effectively imposed on products, as is also provided under the Italian drawback system, it is necessary to establish that the amount of the refund does not exceed the equivalent of the taxes borne in each case. Accordingly, it is for the Italian Republic to show, by precise particulars for the various products, that this second condition is satisfied. Proceedings may therefore be resumed on this matter after the Italian Republic has submitted the particulars required of it by the Court; it has been allowed three months for this purpose.

BULL-EC 3-1966

Taxation

Harmonization of turnover taxes

18. The *ad hoc* study group preparing a draft directive for the system of value added tax in agriculture held its 24th meeting in Brussels on 12 and 13 January 1966. The group examined a working document prepared by the Commission setting out certain proposals for taxation in agriculture under a common TVA system.

After a broad exchange of views it was concluded that a feasible and practical solution might be the adoption of a standard rate of taxation.

The general feeling was that the taxation should be as accurate as possible while avoiding too many administrative formalities and possible inconsistencies.

It was clear that the establishment of the list of farm products to be taxed at a special rate would present certain difficulties.

Opinion of the Economic and Social Committee on the proposed second directive for the harmonization of turnover tax

19. During its plenary session of 26 and 27 January 1966, the Economic and Social Committee rendered an opinion on the "proposal for a second Council directive for the harmonization among Member States of turnover-tax legislation concerning the form and methods of application of the common system of taxation on value added".

The Committee approved this draft directive subject to certain suggestions, comments and amendments.

In particular the Committee proposed the introduction of a new procedure — "tax suspension". Exceptionally, and in a limited number of cases, Member States could, uniformly and under the supervision of the Commission, exempt certain undertakings or activities from the tax. Such a suspension would presuppose that the untaxed operation was part of a later operation which itself would attract tax and that the beneficiaries of the system would be able to transfer or obtain refund of taxes charged on their purchases.

Among the further amendments proposed and comments made, were the following:

- a) A proposal to harmonize taxation on passenger transport at a low rate;
- b) The introduction of a simple system to exempt international transport;
- c) The possibility of applying the suspension system to imports;
- d) Concern to avoid a multiplicity of differentiated rates;

e) Abolition of the right to apply, in a transitional period, the system of deductions *pro rata temporis* for capital goods;

f) The possibility of refunding before the end of the year to new firms and to those carrying out research the amount of tax paid on their purchases in excess of that on their sales.

The opinion was carried by 69 votes to 12 with 6 abstentions.

BULL.EC 4-1966

Taxation

Comparison of fiscal burdens in EEC

10. Working Party VIII (comparison of fiscal burdens) held its second meeting in Brussels on 17 February 1966.

Professor Zeitel of Mannheim, who was instructed by the Commission to study the possibilities of comparing the fiscal burdens on firms in the different EEC countries spoke on possible methods of arriving at such a comparison.

After a broad exchange of views in which experts from the Finance Ministries and statistical offices of the Member States took part, Professor Zeitel undertook to draw up a report for discussion by Working Party VII at its next meeting fixed for September.

BULL.EC 5-1966

Taxation

International taxation

14. The Working Party on international taxation held its 16th meeting in Brussels on 22 and 23 February 1966.

Problems relating to the proposed preparation of a multilateral convention for the avoidance of double taxation were once again examined by experts from the national revenue departments.

The following questions were discussed:

- a) The definition of the concept of personal partnerships or associations of persons;
- b) Determination of the profits of permanent establishments;
- c) Definition of the concept of dividends;
- d) Double taxation cases including more than two Member States.

The examination of technical questions still pending will be continued at the next meeting, which has been fixed for 24 and 25 May 1966.

Harmonization of direct taxes

15. The second joint meeting of the Working Parties on harmonization of direct taxes and on international taxation was held in Brussels on 24 February 1966 to examine the problem of taxation on national and Community company mergers. The new working document, drafted by the Commission's departments at the request of

the Member States, was discussed and the feeling of the meeting was that the right approach to the problem had been found and that the solutions suggested were suitable for further discussion.

In view of the complexity of the technical questions to be solved, it was however agreed that the problem should be further studied in the light of the replies by the Member States to a questionnaire which the Commission is to send out shortly.

Compensatory charges on imports and export drawbacks

16. The Working Party on problems relating to the application of Articles 95 to 97 in respect of turnover taxes met in Brussels on 9 March 1966.

The agenda included the following:

a) A prior consultation as provided for in the Resolution of 21 June 1960 ⁽¹⁾. The consultation was requested by the Italian Government and concerned a draft amendment to the present rules governing Italian compensatory charges on imports and export drawbacks.

Further to the consultation, the Commission will inform the Italian Government of its views regarding the compatibility of the measures contemplated by the Italian Republic with the Resolution of 21 June 1960 and with Articles 95 to 97 of the Treaty.

b) An examination of Italian Law No. 1309 of 4 December 1965, concerning turnover tax on woolen yarn.

The Italian delegation replied to the many questions and comments submitted by the Commission's departments and by delegation from the other Member States concerning this law. After studying a memorandum on controversial points, which is to be drafted in the near future, the Commission will make known its views.

Harmonization of turnover taxes: opinion of the European Parliament

17. On 8 March 1966 the European Parliament rendered an opinion both on the amended proposal for a first directive ⁽²⁾ on turnover tax harmonization and on the proposal for a second directive, concerning the form and methods of application of the common system of taxation on value added ⁽³⁾.

The discussions in the European Parliament of these proposals were based on a report made on behalf of the Internal Market Committee of the Parliament (rapporteur, M. Seuffert). This Committee had also consulted the Economic and Financial Committee (rapporteur, M. Bersani) and the Agricultural Committee (rapporteur, M. Klinker).

The amended proposal for the first directive was approved. In its resolution, the European Parliament suggests, however, a number of amendments to the Preamble.

18. The proposal relating to the second directive, concerning the common system of taxation on value added, was also approved. Nine amendments were suggested.

In its resolution on the proposed second directive, the European Parliament:

a) Welcomes the EEC Commission's proposals as an essential step forward to the establishment of the Common Market and to the harmonization of tax legislation;

b) Stresses that when the Member States go over to the common arrangements they must take action to counter any ill-effects the transition may have in the economic and social fields and must co-ordinate their policies in this respect;

c) Stresses once more the need to complete without delay the dismantlement of tax frontiers and to establish as soon as possible absolute neutrality of taxation in respect of the origin of goods and services, and calls on the Commission to speed up, if possible, the drafting of the relevant proposals;

⁽¹⁾ The Resolution is a "standstill" agreement, under which the Member States have agreed not to change existing rates without first giving reasons for the change proposed.

⁽²⁾ See Bulletin 8-64, Ch. I, sec. 30, and Supplement to Bulletin 7-64.

⁽³⁾ See Supplement to Bulletin 5-65.

d) Feels strongly that when the tax-on-tax deduction system to apply to investments is being worked out, a thorough study should be made of its repercussions on the conditions of competition and on the economic trend; and that care should be taken to ensure that the principle set out in Article 2, second paragraph, of the first directive is properly complied with, so as to obviate any aggravation of the charges borne by consumers and the emergence of further disparities between the Member States in the fields of competition and short-term economic policy. The European Parliament has endorsed the Commission's proposal to adopt the method of immediate deductions for investments whilst leaving it to the Member States to decide whether to apply deductions *pro rata temporis* during a specified transition period;

e) Approves the implementation of the TVA system in the agricultural sector with certain reservations (see amendment to Article 12 mentioned below);

f) Believes that in so far as the entry into force of the directive entails a limitation of the legislative powers of the national parliaments, equivalent powers must be conferred on the European Parliament, particularly if the rules laid down are to be amended;

Among the amendments proposed which concern the actual text of the directive, the following should be mentioned:

a) No. 21 of the "Detailed Provisions" (Annex A) should be supplemented by a rule granting the Member States the option to apply deductions for the tax attracted by capital goods and stocks existing at the time of the entry into force of the common TVA;

b) Banking transactions carried out on behalf of a taxpayer should be deleted from the list of services to which the directive is applicable (Annex B, No. 8);

c) The procedures for the application of the TVA to farmers which the Commission is to propose to the Council (pursuant to Article 12(2)) should give farmers a choice between the standard-rate deduction of the tax paid at previous stages and the normal application of the TVA system according to a simplified method. In particular, the accounting requirements laid down in Article 10 should be simplified.

19. In the course of the debate in the European Parliament on the harmonization of turnover taxes, M. Hans von der Groeben, member of the Commission, made a statement concerning EEC taxation policy. He also took this opportunity to outline the Commission's intentions with regard to harmonization measures in fields other than that of the turnover tax.

The alignment of indirect taxes, i.e. turnover taxes and consumer taxes, which was essential if tax frontiers were to be abolished, concerned, he said, the Member States' tax systems in their entirety. Because of the interdependence of taxes the harmonization of turnover taxes and consumer taxes had effects on direct taxes as well. Some measure of adjustment in this field could therefore not be avoided. The aim was certainly not harmonization for the sake of harmonization. Where, however, differences between tax legislation hampered the success of the Common Market, inducing firms to move their headquarters and engendering distortions of competition, something would have to be done. Consequently, the question must be considered whether taxation on company profits should not be aligned.

In particular, with the growing integration of the Community economy and the increasing alignment of other factors determining investment, tax considerations were gaining importance in management decisions. Firms would set up and lay out capital where the most favourable investment conditions obtained. Precisely for this reason, it seemed of great importance that the taxation factor should be neutralized within the Community.

The harmonization of direct taxes, however, would not only neutralize taxes on production and trade but also those on capital movements. High international mobility of capital was making a most important contribution to the integration of the separate economies. This sector, which was particularly sensitive to competition, was therefore also one in which harmonization was urgently required. For this reason the arrangements — which varied widely from country to country — for taxing income from capital at source should be aligned as soon as possible.

There were many cases in which the economy could not be made more competitive without company mergers. If this kind of industrial combination at Community level were to be made possible, it would be necessary to set aside existing obstacles in the field of taxation. At present, companies wishing to amalgamate were hampered

by heavy taxation, which — where the firms belonged to different countries — would hit undisclosed reserves. They were thus forced to resort to other forms of combination, such as the reciprocal purchase of shares, the setting up of joint research establishments, etc. These expedients did not, however, always meet the needs of the enterprises concerned.

Finally, M. von der Groeben spoke of the effectiveness and yield of taxes, a question which, he said, was relevant for both direct and indirect taxes. The most thoroughgoing alignment of taxes in the Common Market would be pointless if the revenue authorities in fact administered tax rules along widely differing lines. Consequently, the Commission had sent out a questionnaire on the mechanism of taxation to the Member States' finance departments and these had sent detailed replies. A working party was now drafting a collective report which would be available, it was hoped, in the course of the year.

BULL.EC 6/7-1966 -

BULL.EC 8-1966

Taxation

Standing Committee of heads of revenue departments

11. The Standing Committee of heads of revenue departments met in Brussels on 16 and 17 June 1966 under the chairmanship of M. von der Groeben, member of the Commission.

The Committee decided that harmonization work on excise duties must be speeded up.

It then held a thorough discussion of principles, choices and methods for the harmonization of direct taxes. Certain specific problems were raised for the first time, including double taxation of company profits and dividends paid to private shareholders and the role and form of tax at source on investment income.

Questions of principle in connection with a multilateral convention for the avoidance of double taxation, which the Working Party concerned had submitted to the Standing Committee, were dealt with, and the Working Party can now continue its task.

International taxation

12. The Working Party on international taxation held its 17th meeting in Brussels on 24 and 25 May 1966.

The main item on the agenda was a discussion of the possibility of establishing a multilateral convention for the avoidance of double taxation. The experts began with Article 21 of the OECD standard convention ("income not expressly mentioned"), dealing in particular with ways and means of applying this article to trilateral and other multilateral relationships. Speakers referred both to cases in which all the States concerned are members of the Community and to cases in which one of the States involved — whether as country of origin or host country — is not.

The experts examined in detail arrangements for a "mutual agreement" procedure for cases in which international double taxation is not fully eliminated by the convention.

An amended version of Article 25 of the OECD standard convention, which deals with the same subject, will probably be proposed.

Most of the delegations have recommended mutual assistance between the Member States in the exacting of payment on final tax demands. No such administrative assistance is provided for in the standard convention.

Tax arrangements for officials of diplomatic and consular services in the country of origin and in the host country were also discussed in detail (Article 27 of the OECD standard convention).

Harmonization of excise duties

13. The Working Party on indirect taxes other than turnover taxes held its 13th meeting in Brussels on 6 June 1966. The main item on the agenda was the abolition of measures of discrimination relating to excise duties on coffee and sugar.

With regard to the excise duty on coffee, a number of administrative and technical measures whereby the desired result could be achieved were compared; a "short list" of three measures was agreed, and these are to be examined by the departments concerned in the Member States. The Working Party requested that it be kept informed so that it could decide in favour of one of the measures at its next meeting, planned for October 1966.

With regard to the excise duty on sugar, the chemistry experts from the other member countries explained for the benefit of the Italian delegation the general and special methods they had adopted for calculating real sugar content; the Italian authorities intend to introduce an ancillary arrangement for the imposition, according to this criterion, of excise duty on imported sweetened products.

Countervailing charges on imports and drawback on exports

14. The Working Party on problems relating to the application of Articles 95 to 97 of the Treaty in respect of turnover taxes met in Brussels on 13 June 1966.

At this meeting, further examination took place of the changes contemplated by the Italian Government with regard to countervailing charges on imports and drawback on exports.

The measures introduced by Italy in the wool industry, under Law No. 1309 of 4 December 1965, were also discussed; the results of this discussion will be referred to the Commission.

Changes in countervailing charges and drawback which the Netherlands Government is proposing to introduce in the near future were also examined, under the prior consultation (standstill) procedure laid down by decision of the representatives of the Member Governments meeting in the Council (21 June 1960).

BULL.EC 9/10-1966

Taxation

Harmonization of direct taxes

16. The third joint meeting of the Working Parties on direct taxes and international taxation was held in Brussels on 30 June 1966.

The business of the meeting was the tax aspects of mergers i.e. of concentration in the form of groups of companies.

Transfers of profits from company to company which, in ordinary law, are generally taxed at both company and shareholder level can escape this twofold charge by certain national tax relief systems where participation is large (system of parent and subsidiary companies, holdings, etc.).

The two Working Parties taking part in the meeting concluded that to eliminate all obstacles to this type of merger at Community level these same favourable arrangements should apply systematically to all intra-Community relations, an objective already largely achieved moreover.

The Working Parties also considered that to avoid certain distortions some approximation of national laws would also be desirable and that other studies would be necessary before precise proposals could be made.

Harmonization of turnover taxes

17. The Working Party's study group on the harmonization of turnover taxes met in Brussels on 23 and 24 June 1966. It continued to examine the application of the common TVA system at the production stage in agriculture and its possible consequences. Problems which might arise in the taxation of production co-operatives and groups were also discussed.

Moreover, as agreed at the previous meeting, a list of farm requisites and products to which a reduced rate will probably apply was examined.

BULL.EC 11-1966 -

BULL.EC 12-1966

Tax matters

International tax questions

7. The Working Party on international tax questions held its 18th meeting on 4 and 5 October 1966 in Brussels.

Questions concerning unit trusts were discussed in detail. From the point of view of double taxation these problems arise because, on the one hand, such trusts draw income not only from the country where the trust fund has its head office, but also from the other EEC Member States and non-member countries and, on the other hand, there are holders of certificates resident not only in the country of the trust but also in other EEC member countries.

It was agreed that from the taxation angle unit trusts should in principle be regarded as non-existent, but that this treatment should not be unrestricted, particularly with respect to possible claims to tax refund. These studies are continuing.

An endeavour was also made to establish, on the basis of the national regulations, a uniform definition of dividends for the purposes of a possible multilateral convention to avoid international double taxation.

A start was made on working out a preliminary draft of a convention of this kind.

BULL.EC 1-1967

Taxation

Standing Committee of Heads of Revenue Departments

7. The Standing Committee of Heads of Revenue Departments met in Brussels on 8 and 9 November 1966 under the chairmanship of M. Verloren van Themaat, Director-General for Competition.

The meeting was concerned mainly with the avoidance of double taxation in the EEC. It was agreed that a multilateral convention would be a suitable means of regulating this matter. However, the novelty of this method means that it is not yet possible to obtain a complete picture of its consequences, which arise chiefly from the very fact that the proposed convention is multilateral. The Working Party on International Tax Questions is to go into this particular aspect more thoroughly.

There was full discussion of the substantive content of the convention. The Working Party had already done the necessary preliminary work, and had drafted some of the articles of the convention, following the OECD model convention.

A number of problems that could not be solved at expert level were dealt with by the Heads of Revenue Departments; these included several specific items such as definition of "permanent establishment", treatments of dividends received from subsidiary companies, royalties, interest and dues.

Some of the problems still outstanding were thus clarified.

Harmonization of excise duties

8. The Working Party on indirect taxes other than turnover taxes met in Brussels on 14 and 15 November 1966 to consider fiscal problems in the Member States concerning wine and spirits.

The Working Party examined the tax systems applicable to wines of over 14° in Germany and to natural sweet wines and liqueur wines in France, differences in alcohol content in Italy, and the tax system for Benelux wines.

It was found that some of these systems have a considerable effect on agriculture, and that in certain cases they provide an instrument of government policy in agricultural matters. These agricultural requirements should therefore be taken into account when the various tax reductions are abolished.

The Working Party also discussed the problems raised by the alcohol monopolies. It felt that in the modification of these monopolies account would also have to be taken of the future common agricultural policy with regard to alcohol.

BULL.EC 2-1967

Approximation of turnover tax legislation

10. At its meeting of 20 December 1966, the Council examined the Commission's proposals for the first and second Council directives on the approximation of the legislation of Member States concerning turnover taxes. The Council discussed the broad lines of fiscal harmonization, and agreed to resume this discussion at a forthcoming meeting. It instructed the Committee of Permanent Representatives to continue the work on the first and second directives for the harmonization of turnover taxes. The Committee will present a memorandum on the work that should be done to harmonize excise duties and taxes affecting capital movements.

In addition, the Council discussed questions connected with drawback on exports and countervailing charges on imports in relation to turnover taxes.

BULL.EC 3-1967

Taxation

Harmonization of excise duties

6. The Working Party on indirect taxes other than turnover tax met in Brussels on 16 and 17 January 1967.

Problems arising in the harmonization of excise duties on beverages were reviewed from the angle of competition between the different beverages and substitution which might occur if some of them were taxed more heavily than others. Harmonization of excise duties on alcohol was also studied.

The same Working Party met in Brussels on 20 January 1967 to study, as instructed by the Standing Committee of heads of national revenue departments, harmonization of the criteria used by Member States in fixing the basis of assessment of annual or periodical road tax on private cars.

BULL.EC 4-1967

Taxation

Harmonization of turnover tax

4. At its session of 9 February 1967, the Council adopted the two directives ⁽¹⁾ proposed by the Commission on the harmonization of turnover tax systems in the six Member States.

The first directive provides that the multi-stage turnover tax systems at present in force in Belgium, Germany, Italy, Luxembourg and the Netherlands will be replaced by a value-added system and that the TVA system already existing in France will be aligned on the common system. It also lays down the main principles of the latter. The second directive is concerned with the details of the common system.

The introduction of the value-added tax system in all the Member States now decided by the Council is of great economic significance. In the first place, unlike the multi-stage turnover tax it ensures the neutrality of the tax as regards competition between large integrated concerns and the generally small and medium-size firms in the Common Market which are not integrated. Secondly, specialization of production by firms is no longer artificially hindered, and this is of special importance for ancillary industries and those supplying services. Thirdly, it will now be possible in international trade to equalize with precision the burden of turnover taxes. The present multi-stage systems only allow of a rough and ready equalization which leaves much room for distortion of competition between firms in different Member States and allows of manipulations in favour of certain branches of industry. As customs union nears completion these distortions become increasingly important from the economic standpoint. Lastly, the common system has the practical advantage that in international trade businessmen will have to cope with only one turnover tax system instead of the six which exist at present.

The introduction of the common TVA system is a decisive step towards the establishment of a single internal market. It creates the necessary precondition for a common market without internal tax frontiers, i.e. without tax remission on exports, taxation on imports, and, consequently, without the accompanying formalities at frontiers. This objective cannot be reached until the rate of TVA has been equalized in all the Member States, which will be the subject of a later directive.

In essence the first directive embodies the following principles:

a) The common TVA system will come into force by 1 January 1970 at the latest. The necessary municipal legislation must be promulgated early enough for this time-limit to be observed;

⁽¹⁾ See official gazette No. 71, 14 April 1967.

b) Before the end of 1968 the Commission will submit to the Council proposals laying down how and within what time the harmonization of turnover tax should attain its main objective, which is the total abolition of countervailing charges at the frontiers between Member States. The Council will take a decision on these proposals before 1 January 1970 if possible.

The second directive lays down the implementing details of the common TVA system which each Member State must introduce into its tax legislation. The following points may be noted:

- i) Value-added tax is a general consumer tax which is charged in principle at all stages of production and distribution in such a way that only the increment in the value of the product at the stage considered, i.e. the value added at this stage, is taxed. The amount of tax is calculated on the total turnover, the tax paid on the products bought at the preceding stage being deducted. The difference then goes to the revenue authorities;
- ii) The value-added tax is charged on supplies of goods and services in the countries in question and also on goods imported;
- iii) The tax applies in principle to all supplies of goods down to the retail stage. However, for a period extending at latest until tax frontiers are abolished, the Member States are free to apply the system down to the wholesale stage only.

As regards the supply of services taxation is only compulsory if the services have an appreciable direct or indirect influence on the prices of goods. The services subject to the tax are given in a list, which mentions in particular the transfer of patents and trade marks and the transport and stocking of goods. It does not mention banking operations. The tax regulations concerning the large group of services which do not figure on the list (for example doctors, hairdressers and others who generally supply services only to private individuals) are left to the Member State.

The place where the supply of a service is taxed is the place where the service rendered is used or exploited. However, on a proposal from the Commission, the Council may agree to special arrangements waiving this principle.

Tax paid at earlier stages on supplies or services to persons subject to the tax or on imports is deductible from the tax chargeable on the turnover of the taxpayer. In principle such deduction can be made immediately and in respect of all tax paid at the earlier stages. However, in order to mitigate the difficulties of the changeover to the new system, Member States may for a certain transitional period apply the deductions in respect of capital goods by annual fractions (deductions *pro rata temporis*) or exclude capital goods from the system of deductions in whole or in part.

Furthermore, Member States are entitled to exclude deductions for capital goods in whole or in part for reasons connected with business trends and after consulting the Community.

Although Member States are entitled until such time as tax frontiers are abolished to lay down rates of tax and tax exemptions autonomously, the directive contains certain restrictions in this matter. In the event of exemption it is strictly forbidden to permit deduction of the tax paid at earlier stages. A compulsory minimum is fixed for the rates reduced. It is however possible until such time as tax frontiers have been abolished to waive these two rules in favour of final consumers and for specific social reasons. But the total effect of such exceptions may not be greater than the aggregate effect of the facilities previously granted in the context of social policy.

The directive lays down a special procedure should a Member State think fit in certain exceptional cases to take special measures to simplify the collection of the tax or to prevent fraud.

In dealing with small firms for which the normal TVA system would meet with difficulties, every Member State is free to apply the special system best suited to national requirements and possibilities.

The Commission is instructed to submit proposals to the Council as soon as possible on common procedures for applying the tax to operations concerning agricultural products.

Tax harmonization

5. On 8 February 1967 the Commission transmitted to the Council a general programme for the harmonization of taxes up to and after 1 July 1968, the date at which customs duties will have been abolished and the common agricultural market will have been fully established.

As regards indirect taxes the Commission memorandum mentions between now and 1 July 1968 the removal of discrimination in excise duties on wines and spirits, sugar, cocoa and yarns and the harmonization of various excise duties (manufactured tobacco, beer, sugar, wines and spirits). This harmonization is to take place in liaison with the proposals shortly to be worked out in connection with agricultural policy and the modification of monopolies. Harmonization will also have to cover excise duties on petroleum products.

As far as possible proposals will be submitted for the harmonization of the structures and later the rates of annual road tax on motor vehicles. Finally, a transitional solution will have to be found to harmonize the rules on the territorial application of indirect taxes on insurance contracts.

After 1 July 1968 a fourth directive will have to be submitted concerning the Community value-added tax and the new proposals in the field of excise duties and indirect taxes on capital movements.

The programme concerning direct taxes first mentions, among the studies to be completed before 1 July 1968, taxes on capital movements. The aim is the complete removal of international double taxation of dividends and interest and, in general, the removal of all the causes — distortions or discriminations — likely to cause abnormal capital movements, to keep capital markets segregated from each other and to curb the expansion of savings. With this in view it is important *a*) to work out a harmonized system for the retention at source of tax on interest on negotiable bonds and on dividends which would provide in particular for the amount retained to be set against the beneficiary's taxes, *b*) to reorganize tax credit, *c*) to find a single method for lightening the total fiscal burden, *d*) to harmonize the fiscal consequences of the operations of investment companies and *e*) to harmonize the tax arrangements applicable to holding companies.

The programme also includes provisions to facilitate the reorganization and merger of firms (acceptable tax system for mergers and contribution of assets between companies in different Member States) and incentives to investment (prior consultation on all fiscal measures concerning the basis of assessment of the profits of representative firms and alignment of the components of profits tax assessment).

After 1 July 1968 the approximation should concentrate on schedular taxes, the method of computing the taxable profit of businesses, rates of company taxes, co-ordination and methods of control and collection.

International tax questions

6. The Working Party on international tax questions held its 20th meeting in Brussels from 29 January to 2 February 1967.

The study of the draft multilateral convention for the avoidance of double taxation was continued ⁽¹⁾.

The discussions covered:

Article 6 — System for income from property.

Article 7 — Taxation of business profits.

Article 8 — Special provisions applicable to maritime, inland waterway and air traffic.

Article 9 — Transfers of profits between associated companies.

Article 10 — Taxation of dividends at source.

Since there was a consensus on the essential points, it will be possible to maintain the broad lines of the OECD model convention.

⁽¹⁾ See Bulletin No. 1-67, Ch. IV, sec. 7.

However it has become apparent that the lack of harmonization of the rules in the Member States for determining profit causes difficulties as regards the part which can be apportioned to a particular establishment or plant (Art. 7).

The same applies to the fixing of a uniform maximum rate for retention at source on the dividends (Art. 10). In this case too harmonization of direct tax systems would help towards a solution.

Taxes on insurance contracts

7. The Working Party on indirect taxes on insurance contracts met in Brussels on 31 January 1967.

The main purpose of the meeting was to determine whether it was desirable and feasible to bring insurance operations into the scope of Community TVA. It emerged from the discussions that most delegations thought that for technical and budgetary reasons TVA would hardly lend itself to the taxation of insurance services.

It was agreed that the studies on the harmonization of structures and on the rates Member States' specific taxes on insurance contracts should be continued without further delay.

Countervailing charges on imports and refunds on exports

8. The Working Party on problems in the application of Articles 95-97 of the Treaty to turnover taxes met in Brussels on 16 February 1967.

The purpose of this meeting was to examine the changes in countervailing charges on imports and refunds on exports contemplated by the Netherlands Government for 1 March 1967.

These measures were examined by virtue both of the prior consultation procedure laid down by the decision of the member Governments' Representatives meeting in the Council on 21 June 1960 (standstill) and of the prior consultation provided for in Article 102 of the Rome Treaty.

Meanwhile the Commission has informed the Netherlands Government its views.

9. The meeting continued the technical examination of the changes in countervailing charges made in the meantime by the Federal Republic of Germany. After certain further information had been supplied at the request of the other delegations this examination was considered to be concluded.

At the request of the Netherlands delegation a discussion began on the taxing of processed products reimported in the course of processing traffic.

The German delegation described the background to the change introduced in Germany a few months previously and explained the legal reasons for it. ⁽¹⁾

(1) On 1 March 1967 the Commission decided to hold the consultations with the Member States provided for in Article 101(1) of the Treaty.

BULL. EC 5-1967

Taxation

International tax questions

10. The Working Party on international tax questions met in Brussels on 16 and 17 March 1967.

The Working Party continued the second reading of the draft multilateral convention for the avoidance of double taxation. It discussed the articles on the taxation of dividends and interest at source (Articles 10 and 11) and of income from self-employed activities (Article 14). As regards the system to be applied to dividends and interest when the country of the company paying these is not the same as that of the beneficiary, the main lines of the relevant provisions of the OECD model convention on which the Working Party's studies are based were adopted. However, a few special points remain for later examination.

Double taxation of incomes from self-employed activities will also be avoided by taking over the relevant provision of the OECD model convention. Under this provision such income may only be taxed in the country of domicile, unless there is a fixed establishment in the other country where the activity is exercised.

BULL. EC 6-1967

Taxation

Harmonization of excise duties

6. The Working party on indirect taxes other than turnover tax met in Brussels on 12 April for an initial examination of the problems of harmonizing taxes on beer.

The working party examined the following possible approaches to the problem:

- a) Abolition of excise duties and levying of TVA (at a normal rate only);
- b) Incorporation of the excise duties in TVA (TVA at a higher rate for beer);
- c) Retention and harmonization of the excise duties, charged along with TVA at normal or reduced rate.

BULL. EC 7-1967 -

BULL. EC 8-1967

Taxation

Turnover equalization tax: recommendation to the German Government (reply to a written parliamentary question)

11. On 6 April 1967 written question No. 26¹ was put to the Commission by M. Vredeling of the European Parliament (Netherlands, Christian-Democrat). His question ran as follows:

1. Is it correct to say that at the end of 1966 the Commission recommended the Government of the Federal Republic of Germany not to implement immediately within its frontiers the law on turnover equalization tax (Umsatzgleichsteuer)?

¹ Official gazette No. 169, 26 July 1967.

2. If so, what were the Commission's reasons for making this recommendation? Has the Government of the Federal Republic of Germany acted upon the recommendation? If not, for what reasons?"

The Commission's reply, given on 27 June 1967, was formulated in the following terms:

"1. It is correct that on 20 December 1966 the Commission addressed to the Federal Republic of Germany a recommendation concerning the draft of a Seventeenth Law amending the turnover tax legislation. The Commission made the following recommendations to the Federal Republic of Germany:

- a) That it should take suitable measures to ensure that the Seventeenth Law amending turnover tax legislation should not come into force in the form then proposed;
- b) That it should re-examine the draft from a particular point of view.

2. In its recommendation based on the second sentence of Article 102(2) and on Article 155 of the EEC Treaty, the Commission stated that it considered there were grounds for fearing that the provision in the draft Bill of higher countervailing charges on 263 headings and sub-headings of the customs tariff might provoke new distortions of competition or aggravate existing ones. The grounds referred to by the Commission are discussed below.

Article 95 is based on the concept that levels of countervailing charges applicable to products imported into other Member States must not be higher than the tax burden on similar domestic products; the maximum charge is therefore 100% of the turnover tax figure. Nevertheless, in countries with cumulative tax systems, full compensation is generally not provided, if only because the States do not in many cases manage to calculate the domestic tax burden exactly. A graph illustrating the countervailing charges on imports would show that the charge represented from 0% to 100% of the corresponding domestic charge, depending on the product. These differences are the underlying causes of distortion of competition, as they are one reason why the pressure of competition exerted by imported products on like domestic products varies from one sector to another.

When they endeavour to improve their compensatory measures, the Member States should in compliance with Articles 95 and 97 make a special effort to avoid raising their levels so far that the countervailing charge made at the frontier raises the average rate nearer to the permissible maximum. Since, according to the calculations made by the Commission, this average is approximately 60% in the case of the Federal Republic of Germany, the Federal Government was requested in the recommendation to re-examine the Bill in order to ensure that no increase in countervailing charges should exceed 60% of the permissible maximum. In the opinion of the Commission, the same percentage of the maximum charge permissible in the light of Articles 95 and 97 should, if possible, be applied in all cases by uniformly applying to all products the same methods of calculating the internal tax burden. In doing so, the Member State concerned can either bring any disparate countervailing charges more into line with the present average rate or of fixing a new average rate which, in the case of Germany, should be between 60 and 100% and on which all charges diverging from it should be aligned.

3. The Seventeenth Law amending the law on turnover tax was published on 23 December 1966 (BGBl. I, p. 709), without any amendments having been introduced as a result of the recommendation; nor did the Federal Government initially make any observations on this recommendation.

The Commission then consulted the Member States in accordance with Article 101(1); during the consultations, the representatives of the Federal Republic declared that, owing to the conditions of German legislative procedure and the extent of the powers the Federal Government may exercise, as delimited by constitutional law, the recommendation could not be complied with and that, on the point of principle, the conclusions of the recommendation, particularly with regard to the existence of distortion of competition, could not be accepted either.

The consultations did not lead to the abolition of the distortions. Therefore, in accordance with Article 101(2), the Commission, on 12 June 1967, submitted a proposal to the Council that a directive be addressed to Germany.

The Commission will in due course inform the honourable member of the result of the procedure under Article 101."

Countervailing charges on imports and refunds on exports: the Commission's position with regard to measures contemplated by the Netherlands Government (reply to a written question)

12. On 19 May 1967 written question No. 72,¹ also asked by M. Vredeling, was put to the Commission:

"According to page 29 of the April issue of the Bulletin of the European Community, the Commission informed the Netherlands Government of its views on the changes in countervailing charges on imports and refunds on exports contemplated by the Netherlands Government for 1 March 1967.

Is the Commission ready to make its views available to the public in the form of a reply to this written question?"

On 28 June 1967 the Commission made the following reply:

"In its letter of 21 December 1966 the Netherlands Government, availing itself of the prior consultation procedure for which provision had been made by the decisions of the representatives of the Member States' Governments meeting in the Council on 21 June 1960, informed the Commission of a number of proposed changes in the compensatory charges on imports and the refunds on exports which it proposed to introduce with effect from 1 March 1967.

At a meeting arranged by the Commission and with the co-operation of the government experts of the Member States, these measures were examined in the light of the decision taken in the Council and of Articles 95, 96, 97 and 102 of the Treaty.

As a result of this examination the Commission informed the Netherlands Government that, in its view, certain of the contemplated changes did not seem to correspond with the spirit of the decision of 21 June 1960 which provided that changes in countervailing charges and refunds should, in principle, be made only for technical tax reasons.

On the subject of the conformity of the contemplated amendments with Articles 95-97 of the Treaty, the Commission informed the Netherlands Government that, when it first went into the matter, the modifications did not appear to be incompatible with the provisions of these Articles.

It should be noted that the particular measures were also examined at the meeting just referred to from the standpoint of Article 102 of the Treaty, since there was reason to fear certain distortions of competition. In this connection the Commission has informed the Netherlands Government that it had not yet come to a definite conclusion."

¹ Official gazette No. 169, 26 July 1967.

BULL. EC 9/10-1967

Taxation

Turnover taxes

10. On 30 June 1967 the EEC Commission laid before the Council a proposal for a directive to introduce a common method for calculating the average rates referred to in Article 97 of the Treaty. The draft directive corresponds to the wish expressed by the Member States, which hope for greater clarity and certainty with regard to the collection of countervailing charges on imports and the grant of export refunds.

The object of this common method is to enable better appraisal to be made of the compatibility of the average rates with the provisions of Article 97 of the Treaty establishing the EEC. Under Article 97 of the Treaty, any Member State which levies a turnover tax calculated by a cumulative multi-stage system may, in respect of internal charges on imported products or of drawbacks on exported products, establish average

rates for specific products or groups of products, provided this does not infringe certain principles laid down in the Treaty (Articles 95 and 96). As the methods which Member States now employ to determine these compensatory amounts are very complicated and varied, inspection encounters considerable difficulties.

The proposed common method of calculation, which is based to a large extent on present practice, unifies the plans of calculation and specifies how the various components of the cost prices of products may be taken into account. The method provides three possibilities, from a detailed calculation to a simple assessment.

This directive will cover only the period up to 1 January 1970, the deadline by which a common value-added tax will be introduced in all the Member States.

BULL.EC 11-1967 -

BULL.EC 12-1967 -

BULL. EC 1-1968

Taxation policy

The burden of taxation in the EEC: country-to-country comparison

6. Working Party No. VIII held its 3rd meeting on 18 October 1967, in Brussels.

Professor Gerhard Zeitel of Mannheim presented to the experts his "Report on ways and means of comparing the actual burden of taxation borne by enterprises in the different Member States of the EEC".

It was emphasized that the many difficulties hampering comparisons within the countries were even greater when it came to making comparisons between them. The experts felt that further studies should be made, and that it was undesirable to use only one method, the value of a method of comparison being closely related to the objectives chosen.

According to the experts, comparisons based on actual tax liabilities must be given absolute priority over comparisons of tax liabilities of notional, imaginary companies, designed to determine the burden of taxation borne by an enterprise or by a specific product by data established arbitrarily, though as realistically as possible. When a sufficient number of different types of company were included, these comparisons of notional companies were, however, always of value in connection with the choice of location of industrial operations. Again, if it was planned to repeat the comparison at intervals, national comparisons could be useful to monitor changes towards, or away from, a Community average due to measures of tax harmonization.

The Commission will work out proposals for notional companies, and draft a questionnaire aimed at establishing, with the aid of a statistical comparison, what statistical data could usefully be provided by the Member States.

Professor Zeitel's report will be published by the Commission.

BULL. EC 2-1968

Fiscal policy

17. On 6 December 1967 the Italian Government notified the Commission of a proposed law amending the refunds of turnover tax on exports and the countervailing charge on turnover for imports of certain iron and steel products. This law, which was published in the Italian official gazette on 12 December 1967, came into force on 13 December 1967.

The measures concerned are being studied.

BULL. EC 3-1968

Fiscal policy

The European Parliament

Debate and resolution on the proposal for a directive concerning the average rates referred to in Article 97 of the EEC Treaty

5. At its session of 22 to 26 January 1968, the Parliament held a debate on the proposal for a directive concerning the average rates referred to in Article 97 of the EEC Treaty.

In his introductory remarks, the rapporteur, M. Wohlfart (Luxembourg—Socialist group) wondered whether, in view of the "standstill" which took place in June 1960 between the Member States and also of the fact that, as from 1 January 1970, the generalized system of tax on value added will come into use, a directive for Article 97 was still required. The proposal for a directive does after all bring about an improvement in the present position in as far as it introduces a standard method of calculation.

Seeing that the tax on value added will not be introduced until 1 January 1970, M. Coppé, member of the Commission, stated that the latter saw no reason for opposing the wish of certain Member States to have a uniform system in the meantime.

The Parliament then adopted a resolution endorsing the Commission's proposal.

BULL. EC 4-1968

Taxation policy

Proposal for a directive on the application of the tax on value added to turnover in agricultural products

9. On 26 February 1968 the Commission of the European Communities submitted to the Council a proposal for a third directive on the harmonization of the legal provisions of the Member States on turnover tax. The proposal deals with the common rules on application of the tax on value added to turnover in agricultural products, which are to be brought into force by Member States with effect from 1 January 1970 at the latest. The intention is to make it easier for agriculture to integrate itself into the general economy, to facilitate trade in agricultural products within the Community and to avoid differences in the impact of the tax at the stages where agricultural prices in the Member States are, in principle, formed.

The proposed directive starts from the assumption that the common added-value tax system must be extended to agriculture so that this sector shall be subject to the same competitive conditions as the other sectors of the economy and discrimination between producers in the Community avoided. As not all agricultural undertakings keep adequate accounts and therefore cannot comply with the provisions of the normal system of tax on value added, they are made subject to an arrangement allowing the deduction of previous taxes at a flat rate. There is, however, the provision that every farmer is to be free to opt for application of the normal tax on value added.

Excluded from the flat-rate deduction arrangement are associations of agricultural producers and, more particularly, agricultural co-operatives, producer associations and other producer organizations, combinations of these and so-called mixed establishments if their non-agricultural turnover exceeds an amount to be fixed by each Member State. Member States are at liberty to exempt from these arrangements certain groups of agricultural producers (for instance farmers growing special crops) and also those who can be made subject to the normal system without special administrative difficulty.

Under the new proposed directive, deliveries and imports of agricultural products will become subject to a common, reduced rate fixed by the Council, acting unanimously on a Commission proposal, by 1 July 1969 at the latest, with half the arithmetic mean of the normal rates of tax on value added to be applied in the Member States on 1 January 1970 serving as a basis. Where deliveries by producers which come under the flat-rate deduction arrangement are concerned, it is the buyer who will pay to the tax authorities whatever constitutes the tax liability of the farmers, while the price he pays to the latter includes the previous taxes borne by them; the Council, acting unanimously on a Commission proposal, will, by 1 July 1969 at the latest, fix the flat rate at which these previous taxes are to be calculated. With the macroeconomic data available serving as a basis, this rate will be determined in such a way that global adjustment can be ensured for the offsettable tax on value added weighing on the purchases made by all farmers coming under the flat-rate deduction arrangement, and on the services rendered by them.

As the common agricultural market will have to be completed by 1 January 1970, it will also be necessary to relieve intra-Community trade in agricultural products as far as possible of tax formalities and controls at the frontiers between the Member States. The common tax rate proposed is an essential step on the road to this aim. Until taxes on imports and tax refunds on exports are abolished, that is until

the tax frontiers are removed, the intention is to abolish, as a transitional measure, the levying of taxes when goods cross the frontiers and to collect these taxes only at the stage of the first delivery after importation. Although this means that intra-Community trade in agricultural products will continue to be subject to tax adjustment, this adjustment will be effected by a procedure which is as free as possible from all formalities and controls at the frontier. Adjustment will then, incidentally, no longer be the result of differing rates, but will merely serve to maintain the principle of taxation in the consumer country.

The agricultural products to which this directive applies compulsorily are set out in a list appended as Annex A to the proposed directive and based on Annex II to Article 38 of the Treaty of Rome. This list contains in principle all agricultural "ex-farm products", including certain processed products. In addition to agricultural products, it includes a number of means of production, such as seeds and plants, fertilizers, insecticides and plant protection products. The common reduced rate for means of production is intended to reduce and equalize the burden of tax paid at previous stages. Lastly, the list also contains certain groups of agricultural products which are considered as substitution products for others on the list.

"Agricultural producers" are defined as persons exercising, in an agricultural, forestry or fishery establishment, producer activities of the type listed in Annex B to the proposed directive. The list includes agriculture proper, livestock breeding and animal husbandry as well as freshwater fishing, fish farming, clam and oyster cultivation and frog breeding. It is based on a study made by the Statistical Office of the United Nations.

The common reduced rate of tax on value added for agricultural products is applicable up to and including the wholesale stage; the Member States are, however, free to increase or reduce the rate of tax to be paid at the final stage. To ensure that the effects of the discretionary powers thus remaining with the Member States do not run counter to the aims pursued, the Commission proposes a procedure calculated to lead as far as possible to an alignment of the tax burden at the final trading stage.

BULL. EC 5-1968

Taxation policy

Common method of calculating countervailing charges on imports and refunds on exports

11. At its meeting on 25 March 1968 the Council issued a directive introducing a common method for calculating the average rates referred to in Article 97 of the EEC Treaty. A proposal to this effect had been submitted to it by the Commission on 28 June 1967.²

The present systems of turnover taxes are based on the principle of the country to which the goods are exported. States are therefore led to ensure in the framework of this tax the competitiveness of domestic products as against foreign products both in their own territories and in the countries to which these products are exported. When their turnover tax is based on a cumulative multistage system they apply two types of measures: the levy of countervailing charges on imports and the grant of refunds on exports. Article 97 of the EEC Treaty authorizes them to employ for these compensations average rates for specific products or groups of products but it specifies that these may not be higher than the ceiling fixed by Articles 95 and 96, i.e. the actual charge on similar domestic products.

In practice, the fixing of an average rate for a product or a group of products results from two series of investigations:

- i) Ascertainment of the cumulative tax burden resulting from all the commercial transactions directly or indirectly related to the manufacture of the product in question.
- ii) Possible weighting of this burden to make allowance at national level for the various degrees of integration of the enterprises manufacturing this product.

² EEC Bulletin No. 9/10-1967, Ch. VI, sec. 10.

In fact, since 1960, the Member States, when fixing or modifying a rate, put forward supporting calculations; experience shows, however, that the methods used by each State to ascertain the cumulative burden are different. This does not help the examination of the supporting calculations. Furthermore, it is hard to ensure that the ceiling fixed by Articles 95 to 97 will not be exceeded. By establishing a common method of calculation the directive should make the fixing of the rates of compensation clearer and more certain. Making very considerable allowance for present practices, it unifies the methods of calculation by specifying the conditions under which the various factors in the formation of cost prices of goods may be taken into account. Moreover, the common method offers three possibilities, ranging from detailed calculation to a purely lump-sum estimate.

BULL. EC 6/7-1968-

BULL. EC 8-1968

Taxation policy

Measures proposed by the Commission on the occasion of the entry into force of the customs union on 1 July 1968

10. These measures, mainly of a fiscal nature although sometimes closely linked with strictly customs proposals, are, briefly, as follows:

1) A proposal to the Council for the exemption of all travellers from non-member countries entering the Community from customs duties on merchandise up to a value of 25 u.a.;

2) A proposal to the Council for the exemption of all travellers from taxes on merchandise up to a value of 100 u.a. when crossing the Community's internal frontiers, and up to 25 u.a. when entering the Community from outside;

3) A recommendation to the Member States:¹

a) To check travellers and their vehicles at internal frontiers only in exceptional cases;

b) To remove barriers at customs offices on internal frontiers.

The details of the Commission's proposals on the first point are as follows:

1) Imports of merchandise in travellers' personal luggage would be exempted from turnover tax and excise duties, provided the value of the merchandise did not exceed 100 u.a. per person in travel between Member States and 25 u.a. in travel between non-member countries and the Community;

2) From 1 July 1968 onwards travellers from non-member countries would no longer be charged duties for goods whose total value does not exceed 25 u.a. Where the total value of goods brought in by a traveller from outside the Community exceeds 25 u.a. but not 80 u.a., in addition to the taxes, only a flat-rate duty of 10% *ad valorem* should be charged.

3) To apply to imports in small consignments from non-member countries, a flat-rate customs duty of 10% *ad valorem* when the total value of the consignment does not exceed 60 u.a.

In addition to these exemptions, heavily taxed merchandise such as coffee and tea, alcoholic beverages, perfumes, toilet waters, and tobaccos could be imported free of customs duty, turnover tax and excise up to the following quantities:

1) Alcoholic beverages, such as spirits, aperitifs, sparkling wines: 1 litre; or other wines including dessert wines: 2 litres;

2) Perfumes and toilet waters: 50 g;

3) Coffee: 250 g;

4) Tea: 50 g;

¹ Official gazette No. L 167, 17 July 1968.

5) Tobacco goods: travellers with permanent residence outside Europe: up to 400 cigarettes or 200 cigarillos or 120 cigars or 500 g of tobacco. Travellers with permanent residence inside Europe: up to 200 cigarettes or 100 cigarillos or 60 cigars or 250 g of tobacco.

It must be noted that tax exemption does not apply to goods imported in small consignments. Customs exemption does, however, apply to them, except in the case of manufactured tobacco. Products listed in Chapter 24 of the Common Customs Tariff (tobacco) may not benefit from the application of the flat-rate duty.

In any event only non-commercial imports of goods can qualify for tax and customs exemptions or for the flat-rate customs duty. The reliefs therefore apply solely to occasional imports solely of goods for personal use of a traveller or his family, or for gifts. As to persons resident near and frequently crossing frontiers, each Member State will be free to adopt more restrictive regulations. In addition the Member States will prevent tax reliefs being granted (for example through tax-free shops) to travellers who can make use of the tax privileges accorded to tourists.

BULL. EC 9-1968 -

BULL. EC 10/1968 -

BULL. EC 11/1968 -

BULL. EC 12/1968

Taxation policy

Application of TVA to agricultural products

7. At its session from 30 September to 3 October 1968, the European Parliament¹ discussed the Commission proposal for a third directive on the harmonization of Member States' legislation on turnover taxes. This proposal refers to the joint arrangements for the application of tax on value added to transactions involving agricultural produce. In the resolution which it adopted at the end of the debate, and by which it approved the Commission proposal subject to a few amendments, the European Parliament expressed satisfaction that the Commission should have been so prompt in submitting a directive to include agriculture in the common TVA system by arrangements which take account of its special nature. It declared, *inter alia*, that it was "in favour of the application, in one single stage, of a common reduced rate and a flat rate".

¹ See "The European Parliament" in this Bulletin.

BULL. EC 1-1969 -

BULL. EC 2-1969 -

BULL. EC 3-1969

TAXATION POLICY

Amalgamations, etc. of firms from different Member States

10. As part of the work undertaken to remove the tax obstacles which prevent or impede amalgamations, etc., involving firms from different Member States, the Commission adopted on 15 January 1969 two proposed directives which it submitted to the Council. The first proposal relates to the common taxation arrangements applicable to mergers, the splitting up of companies and the transfer of assets, and the second covers the arrangements applicable to parent companies and subsidiaries.

Mergers, splitting up of companies and transfers of assets

11. The main tax obstacle to mergers, the splitting up of companies and transfers of assets between companies of different Member States lies in the cost of the operation. The preferential tax treatment granted in the various Member States if the amalgamation involves domestic companies does not apply if the assets are transferred to a foreign company. In such a case the absorbed company is held to be wound up completely or partially, and this usually entails a very heavy tax liability.

The proposed common arrangement rests on three basic principles: no tax is to be levied at the time of merger; the interests of the State of the absorbed company are not to be prejudiced, and its rights are to be safeguarded for the future; the tax system applicable to companies with permanent establishments is to be improved. The merger must in practice result in the transformation of the absorbed company into a permanent establishment of the absorbing company; there is therefore a need for satisfactory arrangements in respect both of the taxation of companies with permanent establishments abroad, and of the cost of the merger.

To observe the first two principles, the Commission has proposed various measures. As regards the taxation of capital gains (i.e. the difference between the real value and the book value of the assets acquired), the Commission adopted a single and simple solution in the form of a general tax deferment. Under this system, which is already being operated by most Member States at national level, the payment of tax on capital gains is deferred until they are actually converted into cash. This means that capital gains do not attract tax at the time of merger.

To prevent tax evasion and safeguard the right to impose taxation of the state of the absorbed company, the Member States will be required to grant tax deferment only where the assets acquired are entered in the books of a permanent establishment of the absorbing company located in the state of the absorbed company. In this case the absorbing company must calculate, in the framework of this permanent establishment, the new rates of depreciation and subsequent capital gains or losses, in respect of the assets acquired, on the value at which they were shown in the tax statement of the absorbed company. In case of subsequent conversion of these capital gains into cash, tax will thus be levied by, and accrue to, the state of the absorbed company.

The Commission also proposes that the absorbing company should be allowed to claim in its turn, in the framework of the permanent establishment formed as a result of the merger, tax exemption in respect of the tax-free reserves built up for specific or general purposes by the absorbed company, provided they are still to be justified, and in respect of losses of this company which for tax purposes have not yet been written off; it further proposes that the assets brought in, particularly where real property is involved, should be exempted from transfer duty and that, in line with the proposed directive concerning indirect taxes on capital contributions, only a low rate of capital duty should be levied. In addition it is proposed that there should be tax exemption for capital gains resulting from the cancelling or

exchange of securities if one of the two companies involved is a shareholder of the other, and that allotment to the absorbed company's shareholders of shares in the authorized capital of the absorbing company should normally be deemed not to involve a tax liability.

As regards permanent establishments, the prime consideration must be to avoid double taxation of their profits. To this end, the Commission proposes that for the time being the "territoriality" principle should be maintained, i.e. the principle of taxation solely in the country where the establishment is located. For the longer term, the aim is to have a company taxed solely in the country where it has its registered office; as a first step in this direction companies are to be allowed to opt, under certain conditions, for the "world profits system"; under this system, a company may deduct from its taxable profits any losses made by one of its permanent establishments abroad. Arrangements are also envisaged to ensure that for tax purposes a permanent establishment is not placed at a disadvantage compared with a company actually domiciled in the country, but is accorded parity of treatment.

Tax arrangements applicable to parent companies and subsidiaries

12. While for mergers or transfers of assets the main tax obstacle lies in the cost of the operation, the acquisition of holdings leading to the formation of groups of interconnected companies in general raise no tax problems at the time of acquisition. Subsequently, however, the situation may change; at international level in particular it can happen that profits already taxed in the hands of a subsidiary are again taxed with the parent company when it receives them from the subsidiary. This "economic" double taxation has the effect of discrimination against the formation of groups of companies and constitutes, by this very fact, an obstacle to this form of combination.

To solve the problem, not only must this type of double taxation be eliminated but taxation must be rendered truly neutral as regards the final use (allocation to reserves or redistribution) made of dividends accruing to a parent company from its subsidiaries, so that the parent company is treated as if the profits had been earned by it directly. This calls for a modification of the current withholding-tax system, which provides an incentive to the parent company to redistribute the dividends received from its subsidiaries.

To attain this twofold objective for reorganizations involving companies from different Member States, the Commission proposes that it should be admissible to deem dividends received by a parent company from its subsidiaries as not forming part of its taxable profits, at least where the holding is not less than 20%; at the same time it proposes that, except for special cases, no dividends distributed by a subsidiary to the parent company should attract withholding tax. Lastly, where a parent company has major holdings (i.e. amounting to 50%) in other companies, it will be given the right to opt at a later stage for the system of consolidated profits. This system means that in practice a parent company and its subsidiaries, though separate legal persons, are treated as a single entity for tax purposes; it offers the same advantages as the world profits system. The date of entry into force of the provisions implementing this system will be fixed by the Council on a proposal of the Commission.

13. On 22 January 1969 the Economic and Social Committee¹ adopted an opinion on the Commission proposal for a third directive on the harmonization of Member States' legislation on turnover taxes (application of tax on value added to transactions involving agricultural produce). It asked for certain amendments to the Commission proposal, which had already been discussed by the European Parliament at its session from 30 September to 3 October 1968.²

¹ See "Economic and Social Committee".

² See Bulletin No. 12-68, Ch. V, sec. 7, and "European Parliament".

BULL. EC 4-1969

TAXATION POLICY

Application of Italian turnover tax

Refined oils from oilseeds and oleaginous fruits

6. On 11 February 1969 the Commission decided to call upon the Italian Government to modify the turnover tax arrangements providing for a countervailing charge on imports and a refund on exports of refined oils from oilseeds and oleaginous fruits. In the directive it addressed on this subject to the Italian Government in accordance with Article 97 of the EEC Treaty,¹ the Commission invited Italy to reduce the average rate of the charges and the refund, which were increased from 3.6 to 7.0% on 21 November 1967, so as to ensure that Italian products are not granted more favourable treatment than similar products imported from or exported to the other Member States, a discrimination which is contrary to the principles laid down in Articles 95 and 96 of the Treaty of Rome.

Imported wool

7. On 12 July 1966 the Commission instituted against Italy the procedure under Article 169 in respect of several infringements of Articles 95 and 96 of the Rome Treaty resulting from the application of the Italian turnover tax (IGE) to Italian imports of wool and wool products from other Member States. On representations from the Commission, the Italian Government agreed to put an end to some of the infringements, in particular by applying Law No. 370 of 16 May 1967.

The provisions of Article 95 of the Treaty are, however, still being infringed in two ways: stripped wool imported from the other member countries is taxed more heavily than like domestic products, and carded or combed wool imported from the other member countries is also taxed more heavily than the corresponding Italian products.

This being a case of failure to comply with the obligation which Article 95 imposes on the Member States, the Commission has continued the procedure under Article 169 by addressing to the Italian Government on 17 July 1968 the reasoned Opinion provided for under this Article. In its Opinion, the Commission called upon Italy to terminate the infringements still persisting, within a specified period.

The Italian Government took no steps to this effect, and on 4 February 1969 the Commission therefore referred the matter to the Court of Justice, asking the Court to find that Italy has failed to comply with the requirements of the law.²

Adjustment of the national systems of commercial vehicle taxation

8. At its meeting of 26 and 27 February 1969, the Economic and Social Committee discussed the adjustment of national systems of commercial vehicle taxation. By 67 votes to 6 with 5 abstentions, it adopted, on the basis of a report by M. Canonge (France, general interests group), an Opinion on the proposed directive worked out by the Commission on this subject. The Committee noted that the directive covered only part of the field and that an overall solution to the problem, in the form of the introduction of common financial arrangements for infrastructure use, could not be elaborated until the studies and surveys currently being carried out by the Commission with the assistance of the Member States were concluded. The Committee stressed the importance attaching, from the competition angle, to the introduction of equal treatment of the various modes of transport; it also expressed the wish that the Member States should not use the change in the tax structure as an excuse for raising the overall tax yield if this were not justified by a change in infrastructure costs.

¹ Official gazette No. L 52, 3.4.1969.

² See "Court of Justice".

Lastly, the Committee proposed that the directive be extended to cover so-called commercial vehicles with a laden weight of from two to three tons; it also called for the exemption from the tax of commercial vehicles used in passenger transport.

BULL. EC 5-1969

TAXATION POLICY

Capital market and tax harmonization

10. On 5 March 1969, the Commission submitted to the Council a Memorandum on adjustment measures in the field of direct taxes with a view to facilitating the development and interpenetration of capital markets in the Community.¹

Tax exemption on gift consignments within the Community

11. Following a written question from M. Dichgans (Christian-Democrat, Germany), the Commission has again shown that it is concerned to lighten and, as far as possible, eliminate from intra-Community trade the tax equalization measures at frontiers and the formalities and controls connected with them. With this in view, it has again investigated the question as to whether proposals should be made to drop import taxation on gifts dispatched from one Community country to another. The Commission observes that this type of exemption appears to be intrinsically desirable with regard to the sending of gifts with no commercial purpose by private individuals. However, it would require considerable tightening of the control measures. In particular, such exemption would make it indispensable to distinguish between these gifts and other small consignments, as the latter may also comprise goods dispatched on a not inconsiderable scale by commercial enterprises and for which import exemption cannot be entertained, firstly in view of the high and also very different levels of the fiscal charges in the various countries and secondly because, in certain countries, taxes are remitted on these commodities on export. Even if measures of this kind could be effectively implemented they would involve excessive administrative charges and expenses.

¹ See Ch. III.

The Commission therefore considers it expedient for the question of exempting gift consignments to be solved within the framework of Community rules applying to small consignments in general. This solution should be provided under the rules which the Commission will propose to the Council for the abolition of tax frontiers in accordance with Article 4 of the first directive on harmonization of turnover taxes.¹

¹ First Council Directive of 11 April 1967 on harmonization of Member States' legislation concerning turnover taxes (Official gazette No. 71, 14.4.1967).

BULL. EC 6-1969

TAXATION POLICY

Elimination of tax discrimination

Indirect taxes other than turnover taxes

5. In 1964 the Commission appealed to the Court of Justice of the European Communities (Case No. 45-64) alleging that Italy had infringed Article 96 of the

EEC Treaty. The case concerned the drawback paid under Italian Law No. 639-64 on exports of the national mechanical engineering industry.

In its ruling handed down on 1 December 1965, the Court allowed the Commission's claim on the first plea (drawback on taxes not in fact charged on the products themselves (Article 96 of the EEC Treaty)) and reserved its decision on the second (illegality of the flat-rate refunds system applied by the defendant). In the same adjudication, the Court also ordered Italy to show that the drawback paid to offset taxes imposed on the products and thus refundable under Article 96 did not exceed the tax burden which the products had actually borne in this respect. The parties were given the option of requesting at a later date the re-opening of the proceedings on the point still to be decided.

Further to an examination of the documents submitted in compliance with the ruling and after the verifications since carried out with the co-operation of the Italian authorities, the Commission decided to apply for the re-opening of the hearing on the second plea. A request to this effect was accordingly being filed with the Court of Justice.

Excise

6. On 27 March 1969 the Commission filed a suit against Italy under Article 169 for infringement of Article 95 of the Treaty of Rome in respect of the charges imposed on spirits imported from other Member States.

The Italian Government imposes charges on imported spirits for a standard alcohol content of 70%, whereas home-produced spirits are charged according to their actual alcohol content. This situation infringes the obligation of Member States under Article 95 not to impose on the products of other Member States any internal charges in excess of those applied directly or indirectly to like domestic products.

On 7 May 1968 the Commission therefore instituted the procedure laid down in Article 169 by issuing a reasoned opinion calling on Italy to put a stop within a stated period to any infringements still existing.

As no steps to comply with the reasoned opinion were taken by the Member State concerned either within the period stated or subsequently, the Commission instituted proceedings in the Court of Justice, on 27 March 1969, asking the Court to find that Italy had in fact failed to fulfil the obligation in question.¹

¹ Bulletin 5-69, Court of Justice.

BULL. EC 7-1969

TAXATION POLICY

Tax exemptions in international travel

6. On 12 May 1969 the Council adopted the text of a directive on exemption from the turnover taxes and excise duties levied by the Member States on goods imported by tourists and other international travellers.

The checks and formalities which must be complied with at present because of the existing differences in Member States' legislation on turnover taxes and excise duties will be eased once the directive enters into force. The Member States will have to implement the measures required to this end by 1 January 1970 at the latest.

Under the directive, exemption is granted for non-commercial imports of merchandise in travellers' luggage up to a total value of 75 u.a. per person.¹

Travellers from non-member countries entering the Community are allowed to import 25 u.a. worth of goods free of tax.

Article 4 of the directive fixes for certain products the quantitative limits up to which goods can be imported free of turnover tax and excise duty. These quantities are as follows:²

a) *Tobacco goods*

200 cigarettes or 100 cigarillos or 50 cigars or 250 g of tobacco;

b) *Alcoholic beverages*

1 standard bottle of 0.70 to 1 litre of distilled beverages and spirituous beverages of an alcoholic strength of more than 22°,

or

2 litres of distilled beverages and spirituous beverages, aperitives with a basis of wine or alcohol, of an alcoholic strength of 22° or less, sparkling wines, dessert wines

and

2 litres of non-sparkling wine;

c) *Perfumes*

50 g. and 1/4 litre of toilet water;

d) *Coffee*

500 g. or 200 g of coffee extracts and essences;

e) *Tea*

100 g, or 40 g of tea extracts and essences.

The exemptions under a), b) and d) cannot be claimed by travellers under 15 years of age.

Application of the TVA in the Member States

7. According to the first Council Directive adopted in this field on 11 April 1967, the common system of tax on value added must enter into force on 1 January 1970 at the latest.

The Commission having learnt of the intention of the Italian Government to ask for an extension of this deadline until 1 January 1972 in respect of the entry into force of the common TVA system in Italy, President Rey wrote to the Italian Government on 7 May 1969 pointing out that the two Council directives on the harmonization of Member States' legislation on turnover tax constitute an important political act and are also legally binding on all Governments of the Member States.

¹ 1 unit of account (u.a.) equals: US \$1; DM 4; FF 4.83706; Lit. 625; Fl. 3.62; Bfrs. 50; Lfrs. 50.

² Official gazette No. L 133, 4.6.1969.

BULL. EC 8-1969

TAXATION POLICY

Application of TVA in the Member States

8. On 30 May 1969 the Standing Committee of heads of revenue departments held its 18th meeting in Brussels. It discussed a note, prepared by the Commission's staff, on the progress made on harmonization in the field of tax on value added. The note concerned the elimination of import charges and export charge exemptions in intra-Community trade. It was studied in the light of two aims: free movement of goods and the establishment, in the sphere of indirect taxation, of identical conditions of competition throughout the Community.

Various ways of achieving the two aims were considered, with regard both to technical implementing details and the gradual alignment of national rates by means of rate brackets. A procedure was also examined for allocating TVA revenues to the Member State where consumption actually takes place in the event of this tax having been collected by another Member State. The results of this meeting will influence decisions on the further action to be taken on current work, both as to their substance and to the procedure to be adopted.

Amalgamations, etc., of firms from different Member States

9. The Economic and Social Committee endorsed the proposed directives, submitted by the Commission to the Council in January 1969, on the elimination of certain tax obstacles to amalgamations, etc., of firms from different Member States.¹ The proposal relating to the common taxation arrangements applicable to mergers, the splitting up of companies and the transfer of assets was approved by 45 votes to 21, with 17 abstentions; however, the Committee also put forward a number of suggestions. The proposal covering the common EEC arrangements for parent companies and subsidiaries was adopted by 44 votes to 20, with 15 abstentions.

Italian excise duty on products derived from cocoa beans

10. Some time ago the Commission noted that the Italian legislation governing excise duty on cocoa was creating a situation incompatible with Articles 95 and 96 of the EEC Treaty. More particularly, the combined effect of Decree No. 206 of

14 October 1946, Decree No. 50 of 11 March 1950 and Law No. 291 of 25 May 1954, which are still in force, was to discriminate against processed cocoa bean products imported from the other Member States in comparison with like Italian products. In addition, a refund on exports of home-produced products was claimable exceeding excise duty actually paid.

The attention of the Italian authorities was drawn to this situation on several occasions with the support of statistics, and the procedure of Article 169, first paragraph, of the EEC Treaty was initiated. Under this procedure, which was opened by a letter dated 19 July 1966 and followed up by the despatch of a reasoned Opinion dated 17 January 1967, the Italian Republic was called upon to terminate the infringement resulting from its fiscal provisions in this field. On several occasions rectifying legislation was announced, but a considerable period has elapsed without action being taken. The Commission has therefore decided to refer the matter to the Court of Justice of the European Communities.

The Commission asks the Court, in an appeal lodged on 24 June 1969, to find that the Italian Republic is committing the following infringements:

(i) An infringement of Article 95 of the EEC Treaty by reason of the higher incidence of the excise duty on cocoa powder imported directly from the other Member States compared with like products obtained in Italy from cocoa beans which enter the country under the temporary import system and are not subsequently re-exported;

(ii) A second infringement of Article 95 due to the higher incidence of excise duty on cocoa powder, cocoa butter and cocoa husks imported directly from the other Member States compared with like products obtained in Italy from cocoa beans which enter the country under the permanent import system;

(iii) Infringement of Article 96 due to the advantage reserved for Italian products obtained from cocoa beans and intended for export, in that refund of excise duty is granted on them in excess of the amount of duty actually paid.

¹ See Bulletin 3/1969, Ch. IV, sec. 10.

BULL. EC 9/10-1969

TAXATION POLICY

Indirect taxes on the raising of capital

16. At its session of 17 July 1969 the Council adopted a directive on the harmonization of indirect taxation on the raising of capital,¹ after the Luxembourg delegation had expressed a reservation. The directive provides mainly for the abolition of stamp duty on securities and the charging of a harmonized capital duty in the Member States. Stamp duty on the issue of securities is currently charged in certain Member States, while capital duty exists in all six and is charged mainly on the constitution and increase of company capital.

The reasons for this directive are the existence of double taxation, discrimination and distortions in the taxation systems of the Member States, which therefore hamper the free movement of capital. Thus, the application of the stamp duty by certain Member States when foreign securities are issued or brought into circulation on their own market has the same financial effects as countervailing duties in the turnover tax field. The retention of these countervailing duties between the Member States is incompatible with the idea of a free capital market. In order to establish a single internal market, it therefore appeared necessary to abolish these duties, i.e. to abolish stamp duty on securities.

Parallel with the abolition of stamp duties, it has also proved essential to levy the same indirect fiscal charge on companies' own capital in the Member States. To this end, the directive provides for the levy of a harmonized capital duty and defines the joint-stock companies subject to this duty (mainly incorporations of companies, transformations and increases of capital), the basis of assessment and the rate of the tax. The basis of assessment is the real value of the assets contributed to the company after deduction of charges borne by the company as a consequence of these contributions.

On a Commission proposal, the Council is to determine by 1 January 1972 at the latest the common rates of the capital duty. However, the Member States have to apply a rate of not more than 2% or less than 1% until the introduction of the common rates. In the case of mergers, the rate is reduced by 50% or less. There are also special rules for holding companies whose sole purpose is participation in other enterprises, and the administration and exploitation of such participation. For these companies the rate of the capital duty may, without prejudice to the fixing by the Council of common rates, be reduced to 0.5% until 1 January 1973 and after that date increased to 1%. Apart from the TVA and certain taxes of a special nature, no other tax or duty can be charged on operations subject to duty on assets brought in.

When this directive comes into force, capital duty will be charged under the same conditions as in a single internal market. Thus, the transfer of the registered offices of a company from one Member State to another will not be subject to this duty, as is usual at present. As far as taxation is concerned, this directive is the first Community measure harmonizing both the structures and the rates of the tax and therefore having direct effects on the fiscal revenue of the Member States. The revenue accruing to the Member States from the taxes to which the present directive applies was 114 million u.a. for capital duty and 21 million u.a. for stamp duty in 1967.

The Member States are required to adapt their legislation to the provisions of this directive by 1 January 1972 at the latest.

¹ Official gazette No. L 249, 3.10.1969.

Application of TVA in the Member States

17. In accordance with the first Council directive adopted on 11 April 1967, the common system of tax on value added (TVA), whose structure and implementing procedures are laid down in the second directive adopted on the same date by the Council,¹ is to come into force by 1 January 1970 in the six Member States. The TVA system has been in use in France and Germany since 1 January 1968 and in the Netherlands since 1 January 1969.

The Italian Government, following the letter sent to it on 7 May 1969,² officially

¹ Official gazette No. 71, 14.4.1967.

² See Bulletin 7-69, Ch. V, sec. 7.

informed the Commission that Italy is unable to meet the 1 January 1970 deadline for the introduction of TVA. It pointed out that on 20 June 1969 the Italian Cabinet approved a draft law, submitted to the Parliament on 1 July last, for the introduction of an extensive tax reform. The procedures for this reform are to be adopted by the Government by 31 October 1970 in the form of a series of instruments to be implemented simultaneously on 1 January 1972.

The Italian reform overhauls the direct and indirect tax systems; instead of the turnover tax (*Imposta generale sull'entrata* — IGE) currently in force, it will introduce TVA, which in its basic principles and technical structure will conform to the Community system envisaged in the two Council directives mentioned above. Unlike the system in the other Community member countries, the Italian TVA will be applied, at least temporarily, up to and including the wholesale stage, and will be accompanied by an additional tax on consumption, levied at the stage preceding retail trade, the proceeds of which will go to the local authorities to offset the present consumption taxes, which will be abolished.

The Italian Government points out that the TVA system envisaged is in accordance with Community commitments, but will have to be discussed with the Commission and the other Member States, in pursuance of Article 5 of the first directive. It regrets the need to postpone the 1 January 1970 deadline, for various reasons which it gives, and therefore requests an extension until 1 January 1972. At the same time, the Italian Government promises that everything will be done to ensure that this delay does not cause the turnover tax harmonization process to slow down.

In Belgium the law creating the TVA Code is dated 3 July 1969 and was published in the "Moniteur Belge" on 17 July 1969. It was due to come into force on 1 January 1970. However, about mid-September 1969, the Belgian Government asked the Council and the Commission for an amendment to the first directive in order to fix a new final date for the introduction of the system. In a memorandum explaining the reasons for its request, the Government states that it is not in a position to apply TVA before 1 January 1971.

The Luxembourg TVA law was adopted on 5 August 1969 and its wording published on 26 August 1969; this law also provides in principle for the application of TVA as from 1 January 1970.

The Commission intends shortly to submit proposals to the Council for decisions following its current examination of the Italian and Belgian applications.

BULL. EC 11-1969

TAXATION POLICY

Application of TVA in the Member States

2. It will be remembered that on 14 July 1969 the Italian Government advised the Commission that it was not in a position to comply with the 1 January 1970 deadline fixed by the first Council directive of 11 April 1967¹ for the introduction of the common TVA system, and asked for a two-year extension. On 12 September 1969, the Belgian Government in its turn informed the Commission that it was unable to keep to the date fixed by the directive, mainly for reasons connected with the current economic and budgetary situation, and was therefore forced to request a one-year extension.²

Faced with these new facts, the Commission considered that a general extension could be granted only on the condition that it did not exceed one year and that action would be taken to offset the disadvantages entailed by such postponement. In a proposal for a directive on the introduction of TVA in the Member States, which it submitted to the Council on 1 October 1969,³ the Commission has therefore suggested that the deadline should be postponed to 1 January 1971 and at the same time the requisite measures adopted to limit the drawbacks entailed by postponement, both as regards conditions of competition and work on the harmonization of taxes.

¹ Official gazette No. 71, 14.4.1967.

² See Bulletin 9/10-69, Ch. V, sec. 17.

³ Official gazette No. C 129, 10.10.1969.

One of the essential aims behind the introduction of the common TVA system in the six member countries is the establishment of conditions which preclude a distortion of competition through turnover taxes. This aim cannot be achieved by 1 January 1970 because the States allowed to put off the effective date until 1 January 1971 will continue to use average rates to compensate for domestic taxation. However, being calculated on a standard basis, these rates entail disparities in tax treatment to the advantage of certain exports and to the detriment of certain imports. In order to reduce this tax advantage as far as possible, the proposed directive lays down that the averages rates in force on 1 January 1970 shall be reduced progressively by fixed amounts.

As postponement of the introduction of TVA in certain countries is liable to delay the adoption of the measures necessary if intra-Community trade is to be rid of levies on imports and refunds on exports, the Commission thought it indispensable to lay before the Council a time-table for the implementation of a harmonization programme. This would cover not only the abolition of physical checks at the frontiers but also the establishment, at Community level, of conditions that are neutral in their effect on competition. The studies of this subject by the Commission's staff show that for these objectives to be attained it will be necessary, on the one hand, to continue harmonization of the national systems for applying the tax and, on the other, to reduce the differences in rates of tax applied in the Member States.

To expedite this programme, the proposed directive lays down that the Member States shall assume certain additional obligations. Accordingly, they are required to extend the sphere of application of TVA to include retail trade not later than 1 January 1971, and to reduce, as soon as possible, the number of TVA rates applied in each country to two. The European Parliament and the Economic and Social Committee rendered their opinions on 9 October and 15 October 1969 respectively.

Indirect taxes on capital contributions

3. The directive on the harmonization of indirect taxes on capital contributions, approved by the Council on 17 July 1969,¹ has been finally adopted, as the Luxembourg Government withdrew the reservation it had made at that session.

¹ See Bulletin 9/10-69, Ch. V, sec. 16, and official gazette No. L 249, 3.10.1969.

BULL. EC 12-1969

TAXATION POLICY

Application of TVA in the Member States

9. At its session of 17 October 1969, the Council examined the proposed Council directive,¹ submitted by the Commission on 1 October, concerning the introduction of the tax on value added in the Member States. It agreed to continue its examination at its session of 10-11 November. The directive drafted by the Commission proposes deferring to 1 January 1971 the time-limit allowed for the introduction of TVA, because of the additional time required by the Italian and Belgian Governments.

10. On 9 October 1969 the European Parliament approved the proposed directive submitted by the Commission to the Council, but asked that the time-limit for the introduction of TVA should be 1 July 1971. In its resolution on the subject it invited the Commission "to keep a strict watch on the fulfilment of commitments undertaken by the Member States", but also "to follow attentively the measures

¹ Official gazette No. C 139, 10.10.1969, and Bulletin 11-69, Ch. IV, sec. 2.

which will be adopted in 1970 on the basis of the present directive by the Belgian and Italian Governments in order to conform, from 1 July 1971 onwards, to the Community legislation on tax harmonization". The Parliament, like the Commission, also considers that it is essential that this extension "be accompanied by conditions designed to prevent the maintenance of multi-stage taxes in the Member States from distorting competition and having an unfavourable influence on trade". It therefore agreed to the conditions concerning this point contained in the proposed directive.³

11. The Economic and Social Committee for its part held an extraordinary plenary session on this matter on 15 October 1969. In its Opinion (adopted unanimously, apart from 5 abstentions), the Committee recalls the commitments entered into by the Member States when they adopted the first two TVA directives and deplores the requests for deferment submitted by the Belgian and Italian Governments, however without commenting on the reasons which these countries give in support of their requests. The Committee trusts moreover that the period allowed in the proposed directive will enable the Commission to carry out the necessary consultations with the two Governments concerned. With regard to the article on the reduction of the average rates, the Committee considers the proposal for reducing the rates from 1970 onwards as unjustified and asks the Commission to negotiate with the Belgian and Italian Governments certain tariff headings which, in its view, give competitive advantages taking into account the average rates applied to them.³

³ See "European Parliament" below.

³ See "Economic and Social Committee" below and Official gazette No. C 144, 8.11.1969.

BULL. EC 1-1970 -

BULL. EC 2-1970

TAXATION POLICY

Tax harmonization

Application of TVA in the Member States

10. At its meeting on 9 December 1969, the Council approved the text of a third directive on harmonization of turnover taxes, dealing with the introduction of the tax on value added in the Member States.¹

The directive puts back the date indicated in Article 1 of the first directive to 1 January 1972, in deference to pleas by Italy and Belgium to be allowed a two-year and a one-year extension respectively to get the new tax on to their statute books. Accordingly, both countries will continue for the time being to apply average rates of import levy and export drawback to offset domestic taxation, as permitted by Article 97 of the Treaty of Rome. To avoid distur-

¹ Official gazette L 320, 20.12.1969.

tion of competition, however, it is provided that the average rates as at 1 October 1969 are not to be increased; by "average rate" is meant the extra charge over and above the general rate on import, or the rate of drawback on export.

In adopting the directive, the Member States agreed to reduce the average rates as follows:

- 1 April 1970-31 December 1970, 10% reduction in average rates between 101% and 150% of the general rate of turnover tax, and 13% reduction in average rates of 151% or over;
- 1 January 1971-31 December 1971, 10% reduction as before, and 15% reduction instead of 13%.

The Council also requested¹ the Commission to submit the proposals referred to in Article 4 of the first directive of 11 April 1967, making the point once more that the sphere of application of TVA must be extended to include retail trade, and that only a very small number of tax rates must be applied.

¹ Official gazette C 163, 23.12.1969.

BULL. EC 3-1970 -

BULL. EC 4-1970 -

BULL. EC 5-1970 -

BULL. EC 6-1970

TAXATION POLICY

Tax harmonization

8. At its session of 9/10 April 1970¹ the European Parliament approved, subject to a few amendments, the two proposed directives submitted by the Commission to the Council to eliminate tax obstacles to the establishment of new groups by companies of different Member States.

One of these proposed directives concerns the common taxation arrangements applicable to mergers, the splitting up of companies and the transfer of assets between companies of different Member States. The second deals with the taxation arrangements for parent and subsidiary companies of different Member States.

The two proposed directives are to be discussed by the Council, which has to take a unanimous decision under Article 100 of the Rome Treaty.

¹ See "European Parliament" (Part Two, Ch. IV).

BULL. EC 7-1970

TAXATION POLICY

Tax harmonization

10. The Standing Committee of heads of revenue departments held its 19th meeting in Brussels on 17 April 1970.

Measures were decided on with regard to the pursuit and intensification of work on harmonization. Four main points were considered:

- (i) Supplementary studies with a view to VAT harmonization, with special reference to the problem of abolishing tax frontiers in conjunction with a clearing system for the allocation of receipts to the consumer country;
- (ii) Proposed studies analysing the budgetary, economic and social implications of the harmonization of VAT rates;
- (iii) Further harmonization of excise duties;
- (iv) Possible harmonization and co-ordination of tax collection and vetting methods.

BULL. EC 8-1970

TAXATION POLICY

Introduction of VAT in Italy and Belgium

20. On 2 June 1970 the Commission presented to the Council a report on the state of implementation of the agreement concluded on 9 December 1969 between the representatives of the Governments of the Member States — meeting in the Council — concerning reductions of certain average rates charged on imports and refunded on exports under the heading of turnover tax.² In pursuance of this agreement, the Member States which do not yet apply the system of the value-added tax undertook to reduce, as from 1 April 1970 and according to a given schedule, average rates of countervailing charges on imports and of export refunds in force on 1 October 1969 under the heading of turnover tax which exceed 100% of the general rate of this tax.

A clause providing for exceptions has, however, been incorporated in this agreement so that the Commission may authorize a Member State to maintain these rates. The State concerned must then provide specific proof that, in the case of certain products and for the most integrated enterprise in a given branch, the linear reduction referred to above distorts the fiscal neutrality determined by means of the common method of calculation provided for by the Council directive of 30 April 1968. The Member States concerned are Italy and Belgium.

Italy complied with the provisions of this agreement on the specified date of 1 April, first of all at administrative level and then by decree law of 1 May 1970 with retroactive effect. This decree must be transformed into a law by the Parliament within 60 days of its publication in the official gazette.

² Bulletin 2-70, Part Two, sec. 10.

The reductions made by Italy concern all the average rates referred to in the agreement; the exception clause was not invoked.

In the case of Belgium, the average rates referred to by the agreement concern 222 products for increases on imports and 206 for refunds on exports. In a letter of 31 January 1970, the Belgian Government informed the Commission that it intended to apply the reductions specified for 19 products and invoked the exception clause for all the others: i.e. 203 with regard to increases on imports and 187 with regard to refunds on exports.¹ It pointed out that the products for which it requested the maintenance of the existing rates are manufactured by industries of the same structure, integrated or not, according to the case.

In a letter of 18 March 1970, the Commission informed the Belgian Government that the information communicated did not constitute the proof specified by the exception clause in the agreement. If a Member State asks to benefit from this clause, it must provide the Commission with specific proof that fiscal neutrality would be distorted for the most integrated enterprise in a given branch if it put into effect the linear reduction specified in the agreement.

In other words, proof must be provided that as a result of the linear reduction the rates of increase on imports and refunds on exports descend to a level lower than that of the effect of the internal transmission tax noted in a single enterprise by branch of products. As this enterprise is the one which shows the highest level of integration in the branch no calculation of an average may be accepted. However, in its request, Belgium merely referred to the old calculations made to fix the average rates in question according to the common method of calculation specified by the Council directive of 30 April 1968. These calculations were made on the basis of a weighting of the fiscal burdens according to sector and not on the basis of the fiscal burden on the most integrated enterprise within each sector, as prescribed by the agreement of December 1969.

¹ With regard to the refunds, 134 of the 187 rates concerned have been temporarily reduced by one point for reasons connected with the economic trend by the ministerial order of 24 December 1969, issued outside the framework of the agreement of 9 December 1969.

Following the Commission's communication, the Belgian Government contacted the Commission and informed it of its intention to provide fresh calculations to motivate its request. The Commission reserves the right to give a definitive opinion on the question after examining the new evidence to be submitted to it.

BULL.EC 9-1970 -

BULL.EC 10-1970 -

BULL.EC 11-1970 -

BULL.EC 12-1970 -

BULL EC 1-1971

TAXATION POLICY

*Tax harmonization***Excise duties on manufactured tobacco**

6. On 20 November 1970 the Commission submitted to the Council a proposal for a directive for harmonizing the structures of excise duty on manufactured tobacco. This new text replaces the proposed Council regulation concerning taxes on the consumption of manufactured tobaccos, other than turnover taxes, and the draft Council resolution concerning excise duties on manufactured tobaccos, submitted on 4 July 1967 by the Commission to the Council¹. In the light of the discussions on this matter in the Council, it became clear that an amended proposal would have to be submitted. It emerged from these discussions that it was almost impossible to reach an agreement on the basis of the harmonization criteria included in the proposed regulation of 4 July 1967.

In order to break this deadlock, the Council had adopted, on 21 April 1970, a resolution laying down some principles for harmonizing taxes on the consumption of manufactured tobacco, other than turnover taxes². In this way, the amended proposal for a directive is based on the harmonization criteria adopted by the Council in this resolution. It provides particularly for the following :

- (a) The harmonization of the structures of excise duty on manufactured tobaccos will be carried out in several stages. The general criteria for harmonization together with the particular criteria applicable during the first stage will be determined forthwith. The particular criteria applicable during the following stages will be determined by a later directive which the Council must adopt before 1 January 1973.
- (b) Chewing tobacco and snuff will be exonerated from the excise duties. Cigarettes will be subject to an excise duty combining a proportional with a specific taxation component.
- (c) The first stage of harmonization will begin on 1 July 1971 and will cover a period of two and a half years. During this period a limit on the tax chargeable is provided for in the case of cigars, cigarillos and smoking tobacco. To this end, the incidence of excise duty in relation to retail selling price should never exceed 40 % for cigars and cigarillos and 50 % for smoking tobacco.

Turnover tax

7. The Commission has called together a panel of experts, in pursuance of Article 4(2) of the first directive on the harmonizing of Member States' turnover tax legislation (directive of 11 April 1967). The panel has been given the task of analysing the budgetary, economic and social effects of harmonizing turnover tax rates and exemptions.

¹ *Journal officiel* No. 198, 17 August 1967.

² *Ibid.* No. C 50, 28 April 1970.

BULL. EC 2-1971

TAXATION POLICY

Tax harmonization

Closer alignment of taxes on hydrocarbons used as fuel

11. On 28 December 1970 the Commission submitted to the Council a draft directive on the "alignment of specific consumption taxes on liquid hydrocarbons to be used as fuel".¹ Apart from its common energy policy objectives, the draft is designed to improve the terms of competition within the Community for consumer industries, and to facilitate the subsequent suppression of tax frontiers which is a *sine qua non* for the establishment of an economic and monetary union.

¹ See sec. 63.

BULL. EC 3-1971 -

BULL. EC 4-1971 -

BULL. EC 5-1971

TAXATION POLICY

Harmonization of taxes

Standing Committee of heads of revenue departments

10. The Standing Committee held its 21st meeting in Brussels on 3 March 1971. It began by discussing the consequences for future tax harmonization work of the resolution on the stage-by-stage establishment of economic and monetary union in the Community adopted on 9 February 1971 by the Council and the representatives of the Member Governments.

Particular stress was laid on the important role of tax harmonization in the set of measures to be taken during the first three-year stage. These measures concern the following matters:

- (i) Rules establishing a uniform basis of assessment for VAT;
- (ii) Harmonization of the field of application, basis of assessment, and method of levying the principal excise duties;
- (iii) Harmonization of certain kinds of taxes that could affect capital movements within the Community, especially of the tax system applicable to interests on fixed-yield securities and dividends;
- (iv) Further harmonization of the structure of company taxes;
- (v) Progressive extension of the tax exemptions granted to private individuals crossing intra-Community frontiers.

Before the end of this first stage the Council will also examine the Commission's studies and proposals on the approximation of VAT and excise rates.

The Committee members then exchanged information on tax reforms implemented or planned in their respective countries. In this connection, a detailed statement was submitted to the Committee on the guiding principles of a German draft law to ensure equality of treatment for persons with interests abroad and to improve the competitive position of foreign investments (Aussensteuergesetz: law on the duties of taxpayers as regards international taxation law). The meeting finally discussed problems concerning methods of supervision, especially as regards direct taxation, in some Member States and the introduction of a procedure for mutual exchange of information, as well as the attitude which the Community should adopt towards tax evasion at international level.

BULL. EC 6-1971 -

BULL. EC 7-1971 -

BULL. EC 8-1971 -

BULL. EC 9/10-1971

TAXATION POLICY

Duty-free entry for travellers

22. On 30 July 1971, the Commission suggested to the Council, that fresh initiative be taken towards facilitating the transit of travellers within the Community. The Commission communicated a proposal concerning the harmonization of laws and regulations relating to turnover tax and excise duties levied during the international transit of travellers.² If such a directive were adopted by the Council, the new procedures could be applied within a few months, the time required for the Member States to adapt the current system.

In its proposals, the Commission envisages an extension of duty-free entry for travellers and within this extension abolishing the obligation to declare imported goods, in order to minimize checks on travellers' luggage at the inter-Community frontiers. These steps seem particularly justified "by making people more conscious of the reality of the Common Market". Indeed, it is not easy for people to understand that, having achieved a Customs Union (of some years standing), relatively strict fiscal frontiers should still persist between the Member States.

A first directive, concerning duty exemptions for travellers, adopted 28 May 1969, had introduced a free allowance of 75 u.a. for travellers crossing inter-Community frontiers, without any distinction between nationals of the Member States and others.³ It was time to adapt the first directive,

¹ See ser. 173.

² See *Journal officiel* C 106, 23 October 1971.

³ See *Journal officiel* L 191, 5 August 1969.

as a function of the resolution by the Council and the government representatives of Member States (22 March 1971) for the realization by stages of the economic and monetary union within the Community.¹ The resolution, among other things, provided for the progressive extension of duty-free entry granted to private persons when crossing inter-Community frontiers.

Within this perspective the new proposal intends :

- To double the exemption allowance for inter-Community movement of travellers, by allowing up to 150 u.a. (40 u.a. for children);
- Discontinue or extend the quantity limits for goods subject to tax, which will now amount to 400 cigarettes, 1 kilo of coffee, 1 bottle of spirits or 3 litres of apéritifs, and 4 litres of wine , while the limits on perfumery and tea will be discontinued.
- To grant minimum exemptions for border dwellers amounting to 1/3 of the normal exemptions and for frontier workers and the staff of international transport companies 1/5 of normal exemptions;
- To discontinue, within the extended limits the obligation of Customs declarations when crossing frontiers.

The new measures proposed only apply to the movement of travellers within the Member States. The 25 u.a. allowance granted on the importation of goods in the personal luggage of travellers coming in from non-Member States is not extended. Moreover, these facilities are only granted for the occasional import of goods for personal or family use by travellers or intended to be offered as gifts. Only imports of a strictly non-commercial nature may benefit from the exemptions.

The second objective of the proposal is the solving of certain difficulties encountered on the application of Art. 6 of the directive of 28 May 1969. This provision prohibits remission of tax, in a Member State, on goods sold to travellers, which might be imported under exemption into another Member State. Indeed without this prohibition, products could be bought altogether untaxed in one country and then taken in, as personal luggage, into another benefitting from exemption, resulting in a total avoidance of tax.

The common system proposed does not cover at the moment either the deliveries made at the tax-free shops at airports or sales made on board the planes themselves, both of which are to be treated by another proposal now being worked out.

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23. During the session 5-9 July, the European Parliament had adopted a resolution, in which it considered necessary "to discontinue frontier checks on the movement of inter-Community travellers as soon as possible, so that here too the Common Market may become a tangible reality".¹ The Parliament had also invited the Council to "issue as soon as possible, in order to discontinue checks at inter-Community frontiers, the directive, whose draft the Parliament had already approved, covering the insurance of civil responsibility deriving from the use of automotive vehicles" (Green Card).

During the same session the Parliament approved save for a few remarks, the proposal for a directive submitted by the Commission to the Council concerning the fixing of common rates of tax on capital contributions.²

¹ See *Journal officiel* C 28, 27 March 1971.

² See sec. 160.

³ See sec. 161.

BULL. EC 11-1971 -

BULL. EC 12-1971

FISCAL POLICY

Tax exemption at intra-Community borders

10. In reply to a written question from Mr Alfred Califice, Belgian member of the European Parliament, the Commission dealt in detail with the application by Member States of the Council directive of 28 May 1969, concerning the harmonisation of national regulations on exemption from turnover tax and excise duties on imports in international passenger traffic.

The Commission pointed out in this reply¹ that on 1 July 1970 it had addressed a written invitation to three Member States who were putting a restrictive interpretation on this directive (Belgium, France, Luxembourg) to present their comments on the matter thus taking the first step in the procedure laid down in Article 169 of the EEC Treaty.

The Belgian Government replied on 5 August 1970, and the French Government on 15 September 1970. It should be noted that the reply from the Belgian Government had been worked out in collaboration with the Luxembourg Government. In their replies France and Belgium maintained that since there was no precise definition of the term "traveller" in the directive it was up to them to select the most suitable definition so as to avoid abuse. The definition chosen by them is the one to be found in Article 1, letter *b*) of the New York Convention of 4 June 1954 concerning customs facilities for tourists.

¹ See *Journal Officiel* C 101, 13 October 1971.

On 17 May the Commission, not being in agreement with these Member States, sent them a considered opinion and gave them one month to conform with it. This opinion was based on the reasoning that the 24 hours clause applied by these Member States was contrary to the Council directive of 28 May 1969 inasmuch that this directive does not give the Member States a basis for determining the concept of "traveller" in such a way as to give a definition that is likely to restrict the extent of tax exemption provided for by the directive.

On 29 July 1971 France announced that she was ready to cancel the condition of a minimum stay abroad of 24 hours. This decision was put into application by the customs authorities from 1 August 1971. In a letter of 29 October 1971 Belgium also announced that she, too, was cancelling the 24 hours clause arising from the definition of a "traveller" and that the necessary action would be taken immediately to change the present situation. Only Luxembourg had still not replied but there is every reason to believe that her position would be the same as that of Belgium. The Commission would then consider the closing of the case.

The Commission also pointed out that on 30 July 1971 it had transmitted a proposal for a second directive to the Council concerning the harmonisation of legislative and administrative provisions on turnover tax and excise duties from international passenger traffic. The proposal contained amongst other things a definition of "border traffic" as used in the 1969 directive.¹

¹ See Bulletin 9-10/1971, Part Two, Section 22.

BULL. EC 1-1972

FISCAL POLICY

Fiscal alignment

Italian application for postponing the date of introducing the VAT

10. On 25 November 1971, the Commission passed to the Council a proposed directive authorizing Italy to postpone introduction of the value added tax (VAT) until July 1st at the latest. The Italian Republic ought to have introduced the VAT into its fiscal legislation on 1 January 1972 in accordance with the Council's third directive dated 9 December 1969.

In Italy this introduction had been linked to a draft bill making a general fiscal reform. As that law had been adopted by the Italian Parliament only on 7 October 1971, it was impossible for the Italian government to take the necessary complementary steps before 1 January 1972 and a further six months' postponement had been requested. Whilst regretting this new application, the Commission felt that a favourable answer should be given and forwarded to the Council a proposed directive in that sense.

11. At its meeting on 24 November 1971, the Economic and Social Committee expressed an opinion approving, with a few observations, the Council's second directive proposal concerning the alignment of legislative, regulating and administrative provisions relative to turnover taxes and excise duties collected in international passenger traffic. In its opinion¹ the Committee considered "that it would be more expedient to proceed with tax alignment, and even with the complete abolition of some excise duties." It further considered that member States should be urged to take steps to avoid the plurality of tax reductions on exports and exemptions on imports in international passenger traffic.

¹ See sec. 151.

BULL. EC 2-1972

TAX POLICY

Tax harmonization

Postponement of the date of introduction of VAT in Italy

34. On 20 December 1971 the Council gave a favourable reply to the application formulated by Italy¹ and formally agreed a directive²—the fourth in the field of harmonization of turnover taxes—authorizing Italy to postpone until 1 July 1972 the final date of introduction of VAT, thus granting this country a further period of grace of six months.

¹ See Bulletin 1-1972, Part Two, sec. 10.

² *Journal officiel* L 283, 24 December 1971.

35. At its session of 15 to 17 December 1971, the *European Parliament* approved the Commission proposal "with the proviso that this new postponement should be the last and that the average rates of compensation of the internal charge applied by Italy should not be increased in any event". At the same time it found that five member countries had introduced VAT and noted "that Italy has requested a further extension of six months for the implementation of VAT which it adopted by the fiscal reform law of 7 October 1971. During the same session the Parliament adopted a resolution approving on the whole, subject to a few amendments, the Commission's modified proposal on a *directive concerning taxes other than turnover taxes falling on the consumption of manufactured tobaccos*. However, the resolution regretted that the new proposal "was not incorporated, any more than others had been, into a general concept of tax harmonization which alone would make it possible to assess the global incidence on the national budgets of the whole body of tax harmonization projects"¹.

Fixing of the joint rate of capital contribution tax

36. At its session of 6/7 December 1971 the Council, as stated in the press communiqué put out after the discussions, "agreed to the proposal for a second directive on the fixing of joint rates for capital contribution tax. Under this proposal, the contribution tax mentioned in Article 7 of the first directive is fixed at 1% beginning 1 January 1976 and the planned reductions at 50% with effect from the same date. Before this directive is finally adopted, the applicant States will be consulted".

¹ See secs. 150 and 151.

BULL. EC 3-1972 -

BULL. EC 4-1972

FISCAL POLICY

Harmonization of excise structures

9. On 23 February the Commission drafted, for transmission to the Council, five proposed directives for the harmonization of excise duties, and also a proposed decision for the establishment of an excise committee.¹

Structure of company tax

10. After the 22nd meeting of the permanent committee of heads of national fiscal administrations, held in Brussels on 15 November 1971, a working group made up of national civil servants and Commission representatives met in Brussels on 15 and 16 February 1972, for an exchange of views on technical problems in the way of harmonizing company tax structures. In this connexion, it may be remembered that the Council's resolution of 22 March 1971, on the achievement, by stages, of economic and monetary union, provided for harmonization in this field during the first stage.

¹ See Part One, Ch. II, and Supplement 3/72 of Community Bulletin.

The working group concentrated on the question of whether the harmonized system should provide for a means of lightening double taxation of dividends, or whether a classical system of company tax should serve as the basis for a harmonized system.

11. At its session from 7 to 11 February 1972,¹ the *European Parliament* approved in principle the proposals made by the Commission concerning fiscal exemption for travellers crossing Community frontiers, described as "a new step towards simplifying passenger traffic within the Community". The Parliament also insisted once again on "the need to abolish, shortly and totally, frontier examinations of travellers moving between Community countries", and called for "the earliest possible uniformization of excise duties and VAT in the Member States".

¹ See sec. 107.

BULL. EC 5-1972

FISCAL POLICY

Italian request to postpone the introduction of VAT

13. Having decided on 11 April 1967,³ that Member States shall replace as from 1 January 1970 the turnover tax by a common VAT system the Council, at its meeting of 9 December 1969⁴ postponed the date till 1 January 1972; on 20 December 1971 it was further delayed by six months for Italy so as to be applied on 1 July 1972.⁵ In March 1972, the Italian Government advised

³ *Ibid.* 71, 14 April 1967.

⁴ *Ibid.* L 320, 20 December 1969.

⁵ *Ibid.* L 283, 24 December 1971.

the Commission that due to the early dissolution of Parliament and the consequent difficulties in legislative procedure it was not possible to introduce the VAT on 1 July 1972 as had been anticipated and requested that the date of application be again postponed by six months and be fixed to 1 January 1973.

The Commission much regrets that Italy had to request this new postponement but in view of the country's exceptional political situation it considers that a favourable reply should be given. In order to eliminate unfavourable repercussions of this further delay—particularly competition neutrality in intercommunitary trade (this neutrality can be assured only through application of the VAT by all Member States)—it is necessary for Italy to reduce substantially the average rates of export allowances and of compensation taxes on imports. The Commission is of the opinion that all average rates between 101 and 150% of the normal rate on turnover tax must be reduced by 10%, higher rates by 15%.

This is the reason why the Commission, subject to the reductions mentioned above being applied, decided to forward to the Council a proposition to postpone until 1 January 1973 the date of introduction of the VAT in Italy.¹

Duty-free entry for travellers

14. On 30 July 1971, the Commission sent to the Council a proposal for a second directive on alignment of laws and regulations concerning turnover taxes and excise duties levied on passengers during international travels.²

¹ *Journal officiel* C 44, 4 May 1972.

² See Bulletin 9/10-1971, Part Two, Ch. I, par. 22 and *Journal officiel* C 106, 23 October 1971.

Following the European Parliament's opinion of 7 February 1972, the Commission, in accordance with Article 149(2) of the EEC Treaty, decided to modify its proposal for a second directive; the modifications aim at reducing certain risks of competition distortion in intercommunitary frontiers zones. Thus, the duty-free entry to be granted to persons living near borders, to frontier workers and to persons employed by international means of transport can be reduced to one-quarter of the normal duty-free entry and to one-tenth for goods containing tobacco and for alcoholic beverages; at present these restrictions apply to all frontiers workers even if they do not reside in the frontier zone.

The new text in the form of a modified proposal as sent to the Council on 9 March 1972; it also contains certain modifications to bring it in line (as concerns relations with non-Member States) with a new draft regulation presented to the Council by the Commission.

BULL. EC 6-1972

FISCAL POLICY

Duty-free entry for travellers

7. During its session of 24 and 25 April 1972 the Council examined the problems which had arisen through the Second Directive Proposal conveyed by the Commission to the Council,¹ on standardization of laws and regulations concerning turnover tax and excise duty collected during international journeys at borders inside the Community. The Council entrusted the Committee of Permanent Representatives with the task of examining these problems so that the Directive may be applied prior to 1 July 1972

Request for postponing the introduction of VAT in Italy

8. The Council was in favour of authorizing Italy to postpone by six months, i.e. until 1 January 1973, the effective introduction of the common value added tax system; the request for postponement was made in March.¹ The Council took note of the declaration by the Italian Delegation that it undertakes to reduce, prior to 1 July 1972, compensatory taxes on imports and exports; the Council will give a definite ruling on this question at a future session.

9. During its session of 17 to 20 April,² the European Parliament adopted a resolution "strongly deploring the fact that the Italian Government had to ask again authorization to postpone the introduction of VAT in Italy; this postponement will delay the work on fiscal harmonization and, therefore, the fulfilment of the economic and monetary union and other objectives of the Community." It particularly insists "that the Italian authorities shall consider the introduction of the VAT as being among its first obligations, any further postponement is formally excluded."

¹ See Bulletin 5-1972, Part Two, secs. 13 and 14.
² See sec. 95.

BULL. EC 7-1972 -

BULL. EC 8-1972

FISCAL POLICY

Tax and Duty Exemptions for Travellers

13. On 12 June¹ the Council adopted a second Directive for harmonizing legal and administrative provisions concerning turnover tax and levies raised on international private travel. This text amplifying the exemptions granted to travellers had been proposed to the Council by the Commission on 30 July 1971.

The first Directive on tax exemptions, adopted on 28 May 1969, had brought in an allowance of 75 u.a. for travellers crossing inter-Community borders with no distinction between foreign and Member States' nationals.² The first Directive had to be amended, after the Resolution of 22 March 1971, by the Council and representatives of Member States' government concerning the realization of the Economic Monetary Union.³ This Resolution provided among other things for the progressive increase of tax exemptions for private citizens crossing inter-Community borders.

After the Opinion expressed by the European Parliament on 7 February 1972, the Commission had decided to amend its second proposed Directive. The amendments are mainly aimed at reducing the risk of distorting competition in the inter-Community border regions. During its session of 12 June, the Council adopted the Directive after consulting the incoming countries.⁴

The new Decision by the Council means that:

- (i) The exemption for inter-Community private travel will be raised from 75 u.a. to 125 u.a. (from 20 u.a. to 30 u.a. for children).
- (ii) Limit quantities for products subject to tax will be raised as follows:
 - (a) Cigarettes from 200 to 300
 - (b) Coffee from 500 to 750 gm
 - (c) Coffee extract and coffee essence from 200 gm to 300 gm
 - (d) Spirits from 1 litre to 1 1/2 litres
 - (e) Aperitifs from 2 litres to 3 litres
 - (f) Wine from 2 litres to 3 litres
 - (g) Perfume from 50 gm to 75 gm
 - (h) Toilet waters from 1/4 litre to 3/8 litre
 - (i) Tea from 100 gm to 150 gm
 - (j) Tea extract and tea essence from 40 gm to 60 gm.
- (iii) Minimal exemptions will be granted to border dwellers and workers and transport personnel involved in international traffic. They amount to 10% of the standard exemptions, except for tobacco products and alcoholic drinks for which particular quantities are specified (40 cigarettes, 0.25 litre for aperitifs or wine).
- (iv) Within the exemption limits, compulsory frontier declarations by travellers will be discontinued by providing for instance special channels at frontier posts.
- (v) Certain problems encountered in the application of Art. 6 of the Directive of 28 May will be resolved. These concern remission of tax for travellers whose home, usual residence or centre of occupation is located

¹ OJ L 139 of 17.6.1972.

² OJ L 133 of 4.6.1969.

³ OJ C 28 of 27.3.1971.

⁴ The integral text of the two Directives forms the Supplement 7-72—Bulletin of the EEC.

in a Member State. Tax remission at the retail trade level is now allowed only on articles with a unit value, tax included, exceeding that of the exemptions. It is subject to presentation of a copy invoice or supporting document, covered by a visa from the customs of the final importing Member State or from another competent authority in that Member State. The joint system adopted does not for the moment cover supplies to airport customs free shops or sales made on aircraft or ships. These questions are to be the subject of a proposed Directive now being prepared.

The new measures just adopted by the Council therefore cover only the movement of travellers between Member States. The tax-free allowance of 25 u.a. granted on imports of goods in the luggage of travellers from non-Member States has not been increased.

The new arrangements came into force on 1 July 1972 at the latest, except for the provisions on tax remission which are to come in at the latest on 1 January 1973.

BULL. EC 9-1972

FISCAL POLICY

Postponement of the introduction of VAT in Italy

25. The Council finally adopted on 4 July 1972 a fifth Directive on harmonization of Member States laws on turnover taxes.¹

The Council had adopted, in principle, the proposed Directive presented by the Commission to postpone till 1 January 1973 the introduction of VAT in Italy at the request of the Italian Government² but subject to a substantial reduction by Italy of lumb rebate rates on exports and countervailing duties on imports.

The Italian Government passed an order in Council on 25 May 1972 introducing reductions of rebate rates at the border as agreed. It also agreed to take steps to ensure that these rates are applied on the taxable amount for interior trade as provided for in the Decree already mentioned.

This order in Council became law on the 24 July 1972.

¹ OJ L 162 of 18.7.1972.

² See Bulletin 6-1972, Part Two, sec. 8.

BULL. EC 10-1972

TAXATION POLICY

Deferred Introduction of VAT in Italy

23. In the harmonization of Member States' law on turnover taxes, the Council on 4 July 1972 adopted a Directive deferring the last possible date for

introducing VAT in Italy to 1 January 1973.¹ Art. 2 of the Directive says that "the Commission will report to the Council before 1 October 1972 on the status of proceedings for applying the common system of VAT in the Italian Republic."

In its Report sent on 26 October to the Council as under Article 2, the Commission stated that it can be taken that the law on VAT will be promulgated before 1 November 1972 with its application date scheduled for 1 January 1973. The Commission added that it has not yet been advised of all the measures which the Italian Government intends to adopt to ensure that the fiscal administrators and persons liable are prepared for the work involved by the new tax and that the public is adequately informed about the expected economic effects of transition from the old cumulative turnover tax to VAT.

Tax Exemptions for Travellers

24. On 22 September the Commission sent the Council two proposed Directives.

The first concerns *harmonization of laws, regulations and administrative provisions on turnover taxes and on levies raised on passenger transit*. It follows the Directives of 28 May 1969 and 12 June 1972 on the same subject.²

The new proposal aims at settling some specific problems over remission of tax on goods sold from retail outlets to travellers who can later enjoy tax exemptions when importing the goods into another Member State. This means that tax remissions involved in retail trading in airport tax-free shops and aboard the various means of transport together with supplies to certain end-consumers will all have to be brought in line with the internal market concept.

The solution adopted for airport tax-free shops will abolish remission of tax for goods of lower value than the amount of the exemption, for travellers with transit tickets other than reserved tickets quoting as immediate destination another airport outside the Community. No remission of tax will be allowed for the levies. Tax-free sales in aircraft directly linking Community airports will be discontinued except in the case of flight catering. A similar solution in effect has been proposed by the Commission for ships and hovercraft.

¹ OJ L 162 of 18.7.1972 and Bulletin 9-1972, part 2, Sec. 25.

² See Bulletin 8-1972, Part 2, Sec. 13 and Supplement 7/72, Bulletin of the EEC.

25. The second proposal sets up for *small consignments sent by post* or addressed to private persons a tax exemption scheme akin to the one covering goods carried in travellers' personal luggage.¹ The principle of taxation in the exporting country will be applied and all taxes and dues on the package in the importing country will be abolished under certain conditions.

Goods sent by private persons must have been acquired under the general tax conditions of one of the Member States without benefitting from any reimbursement of turnover tax and/or levies, must be for the addressee's personal or family use, must not be sent C.O.D. and must not exceed a total value of 50 u.a. Newspapers, magazines, periodicals, brochures and books sent by those liable may be imported exempt by any private persons provided they are delivered under the overall tax conditions of the dispatching State without benefitting from any reimbursement of turnover tax and/or levies and provided their total value does not exceed 25 u.a.

Extension of the scope of application for the reduced tax on capital contributions for the benefit of company mergers

26. Article 7(1a) of the Council Directive of 17 June 1969¹ concerning

¹ OJ L 249 of 3.10.1969.

indirect taxation on raising of capital lays down that capital contributions tax will be between 1 and 2%. (1b) of this Article provides for the rate to be cut by 50% or more in the case of company mergers.

On 21 September the Commission sent the Council a proposed Directive² expanding the coverage of this Article so that company restructuration moves might also benefit from the cut in this tax. This would cover moves which economically speaking are on the same footing as mergers dealt with under Article 7(1b) of the Directive of 17 July 1969.

The restructurations covered by the proposal which are carried on especially in some acceding States but which also occur in some Member States, are effected by bringing into a company already or about to be formed all or the bulk (at least 75%) of the nominal capital of another company (as distinguished from bringing the assets of one company into another provided for under the 1969 Directive), this contribution being rewarded by assigning shares in the nominal capital of the company taking over. This actually means an exchange transaction of shares between one company and shareholders of another company.

The outcome of the proposed Directive would be that such deals should benefit from the cut-rate of tax on capital contribution only when made with the restructuration of two or more companies in mind and not for instance with a view to speculation. To this end, the proposal stipulates that companies having benefitted from the cut in this tax will be required to remit the portion of unpaid tax as a result of the cut if, for a period of five years from the date of the transaction so benefitting, they have not kept all the shares they were holding on that date of the other company following an outright purchase or a capital contribution. The portion of unpaid tax will therefore be due from the company which benefitted from the cut if, within the stipulated period, it sells one or more shares of the acquired company or liquidates it.

² OJ C 113 of 28.10.1972.

BULL. EC 11-1972

TAXATION POLICY

Taxation Exemptions

9. On 16 November 1972 the European Parliament approved the whole Commission Proposal to the Council on a Directive concerning fiscal exemptions on *imports of small goods consignments for private individuals*.¹ In its Opinion Parliament felt that to adopt this Proposal, which some of its Members had keenly supported during its preparation, would have a favourable psychological influence on the population since it would feel its effects directly. The House urged the Commission to "see that tightening of administrative controls does not cripple activation of the Proposal".² The Proposal was also approved by the Economic and Social Committee which, during its session of 29 and 30 November 1972,³ also issued an Opinion on the Proposal for a third Directive "concerning harmonization of legal and administrative provisions on turnover taxes and levies raised on the movement of travellers".

¹ OJ C 113 of 28.10.1972 and Bulletin 10-1972, Part Two, Sec. 25.

² See Sec. 117.

³ See Secs. 154 and 155.

BULL. EC 12-1972

TAXATION POLICY

Fiscal Harmonization

Levies on Manufactured Tobaccos

23. On 19 December the Council, on a Commission Proposal, adopted an initial Directive concerning taxation other than turnover tax on the consumption of manufactured tobacco¹.

This Directive is aimed at removing disturbance of competition in the manufactured tobacco sector by harmonizing the taxation rules within the Community and thus easing market interpenetration. The Directive is thus a part of the work to be done in line with the Resolution of the Council and Member States Government Representatives of 22 March 1972 to achieve by stages the Economic and Monetary Union.

The first section of the Directive lays down certain general principles for harmonizing the structure of levies on manufactured tobacco in the Member

¹ OJ L 303 of 31.12.1972.

States. The second section sets the particular criteria to be applied during the first phase of harmonization. This first phase runs in principle from 1 July 1973 to 30 June 1975. It is anticipated before 1 July 1974 that the Council will adopt a second Directive setting the criteria to be applied over the next phase.

The United Kingdom and Ireland may defer application of the Directive's provisions until 31 December 1977 at the latest.

24. During its session of 11 and 12 December 1972¹ the *European Parliament* passed a Resolution approving with a few reservations the Commission's proposed Directive "amending the scope of application for the cut-rate in capital contributions tax provided, for certain company restructuring moves, by Article 7(1 b) of the Council Directive concerning indirect taxation on capital formation".

¹ See Sec. 138.

BULL. EC 1-1973

Taxation Policy and Financial Institutions

Tax exemptions for Travellers

2111. On 19 January 1973¹ the European Parliament issued a favourable Opinion on the proposed third Directive concerning harmonization of legal and administrative provisions for turnover taxes and levies raised on passenger traffic.² The House stipulated that a three-year transitional period be allowed for reduction and phase-out measures.

¹ See Sec. 2418.

² OJ C 113 of 28.10.1972 and Bull. EEC, 10-1972, Part 2, Sec. 24.

BULL. EC 2-1973

Fiscal Policy and Financial Institutions

Taxation

Excise Duties

2110. The proposed directive on excise duties and similar taxes,¹ sent by the Commission to the Council on 7 March 1972, were the object of an opinion by the Economic and Social Committee during its session of 21 and 22 February 1973.²

¹ Supplement 3/72 - Bull. EC.

² Point 2454.

BULL. EC 3-1973

Taxation policy and Financial institutions

Taxation

Direct taxation

2116. Several meetings have been held with the fiscal experts of national governments seeking possible solutions at the Community level for the following problems:

- (i) international tax inspection;
- (ii) various problems relating to workers in the Community;

(iii) alignment of provisions for determining the profits of firms, more especially the allowances for depreciation. This work is to be continued in further meetings.

Indirect taxation

Regulation of tax-free sales in airport skyshops and in various transport media

2117. On 14 March 1973, the Commission submitted to Council, under the second section of Article 149 of the EEC Treaty, an amended proposal for a third Council directive on the alignment of legislative measures, regulations and administrative action relating to turnover taxation and excise duties collected in the course of passenger traffic.¹ This new proposal, which takes into account the opinion of the European Parliament² and of the Economic and Social Committee³ which were dated respectively, 19 January 1973 and 30 November 1972, proposes transitional measures lasting until 1 January 1976 for the regulation of tax-free sales in airport sky shops and on board various transport media.

¹ OJ C 113 of 28.10.1972 and Bull. EC 10-1972, second part, point 25.

² OJ C 4 of 14.2.1973 and Bull. EC 2-1973.

³ OJ C 142 of 31.12.1972 and Bull. EC 11-1972, second

BULL. EC 4-1973

Taxation Policy and Financial Institutions

Taxation

Indirect taxation

Tax on capital contributions

2111. On 9 April 1973, the Council of the European Communities adopted two directives concerning tax on capital contributions.

Fixing of a common rate for tax on capital contributions

2112. The first directive¹ within the framework of Article 7 of the directive of the Council of 17 July 1969 concerned indirect taxation on raising of capital,² and is the first

¹ OJ L 103 of 18.4.1973.

² OJ L 249 of 3.10.1969.

example of the harmonization of the rate of taxation at Community level. The directive envisages the application by all the Member States, as from 1 January 1976, of tax on capital contributions at 1% with reduced rates fixed at 0% to 0.50% for certain operations of regrouping activities.

Extension of the scope of application for the reduced tax

2113. The second directive¹ had as objective the extension of the benefits of reduced tax on capital contributions as laid down in Article 7 of the Directive of 17 July 1969 concerning indirect taxation on raising of capital for certain restructuration operations of enterprises which, from economic point of view, can be considered as comparable to the merger operations envisaged in the directive. The restructuration operations envisaged in the new directive are those which bring into a company already, or about to be formed, all or the bulk (at least 75%) of the *nominal capital* of another company (as distinguished from bringing the assets of one company into another provided for under the 1969 Directive), this contribution being rewarded by assigning shares in the nominal capital of the company taking over. This actually means an exchange transaction of shares between one company and the shareholders of another company.

BULL. EC 5-1973 -

BULL. EC 6-1973

Taxation Policy and Financial Institutions

Taxation

Meeting of the Standing Committee of Heads of Fiscal Administrations

2117. The 24th meeting of the Standing Committee of National Fiscal Administrations was held in Brussels on 18 June 1973. During this meeting the Committee examined various fiscal problems discussed in the Communication sent to the Council by the Commission on 30 April 1973 on realizing the Economic and Monetary Union (statement concerning the first stage and programme for the second). This was followed by a discussion on tax evasion. The next Committee meeting is scheduled for October and will deal exclusively with the alignment of VAT rates and excise duties.

Indirect Taxes

New proposed Directive on VAT Harmonization: Standard Basis

2118. The Commission presented on 29 June 1973 to the Council a Proposal for a sixth Directive—on harmonization of Member States legislations concerning turnover tax—common system of value added tax: 'standard basis'.¹ The object of this Proposal is to standardize national laws in broad outline, like those which have resulted from the first two VAT Directives of 11 April 1967²—one established the principle of VAT in all Member States; the other determined the structure and conditions of application whilst leaving a large measure of freedom to Governments (the other three Directives dealt with postponement of the date VAT came into effect).

The Commission's Proposal is in the form of a coordinated legislative text which takes into account the proposed provisions contained in the second VAT Directive which are unchanged. As regards both substance and form, this constitutes a proposal for a peal 'European VAT code'.

It might seem surprising that soon after all Member States have adopted the VAT in accordance with the 1967 Directives, the Commission should propose a change in national legislations concerning turnover tax. There are two main reasons for this.

Firstly, basing itself on the Council's decision of 21 April 1973³ on the substitution of financial contributions by Member States by the own resources of the Communities, the Commission seeks to provide a fiscal instrument for the Community enabling it to make up, through VAT, the resources from custom duties and agricultural levies to finance expenditure of a Community character.

Secondly, basing itself on the Resolution by the Council and representatives of Member States Governments of 22 March 1971⁴ on the setting up by stages of the Community's Economic and Monetary Union, the Commission wishes the VAT system to be planned so that it does not constitute an obstacle to the creation of a single economic market. The removal of fiscal borders was, moreover, defined in 1967 and the Commission intends to stress its fundamental importance as a basic objective.

Amongst the main points dealt with in the Commission's Proposal are: the broadening of the concept of 'tax-payer', the territoriality of tax, the real estate system, the principle of taxation for all services, the preparation of a common list of goods and services exempted, the system of deduction of tax at source, the

¹ Supplement 11/73 — Bull. EC.

² OJ 71 of 14.4.1967.

³ OJ L 94 of 28.4.1970.

⁴ OJ C 28 of 27.3.1971.

special systems applying to smaller enterprises, certain second hand goods and the agricultural sector. The Commission's Proposal also clarifies many points of the 1967 Directives which had been interpreted in different ways.

To ensure coordination in the measures to be taken by Member States in applying the Directive and to prevent differences in the interpretation of application terms, the Directive provides for the setting up of a special VAT Committee attached to the Commission.

The sixth Directive precludes a zero rating of tax being applied by a Member State in the context of options offered under the second Directive (Art. 17). However, as a transitional measure and for economic and social reasons, the Commission has provided for the continuation of exemption systems with deduction of taxes at source (zero rating) in force in Member States on 1 April 1973.

Direct Taxation

Fiscal System of Holding Companies

2119. During the Council session of 2 and 3 April 1973 held in Luxembourg, the Commission accepted the declaration by the German and French delegations requesting that the problem of fiscal system of holding companies be taken into account when it presents its report to the Council by 1 July 1973 concerning arrangements for short-term monetary support and conditions for the gradual pooling of reserves. The Commission sent this report to the Council on 19 June who proposes to look into fiscal evasion in the broader context of measures to be taken against all kinds of 'tax havens'.

BULL. EC 7/8-1973

Taxation Policy and Financial Institutions

Taxation

Indirect Taxes

Excise duties on mineral oils

2120. On 9 August the Commission forwarded to the Council a proposal for a directive on

the harmonization of the structure of excise duties on mineral oils. These duties, which are collected in all the Member States and are a considerable source of revenue, belong to the group of excise duties which, as the Commission has proposed to the Council, should be retained and harmonized.¹ Structural harmonization is the first stage which ought to prepare the way for the subsequent alignment of the rates of duty. The proposal specifies the scope of application (i.e. the taxable products), the chargeable events, the rules for charging and collecting the taxes and the obligatory exemptions, as well as certain principles to be adhered to when differentiating between rates. The Member States would still be free to fix the rate of tax. A certain number of transitional provisions ought to make it easier for Member States to adjust these excise duties to Community structures.

¹ Supplement 3/72 - Bull. EC.

BULL. EC 9-1973 -

BULL. EC 10-1973 -

BULL. EC 11-1973

Fiscal Policy and Financial Institutions

Taxation

Direct Taxes

2113. During its meeting of 21 November 1973 the Commission adopted the main lines of the Proposals it intends to submit to the Council on the harmonization of direct taxation.⁴

⁴ Points 1301-1304.

BULL. EC 12-1973 -

BULL. EC 1-1974

Fiscal Policy and Financial Institutions

Taxation

2122. During the plenary session of 30-31 January 1974, the *Economic and Social Committee* issued an Opinion on the 'draft of the sixth Council Directives for harmonizing Member States' laws governing turnover tax, the joint VAT system and a standard basis.¹

¹ Supplement 11/73 - Bull. EC.

BULL. EC 2-1974

Fiscal Policy and Financial Institutions

Taxation

Direct Taxes

2120. The problems involved in standardizing *systems of taxation at source on income from bonds*² were discussed by a Working Party who met for the first time on 18-19 February in Brussels. The group examined the problems concerning income from loans where Community borrowers are involved. It paid special attention to defining income liable to be withheld, the charging and possible reimbursement of the sum withheld, the non-discrimination clauses in relation to the origin of the income and the clearing system to be set up between Member States when withheld sums are to be charged or reimbursed.

² Bull. 11-1973, Part 1, Chapter 3: 'Direct Taxes: Commission Decisions on the Proposals it expects to make to the Council'.

BULL. EC 3-1974

Fiscal Policy and Financial Institutions

Taxation

Indirect Taxes

Capital Duty

2120. On 19 March the Commission sent the Council a Proposal for certain limited amendments to a provision (Art. 5) of the Council Directive of 17 July 1969¹ concerning indirect taxes on capital-raising operations. The aim of the Proposal² is to avoid overhigh taxation when the nominal cash capital of a company is increased.

Levies on Manufactured Tobaccos

2121. Two Proposals sent by the Commission on 27 March to the Council deal with the harmonization of levies on manufactured tobaccos; they are a follow-up to the first Directive adopted by the Council on 19 December 1972³ and effective from 1 July 1973.

The proposed second Directive is to determine and define, at Community level, the various groupings of manufactured tobaccos, i.e. cigarettes, cigars and cigarillos, pipe tobaccos, snuff and chewing tobaccos, as under Article 2, paragraph 2 of the first Council Directive.

The other text, namely the proposed third Directive, is to prolong by twelve months the first phase of excise harmonization specified in the first Council Directive of 19 December 1972. More disparities in market conditions stemming from the enlargement of the Community have further complicated the setting of satisfactory criteria for making more headway in harmonizing taxes on manufactured tobaccos. Since the position must be rescrutinized the Commission finds it desirable and necessary to prolong the first phase of harmonization by one year, i.e. until 30 June 1976.

2123. During the sitting of 11-14 March 1974, the *European Parliament* gave its Opinion on the Commission's Proposal for a sixth Directive 'on harmonizing Member States' laws concerning turnover taxes—common VAT system: uniform basis of assessment.'

¹ OJ L 249 of 3.10.1969.

² OJ C 46 of 23.4.1974.

³ OJ L 303 of 31.12.1972.

BULL. EC 4-1974

Fiscal policy
and financial institutions

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2115. During the sitting of 3 to 5 April, the *European Parliament* gave its Opinion on six proposed Directives, sent to the Council in March 1972, which concerned excise duties and taxes of equivalent effect.¹

¹ Supplement 3 72 - Bull. EC.

BULL. EC 5-1974

Fiscal policy
and financial institutions

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2113. During the plenary session of 29 and 30 May 1974, the *Economic and Social Committee* gave its Opinion on the Commission's Proposals concerning: direct life insurance, harmonization of levies on mineral oils, and taxes other than turnover taxes on the consumption of manufactured tobaccos.

BULL. EC 6-1974

Fiscal policy
and financial institutions

Taxation

Indirect taxes

Levies on manufactured tobaccos

2126. Acting on a Commission Proposal,¹ the Council on 25 June² adopted a Directive extending by twelve months, i.e. until 30 June 1976, the first phase of harmonization of levies on manufactured tobaccos. This initial phase had been defined by the first relevant Directive which the Council adopted on 19 December 1972.³

2127. During the sitting of 10 to 14 June 1974 the *European Parliament* had given a favourable Opinion on this third Proposal, from the Commission which would extend the first phase of harmonization by twelve months. Parliament had also approved the Commission's Proposal for limited amendments⁴ to the Directive of 17 July 1969⁵ concerning indirect taxation on capital formation.

¹ Bull. EC 3-1974, point 2121 and OJ C52 of 7.5.1974.

² OJ L180 of 3.7.1974.

³ OJ L303 of 31.12.1972.

⁴ Bull. EC 3-1974, point 2120 and OJ C46 of 23.4.1974.

⁵ OJ L249 of 3.10.1969.

BULL. EC 7/8-1974

Fiscal policy
and financial institutions

Taxation

Indirect taxes

Common VAT system: uniform basis

2137. On 26 July the Commission decided to lay before the Council an amended version of its sixth proposed Directive on the harmonization of Member States' laws concerning turnover taxes. This proposal, of which the first text was sent to the Council on 29 June 1973,¹ lays down the structures of a truly 'European' tax on added value.

The amendments to the Commission's Proposal of June 1973, which are based for the most part on the Opinions of the European Parliament and the Economic and Social Committee, would make the common VAT system more flexible without impeding the collection of Community 'own resources' from a uniform tax base, an objection which, together with the movement towards economic and monetary union, underlies the Commission's Proposal.

¹ OJ C80 of 5.10.1972 and Supplement 11/73 - Bull. EC.

The amendments include:

- (i) sharper definition of the term 'building land';
- (ii) wider and more flexible definition of the tax base;
- (iii) certain restrictions on the exemptions originally proposed (telecommunications, some banking services);
- (iv) new exemptions: land projects carried out by local government bodies in the general interest; certain professions: the legal profession, authors etc.;
- (v) the possibility for Member States to apply a scheme for waiving the tax on supplies of goods, for export firms;
- (vi) extension of the special scheme covering second-hand goods to original works of art, antiques and collectors' items.

The Commission considered that these various amendments would ease application of the common VAT system and its adoption by companies and final consumers alike.

It should be mentioned that the fact a fraction of the value-added tax will belong to the Community as 'own resources' (up to a maximum of 1% of the standard base) does not *ipso facto* constitute a reason for raising national rates, since Member States budgetary contributions will be correspondingly abolished.

When forwarding these amendments to the Council on 12 August, the Commission underlined the importance it attached to application of the sixth VAT Directive throughout the Community, at the earliest opportunity, and at all events by 1 January 1978.

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2139. The *Economic and Social Committee*, meeting in plenary session on 17 and 18 July, issued its Opinion on two proposed Directives submitted by the Commission to the Council. One concerns taxation other than turnover taxes on manufactured tobaccos. The other covers the prospectus to be published when stocks and shares are admitted to the stock exchange.

BULL. EC 9-1974 -

BULL. EC 10-1974 -

BULL. EC 11-1974

Fiscal policy and financial institutions

Taxation

Fraud and tax evasion

2119. On 21 November, the Commission adopted a draft Council Resolution concerning close collaboration between Member States' fiscal authorities in putting a stop to international fraud and tax evasion.

The Commission has already highlighted some features of this problem in its report on the fiscal system of holding companies, and in its Communication to the Council concerning multinational undertakings, as against the background of Community regulations. The above documents also expressed the Commission's concern over international fraud and tax evasion in general, which, in their various forms, not only affect individual countries (budgetary losses) but are also felt at Community level (abnormal capital movements and distortion of competition conditions).

In combatting tax evasion, national fiscal authorities are hampered by inadequate data on the situation in other Member States, even where an agreement against double taxation provides for bilateral cooperation in the shape of exchanging information.

In the draft Resolution, the Commission indicated how it hoped to get better results by organizing collaboration between national fiscal authorities on a Community footing. It intends, at the earliest opportunity, to put proposals before the Council on the following points:

- (i) Exchange between Member States, on request or otherwise, of any information of value in making a proper assessment of income tax on profits tax, and especially in circumstances where tax evasion is suspected, when transactions are made through the agency of a third country so as to obtain tax advantages, or when imputed transfers of profits take place between related companies located in different countries;
- (ii) investigations by one Member State on behalf of and at the request of another Member State;
- (iii) participation, in certain instances, of the officials of one Member State in fiscal investigations in another Member State;
- (iv) formation of a Working Party, sponsored by the Commission, consisting of Member States' representatives assigned to watch how procedures operate with a view to improving

them, and also to share experience in the matter of imputed transfers of profits between related companies, in order to work out appropriate Community rules.

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2120. During its part-session of 11 to 15 November, the *European Parliament* gave its Opinion on the Commission's Proposal to the Council for a second Directive concerning taxes other than turnover taxes on manufactured tobaccos.

BULL. EC 12-1974

Fiscal policy and financial institutions

Taxation

Standing Committee of Revenue Departments

2132. The Standing Committee of Heads of National Revenue Departments held a meeting in Brussels to discuss the action to be taken in the years ahead as part of economic and monetary union, regarding the harmonization of direct and indirect taxation and the campaign against international fraud and tax evasion. The Committee also assessed the status of work undertaken on the Commission's initiative concerning the taxation scheme for frontier and migrant workers.

International fraud and tax evasion

2133. On the basis of a Commission Communication,¹ the Council, at its session of 19 December, discussed in detail the problems arising from international fraud and tax evasion.

The Council expressed its political resolve to take action in this area by passing a Resolution which would tighten collaboration between tax authorities. At the Council's request, the Commission, acting within its powers, will take appropriate steps.

Directive on small consignments of goods between private individuals

2134. On 19 December,² the Council adopted

a Directive on tax exemptions to be allowed 'on small consignments of goods' *within the Community*. The Directive exempts small consignments of goods between private individuals from all taxes and levies, when the consignments do not exceed a value of 40 u.a. and provided the goods were bought under normal conditions (VAT and charges included) in the country of dispatch and provided that they are not forwarded against remittance.³

The Directive is the outcome of efforts to foster personal and family relationships between private individuals in different Member States by lowering as far as possible tax barriers obstructing the dispatch of such consignments.

2135. To back up this Directive, the Commission, on 31 December 1974 sent the Council a proposed Directive on tax exemptions applicable to imports in small consignments of a non-commercial nature from *non-member countries*.

³ Bull. EC 10-1972, point 25.

¹ Bull. EC 11-1974, point 2119.

² OJ L 354 of 30.12.1974.

BULL. EC 1-1975

Fiscal policy and financial institutions

2115. During the part-session of 13 to 17 January, the *European Parliament* gave its Opinion on the proposed Directive laid before the Council concerning the harmonization of excise duties on mineral oils.

BULL. EC 2-1975 -

BULL. EC 3-1975 -

BULL. EC 4-1975

Fiscal policy and financial institutions

Taxation

Tax exemptions for certain small consignments

2114. On 17 April, the Commission slightly amended the Proposal for a Directive which it had put to the Council in December 1974² concerning tax exemptions for certain small consignments of a non-commercial nature *coming from non-member countries*. The amendment made to the original text, on the strength of the Opinions of the European Parliament and the Economic and Social Committee, allows for increases in the quantities of *tobacco* products to be exempted.

² Bull. EC 12-1974, point 2135 and OJ C18 of 25.1.1975.

BULL. EC 5-1975

Fiscal policy and financial institutions

Taxation

Taxation in the Community: Statistics 1968-1973

2120. The Statistical Office of the European Communities has published a new set of statistics on taxes in the Member States giving details

of tax revenue, tax burdens and differences between systems.

For purpose of international comparison, tax revenue and social security contributions are added together. In real terms the sharpest increase in revenue from taxes and social security contributions between 1968 and 1973 occurred in Denmark (56%) and Luxembourg (52%); the rise was average in the Netherlands (47%), Germany (45%), Belgium (44%) and Ireland (39%), smaller in France (33%) and considerably lower in Italy (19%) and the United Kingdom (8%).

The tax ratio (revenue from taxes and social security contributions as a percentage of gross domestic product) varies sharply from country to country. The countries with the highest ratios are the Netherlands and Denmark with 45% and 43% in 1973, followed by Belgium (38.1%), Germany (37.7%), Luxembourg (37.6%), France (35.8%); the United Kingdom (33%), Ireland (32.4%) and Italy (30%), the three countries with the lowest per capita incomes in the Community, also have the lightest tax burdens. A further interesting point is that in the United Kingdom this ratio has fallen since 1970, and did likewise in Italy from 1972 to 1973. In the other countries, by contrast, the tax ratio increased from 1968 to 1973, with the exception of France, where it remained unchanged: Denmark: + 8.1%, Luxembourg: + 6.3%, Netherlands: + 5.5%, Germany: + 4.4%, Belgium: + 3.5%, Ireland: + 3.2%, France: about 0, Italy: - 1.2%, United Kingdom: - 2.1%.

There is also no uniformity in tax structures in the Community. The proportion of indirect taxes (in particular value added tax and excise duties) in total revenue from taxes and social security contributions ranges from 27% in the Netherlands to 58% in Ireland, while the proportion of direct taxes (taxes on income and wealth) ranges from 18% (France) to 58% (Denmark).

1973 was the first year in which *value added tax* was applied in all the countries. It yielded 24% of total revenue in France, 18% in Belgium and Denmark, 16% in Ireland and Italy, about 15% in the Netherlands and Germany, 12% in Luxembourg and 7% in the United Kingdom.

Taxes on income and wealth account for 58% in Denmark, 42% in the United Kingdom, 18% in France and 22% in Italy. The share in the other member countries varies between 30 and 36%.

Italy and France are the countries in which direct taxation is lightest, but they also have the highest proportions of social security contributions (41 and 38%). In other countries, such as Denmark, social security benefits are partially financed out of general taxation.

With the entry of the three new Member States the differences between tax burdens and tax systems within the Community have in many respects increased even further.

BULL. EC 6-1975

Fiscal policy and financial institutions

Taxation

Indirect taxes

Levies on manufactured tobaccos

2123. On 16 June, the Commission proposed to the Council that the first stage in harmonizing levies on manufactured tobaccos be once again extended for twelve months, i.e. until 30 June 1977. The Council had granted the first one-year extension on 25 June 1974.¹ Its Directive of 19 December 1972,² amended a year ago, stipulated that by 1 July 1975, the Council must adopt the special criteria applicable to the structures of excise duties on cigarettes, during a second phase which should start on 1 July 1965. It was already evident last year that the enlargement of the Community was complicating the setting of satisfactory criteria to enable levy harmonization to proceed further (for instance in deciding on the ratios between the specific component and the *ad valorem* component of the tax). These problems are still there and the talks between national experts came to the conclusion that the anticipated timetable could not be met; hence the new Proposal by the Commission for a year's extension.

Tax Exemptions for travellers: Proposal withdrawn

2124. On 9 June, the Commission elected to withdraw the Proposal for a third Directive on harmonizing laws, regulations and administrative provisions in respect of turnover taxes and levies gathered from the travelling public. This had been laid before the Council on 22 September 1972.³

The Proposal, which had gained favourable Opinions from the European Parliament and the Economic and Social Committee, was withdrawn owing to the divergent views of the Member States' delegations within the Council, which were so much at variance that it seemed unlikely that the Directive would ever be adopted. The Commission is now examining any necessary action which should be taken, bearing in mind obligations on the Member States deriving from the Directives on tax exemptions for travellers, adopted by the Council on 28 May 1969⁴ and 12 June 1972.⁵

¹ OJ L 180 of 3.7.1974.

² OJ L 303 of 31.12.1972.

³ OJ C 113 of 28.10.1972 and Bull. EC 10-1972, point 24.

⁴ OJ L 133 of 4.6.1969.

⁵ OJ L 139 of 17.6.1972 and Supplement 7/72 — Bull. EC.

Value-added tax

2125. On 20 June,¹ the European Parliament passed a Resolution on the state of progress in adopting the sixth Directive concerning the harmonization of Member States' laws relating to turnover taxes—common VAT scheme: uniform basis. The new proposed Directive, which would harmonize VAT, had been put by the Commission to the Council on 29 June 1973.²

¹ Point 2421.

² Supplement 11/73 — Bull. EC.

BULL. EC 7/8-1975

Fiscal policy and financial institutions

Taxation

Action programme

2139. On 30 July, the Commission presented an action programme for taxation to the Council.³ This would establish the tax conditions for economic and monetary union, and also carries longer-term measures with an eye to fuller integration.

Direct taxation

2140. On 1 August, the Commission sent the Council a Proposal for a Directive on *harmonizing corporation systems and arrangements for withholding taxes on dividends*. The future Directive will lay down the Community system of taxation for big companies; it is thus a decisive step towards harmonizing direct taxation. This is absolutely necessary to ensure the free movement of capital and the neutrality of competition conditions.

The present coexistence of different systems is creating distortions in capital movements within the Community. The Commission's Proposal operates on the system of partial imputation, the basic principle consisting of a tax credit to the shareholder amounting to a fraction of the corporation tax, which is charged to personal taxes and possibly refunded to the extent that it exceeds the amount of the tax.

This system has a number of advantages. It tends to ensure tax neutrality in respect of the

³ Points 1401 to 1404.

various forms of company financing and the different legal forms of companies etc. It also has many positive features from the angle of taxation fairness and offers less temptation to very rich taxpayers to evade taxes by means of bogus companies.

The aim is equal treatment for each company shareholder, regardless of where he resides in the Community. This principle is also followed, as far as possible, wherever a dividend paid by a subsidiary reaches the final shareholder only through the intermediary of a parent company.

As regards any tax credits granted to residents of non-member countries, the Commission feels that the Member States, together with the Commission, should adopt a common stance in negotiating double taxation agreements with non-member countries.

The same proposed Directive also provides for harmonizing arrangements for withholding taxes on dividends. Although the tax credit already guarantees some tax, it stipulates that a deduction of 25% will be made from dividends, which has the effect of raising the total deduction at source to roughly 50% and of deterring fraud. The deduction will be fully charged to the personal tax of the recipient and any excess will be refunded.

BULL. EC 9-1975 -

BULL. EC 10-1975

Fiscal policy and financial institutions

Taxation

Indirect taxes

Exemptions

2111. On 30 October, the Commission laid before the Council two new major Proposals for Directives on the subject of tax exemptions. On several occasions business organizations and members of the European Parliament have by means of Written Questions, alerted the Council to the problems involved in movements between Member States of chattels, cars, caravans and other personal property, in the course of removals by private individuals, and to the problems raised by private or business use of certain modes of transport in several Member States.

To eliminate the difficulties, the Commission decided to present two proposed Directives to the Council on (a) exemptions for permanent importations of private property from a Member State and (b) temporary importation, within the Com-

munity, of certain modes of transport.¹

2112. The first Directive would allow exemption from all consumer taxes *when a private individual's used personal property is permanently imported on his move from the Member State where his main residence is situated to a Member State where he has at least a secondary residence.* The Directive also covers removals of personal property, where ownership or usufruct was acquired by a private individual through inheritance, and private property removed following marriage.

The differences between national laws governing the arrangements peculiar to these goods when imported are hard to understand for the citizen, who cannot imagine that the relocation of personal property in the Community raises such problems. Moreover, these tax barriers, which sometimes run counter to the principle of free movement and right of establishment for persons, are hardly compatible with the principle of forming an economic market with all the features of an internal market. The Commission therefore felt that it should present a package of measures which would as far as possible obviate double taxation on the importation of private property, as defined in its first Proposal.

2113. The second proposed Directive would, under certain conditions, grant *temporary imports* exemption from any taxes in the importing Member State on *certain modes of transport* whether the taxes derive from the purchase, placing in service or movement of these vehicles, except for taxes paid for their direct use, such as charges for fuel oil, repairs, parking, tolls, etc.

Since the two international Conventions concluded in New York on 4 June 1954 (temporary importing of private road vehicles) and in Geneva on 18 May 1956 (taxation arrangements for private road vehicles in international traffic) no longer entirely meet the requirements of the common market, the Commission considered that it should propose a package of measures to avoid, here again, as far as possible, any double taxation when such vehicles are temporarily imported.

The proposed Directive covers motor vehicles, including trailers (but excluding commercial vehicles), caravans, pleasure-boats, sports aircraft, bicycles and riding-horses (riding excursions).

2114. The exemption schemes proposed by the Commission do not rule out the possibility, for certain Member States, of retaining or bringing in more apposite measures than those they will formally be required to apply under the Directives, since the schemes therein are regarded as a minimum basis of exemptions which private individuals are to be accorded for their relocations within the Community.

¹ OJ C 267 of 21.11.1975.

The two new Proposals show that the Commission is determined to secure a real internal market for the benefit of private individuals, even if this must still be hedged round with certain limits and conditions.

2115. The *Economic and Social Committee*,¹ meeting on 29 and 30 November, gave its Opinion on a Commission Proposal to amend the Council's 1972 Directive on taxes other than turnover taxes on the consumption of manufactured tobaccos.

¹ Point 2454.

BULL. EC 11-1975

Taxation policy and financial institutions

Taxation

Action programme for taxation

2125. At the meeting of 24 November, the Council got down to a policy debate on the Commission's Communication concerning an Action programme for taxation,¹ which had been presented on 30 July.

The delegations put forward their ideas on the priorities for the work in this important area to achieve economic integration.

Indirect taxation

Turnover tax

2126. At the same meeting the Council made its first review of the substance of the *proposed sixth Directive* on harmonizing laws relating to turnover tax, which covers the common arrangements (uniform basis) for VAT. The Proposals, which the Commission presented to the Council on 29 June 1973,² had undergone a number of amendments by the Commission after the Opinion from the European Parliament; the Commission had then presented the amended text on 26 July 1974.³

The Council had to reach agreement on a number of points considered to be of political importance to

¹ Bull. EC 7/8-1975, points 1401 to 1404, and 9-1975, Part 3 (full text of the Communication).

² OJ C 80 of 5.10.1973 and Supplement 11/73 - Bull. EC.

³ OJ C 121 of 11.10.1974 and Bull. EC 7/8-1974, point 2137.

the Member States (zero rate, reduced rates, specific arrangements for small companies and farmers and property transactions).

Agreement could emerge only in the shape of a compromise between the tendency of Member

States' governments to insist on retaining control of taxation in certain sensitive areas, and the Commission's argument, that implementation of the Council Decision of 21 April 1970,¹ on replacing Member States' financial contributions to the Communities' budget by own resources, involves both fixing a true basis for VAT, and actually collecting the tax on that basis.

In the end it was conceded that the Member States could go on applying their national schemes in the above-mentioned cases, on the understanding that departures from the Community ruling would entail payment of financial compensation on terms to be established.

Regarding the question of the zero rate and reduced rates, involving reimbursement of tax paid at the previous stage, it must be noted that derogations which can be maintained at national level must not extend further than those provided for in the second Directive, of 11 April 1967;² such rates cannot be maintained unless they have been introduced in accordance with the provisions of Article 17 of the Directive.

¹ OJ L 94 of 28.4.1970.

² OJ L 71 of 14.4.1967.

BULL. EC 12-1975 -

BULL. EC 1-1976

Taxation policy and financial institutions

Taxation

Indirect Taxes

Tax exemptions for travellers

2112. Under a Directive adopted by the Council on 20 January,¹ Denmark will be able to maintain up to and including 31 December 1976 the rules in force for exemptions applicable in international travel. This extends for one year the authorization, granted under the Act of Accession, to defer application of certain provisions of the Directive of 28 May 1969,² as amended on 12 June 1972,³ relating to exemption from turnover tax and excise duty on imports in international travel.

The Act of Accession (Annex VII, part V) gives Denmark the right up to and including 31 December 1975 to exclude certain goods (tobacco products, alcoholic beverages and beer) from exemption for travellers laid down in Community Directives, provided that there is no discrimination between travellers from Community and from non-Community countries. The Council was to decide before 31 December 1975 'whether and how far this derogation requires to be prolonged, account being taken of the extent to which economic and monetary union, and particularly progress in tax harmonization, has been achieved'.

In October 1975, the Danish Government asked the Commission to take the necessary measures to extend the arrangements, unaltered, for a period of two years, in view of the lack of progress in tax harmonization; this request was repeated in December.

The Commission sent the Council a proposal for a Directive extending the derogation accorded to Denmark for a certain period, and the Council finally decided to grant an extension of one year only, in view of the fact that consultations are currently taking place between the Commission's departments and the Danish authorities with a view to bringing the Danish rules into line with Community Directives.

¹ OJ L 21 of 29.1.1976.

² OJ L 133 of 4.6.1969.

³ OJ L 139 of 17.6.1972.

BULL. EC 2-1976

Taxation policy and financial institutions

Taxation

Indirect taxes

Excise duties on manufactured tobacco

2118. On 10 February¹ the Commission laid before the Council a proposal amending the Council Directive of 19 December 1972² on taxes on the consumption of manufactured tobacco other than turnover taxes.

The proposal provides for the introduction from 1 July 1977 of a second stage, lasting three-and-a-half years, in the harmonization of the structures of excise duties on cigarettes. During this stage the specific component of the excise duty on cigarettes in the most popular price category should be fixed so as to be not less than 15 % and no more than 50 % of the total tax charged (excise duty plus VAT). In other words, the *ad valorem* components of the tax (*ad valorem* component of excise duty plus VAT) would not be less than 50 % nor more than 85 % of the total tax. The Member States would retain complete discretion with regard to the rates of VAT and excise duty on cigarettes.

Pursuant to the December 1972 Directive the Council must take a decision on the proposal for a directive before 1 July 1976, otherwise the first stage of harmonization will have to be extended a third time.

¹ OJ C 45 of 27.2.1976.

² OJ L 303 of 31.12.1972 and Bull. EC 12-1972, point 23.

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2119. At its part-session held from 9 to 13 February, *Parliament*¹ gave its opinion on two proposals for directives on tax exemptions presented by the Commission to the Council on 30 October 1975.² The proposals cover tax exemptions for the personal property of individuals on permanent importation from another Member State and tax exemption for certain means of transport temporarily imported into one Member State from another.

¹ Point 2417.

² OJ No C 267 of 21.11.1975; Bull. EC 10-1975, points 2111 to 2114.

BULL. EC 4-1976

Taxation policy and financial institutions

Taxation

Indirect taxes

Transactions in securities

2115. On 2 April the Commission laid before the Council a proposal for a Directive aimed at establishing a single system of taxation for transactions in securities to replace the taxes currently levied on stock exchange transactions in Member States.

The proposal forms part of the work on the establishment of a European capital market and takes a stage further the progress achieved by the previous Council Directives concerning indirect taxes on the raising of capital. It also follows up two other proposals for directives concerning stock exchange transactions and will, in the long run, facilitate the gradual abolition of the tax, an objective which the Commission has set itself. For this reason, incidentally, the establishment or retention of the tax in question has not been made compulsory.

The proposal provides for the partial harmonization of the structures of the taxes on transactions in securities. In particular, with a view to bringing the levels of taxation closer into line, maximum rates are set and a number of exemptions are made compulsory. The proposed rules are designed to limit double taxation and to eliminate most forms of discrimination.

Direct taxes

Mutual assistance between Member States

2116. On 5 April the Commission laid before the Council a proposal for a Council Directive on mutual assistance between the competent authorities of the Member States in the field of direct taxation.¹ Tax evasion and avoidance have an important international dimension, and measures to combat these practices are therefore needed at international level as well. The Commission proposal lays down the guiding principles for a mutual assistance procedure between the revenue departments of the Member States.

The method of collaboration proposed is to establish a system for the exchange of information enabling income and wealth tax liabilities to be determined accurately. Information could be supplied either automatically, or when a Member State requested it, or spontaneously, by a Member State which has discovered relevant evidence.

Mutual assistance also covers the investigations which a Member State may make on behalf of another Member State in order to obtain the in-

formation requested. Lastly, the proposal provides that an official of one Member State could work in another Member State.

Taken together, these three measures go beyond, in their scope, the cooperation already arranged bilaterally by Member States, in particular in double taxation conventions.

The mutual assistance arrangements will include rules on preserving the confidentiality of the information collected, and on the right of Member States to refuse to transmit information in certain situations, such as the absence of reciprocity.

Finally, the proposal provides for cooperation between the Member States and the Commission with the aim of improving the mutual assistance arrangements and, where appropriate, of formulating Community regulations for this purpose.

BULL. EC 5-1976 *

BULL. EC 6-1976 *

BULL. EC 7/8-1976

Taxation policy and financial institutions

Taxation

Indirect taxes

Excise duties on tobacco

2133. On 5 July the Commission laid before the Council a proposal for a Directive¹ the purpose of which is to extend by six months the first stage of harmonization of excise duties on manufactured tobacco as laid down by the Directive of 19 December 1972.² This first stage has already been extended on two occasions, in 1974 and 1975.³

Pursuant to the Directive of December 1972, the Council was to adopt at least one year before the expiry of the first stage (i.e. 30 June 1976) a directive laying down the criteria applicable during a second stage of harmonization beginning on 1 July 1977. A proposal regarding these criteria was laid before the Council by the Commission on 10 February 1976.⁴ The Council, however, had not been able to take a decision on this proposal within the deadlines set since Parliament and the Economic and Social Committee had not yet delivered their opinions.⁵ Consequently, it was necessary to extend the first stage once again.

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¹ OJ C 168 of 22.7.1976.

² OJ L 303 of 31.12.1972.

³ OJ L 180 of 3.7.1974 and L 330 of 24.12.1975.

⁴ OJ C 45 of 27.2.1976.

⁵ Parliament delivered its opinion on 6 July.

¹ OJ C 94 of 27.4.1976.

2134. At its part-session from 5 to 9 July, *Parliament*⁶ delivered opinions on the progress of work within the Council on the adoption of the sixth VAT Directive.

⁶ Point 2416.

BULL. EC 9-1976 -

BULL. EC 10-1976

Taxation policy and financial institutions

Taxation

Indirect taxes

2118. At a meeting devoted to taxation matters held on 21 October the Council examined the proposal for a Sixth Directive on the harmonization of laws relating to turnover taxes,³ presented by the Commission on 29 June 1973 and amended on 26 July 1974.⁴ This proposal concerns a uniform basis of assessment of VAT.

The Council considered in particular certain points which had already been discussed at its meeting of 24 November 1975⁵—zero rating, reduced rates, special schemes for small undertakings and farmers, and transactions relating to immovable property—and others also requiring decisions at political level: exemptions, national and international passenger transport, and non-deductibility of certain types of expenditure. Agreement was reached on some of these points, and others were referred back for further study to the Permanent Representatives Committee.

During this meeting, a real effort to negotiate viable compromises was made, and the Finance Ministers undertook to adopt the whole of the proposed directive at a meeting scheduled for 16 December.

Mutual assistance for the recovery of claims

2119. On 8 October, the Commission sent to the Council a proposal for a Directive designed to

³ OJ C 80 of 5.10.1973 and Supplement 11/73 — Bull. EC.

⁴ Bull. EC 7/8-1974, point 2137.

⁵ Bull. EC 11-1975, point 2126.

bring VAT, excise duties and other consumption taxes within the scope of the Directive of 15 March 1976¹ on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund and from agricultural levies and customs duties.

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2120. At its part-session from 11 to 15 October, *Parliament*² adopted Opinions on two Commission proposals to the Council, one amending the Directive of 19 December 1972 on excise duties on the consumption of manufactured tobaccos³ and the other relating to indirect taxes on transactions in securities. An Opinion on the latter document was also rendered by the *Economic and Social Committee*⁴ at its session held on 27 and 28 October.

¹ OJ L 73 of 19.3.1976 and Bull. EC 3-1976, point 2103.

² Point 2420.

³ OJ L 303 of 31.12.1972.

⁴ Point 2468.

BULL. EC 11-1976

Taxation policy and financial institutions

Taxation

Direct taxes

Elimination of double taxation in connection with the adjustment of transfers of profits between associated enterprises

2127. In accordance with the undertakings given in its Action Programme for Taxation³ and in its proposal for a Directive on mutual assistance between Member States in the field of direct taxation,⁴ the Commission laid before the Council, on 29 November, a proposal for a Directive on the elimination of double taxation in connection with the adjustment of transfers of profits between associated enterprises based in different Member States.

The proposed Directive covers situations where a Member State's revenue authorities—taking the view that the operations carried out by an enterprise with another associated enterprise have been completed on terms different from those which would have been agreed between independent enterprises—increase the figure for the declared profits of one enterprise without there having been a corresponding reduction in the declared profits of the other. Such cases will become more frequent owing to the increased ex-

³ Bull. EC 7/8-1975, points 1401 to 1404.

⁴ Bull. EC 4-1976, point 2116 and OJ C 94 of 27.4.1976.

change of information between revenue authorities provided for in the proposed Directive mentioned above.

Double taxation of this kind is liable to distort conditions of competition within the Community.

Such distortions are all the more serious where the declared profits require adjustment not as a result of fraudulent intent, but of objective difficulties in fixing the 'right' price for a given operation.

The double taxation is eliminated by first submitting the case to the two tax authorities concerned; failing agreement, the case is then referred for a decision to a board composed of representatives of the tax authorities and of independent persons—an innovation in international tax practice.

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2128. On 17 November,¹ *Parliament* delivered its Opinion on the Commission's proposal concerning mutual assistance between the competent authorities of the Member States in the field of direct taxation

¹ Point 2410.

BULL. EC 12-1976

Taxation policy and financial institutions

Taxation

Indirect taxes

Sixth VAT Directive: further progress

2138. The Council devoted its meeting on 16 December to taxation (sixth VAT Directive) and continued its discussion of the problems still outstanding after its meeting in Luxembourg on 21 October,¹ at which substantial progress had already been made.

By the end of the meeting, the Council had agreed on solutions to all the major political problems raised by the proposal for a sixth VAT Directive. The relevant delegations undertook to deal by 15 January 1977 with the few reservations they had made.

In addition to providing an instrument of tax harmonization, the sixth VAT Directive will enable the Community's own resources system, which was established by the Decision of 21

¹ Bull. EC 10-1976, point 2118.

April 1970, to be applied in full. The adoption of this Directive will therefore play an important part in strengthening the Community's internal structures.

The Council invited its President to arrange for the draft definitive text to be drawn up in close collaboration with the Commission, with a view to the adoption of the Directive by the Council before 1 March 1977

Excise duties on manufactured tobacco

2139. On 20 December, the Council decided that, as it had yet to take a decision concerning the proposal for a directive presented by the Commission on 10 February on a second stage in the harmonization of the structures of excise duties on cigarettes,² the first stage of harmonization would have to be extended once more.

This extension—the third—is provided for in a directive³ postponing the end of the first stage until 31 December 1977. At the same time, the Council agreed to decide on the proposal relating to the second stage before 30 June 1977.

Tax exemptions

Proposal for increasing exemptions

2140. On 31 December, the Commission decided to lay before the Council a proposal for a directive amending the present rules governing exemptions in international traffic, firstly by increasing the amount to 200 u.a. (it had been fixed at 125 u.a. since 1972) and secondly by adopting a mechanism for keeping the real value of Community exemptions constant. The exemptions, expressed in EUA, would be adapted each year in line with an index reflecting movements in the cost of living in the Community as a whole (an index of consumer prices calculated by the Statistical Office of the Communities).

The system of intra-Community tax exemptions granted to individuals has, since its inception in 1969, deteriorated somewhat owing to the steady upward movement of prices and to exchange rate fluctuations. In the first place, price rises tend gradually to erode the real value, and hence the impact of, Community exemptions. Secondly, as a result of the present monetary situation in the Community, the exemption amounts converted into the various currencies are not in fact the same. This situation is not only a source of dou-

² Bull. EC 2-1976, point 2118.

³ OJ L 354 of 24.12.1976.

ble taxation (or non-taxation) but also has the result that the application of Community rules in this field may appear discriminatory.

Derogation granted to Denmark

2141. On 10 December, the Commission laid

before the Council a proposal for a directive extending until 31 December 1979 the derogation granted to Denmark until the end of 1975 by the Act of Accession (and subsequently to the end of 1976 by a Council Directive of 20 January 1976¹) concerning tax exemptions on imports in international travel.

In the light of discussions between its departments and the Danish authorities, the Commission believes a further extension of the derogation to be necessary, particularly in view of the budgetary difficulties which Denmark might face as a result of a full and immediate application of Community exemptions.

However, the Commission proposal is designed to reduce the scope of the derogation granted to Denmark, in that this country must, from 1 January 1977, in some cases apply the intra-Community exemptions to products (tobacco, alcoholic beverages, beer) which are currently covered by the derogation.

Direct taxes

2142. At a plenary session held on 15 and 16 December, the *Economic and Social Committee*² adopted its opinion on the proposal transmitted by the Commission to the Council concerning mutual assistance between the competent authorities of the Member States in the field of direct taxation.

¹ OJ L 21 of 29.1.1976 and Bull. EC 1-1976, point 2112.

² Point 2460.

BULL. EC 1-1977

Financial institutions and taxation

Taxation

Indirect taxes

Tax exemptions

Derogation accorded to Denmark

2.1.24. On 18 January,³ the Council adopted a Directive authorizing Denmark to maintain until 31 December 1977 current arrangements concerning turnover tax and excise duty exemptions applicable in *international travel*. This is a further extension of the *derogation* granted to Denmark by the Act of Accession and already extended by one year on 20 January 1976.⁴ At the request of the Danish Government, the Commission had proposed a three-year extension of the derogation with certain adjustments designed to reduce its scope.⁵ The Council decided simply to extend the present derogation, but by only one year.

³ OJ L 23 of 27.1.1977.

⁴ Bull. EC 1-1976, point 2112.

⁵ Bull. EC 12-1976, point 2141.

BULL. EC 2-1977 -

BULL. EC 3-1977

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

VAT: adoption of a 'joint position'

2.1.39. The Council (Taxation), which met on 22 March, took a further step towards the adoption of the *sixth VAT directive*, the efforts made by the Commission and the delegations of the Member States having led to agreement on a 'joint position'.

During this Council meeting, which had been called to examine and try to resolve certain residual difficulties which had remained after the agreement in principle reached last December,¹ a

¹ Bull. EC 12-1976, point 2138.

number of decisions were taken, concerning the taxation of travel agencies, measures to simplify paperwork for taxable persons, and the retention of specific taxes, other than turnover-type taxes, in certain fields such as those of insurance contracts and gambling.

Two reservations outstanding at the end of the 22 March meeting were subsequently lifted so that the Council (Research) meeting on 29 March was able to record the Member States' 'joint position' on the directive as a whole and also to close all discussion of the directive at this stage.

In view of the differences between the text produced by the Council and the text of the original Commission proposal²—on which Parliament had already been consulted pursuant to Article 100 of the Treaty—a new procedure for consultation of Parliament has been opened.

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2.1.40. The *Economic and Social Committee*,³ which met in plenary session on 30 and 31 March, adopted its Opinion on a proposal for a directive, submitted by the Commission to the Council, on the harmonization of provisions laid down by law, regulation or administrative action relating to the rules governing turnover tax and excise duty applicable in international travel.

² Supplement 11/73 — Bull. EC.

³ Point 2.3.74.

BULL. EC 4-1977 -

BULL. EC 5-1977

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

Adoption by the Council of the sixth VAT Directive

2.1.23. On 17 May,² the Council formally adopted the sixth Directive on VAT, the text of

² OJ L 145 of 13.5.1977 and points 1.3.1 to 1.3.4.

which it had already approved, as a 'joint position', on 29 March.¹

¹ Bull. EC 3-1977, point 2.1.39.

2.1.24. On 12 May, Parliament delivered its Opinion² on a Commission proposal to the Council for a directive on the harmonization of provisions laid down by law, regulation or administrative action relating to the rules governing turnover tax and excise duty applicable in international travel.

² Point 2.3.20.

BULL. EC 6-1977

Financial institutions and taxation

Taxation

Indirect taxes

Excise duties

Manufactured tobacco

2.1.44. At its meeting on 20 June, the Council (Economic and Financial Affairs) reviewed the remaining problems concerning the second stage in the harmonization of the structures of excise duties on manufactured tobacco (cigarettes).

However, it failed to reach agreement on the arrangements for this second stage, which should start on 1 January 1978. But it did agree to resume discussions at a later date. The Directive laying down the criteria applicable during the first stage of harmonization of excise duty on cigarettes was adopted by the Council on 19 December 1972.¹ The transition to the second stage has already been postponed several times.

2.1.45. On 14 June² Parliament delivered its Opinion on the Commission's proposal to the Council concerning the elimination of double taxation in connection with the adjustment of profits between associated enterprises (arbitration procedure).

¹ OJ L 303 of 31.12.1972 and Bull. EC 12-1972, point 23.
² Point 2.3.10.

BULL. EC 7/8-1977

Financial institutions and taxation

Taxation

Indirect taxes

Excise duties

Harmonization of excise duties

2.1.39. On 2 August, the Commission laid before the Council a communication containing suggestions for the immediate resumption of work by the Council on the proposals for directives presented in 1972 and 1973 concerning the harmonization of consumer taxes other than VAT (i.e. excise duties).

Consideration of these proposals was postponed to enable the Council to give priority to the Sixth VAT Directive. Since this Directive was definitively adopted by the Council on 17 May,² consideration of the proposals still pending should now be resumed, especially as the duties are still applied in such a way as to entail distortions of competition and infringements of the EEC Treaty.

The basic proposal was a 'framework' directive, which provided that when tax frontiers were eliminated, only five excise duties should be levied in the Community: on beer, wine, spirits, tobacco and mineral oils. The framework directive was followed by proposals for directives to establish harmonized structures for the duties on beer, wine, spirits and mineral oils. These proposals related only to the structures of the duties: the freedom of Member States to fix the rates was unaffected. A proposal for a directive on a first stage in the process of harmonizing the structure of tobacco duties was adopted in December 1972, and proposals concerning the second stage are currently under discussion in the Council.

To date, little progress has been made in the Council with the framework proposal or with the proposals on the structures of the duties on beer, wine, spirits and mineral oils.

The Commission's communication indicates the best way of approaching the proposals, and the priorities now to be accorded to each of them. It is recognized that the framework proposal will be dependent on further progress towards economic and monetary union. In addition, as Germany, Italy and Luxembourg do not charge a duty on wine, it is not realistic to expect Council agreement on this proposal for some time to come.

By contrast, the communication points out that all the Member States charge excise duties on beer and spirits, and that differences in the operation of these duties entails major distortions of competition and infringements of Article 95 of the Treaty, hindering the free movement of these goods.

Article 95 forbids the Member States to impose, directly or indirectly, on the products of other Member States any internal taxation of any kind

² OJ L 145 of 13.6.1977 and Bull. EC 5-1977, points 1.3.1 to 1.3.4.

in excess of that imposed directly or indirectly on similar domestic products; it also forbids them to impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

The Commission therefore recommends that the Council should immediately resume work on the proposals to harmonize the excise duties on spirits and beer, with a view to their adoption by 1 May 1978, and subsequently to recommence discussions on the mineral oils proposal, with a view to its adoption by the end of 1978.

BULL. EC 9-1977 -

BULL. EC 10-1977 -

BULL. EC 11-1977

Taxation

Tax harmonization

2.1.50. During a contact meeting with Community trade-union organizations held in Brussels on 10 November, Mr R. Burke, Member of the Commission, reviewed the progress made in tax harmonization and the outlook. His main point was the need to achieve the neutrality of taxation on intra-Community trade and to make the necessary preparatory arrangements in this area for attaining economic and monetary union, the revival of which is at present the Commission's major concern. A discussion then took place on the various points made by Mr Burke.

Direct taxes

Mutual assistance between the revenue departments of the Member States

2.1.51. On 21 November the Council recorded its agreement in principle on a directive laying down arrangements for close collaboration between the Member States' revenue departments in the field of direct taxation, with a view to strengthening the drive to combat international tax evasion and avoidance.

This directive constitutes the legal implementation of the resolution of 10 February 1975,¹ in which the Council recognized that these problems have an international dimension and must be combated energetically at international level. The directive—which is the first Community instrument to be adopted so far in the field of direct taxation—represents a major initial step in this direction.

¹ OJ C 35 of 14.2.1975.

The main purpose of the directive is to enlarge the procedure of systematic exchange of information to cover all information that may assist in determining the correct liability to taxes on income and on capital. Its scope therefore goes beyond the existing bilateral assistance between Member States, extending it to the whole of the Community.

The exchange of information may take place at the request of the Member State concerned, but there may also be transmission of unsolicited information where a State, having no evidence, has no cause to take the initiative. Such exchanges without request may be automatic—for certain categories of cases which have still to be determined—by common agreement between the two revenue departments concerned, or spontaneous, where a revenue department feels that certain situations may be of interest to another Community revenue department. Spontaneous exchange will take place, for example, where there are grounds for supposing that tax is being avoided by the device of transfer pricing between firms belonging to the same group.

The information exchange arrangements are supplemented by a rule under which one Member State may make inquiries on behalf of another Member State. The directive also provides that the presence of officials of one Member State may be authorized on the territory of another Member State, with a view to clarifying a given situation, but this provision is purely optional and requires agreement between the revenue departments concerned before it can be applied.

With a view to proper protection of the rights and interests of taxpayers, the directive provides for very strict common rules of secrecy, ensuring that the information will not be improperly disclosed or used for purposes other than taxation.

Finally, the directive provides for permanent co-operation arrangements between the Member States and the Commission, firstly with a view to improving mutual assistance arrangements and where necessary to broadening the scope of the collaboration already agreed, and secondly with a view to drawing up, in the light of the experience pooled by all revenue departments, such Community rules as may be needed to prevent transfer pricing.

The directive will be formally adopted by the Council at one of its forthcoming meetings, once the text in the various languages has been finalized.

BULL. EC 12-1977

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

Two new proposals for VAT directives

2.1.65. On 23 December the Commission approved two new proposals for Council Directives on the harmonization of the laws of the Member States relating to turnover taxes.³

One of these proposals—the seventh on the subject—is the result of a re-examination of the problems arising in connection with the taxation of used goods, works of art, antiques and collectors' items carried out in accordance with the mandate given to the Commission by the Council in Article 32 of the sixth VAT Directive, adopted on 17 May.⁴

The proposal for a sixth Directive, sent to the Council by the Commission on 29 June 1973,⁵ had suggested special VAT arrangements for used goods, works of art, antiques and collectors' items, under which taxable persons purchasing with a view to resale goods which had already entered the final consumption stage would be entitled to deduct a certain amount of tax deemed to correspond to the amount of input tax. However, the Council took no decision on this part of the Directive in May, because of the complex nature of the problems involved.

After re-examining the problems, the Commission reached the conclusion that, with a view to avoiding or mitigating the impact of cumulative

³ OJ C 26 of 1.2.1978.

⁴ OJ L 145 of 13.6.1977 and Bull. EC 5-1977, points 1.3.1 to 1.3.4.

⁵ OJ C 80 of 5.10.1973 and Supplement 11/73 — Bull. EC.

taxation and to preventing distortions of trade working to the detriment of traders wishing to resell used goods or works of art, the simplest and most feasible solution would be to introduce a special taxation scheme under which a standard percentage of the selling price—the figure suggested is 30%—is taken as the taxable amount for VAT purposes. Except in the case of import and export transactions, taxable persons would not be eligible under this scheme to deduct tax paid in respect of the purchase of used goods and works of art or goods and services used for the purposes of their work. Subject to special rules, this scheme would apply in respect of both works of art and used goods, with the exception of a number of such items (e.g. private cars) for which a scheme based on the resale price is proposed, entitling taxable persons to deduct a standard amount of tax.

This new proposal is a practical application in the tax field of the guidelines laid down by the Commission in its Communication to the Council concerning Community action in the cultural sector,¹ since rules such as the reduction of the taxable amount to 30% of the selling price or the exemption for works of art supplied or imported by the artist himself are designed to facilitate the dissemination of cultural objects and to assist artists.

¹ Bull. EC 11-1977, point 1.4.3.

2.1.66. The aim of the proposal for an eighth Directive is on the face of it a limited one, that of introducing common arrangements for the refund of value added tax to undertakings established in a Community country other than that in which goods or services have been invoiced inclusive of tax.

The principle of such a refund is embodied in the sixth Directive of 17 May 1977 (Article 17), but this Article states that the Council will adopt at a later date Community rules laying down the arrangements under which refunds are to be made. Until such Community arrangements enter into force, each Member State is free to determine its own refund arrangements.

The practical importance of these new measures should not, however, be underestimated, since they will make for a substantial improvement on the present situation for firms publicizing or expanding their operations in other member countries, whether on a temporary or a permanent basis.

The proposal, which is of particular interest to exhibitors at international fairs and international carriers, will enable equal treatment in respect of value added tax to be accorded in areas of international trade relations in which such treatment is now very uneven because the conditions governing refund of the tax are more restrictive in some countries than in others (the result being that countries with the most generous arrangements come to be regarded as havens by the firms concerned).

For these reasons, the Commission believes that Community arrangements in this field will enable further progress to be made towards the effective liberalization of the free movement of persons, goods and services, thereby helping to promote the process of economic integration.

Excise duties

Manufactured tobacco

2.1.67. On 19 December² the Council adopted a Directive amending and supplementing the Directive it had adopted on 19 December 1972,³ on taxes other than turnover taxes which affect the consumption of manufactured tobacco. The main provisions of the new Directive may be summarized as follows:

(i) From the beginning of the second harmonization stage and under the final harmonization arrangements, the specific component of the mixed excise duty applicable to cigarettes will no longer be determined by reference to the total excise duty but by reference to the total tax (excise duty plus VAT);

(ii) The first stage of harmonization of the structures of excise duties on cigarettes is extended, for practical reasons, until 30 June 1978 (this first stage will therefore have lasted five years);

(iii) The second harmonization stage will cover the period from 1 July 1978 to 31 December 1980; during this stage the amount of specific ex-

² OJ L 338 of 28.12.1977.

³ OJ L 303 of 31.12.1972 and Bull. EC 12-1972, point 23.

cise duty levied on cigarettes in the most popular price category must not be lower than 5% or higher than 55% of the total tax (excise duty plus VAT);⁴ the Member States are to review their calculations at least once a year to take account of any price or tax changes;

(iv) Under the 1972 Directive, the United Kingdom and Ireland must align themselves on the first stage on 1 January 1978, but certain special arrangements have been made for them for the second stage. Thus, the United Kingdom is authorized, as part of its public health policy, to increase tax on cigarettes with a tar content of 20 mg or more until the end of 1980; the Council has called upon the Commission to report on the implications of this increased tax before this date; Ireland may, in order to adjust to the second stage, apply until 31 December 1978 an amount of specific excise duty which may not exceed 60% of the total tax burden.

(v) Denmark was authorized not to apply the provisions of the Directive in Greenland, in view of that territory's special position.

⁴ Under the proposal for a Directive which the Commission presented to the Council in February 1976—subsequently endorsed by Parliament and the Economic and Social Committee—the amount of the specific excise duty should have been between 15% and 50% of the total tax.

Tax exemptions

Derogation for Denmark

2.1.68. On 13 December the Commission sent to the Council a proposal for a Directive granting Denmark a further prolongation, until 31 December 1980, of the derogation from the Council Directive of 28 May 1969,¹ amended by the Directive of 12 June 1972,² which had been accorded in the Act of Accession (Annex VII, Part V), for tobacco products, certain alcoholic beverages and beer; the last prolongation dated from 18 January 1977.³

The proposal was made in response to a request by the Danish Government to prolong the derogation granted Denmark by the Act of Accession for five years.

After examining this proposal, the Council adopted a Directive on 19 December⁴ granting Denmark a derogation, until 31 December 1982, from the arrangements in force for duty-free allowances applicable in international travel. This five-year derogation is accompanied by certain adjustments proposed by the Commission. The Directive involves a relaxation of the system already in force, beginning on 1 January 1978; it will gradually introduce other adjustments over the five-year period.

¹ OJ L 133 of 4.6.1969.

² OJ L 139 of 17.6.1972.

³ OJ L 23 of 27.1.1977 and Bull. EC 1-1977, point 2.1.24.

⁴ OJ L 336 of 27.12.1977.

Direct taxes

Mutual assistance between revenue departments

2.1.69. On 19 December⁴ the Council formally adopted the Directive concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation in respect of which it had recorded its agreement in principle on 21 November.⁵

⁵ Bull. EC 11-1977, point 2.1.51.

BULL. EC 1-1978 -

BULL. EC 2-1978 -

BULL. EC 3-1978 -

BULL. EC 4-1978

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

Mutual assistance by revenue departments

2.1.35. On 28 April the Commission adopted, for transmission to the Council, a proposal for a directive designed to extend the arrangements for mutual assistance by the competent authorities of the Member States, already provided for in the Council Directive of 19 December 1977¹ in the field of direct taxation, to value added tax as well.

The adoption of the Directive of 19 December 1977 concerning direct taxation was the first major step towards combating international tax evasion and avoidance. For many reasons, the Commission feels that, as a second stage, the assistance arrangements should now be extended to VAT. A number of factors suggest that Community action with regard to VAT is a particularly urgent need.

For one thing, the information received by the Commission from the Member States shows that there is much illegal practice involving this tax international trade, including fraudulent importation and the use of false export invoices.

Secondly, the implementation of certain provisions of the Sixth VAT Directive, particularly those concerning the location of the supply of services and tax deduction for transactions effected abroad, makes it highly desirable that there should be close cooperation between national revenue departments in order to ensure that VAT is properly charged and that all cases of non-taxation or double taxation are avoided. Because a part of the Community's own resources is to accrue from VAT, fraud or failure to collect the tax may entail revenue losses not only for the Member States, but also for the Community, so that the drive to eliminate evasion and avoidance in this field will in future constitute a direct Community interest.

¹ OJ L 336 of 27.12.1977; Bull. EC 11-1977, point 2.1.51 and 12-1977, point 2.1.69.

Thirdly, closer cooperation between national authorities with regard to VAT will make it easier, by means of the cross-checks it will allow, to assess income and profits tax liabilities accurately. Such cooperation will therefore be an extremely useful addition to the mutual assistance procedure already adopted by the Council with regard to direct taxes.

BULL. EC 5-1978

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

Sixth VAT Directive

2.1.36. On 25 May¹ the Commission sent to the Council a proposal for a Ninth Directive on the harmonization of the laws of the Member States relating to turnover taxes, which, by way of derogation from Article 1 of the Sixth Directive of 17 May 1977,² sets 1 January 1979 as the latest date for its implementation.

Because of the scope of the Sixth VAT Directive and the very large number of national regulations involved, several Member States have been unable to complete the necessary adjustments to their legislation by the date originally set and have consequently requested the entry into force of the Directive to be postponed.

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2.1.37. At its meeting on 31 May and 1 June the Economic and Social Committee³ delivered its Opinion on the two Commission proposals for a Directive on the harmonization of the laws of the Member States relating to turnover taxes.⁴ The first concerns value added tax to be applied to works of art, collectors' items, antiques and used goods and the second relates to the arrangements for the refund of value added tax to taxable persons not established in the territory of the country.

¹ OJ C 141 of 16.6.1978.

² OJ L 145 of 13.6.1977 and Bull. EC 5-1977, points 1.3.1 to 1.3.4.

³ Points 2.3.78 and 2.3.79.

⁴ OJ C 26 of 1.2.1978 and Bull. EC 12-1977, points 2.1.65 and 2.1.66.

BULL. EC 6-1978

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

Ninth VAT Directive

2.1.37. On 26 June² the Council adopted the ninth Directive on the harmonization of the laws of the Member States relating to turnover taxes.

This Directive allows the countries which have not yet implemented the sixth VAT Directive³ to defer its application until 1 January 1979 at the latest.

At its meeting on 20 and 21 June the Economic and Social Committee had given its Opinion on the Commission proposal⁴ for this ninth Directive.

Mutual assistance by revenue departments

2.1.38. At its meeting on 20 and 21 June, the Economic and Social Committee⁵ gave its Opinion on the Commission proposal for extending the arrangements for mutual assistance by the competent authorities of the Member States to value added tax as well.⁶

² OJ L 194 of 19.7.1978.

³ OJ L 145 of 13.6.1977 and Bull. EC 5-1977, points 1.3.1. to 1.3.4.

⁴ OJ C 141 of 16.6.1978 and Bull. EC 5-1978, point 2.1.36.

⁵ Point 2.3.84.

⁶ Bull. EC 4-1978, point 2.1.35.

BULL. EC 7/8-1978

Financial institutions and taxation

Taxation

Indirect taxes

Tax exemptions

2.1.44. On 16 August¹ the Commission presented to the Council proposals for

¹ OJ C 213 of 7.9.1978.

amending two Directives relating to tax exemptions, adopted by the Council in 1969 and 1974, and a 1975 Commission proposal to the Council in the same field.

The aim is to adapt the exemptions, in terms of amounts, to the new situation to be created by the use, from 1 January 1979, of the European unit of account to express such exemptions, so that travellers suffer no reduction in the equivalent value in national currencies of the exemptions now in force or planned.

The two Directives affected by the Commission proposals are those of 28 May 1969¹ on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel—amended previously on 12 June 1972²—and of 19 December 1974³ on the tax reliefs to be allowed on the importation of goods in small consignments of a non-commercial character within the Community.

Similarly, the Commission has proposed the amendment of the proposal it transmitted to the Council on 31 December 1974⁴—which was designed to supplement the Directive of 19 December 1974—concerning small consignments of goods of a non-commercial nature from non-member countries.

Turnover taxes

Mutual assistance by revenue departments of the Member States

2.1.44a. On 7 July⁵ Parliament approved without debate the Commission proposal to the Council⁶ extending the arrangements for mutual assistance by the competent authorities of the Member States, provided for, in respect of direct taxation, in the Council Directive of 19 December 1977,⁷ to value added tax as well.

Direct taxes

Company taxations and withholding taxes on dividends

2.1.44b. On 24 July⁸ the Commission sent to the Council a proposal for a directive on the application to collective investment institutions (CIIs) of the provisions of its proposal on the harmonization of systems of company taxation and of withholding taxes on dividends.

This latter proposal, submitted to the Council on 1 August 1975,⁹ provides for the in-

¹ OJ L 133 of 4.6.1969.

² OJ L 139 of 17.6.1972.

³ OJ L 354 of 30.12.1974.

⁴ OJ C 18 of 25.1.1975 and Bull. EC 12-1974, point 2135.

⁵ OJ C 182 of 31.7.1978.

⁶ Bull. EC 4-1978, point 2.1.35.

⁷ OJ L 336 of 27.12.1977; Bull. EC 11-1977, point 2.1.51 and 12-1977, point 2.1.69.

⁸ OJ C 184 of 2.8.1978.

⁹ OJ C 253 of 5.11.1975 and Bull. EC 7/8-1975, point 2140.

roduction of the partial imputation system—which alleviates the impact of economic double taxation of dividends by giving back part of the corporation tax to the shareholder in the form of a tax credit which is set off against his personal tax—as the common system of company taxation. One of the reasons which led the Commission to choose this system was the desire to eliminate various obstacles impeding investment in shares by the smaller saver. Many such savers prefer to invest through CII's rather than acquire shares directly.

However, for technical reasons arising in the taxation field, dividends accruing to the ultimate beneficiary via a collective investment institution could not be included in the scope of the company taxation proposal. The new proposal fills this gap and also relieves economic double taxation of dividends for savers investing through CII's by enabling them to set against their personal tax liability withholding tax already levied on dividends received and redistributed by the investment institution. It therefore constitutes a vital supplement to the company taxation proposal, without which the latter could not fully attain its objectives.

BULL. EC 9-1978

Financial institutions and taxation

Taxation

Indirect taxes

Excise duties

2.1.24. The Commission has commenced separate proceedings before the Court of Justice against Denmark, France, Italy and the United Kingdom for infringement of Article 95 of the EEC Treaty in respect of alcoholic beverages.

Article 95—a Treaty clause having direct effect for individuals—prohibits all tax discrimination between domestic products and similar and/or competing products imported from the other Member States. It is evident that the laws of the Member States in question are structured in such a way as to protect their domestic products and do not therefore comply with this rule. Examples are:

(i) in *Denmark*: tax arrangements on the consumption of spirits (domestic products, such as akvavit and the other schnapps of this kind, are taxable at a rate approximately 42% lower);

(ii) in *France*: tax arrangements on the manufacture and consumption of spirits (domestic products such as cognac are taxable at rates at least 30% lower than the rates applied to imported spirits distilled from cereals, such as whisky);

(iii) in *Italy*: tax arrangements such as the 'contrassegno di Stato' (tax bands) on the consumption of spirits: the rates of this excise duty are four to six times higher on spirits distilled from cereals than on spirits distilled from wine (for example, brandy and grappa);

(iv) in the *United Kingdom*: tax arrangements on the consumption of wine and beer; the rates of excise duty are five times higher for wine than for beer.

The actions brought before the Court of Justice are the logical and inevitable consequence of the representations the Commission has been making unsuccessfully for some years to the Member States concerned requesting them to put an end to the discriminatory arrangements in force.

Although these are separate proceedings in law, there is an economic link between the production of the beverages concerned: alcoholic beverages belong to the same family, whether they are distilled like spirits or fermented like wine and beer. The judgments to be handed down by the Court in these cases will enable the Commission to deal, *mutatis mutandis* with the questions raised by the systems of taxing alcoholic beverages in force in other Member States as well.

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2.1.25. At its 15 September sitting Parliament¹ passed a Resolution on taxes applicable to wine and alcoholic beverages.

¹ Point 2.3.15 and OJ C 239 of 9.10.1978.

BULL. EC 10-1978 -

BULL. EC 11-1978 -

BULL. EC 12-1978

Financial institutions and taxation

Indirect taxes

Excise duties on manufactured tobacco

2.1.53. On 18 December⁴ the Council adopted the Directive setting out the definitions of the products falling within each of the five major categories of manufactured tobacco: cigars and cigarillos, cigarettes, smoking tobacco, snuff and chewing tobacco.

These Community definitions do not prejudice the systems or rates of taxation applying to the different products, but they do ensure that products with the same characteristics will not be classified differently according to the country where they are taxed.

The Member States are to implement the Directive by 1 January 1980. The Directive should make it easier to press ahead with the harmonization of excise duties on manufactured tobacco.

⁴ OJ L 10 of 16.1.1979.

Tax-free allowances for travellers

2.1.54. On 19 December¹ the Council adopted four directives on tax-free allowances in respect of goods contained in travellers' personal luggage and goods sent in small consignments.

The main purpose of these directives is to lay down the arrangements for applying the European unit of account to the new tax-free allowances with effect from 1 January 1979. Under these arrangements, the allowances, which are applicable in each Member State on a calendar-year basis, will be determined by taking as the counter-values of the national currencies the rates obtaining on the first working day in October.²

The Council fixed the new allowances as follows:

(i) 180 EUA for the allowance granted to travellers within the Community, previously set at 125 units of account by the Council Directive of 12 June 1972;³

(ii) 40 EUA for the allowance granted to travellers arriving from outside the Community, previously set at 25 units of account by the Council Directive of 28 May 1969;⁴

(iii) 60 EUA for the allowance in respect of small consignments sent between individuals within the Community, previously set at 40 units of account by the Council Directive of 19 December 1974;⁵

(iv) 30 EUA for the allowance in respect of small consignments sent by individuals outside the Community to individuals within the Community, which was introduced for the first time by the Council acting on a Commission proposal forwarded to it on 31 December 1974.⁶

In spite of the above increases in the amounts expressed in EUA, the amounts expressed in national currency will themselves be increased to differing degrees in the different Member States, with large increases in Member

States whose currencies have depreciated in recent years and small increases or none at all in Member States whose currencies have appreciated.

Temporary derogations relating to the unit value of imported goods have been granted:

(i) to Denmark, which may, until 31 December 1981, exclude goods with unit values of more than 135 EUA from the above arrangements;

(ii) to Ireland, which may, until 31 December 1983, exclude goods with unit values of more than 77 EUA from these arrangements.

Introduction of the EUA in the field of tax-free allowances within the Community will make it possible to restore equivalence in monetary terms as between the different amounts expressed in national currency. This will put an end to cases of double taxation resulting from the previous situation in which the value of one and the same product might well be lower than the allowance granted in a Member State that did not grant remission of tax on export and higher than the allowance in the country of importation, entailing taxation in that country.

In an attempt to eliminate other cases of double taxation, the Council has made compulsory for Member States to grant remission of tax on goods carried by travellers where the value of such goods exceeds the amount of the allowance; taxes are then charged on import. The manner in which Member States applies this hitherto optional provision differed.

The wine allowance granted to travellers within the Community has been increased from 3 to 4 litres. A derogation has, however, been granted to Denmark, which may, until 31 December 1983, continue to apply the old allowance.

¹ OJ L 366 of 28.12.1978.

² For 1979, cf. OJ C 233 of 3.10.1978.

³ OJ L 139 of 17.6.1972.

⁴ OJ L 133 of 4.6.1969.

⁵ OJ L 354 of 30.12.1974.

⁶ OJ C 18 of 25.1.1975.

BULL. EC 1-1979

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

Sixth VAT Directive

2.1.41. The Commission has instituted proceedings under Article 169 of the EEC Treaty against four Member States which failed to implement the sixth VAT Directive by the deadline of 1 January 1979.

Letters asking for the observations of the Governments of the Member States concerned—the Federal Republic of Germany, Ireland, Italy and Luxembourg—were sent on 10 January. The decision to institute the proceedings had been taken by the Commission on 20 December 1978.

2.1.42. On 16 January¹ Parliament delivered its opinion on the proposal for an eighth Council Directive on VAT (submitted by the Commission to the Council at the beginning of January) concerning arrangements for the refund of value-added tax to taxable persons not established in the territory of the country.²

¹ Point 2.3.13 and OJ C 39 of 12.2.1979.

² OJ C 26 of 1.2.1978 and Bull. EC 12-1977, point 2.1.66.

Tax-free allowances

Report to the Council on the derogation accorded to Denmark

2.1.43. On 23 January the Commission transmitted to the Council its first report on the derogation granted to Denmark concerning the rules governing turnover tax and excise duty applicable in international travel.

When, on 19 December 1977,¹ the Directive according to Denmark a new derogation from the Community system of allowances until 31 December 1982 had been adopted, the Commission had undertaken to draw up each year, starting in 1978, a report on changes in the prices of alcoholic drinks and tobacco products in Denmark and in the Federal Republic of Germany, on changes in fares for travellers in Denmark and on the fiscal policy of the Danish Government. The

¹ OJ L 336 of 27.12.1977 and Bull. EC 12-1977, point 2.1.68.

report presented by the Commission concludes that no significant progress was made in 1978 towards the gaps between prices in Denmark and Germany.

BULL. EC 2-1979 -

BULL. EC 3-1979

Financial institutions and taxation

Taxation

Indirect taxes

Turnover tax

2.1.36. On 12 March¹ Parliament delivered its opinion on the proposal for a seventh VAT Directive presented by the Commission to the Council on 11 January 1978² and relating to the common system of value added tax to be applied to works of art, collectors' items, antiques and used goods.³

¹ Point 2.3.18 and OJ C 93 of 9.4.1979.

² OJ C 26 of 1.2.1978.

³ Bull. EC 12-1977, point 2.1.65.

BULL. EC 4-1979 -

BULL. EC 5-1979

Financial institutions and taxation

Taxation

Indirect taxes

Turnover tax

Amendments to the proposal for a Seventh VAT Directive

2.1.45. On 16 May¹ the Commission sent to the Council a number of amendments to its proposal for a seventh VAT Directive relating to the taxation of works of art, collectors' items, antiques and used goods,

¹ OJ C 136 of 31.5.1979.

which it had presented to the Council on 11 January 1978.² These amendments are in response to the opinions delivered by Parliament³ and the Economic and Social Committee.⁴ They do not alter the fundamental options made by the Commission in its initial proposal, designed to introduce a special scheme for determining the taxable amount for VAT purposes so as to avoid any double taxation of goods originating from the final consumption stage.

Alongside the flat-rate scheme, under which the taxable amount is 30% of the selling price, provision is made for a scheme involving taxation of the difference between the selling price and the purchase price. Any taxable person who resells used goods (other than those referred to in Article 4 of the original proposal), works of art, antiques or collectors' items must opt for one of these two schemes for a tax period equal to not less than one year, though he may of course still elect to be taxed under the normal scheme.

Some changes of detail have also been made with regard to the right to deduct input tax, basically so as to adapt the provisions initially proposed to the new taxation scheme.

2.1.46. On 8 May⁵ Parliament adopted a resolution on the harmonization of systems of company taxation and of withholding taxes on dividends.

² OJ C 26 of 1.2.1978 and Bull. EC 12-1977, point 2.1.65.

³ OJ C 93 of 9.4.1979 and Bull. EC 3-1979, point 2.3.18.

⁴ OJ C 269 of 13.11.1978 and Bull. EC 5-1978, point 2.3.78.

⁵ Point 2.3.17 and OJ C 140 of 5.6.1979.

proposed Council Directives⁷ to harmonize the structures of consumption taxes, other than VAT, on beer, wine and alcohol.

Work on these proposals, which were put forward in 1972,⁸ was suspended by the Council at the end of 1974. It resumed discussions in February 1978—on the basis of a first Commission Communication of 2 August 1977⁹—and completed technical examination of all three proposals on beer, alcohol and wine by the end of that year.

In this second Communication, compromise solutions are proposed for the main issues of principle posed by the three proposals. The most important elements are as follows:

(i) it is proposed that the same VAT rate be applied by each Member State to both beer and wine, and that the excise rate for wine relative to that for beer should not exceed the ratio of the alcoholic strengths of the two drinks;

(ii) fortified wines (liqueur wines, aromatized wines and comparable fermented beverages of CCT heading 22.07) should be removed from Article 6 of the alcohol proposal, where they formed a special group subject to a reduced rate of alcohol excise, and included in the wine Directive as a third category of wine (the two others being table and sparkling wines), with the possibility for Member States to fix a separate rate of the wine excise for this category, taking alcoholic strength into account;

(iii) Germany, Italy and the Benelux countries would be allowed to exempt certain of the three categories of wine from the introduction of the wine excise. This exceptional arrangement would end at the latest when tax frontiers are removed.

⁷ OJ C 43 of 29.4.1972.

⁸ Bull. EC 7/8-1977, point 2.1.39.

BULL. EC 6-1979

Financial institutions and taxation

Taxation

Indirect taxes

Excise duties

Harmonization of excise duties

2.1.39. On 26 June the Commission transmitted a Communication to the Council concerning the major problems relating to the

BULL. 7/8-1979 -

BULL. EC 9-1979 -

BULL. EC 10 1979

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

Eight VAT Directive

2.1.38. At its meeting on tax questions, held on 16 October, the Council recorded its agreement on a new VAT Directive, the Eighth, the proposal for which had been submitted by the Commission on 11 January 1978.¹ The Directive lays down arrangements for the refund of VAT to taxable persons not established in the territory of the country.

It will be recalled that the Sixth VAT Directive of 17 May 1977² established the principle that all taxable persons are entitled to have VAT deducted or refunded whatever the country in which they incur expenditure attracting the tax. The Eighth Directive harmonizes, at Community level, the arrangements for refunding VAT to foreign taxable persons residing in the Community, thereby eliminating the differences which exist in this field in the various member countries and which could give rise to deflection of trade and distortions of competition.

So as to facilitate applications for refunds, the Eighth Directive introduces an identical form for all Community countries. Accordingly, taxable persons will merely have to submit their application accompanied by the substantiating documents and a statement issued by the relevant official department certifying that they rank as a taxable person for the purpose of VAT in the Member State in which they are established.

Mutual assistance between national tax authorities

2.1.39. On 16 October the Council also recorded its agreement on two Directives concerning mutual assistance between tax authorities in the Member States. The aim of the Directives is to extend to VAT the arrangements made by the Directive of 19 December 1977³ concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and by the Directive of 15 March 1976⁴ on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties. These two new Directives mark significant progress in connection with the measures already taken to combat tax evasion and avoidance on a Community scale.

¹ OJ C 26 of 1.2.1978 and Bull. EC 12-1977, point 2.1.66.

² OJ L 145 of 13.6.1977 and Bull. EC 5-1977, points 1.3.1 to 1.3.4.

³ OJ L 336 of 27.12.1977; Bull. EC 11-1977, point 2.1.51 and Bull. EC 12-1977, point 2.1.69.

⁴ OJ L 73 of 19.3.1976.

Tenth VAT Directive

2.1.40. At the same meeting the Council held a policy debate on the proposal for a Tenth VAT Directive, presented by the Commission on 23 April,¹ the aim of which is to clarify the provisions of the Sixth VAT Directive relating to the place where a service is supplied in the case of the hiring out of movable tangible property. The Council requested the Permanent Representatives Committee to examine this further, particularly in the light of the Opinion expected from Parliament.

Excise duties

2.1.41. Also on 16 October, the Council examined the Communication presented by the Commission on 26 June² as a basis for a compromise agreement on the main problems arising in connection with its proposals, submitted in 1972, to harmonize the structures of excise duties on alcoholic beverages (beer, wine and spirits).³ This was the first time the Council discussed the proposals. It agreed to resume examination of them at a later date.

Direct taxes

Collective investment institutions and company taxation

2.1.42. At its plenary session on 24 and 25 October, the Economic and Social Committee adopted an Opinion⁴ endorsing, subject to certain observations, the Commission's proposal for a Council Directive, presented on 24 July 1978, on the application to collective investment institutions of the Directive concerning the harmonization of systems of company taxation and of withholding taxes on dividends.⁵

¹ OJ C 116 of 9.5.1979.

² Bull. EC 6-1979, point 2.1.39.

³ OJ C 43 of 29.4.1972.

⁴ Point 2.3.89.

⁵ OJ C 184 of 2.8.1978 and Bull. EC 7/8-1978, point 2.1.44b.

BULL. EC 11-1979

Financial institutions and taxation

Taxation

Indirect taxes

Tax-free allowances

Proposal for a fifth Directive on travellers' tax-free allowances

2.1.38. On 30 November the Commission presented to the Council a proposal for a fifth Directive on the harmonization of provisions laid down by law, regulation or administrative action relating to the rules governing turnover tax and excise duty applicable in international travel.

The proposal was drawn up following the annual examination of the application of the third Directive¹ on travellers' tax-free allowances. Its purpose is:

- (a) to increase the intra-Community tax-free allowance from 180 EUA to 210 EUA;
- (b) to increase the minimum allowance for travellers under fifteen years of age from 50 EUA to 60 EUA;
- (c) to alter the levels for application of the derogations which have been granted to Denmark and Ireland and under which these countries may restrict application of the tax-free allowance to goods with a unit value lower than a specified sum;
- (d) to introduce a technical change in the expression of alcoholic strength in the basic Directive on travellers' tax-free allowances in order to take account of Community provisions on alcoholometry.

Direct taxes

2.1.39. The problems raised by tax harmonization (particularly for frontier workers) and tax avoidance were discussed at a meeting between Mr Burke, Member of the Commission, and representatives of the European Trade Union Confederation (ETUC) in Brussels on 6 November.

The ETUC representatives welcomed the Commission's plans to present to the Council a proposal for a Directive on eliminating tax discrimination against frontier workers before the end of the year. The discussions also covered the problem of transfer pricing between companies of the same group and international tax evasion and avoidance on the basis of a memorandum submitted by the ETUC.

¹ OJ L 366 of 28.12.1978.

BULL. EC 12-1979

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

Eighth VAT Directive; mutual assistance between national tax authorities

2.1.55. On 6 December the Council formally adopted three Directives¹ which it had approved in principle on 16 October, namely the eighth Directive laying down arrangements for the refund of VAT to taxable persons not established in the territory of the country and the two Directives extending to VAT the scope of the Directives of 15 March 1976 and 19 December 1977 concerning mutual assistance.²

French overseas departments and the scope of the sixth VAT Directive

2.1.56. On 20 December the Commission transmitted to the Council a proposal for an eleventh Directive on the harmonization of turnover taxes. Its purpose is to exclude the French overseas departments from the scope of the sixth VAT Directive—common system of value added tax: uniform basis of assessment—adopted by the Council on 17 May 1977.³ The Commission sent this proposal to the Council following a judgment given by the Court of Justice on 10 October 1978⁴ in Case 148/77 (Hansen and Balle v Hauptzollamt Flensburg); the proposal is the expression of the implications of the judgment as regards taxation.

Tenth VAT Directive

2.1.57. On 14 December Parliament gave its opinion⁵ on the proposal⁶ for a tenth VAT Directive, presented by the Commission to the Council on 23 April, which is designed to clarify the provisions of the sixth Directive concerning the place of the supply of services in the case of the hiring out of movable tangible property.

¹ OJ L 331 of 27.12.1979.

² Bull. EC 10-1979, points 2.1.38 and 2.1.39.

³ OJ L 145 of 13.6.1977 and Bull. EC 5-1977, points 1.3.1 to 1.3.4.

⁴ OJ C 263 of 7.11.1978 and Bull. EC 10-1978, point 2.3.57.

⁵ OJ C 4 of 7.1.1980.

⁶ OJ C 116 of 9.5.1979.

Direct taxes

**Income tax
and non-resident employed persons**

2.1.58. On 21 December the Commission placed before the Council a proposal¹ for a Directive concerning the harmonization of income taxation provisions with respect to freedom of movement for workers within the Community. This is designed to remove the disadvantages suffered by persons who, exercising their freedom of movement within the Community, find themselves penalized by the income tax treatment they receive as non-resident employed persons. The proposal's main provisions are:

(a) that frontier workers should be taxed in the Member State of residence, with credit being given for any tax withheld at source by the Member State of employment;

(b) that other non-resident workers should be taxed in the Member State of employment on terms no less favourable than those applied to resident workers;

(c) that income tax relief for payments such as insurance premiums and pension contributions should no longer be conditional upon the taxpayer being resident in the Member State granting the relief; payments made anywhere in the Community are to be treated alike.

¹ OJ C 21 of 26.1.1980.

BULL. EC 1-1980

Financial institutions and taxation

Taxation

Indirect taxes

Tax exemptions

Procedure applicable to the stores of vessels, aircraft and international trains

2.1.19. On 23 January the Commission transmitted to the Council a proposal for a Directive¹ on the Community tax procedure applicable to the stores of vessels, aircraft and international trains, i.e. goods such as catering supplies, fuels and sundry stores to be used exclusively on board.

National legislation traditionally provides, subject to certain conditions, for exemptions on the importation and exportation of such products. This is incorporated in Community legislation in the Sixth VAT Directive of 17 May 1977,² which at the same time stipulates that Community rules defining the scope of the exemption and implementing provisions are to be adopted at a later date. This is the purpose of the Directive now proposed: it would determine the Community tax procedure to apply in this field, both within the Community and in traffic with non-member countries.

The procedure covers both VAT and excise duties. A single procedure is necessary, both

¹ OJ C 31 of 8.2.1980.

² OJ L 145 of 13.6.1977.

because the two types of tax give rise to similar problems and because the tax rules applicable to one and the same transaction should be simplified. For the same reasons, the tax procedure has been modelled as closely as possible on that already suggested by the Commission for customs purposes in its proposal for a Regulation sent to the Council on 8 March 1978.³ The principles of this latter proposal are also largely derived from the Sixth VAT Directive.

If true harmonization is to be achieved, excise duties must be included in the proposal, owing to their great importance in the tax field, given the high level of rates applied in the Member States.

³ OJ C 77 of 23.3.1978.

Denmark derogation

2.1.20. On 31 January the Commission adopted a report to the Council on the derogation accorded to Denmark, under a Directive adopted on 19 December 1977,⁴ relating to the rules governing turnover tax and excise duty applicable in international travel. This Directive authorized Denmark to derogate from the Community system of allowances up to 31 December 1982, and the Commission undertook to report annually to the Council on the prices of tobacco products and alcoholic beverages in Denmark and the Federal Republic of Germany, on passenger fares in Denmark and on the Danish Government's tax policy. The Commission's report (the second on this matter) concludes that in general no significant progress was achieved in 1979—as in 1978⁵—in reducing the differences between the prices of the products concerned. On the contrary, so far as cigarettes are concerned, the price gap increased considerably as a direct result of Danish tax increases.

Excise duties

French overseas departments

2.1.21. On 28 January the Commission transmitted to the Council a proposal for a Directive authorizing France not to apply in the French overseas departments the Directives, adopted by the Council on 19 December 1972⁶ and on 18 December 1978,⁷ on taxes other than turnover taxes (i.e. excise duties) on consumption of manufactured tobacco. The first of these Directives lays down the principles for a stage-by-stage harmonization of the structures of excise duties on manufactured tobacco (and, in its amended version, the criteria to be applied during the second stage); the second defines the different types of manufactured tobacco.

In adopting these Directives, the Commission and the Council had, in the absence of provisions to the contrary, interpreted Article 227(2) of the EEC Treaty as excluding the French overseas departments from the scope of the Directives. A judgment delivered by the Court of Justice on 10 October 1978⁸ set aside this interpretation, holding that, with the expiry of the two-year period provided for in Article 227(2), the provisions of the Treaty and secondary legislation applied automatically to the overseas departments.

The purpose of the proposal sent to the Council in January is to enable France, as ini-

⁴ OJ L 336 of 27.12.1977; Bull. EC 12-1977, point 2.1.68.

⁵ Bull. EC 1-1979, point 2.1.43.

⁶ OJ L 303 of 31.12.1972.

⁷ OJ L 10 of 16.1.1979; Bull. EC 12-1978, point 2.1.53.

⁸ Case 148/77 *Hansen & Balle v Hauptzollamt Flensburg* [1978] ECR 1787; OJ C 263 of 7.11.1978; Bull. EC 10-1978, point 2.3.57.

tially intended, to exclude the overseas departments from the scope of the two Directives in question.

2.1.22. At its plenary session on 30 and 31 January the Economic and Social Committee delivered its Opinion¹ on the proposal for a Fifth Directive on the rules governing turnover tax and excise duty applicable in international travel, which the Commission had sent to the Council on 30 November 1979.²

¹ Point 2.3.30.

² OJ C 318 of 19.12.1979; Bull. EC 11-1979, point 2.1.38.

BULL. EC 2-1980

Financial institutions and taxation

Taxation

Indirect taxes

Application of the EEC Treaty in respect of excise duties on certain alcoholic beverages

Significance and implications of judgments by the Court of Justice

2.1.26. The differences between Member States in the structures of their excise duties on certain alcoholic beverages will have to be eradicated. This is the upshot of five judgments given by the Court of Justice¹ on 27 February at the conclusion of proceedings instituted by the Commission against five Member States in 1978² and 1979.³

The main problems involved in the harmonization of excise duties in this field had been the subject of proposals put up to the Council by the Commission in 1972,⁴ but such scant progress was made in examining them that the Council suspended its deliberations at the end of 1974.

In an attempt to break the deadlock, the Commission sent to the Council on 26 June 1979 a Communication⁵ setting out com-

¹ Point 2.3.24.

² OJ C 214 of 8.9.1978; Bull. EC 7/8-1978, points 2.3.51 to 2.3.54.

³ Bull. EC 4-1979, point 2.3.41.

⁴ OJ C 43 of 29.4.1972.

⁵ Bull. EC 6-1979, point 2.1.39.

promise solutions to the main issues of principle raised by its 1972 proposals (concerning beer, wine and spirits); however, at its meeting on 16 October 1979⁶ the Council was unable to make any tangible progress, as the Member States' delegations were awaiting the outcome of the five cases pending before the Court on infringements of Article 95 of the EEC Treaty. The Court's judgments in these five cases thus add a new important dimension to the matter.

Three of the cases concerned the differential taxation applied in France (Case 168/78), Italy (Case 169/78) and Denmark (Case 171/78) in respect of home-produced spirits, to the detriment of imported spirits. The Commission had also instituted proceedings against the United Kingdom (Case 170/78) with a view to establishing that a higher excise duty was charged in that country on light wines made from fresh grapes than on beer, which was thus afforded indirect protection. Lastly, the Commission challenged the Irish legislation whereby the time limits for payment of excise duties depend on whether the beverages in question are home-produced or imported from other Member States (Case 55/79).

France, Italy and Denmark

2.1.27. In the first three cases, concerning differential taxation of spirits, the Court of Justice agreed with the Commission that, whatever their special characteristics, all the products in question have *common generic features*, even though some of them may present specific properties to a degree that depends on the raw materials and production processes.

The Court drew two conclusions:

- First, there is an undetermined number of beverages that ought to be treated as 'similar products' within the meaning of the first paragraph of Article 95.
- Second, even where a sufficient degree of similarity between the products concerned could not be established, all spirits have common features which are sufficiently pronounced for there to be in all cases a competitive relationship that is at least partial or potential. The second paragraph of Article 95 of the EEC Treaty thus becomes relevant whenever the degree of similarity between specific kinds of spirits is in doubt or challenged.

Article 95 taken in its entirety, is therefore applicable to all the products concerned without distinction.

Accordingly, the Court held that, with regard to products imported from the other Member

⁶ Bull. EC 10-1979, point 2.1.41.

States, France, Italy and Denmark had failed to fulfil their obligations under Article 95 of the EEC Treaty and must, therefore, apply the same level of taxation to both home-produced and imported spirits.

United Kingdom

2.1.28. In the case concerning the United Kingdom (170/78) the Court upheld the Commission's view that:

- wine and beer are to some extent substitutable;
- in the United Kingdom the tax burden on wine is greater than that on beer;
- the development of the two tax systems in question reveals a protective leaning with respect to wine imported into the United Kingdom;
- the proper taxation relationship between wine and beer should be based on alcoholic strength by volume.

The Court did not, however, give its final judgment; it called on the Commission and the United Kingdom to re-examine the subject matter of the proceedings in the light of the legal considerations set out above and to report to it before 31 December on the solution to the conflict worked out by them or, failing that, on their respective positions, taking into account the points of law stated in the judgment.

Ireland

2.1.29. In Case 55/79 the Court held that Ireland had failed to fulfil its obligations under the first paragraph of Article 95 of the Treaty by having introduced tax provisions which had the effect of affording Irish producers preferential treatment with regard to the time limits for the payment of excise duties, to the detriment of persons importing the same products from other Member States.

Implications of these judgments for tax harmonization

2.1.30. The Court's findings not only concur with the arguments put forward by the Commission in the five cases but also add considerable weight to the compromise suggested in June 1979. In particular, the observations made in the interlocutory judgment concerning the United Kingdom are a key element of the overall compromise. By seeking to establish an appropriate relationship in the United Kingdom between the burden of excise duties on wine and that on beer, the Court expressly underscored the importance of this relationship for the Community as a whole.

Tax avoidance

Proposal to extend the system of mutual assistance to other countries

2.1.31. The Commission acted upon the requests from Finland, Iceland, Norway and Sweden to participate in the system of mutual assistance now operating between Member States' tax authorities in the fields of direct taxation and value added tax.¹ It asked the Council on 25 February for authorization to open negotiations with these Nordic countries for the purpose of concluding separate conventions associating them with the Community system. Measures to combat international tax evasion and avoidance will be all the more effective as the system is extended to include the tax authorities in non-member countries.

¹ OJ L 336 27.12.1977; OJ L 331 of 27.12.1979; Bull. EC 10-1979, point 2.1.39; Bull. 12-1979, point 2.1.55.

BULL. EC 3-1980

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.36. On 26 March⁵ the Council, acting on a proposal sent by the Commission on 20 December 1979⁶ adopted the Eleventh Directive on the harmonization of the laws of the Member States relating to turnover taxes. This Directive provides for the exclusion of the French overseas departments from the scope of the Sixth VAT Directive of 17 May 1977.⁷

⁵ OJ L 90 of 3.4.1980.

⁶ Bull. EC 12-1979, point 2.1.56.

⁷ OJ L 145 of 13.6.1977 and Bull. EC 5-1977, points 1.3.1 to 1.3.4.

Excise duties

2.1.37. Also on 26 March,⁵ the Council authorized the French Republic not to apply the Directives on manufactured tobacco of 1972⁶ and 1979⁷ in the French overseas departments. A proposal to this effect had been submitted by the Commission on 28 January.¹⁰

⁵ OJ L 90 of 3.4.1980.

⁶ OJ L 303 of 31.12.1972.

⁷ OJ L 10 of 16.1.1979 and Bull. EC 12-1978, point 2.1.53.

¹⁰ Bull. EC 1-1980, point 2.1.21.

BULL. EC 4-1980

Financial institutions and taxation

Taxation

Direct taxes

Common tax system applicable to mergers

2.1.32. On 30 April the Commission transmitted to the Council a communication designed to give a new impetus to examination of the proposal for a Directive on mergers, which was presented in 1969¹ and which is shortly to be discussed by the Council.

The proposal is designed to defer the taxation that would otherwise occur when two companies from different Member States engage in a merger or similar operation. Its effect would be to remove some of the tax obstacles to cooperation across frontiers between enterprises wishing to concentrate or disperse their activities.

The stage has now been reached where nearly all the technical problems have been solved in the Council working group. The adoption of the Directive is, however, blocked by political objections on the part of two Member States. Both States fear that, once the tax obstacles

¹ OJ C 39 of 22.3.1969.

to cross-frontier mergers, etc. are removed, companies engaging in a merger or similar operation will transfer the headquarters of the corporate group outside their respective countries.

In an effort to meet the concerns of the two States concerned, and in preparation for the Council discussion, two articles designed to safeguard the interests of any Member State against such risks and to monitor the operation of the Directive are envisaged.

Provision is made for a safeguard article to protect any Member State which finds that, following the introduction of the Directive, mergers or similar operations are 'one-way' (i.e. resulting in the transfer of the headquarters of corporate groups to other Member States) to such an extent as to create serious economic or social problems. Under this article the Member State could apply, stating its reasons, to the Commission for authority to take such measures as are necessary to correct the imbalance.

The Commission would decide, within a limited period of time and after consulting the other Member States, whether authorization should be granted and, if so, under what conditions and for how long.

Any Commission decision refusing authorization, granting authorization or attaching conditions to the authorization would be subject to review by the Council, which, acting by a qualified majority, could substitute its own decision. The safeguard provisions would, however, cease to have effect once Community rules had been introduced to remove any possible causes resulting in mergers or similar operations that were 'one-way'.

Finally, the operation of the mergers Directive will need permanent supervision. It would therefore seem appropriate to add an article requiring the Commission to supervise the application of the Directive, report on its supervision to the Council every two years and make such proposals as seem appropriate.

2.1.33. On 18 April Parliament delivered its opinion¹ on the Commission's proposal on the harmonization of provisions relating to the rules governing turnover tax and excise duty applicable in international travel, which had been transmitted to the Council on 30 November 1979.²

¹ Point 2.3.12; OJ C 117 of 12.5.1980.

² OJ C 318 of 19.12.1979; Bull. EC 11-1979, point

BULL. EC 5-1980

Financial institutions and taxation

Taxation

Indirect taxes

Tax exemptions

2.1.21. Both Parliament² and the Economic and Social Committee³ delivered their opinions on the proposal for a Directive on the Community value-added tax and excise duty procedure applicable to the stores of vessels, aircraft and international trains, transmitted by the Commission to the Council on 23 January.⁴

² OJ C 147 of 16.6.1980; point 2.3.11.

³ Point 2.3.28.

⁴ OJ C 31 of 8.2.1980; Bull. EC 1-1980, point 2.1.19.

BULL. EC 6-1980

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.37. On 13 June the Commission presented the Council with a proposal for a Directive⁷ determining the scope of Article 14(d) of the Council Directive of 17 May 1977⁸ as regards exemption from value-added tax on final importation of certain goods.

The proposed Directive has a very wide scope: it covers the personal effects of private individuals coming from non-member countries, goods imported by schoolchildren and students, stock imported by firms on transfer of their activities and goods sent to charitable or philanthropic bodies.

⁷ OJ C 171 of 11.7.1980.

⁸ OJ L 145 of 13.6.1977; Bull. EC 5-1977, points 1.3.1 to 1.3.4.

Tax-free allowances

2.1.38. On 6 June the Commission decided to amend its proposal for a fifth Directive, which had been sent to the Council on 30 November 1979,⁹ on the harmonization of provisions laid down by law, regulation or administrative action relating to the rules governing turnover tax and excise duty applicable within the Community in international travel.

The amended proposal provides:

- (i) for an increase in tax-free allowances between 1 July 1980 and 1 January 1982 from 180 ECU to 300 ECU for travellers aged 15 and over and from 50 ECU to 85 ECU for travellers under 15; at the same time, some of the partial derogations enjoyed by Denmark and Ireland are to be phased out;
- (ii) the gradual abolition, over the same period, of quantitative limits on allowances for tea and coffee, and an increase in the allowance for wine from 4 to 5 litres (from 3 to 4 litres for Denmark).

⁹ OJ C 318 of 19.12.1979; Bull. EC 11-1979, point 2.1.38.

Excise duties

Manufactured tobacco

2.1.39. On 25 June the Commission adopted a proposal to supplement the Council Directive adopted on 19 December 1972;¹ the proposal introduces the third stage of harmonization for the structure of excise duties on cigarettes. It is proposed that this stage should begin on 1 January 1981 and end on 31 December 1986. During this period, the specific component of the excise duty should fall within the range of 10% to 35% of the total tax burden. However, in view of the persisting wide differences between national arrangements, the Member States would be authorized to levy specific excise duties of between 5% and 55% of the total tax burden (as during the second stage) until 31 December 1982, and of between 7.5% and 42% from 1 January 1983 until 31 December 1984. These percentages are based on the calculations carried out by Commission departments in connection with the single specific component to be applied at the final stage, which will be equal to 20%.

¹ OJ L 303 of 31.12.1972.

BULL. EC 7/8-1980

BULL. EC 9-1980

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.27. At its session of 24 and 25 September the Economic and Social Committee delivered its opinion¹ on the proposal for a Directive—sent by the Commission to the Council on 13 June 1980—on exemption from value-added tax on the final importation of certain goods.²

¹ Point 2.3.27.

² OJ C 171 of 11.7.1980.

BULL. EC 10-1980

Financial institutions and taxation

Taxation

Indirect taxes

Excise duties

Alcoholic beverages

2.1.31. At its meeting on 27 October in Luxembourg, the Council (Tax Questions) was unable to reach definitive agreement on the thorny problem of the harmonization of the structure of excise duties on beer, wine and spirits, even though the Presidency had evolved proposals for an overall solution. The press release issued at the end of the meeting stated, however, that certain new elements had emerged from the discussion that would have to be looked at more closely.

It was in 1972 that the Commission presented a framework Directive covering all excise duties and three proposals for Directives on the harmonization of the duties on

spirits, beer and wine.² Because of differences of opinion between the Member States, the Council suspended its examination of these proposals towards the end of 1974. The Commission attempted to reopen discussion of the matter by transmitting to the Council on 2 August 1977 a communication setting

out a number of proposals;³ this initiative did not, however, pave the way for a solution, although the Council did resume its technical examination of the three proposals in 1978.

On 26 June 1979 the Commission transmitted to the Council a new communication suggesting a number of compromise solutions to the main problems arising out of the three proposals for Directives;⁴ the compromise solutions were discussed by the Council at its meeting on 16 October 1979 but no agreement was reached.⁵ Five procedures initiated in these matters by the Commission under Article 169 of the EEC Treaty were concluded on 27 February; the judgments delivered by the Court of Justice⁶ laid down a number of principles and clarified several points which, until then, had hampered progress towards an agreement.

The criteria fixed by the Court thus seemed to provide the basis for an overall compromise solution that would make it possible to resolve forthwith the serious problem posed by harmonization of excise duties within the Community.

It was with this objective in mind that the Luxembourg Presidency put forward in September a number of proposals for a blanket solution to the problem; these proposals differ from those made by the Commission in 1979 in the following respects:

(i) the proposal for a harmonized excise duty on wine was left on ice;

(ii) the excise duty on wine should not be more than three times higher than that charged on the most popular category of beer on each market; this would ensure that, irrespective of the differences in the alcoholic strength of wine and beer on each market, the ceiling was the same in all Member States;

(iii) with regard to intermediate products (flavoured wines, liqueur wines, etc.), it is proposed that all the Member States should have the right to apply to certain liqueur wines produced in specific regions under particular conditions a reduced rate equal to not less than 20% of the full rate for alcohol.

This was the compromise solution, which had the backing of the Commission, that was discussed by the Council (Tax Questions) at

² OJ C 43 of 29.4.1972; Bull. EC 4-1972, Part One, Ch. II; Supplement 3/72 — Bull. EC.

³ Bull. EC 7/8-1977, point 2.1.39.

⁴ Bull. EC 6-1979, point 2.1.39.

⁵ Bull. EC 10-1979, point 2.1.41.

⁶ Bull. EC 2-1980, points 2.1.26 to 2.1.30.

its meeting on 27 October, when the main problems posed by harmonization of the structure of excise duties on alcoholic beverages were reviewed. Since, once again, no definitive agreement was reached, it was decided to return to the matter before the end of the year.

2.1.32. At its 29-30 October session the Economic and Social Committee gave its opinion¹ on the Commission's proposal² of 21 December 1979 for a Council Directive concerning the harmonization of income taxation provisions with respect to freedom of movement for workers within the Community.

¹ Point 2.3.26.

² OJ C 21 of 26.1.1980; Bull. EC 12-1979, point 2.1.58.

BULL. EC 11-1980

BULL. EC 12-1980

Financial institutions and taxation

Taxation

Indirect taxes

Tax-free allowances

Increases proposed by the Commission

2.1.42. On 18 December the Commission transmitted to the Council two proposals for Directives, one of which is designed to increase from 60 EUA to 70 ECU, as from 1 January 1981, the amount of the tax reliefs allowed on the basis of the Directive of 19 December 1974 on the importation of goods in small consignments of a non-commercial character within the Community.¹

The other provides for an increase, as from the same date, in the amount of tax-free allowances applied, on the basis of the Directives of 28 May 1969² and 19 December 1978³, in international travel (45 ECU instead of the present 40 EUA for travellers over 15 years of age and 23 ECU instead of the present 20 EUA for those under 15 years of age) and to

¹ OJ L 354 of 30.12.1974.

² OJ L 133 of 4.6.1969.

³ OJ L 366 of 28.12.1978.

imports of goods in small consignments of a non-commercial character from third countries (35 ECU instead of the present 30 EUA).

Derogation to Denmark

2.1.43. On 30 December the Commission transmitted to the Council a report on the derogation granted to Denmark, by a Council Directive adopted on 19 December 1977⁴ concerning the rules governing turnover tax and excise duty applicable in international travel. This Directive authorized Denmark to derogate from the Community system of allowances up to 31 December 1982, and the Commission undertook to report annually to the Council on changes in the prices of tobacco products and alcoholic beverages in Denmark and in the Federal Republic of Germany, on changes in fares for travellers in Denmark and on the Danish Government's tax policy. The Commission report (the third of its kind) concludes that in general—as in 1978⁵ and 1979⁵—no significant progress was made in 1980 in reducing the differences between the prices of the products concerned. On the contrary, the introduction of the mixed system for taxing spirits in Denmark tended to aggravate the situation in the case of expensive alcoholic beverages.

Excise duties

Manufactures tobacco

2.1.44. On 22 December the Council decided, on a proposal from the Commission,⁶ to extend by six months (until 30 June 1981) the second stage in harmonizing the structure of excise duties on cigarettes. The Council was unable to act before 31 December on the proposal for a Directive (presented by the Commission on 1 July) to

⁴ OJ L 366 of 27.12.1977; Bull. EC 12-1977, point 2.1.68.

⁵ Bull. EC 1-1979, point 2.1.43; Bull. EC 1-1980, point 2.1.20.

⁶ OJ C 311 of 29.11.1980.

establish the bases for a third stage (1981-86) in harmonizing the structure of excise duties on cigarettes.¹

2.1.45. On 19 December Parliament gave its opinion,² on the Commission proposal to the Council for extending by six months the second stage of the harmonization of the structure of excise duties on cigarettes. The Economic and Social Committee delivered its opinion at its 10-11 December session.

¹ OJ C 264 of 11.10.1980; Bull. EC 6-1980, point 2.1.39.

² OJ C 346 of 31.12.1980.

2.1.46. On 16 December the Commission transmitted to the Council a report on the implications of the additional excise duty (tar surcharge) levied by the United Kingdom on cigarettes yielding 20 mg or more of tar per cigarette

BULL. EC 1-1981 -

BULL. EC 2-1981 -

BULL. EC 3-1981 -

BULL. EC 4-1981 -

BULL. EC 5-1981

Financial institutions and taxation

Taxation

Indirect taxes

2.1.31. On 20 May the Commission sent to the Council a communication on the programme for the simplification of value-added tax procedures and formalities in intra-Community trade.

The programme describes the various Community measures that will need to be taken in the years ahead to simplify substantially

the operation of the common VAT system in intra-Community trade. Some of these measures relate to transactions carried out by undertakings subject to VAT, while others apply to transactions carried out by individuals.

The first group of measures covers in particular the method of collecting value-added tax due on imports carried out by taxable undertakings. As requested both by members of Parliament and by trade associations, the intention is to ask all the Member States to apply the principle of deferred payment of the tax due on imports from Member States on the basis of taxable persons' periodical returns, in line with the arrangements already applied in some countries, notably in the Benelux countries. Bearing in mind the requirements of simplification, such deferment seems to offer the most satisfactory solution since frontier formalities are reduced to a minimum (oral declaration and presentation of invoice), since the procedure operates under the responsibility of the taxable persons (who calculate, declare and deduct the tax) and since only one declaration and only one payment are made in respect of imports and in respect of transactions carried out within the Community.

Among the specific measures benefiting individuals, the Commission is contemplating various proposals for reducing the number of cases of double taxation still encountered in the Community in connection with a range of individual transactions and for simplifying the customs formalities with which individuals have to comply when engaging in certain import transactions, e.g. in the event

of removal. The Commission also underscores the importance it attaches to adoption by the Council of the proposals on the temporary importation of certain means of transport and on the permanent importation of personal property.¹ These proposals, which have been examined meticulously in the Council, would introduce new tax-free allowances upon importation and a strict definition of the concept of normal residence, thereby putting an end to most of the inconvenience that individuals have to put up with when carrying out transactions of this kind.

There are two limitations to what such a programme can achieve. The first arises from the existence of tax frontiers: their eventual removal will become possible only after rates of tax have been aligned, and this means that until then imports from other Member States will continue to be taxed while exports will remain exempt. The second lies in the need to combat tax fraud. The chances of success of a programme aimed at simplifying tax formalities and procedures at the Community's internal frontiers also depend, of course, on the progress made by the Community in other fields, including the customs field.

Excise duties

Manufactured tobacco

2.1.32. On 20 May the Commission sent to the Council a proposal for a Directive extending for six months, i.e. until 31 December 1981, the second stage of harmonizing the structure of excise duties on cigarettes, an initial six-month extension having been decided by the Council on 22 December 1980.² This move was prompted by the fact that the Council will be unable to take a decision before 30 June on the proposal presented by the Commission on 12 July 1980 aimed at establishing the basis for a third stage (1981-86) of harmonization of the structure of excise duties on cigarettes,³ since it will not receive Parliament's opinion in time.

2.1.33. On 7 May Parliament gave its opinion⁴ on two proposals for Directives concerning tax exemptions and reliefs.⁵ One of the proposals amends the Directive of 28

¹ OJ C 267, 21.11.1975; Bull. EC 10-1975, points 2112 and 2113.

² OJ L 375, 31.12.1980; Bull. EC 12-1980, point 2.1.44.

³ OJ C 264, 11.10.1980; Bull. EC 6-1980, point 2.1.39.

⁴ OJ C 144, 15.6.1981.

⁵ OJ C 350, 31.12.1980; Bull. EC 12-1980, point 2.1.42.

May 1969 on tax exemptions in international travel¹ and the Directive of 19 December 1978 on tax exemptions on imports of small consignments of a non-commercial character from third countries.² The other amends the Directive of 19 December 1974 on tax reliefs on the importation of goods in small consignments of a non-commercial character within the Community.³ While endorsing the proposals, Parliament stressed that the Council should, in the interests of travellers, ensure that the real value of these exemptions and reliefs in terms of their purchasing power will be maintained.

¹ OJ L 133, 4.6.1969.

² OJ L 366, 28.12.1978.

³ OJ L 354, 30.12.1974.

BULL. EC 6-1981

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.41. On 24 June, in the light of the opinions delivered by Parliament⁷ and by the Economic and Social Committee,⁸ the Commission amended its proposal for a Directive on exemption from VAT on the final importation of certain goods.⁹ The amendments amplify certain provisions in the original proposal, including those concerning exemption for goods imported for the benefit of disaster victims, samples, imports of small value, and severely damaged vehicles.

Excise duties

2.1.42. On 24 June the Council adopted,¹⁰ after obtaining Parliament's opinion,⁶ the

⁶ OJ C 172, 13.7.1981.

⁷ OJ C 50, 9.3.1981; Bull. EC 2-1981, point 2.3.8.

⁸ OJ C 300, 18.11.1980; Bull. EC 9-1980, point 2.3.27.

⁹ OJ C 171, 11.7.1980; Bull. EC 6-1980, point 2.1.37.

¹⁰ OJ L 183, 4.7.1981.

proposal for a further extension of the second stage in the harmonization of the structure of excise duties on cigarettes.¹

2.1.43. As Parliament had voted against the proposal for the transition to a third stage,² the Commission agreed to study the matter before Parliament delivered its opinion.³

¹ Bull. EC 5-1981, point 2.1.32.

² OJ C 264, 11.10.1980; Bull. EC 6-1980, point 2.1.39.

³ Point 2.3.7.

BULL. EC 7/8-1981

Financial institutions and taxation

Taxation

Direct taxes

Turnover taxes

2.1.44. On 20 July, the Commission sent the Council a proposal for a Decision authorizing the Italian Republic to waive until 31 December 1981 the provisions of the Sixth VAT Council Directive of 17 May 1977,³ by granting exemption with refund of input VAT for certain operations of emergency relief to victims of the earthquake of November 1980.

Tax-free arrangements

2.1.45. On 28 July, the Commission sent the Council a proposal for a Regulation⁴ to allow certain goods to be sent from a Member State for temporary use in another Member State without taxes being collected in the importing State.

³ OJ L 145, 13.6.1977.

⁴ Point 2.1.29.

2.1.46. In its judgment of 7 July (and its order of 15 July) the Court of Justice gave a ruling on tax-free and duty-free arrangements in the case of 'butter ships'.¹ This ruling basically means that duty-free and tax-free sales of various goods on these ships are incompatible with Community law.

¹ Point 2.3.38.

BULL. EC 9-1981

Financial institutions and taxation

Taxation

Indirect taxes

Excise duties

Alcoholic beverages

2.1.37. At its meeting on tax questions in Brussels on 22 September the Council noted that it needed more time to reach a decision on the problem of the harmonization of excise duties on alcoholic beverages.² Since new proposals were tabled at the meeting, the Council decided to hold over its deliberations until the meeting scheduled for 21 October.

² Bull. EC 10-1980, point 2.1.31.

BULL. EC 10-1981

Financial institutions and taxation

Taxation

Indirect taxes

Excise duties

Alcoholic beverages

2.1.44. A further Council meeting on taxation held on 21 October once again failed to reach agreement on the harmonization of excise duties on alcoholic beverages.¹ The Commission is continuing its examination of discrimination in this field in the light of Article 95 of the EEC Treaty.

Manufactured tobacco

2.1.45. On 28 October the Commission proposed² to the Council a further extension (until the end of 1982) of the second stage in the harmonization of the structure of excise duties on cigarettes.³

Parliament has reserved its opinion⁴ on the

¹ Bull. EC 9-1981, point 2.1.37.

² OJ C 285, 7.11.1981.

³ Bull. EC 6-1981, point 2.1.42.

⁴ Bull. EC 6-1981, point 2.3.7.

proposal to proceed to the third stage⁵ pending a detailed study by the Commission on the effects of continued harmonization in this field.

⁵ OJ C 264, 11.10.1980; Bull. EC 6-1980, point 2.1.39.

BULL. EC 11-1981

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.45. On 3 November the Council adopted a Decision³ authorizing the Italian Republic, until 31 December 1981, by way of derogation from the Sixth VAT Directive of 17 May 1977,⁴ to exempt, with refund of the tax paid at the preceding stage, certain transactions carried out in connection with emergency relief to the victims of the November 1980 earthquake.

Tax-free allowances

2.1.46. On 17 November the Council adopted⁵ two proposals for Directives transmitted on 18 December 1980,⁶ which will increase, from 1 January 1982, the tax relief applicable, respectively, to the importation of goods in small consignments of a non-commercial character within the Community, and in international travel to imports of small consignments of goods of a non-commercial character from non-member countries.

The new allowances will be:

- (i) for travellers entering the Community from non-member countries:
45 ECU (formerly 40 EUA);
- (ii) for consignments of goods sent from non-member countries:
35 ECU (formerly 30 EUA);
- (iii) for goods sent from one part of the Community to another:
70 ECU (formerly 60 EUA).

2.1.47. At its November session the Economic and Social Committee gave its opinion⁷ on the proposal to extend the second stage of harmonization of the structure of excise duties on cigarettes.⁸

³ OJ L 322, 11.11.1981.

⁴ OJ L 145, 13.6.1977.

⁵ OJ L 338, 25.11.1981.

⁶ OJ C 350, 31.12.1980; Bull. EC 12-1980, point 2.1.42.

⁷ Point 2.3.26.

⁸ OJ C 285, 7.11.1981; Bull. EC 10-1981, point 2.1.45.

BULL. EC 12-1981

Financial institutions and taxation

Taxation

Convergence of tax systems

2.1.52. On 3 December the Commission sent the Council a proposal for a Decision establishing a prior information and consultation procedure for tax matters.

The proposal provides first of all that Member States must notify the Commission and the other Member States of any proposed tax measures that may have an appreciable influence on the establishment or functioning of the common market or on the implementation of a common policy or common action. Second, it provides that the Commission may express an opinion or adopt a recommendation concerning the proposed measures. It also enables the Commission to enter into consultations with all Member States on the measures in question whenever a Member State requests such consultations or the Commission itself deems them appropriate.

Excise duties on manufactured tobacco

2.1.53. On 21 December the Council adopted a Directive⁹ extending by one year the second stage in the harmonization of the structure of excise duties on manufactured tobacco.¹⁰ Parliament had given its opinion

⁹ OJ L 5, 9.1.1982.

¹⁰ OJ L 338, 20.12.1977.

on the Commission's proposal on 18 December.¹

¹ OJ C 11, 18.1.1982; Bull. EC 10-1981, point 2.1.45.

BULL. EC 1-1982

Financial institutions and taxation

Taxation

Indirect taxation

Tax allowances

Report to the Council on the derogation granted to Denmark

2.1.24. On 13 January the Commission transmitted to the Council a report on the derogation granted to Denmark, under a Directive adopted on 19 December 1977,⁴ relating to the rules governing turnover tax and excise duty applicable in international travel. This Directive authorized Denmark to derogate from the Community system of allowances up to 31 December 1982, and the

Commission undertook to report annually to the Council on the prices of tobacco products and alcoholic beverages in Denmark and the Federal Republic of Germany, on passenger fares in Denmark and on the Danish Government's tax policy. The Commission's latest report, the fourth,⁵ which covers the period from 1 October 1980 to 30 September 1981, concludes that in general no significant progress was made in 1981 in reducing the differences between the Danish and German prices. If present trends continue, the situation at the end of 1982, when the five-year derogation expires, will be broadly the same as it was in 1977.

2.1.25. On 22 January Parliament delivered its opinion⁶ on the proposal for a Regulation introducing arrangements for movement within the Community of goods sent from one Member State for temporary use in one or more Member States.⁷ Parliament broadly approved this proposal, which it had called for in a resolution passed on 16 October 1980.⁸

⁴ OJ L 336, 27.12.1977; Bull. EC 12-1977, point 2.1.68.

⁵ Bull. EC 1-1979, point 2.1.43; Bull. EC 1-1980; point 2.1.20.

⁶ OJ C 40, 15.2.1982.

⁷ OJ C 227, 8.9.1981; Bull. EC 7/8-1981, points 2.1.29 and 2.1.45.

⁸ OJ C 291, 10.11.1980; Bull. EC 10-1980, points 2.1.25 and 2.3.9.

BULL. EC 2-1982

Financial institutions and taxation

Taxation

Indirect taxes

Excise duties

2.1.30. On 23 February the Commission presented to Parliament the report it had requested on the implications of further harmonization of excises on manufactured tobacco. This report is the first of the sort on one of its own proposals; the Commission had undertaken to prepare it for Parliament, following Parliament's unfavourable opinion in June 1981⁶ on the proposal for a Directive for the third stage of harmonization of the excises on manufactured tobacco.⁷ The Economic and Social Committee had proposed a different approach to harmonization in this field in February 1981.⁸ The Commission's report demonstrates that the proposals for the third stage follow the principles for harmonization adopted for the previous stages and that the computing method used in the present mixed excise duty system is still the best way of arriving at a fair compromise among the national taxation systems.

It is understood that Parliament, in the light of this report, will deliver its opinion on the proposal for a Directive on the third stage of harmonization of the excises on cigarettes.

⁶ OJ C 172, 13.7.1981.

⁷ OJ C 264, 11.10.1980; Bull. EC 6-1980, point 2.1.39.

⁸ OJ C 138, 9.6.1981; Bull. EC 2-1981, point 2.3.26.

BULL. EC 3-1982

Financial institutions and taxation

Taxation

Indirect taxes

Tax-free arrangements

2.1.37. On 19 March the Commission amended, in the light of the opinion adopted by Parliament,¹¹ its proposal for a Regulation to allow certain goods to be sent from a Member State for temporary use in another Member State without taxes being collected in the importing State.¹² The proposal was sent to the Council on 28 July 1981.¹³

¹¹ Bull. EC 1-1982, point 2.1.16.

¹² Point 2.1.23.

¹³ OJ C 227, 8.9.1981; Bull. EC 7/8-1981, point 2.1.45.

BULL. EC 4-1982

Financial institutions and taxation

Taxation

Indirect taxes

Turnover tax

2.1.20. On 16 April, in response to a request from the Italian authorities, the Commission sent the Council a proposal to extend until 31 December 1982, for a number of explicitly specified transactions, the temporary derogation from the Sixth VAT Directive of 17 May 1977³ authorized until 31 December 1981 by a Council Decision of 3 November 1981.⁴ That Decision had enabled Italy to derogate temporarily from the value-added tax arrangements in the case of certain transactions carried out in connection with emergency relief to the victims of the November 1980 earthquake. An extension of the November 1981 Decision was necessary in view of the special situation in the disaster areas.

³ OJ L 145, 13.6.1977.

⁴ OJ L 322, 11.11.1981; Bull. EC 11-1981, point 2.1.45.

Excise duties

2.1.21. On 1 April the Commission sent the Council a proposal for a Decision authorizing the French Republic to apply in its overseas departments and in metropolitan France, in derogation from Article 95 of the EEC Treaty, a reduced rate of the revenue duty imposed on the consumption of 'traditional' rum produced in those departments.¹ Derogations from basic principles of the Treaty such as the non-discrimination rule of Article 95 should be authorized with caution and must be severely limited. Consequently, the Commission proposes that the favourable tax arrangements be limited to an annual quota of 'traditional' rum corresponding to the average annual consumption of such rum in metropolitan France during the past 10 years. It is further proposed that the relative tax advantage enjoyed by 'traditional' rum should be restricted, with the ratio between the reduced rate on 'traditional' rum and the full rate on spirits not allowed to be less than the ratio obtaining on the date of entry into force of the Decision. The situation is to be reviewed by the Council after five years, on the basis of a report to be made by the Commission.

¹ OJ C 107, 28.4.1982.

BULL. EC 5-1982

Financial institutions and taxation

Taxation

Direct taxes

2.1.27. On 14 May Parliament also delivered its opinion⁶ on the proposal for a Directive concerning the harmonization of income taxation provisions with respect to freedom of movement for workers within the Community.⁷ It supports the principle of a Community definition of the frontier worker, a concept which has previously been defined very differently by the bilateral conventions concluded between Member States, and calls on the Commission to define the frontier worker in an identical manner for the purposes of both taxation and social security legislation.

⁶ OJ C 51, 10.3.1981; Bull. EC 12-1980, point 2.1.39.

⁷ OJ C 21, 26.1.1980; Bull. EC 12-1979, point 2.1.58.

BULL. EC 6-1982

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.57. On 23 June the Commission adopted for transmission to the Council a proposal for a Directive on the deferred payment of the value-added tax payable by taxable persons on imports from Member States. This tax proposal is part of the overall programme launched by the Commission to strengthen the Community's internal market.² The proposed arrangements are largely based on those which have been applied for many years by the Benelux countries and by two other Member States. While the chargeable amount for goods imported into one Member State from another remains the same, deferred payment offers clear advantages in that it simplifies matters for taxable persons and for the VAT and customs authorities:

(i) Under this procedure, it is the taxable persons' responsibility, under the supervision of their VAT office, to calculate the tax due and to declare, pay and, where appropriate,

² Point 2.1.10.

deduct it on the tax returns which they submit periodically in respect of all their business activities;

(ii) The formalities to be completed at the time of importation can therefore simply consist of the production of the required documents and a random check of the goods.

The proposed arrangements constitute minimum Community requirements and Member States are free to introduce further simplifications.

The deferred payment procedure differs markedly from that applied to trade by five Member States on the basis of customs regulations, including Community trade. Under that procedure, payment of the tax on importation is generally deferred for 30 days or even longer. Its unwieldiness, which is keenly felt by small and medium-sized firms, is due mainly to the 'entry in the accounts', the official act by which the customs authorities establish the amount of import duty in respect of each transaction.

On a purely technical level, implementation of this proposal would require only a minimum effort from those Member States which would have to amend their legislation, while the result would be a considerable strengthening of the internal market. However, this proposal is also likely to present some of those same Member States with two problems. The first concerns the change in the division of responsibilities between the VAT authorities and the customs authorities, since the latter would no longer have to collect the tax, which would henceforth be declared to the former. The second problem is a budgetary one and arises from the fact that the proposed deferred payment procedure would bring forward the moment at which the tax is actually deducted. This would lead to some shortfall of revenue during the financial year in which the arrangements were introduced. This relatively minor problem can easily be solved by implementing the deferred payment arrangement gradually so that the effect is spread over two financial years.

The fate of this proposal will therefore depend to a large extent on how the Member States concerned will wish to weigh these two problems in the balance against the simplifications which must be introduced to strengthen the internal market.

2.1.58. On 21 June the Council adopted,¹ on a proposal from the Commission,² a Decision authorizing the Italian Republic to extend until 31 December 1982, by way of derogation from the Sixth VAT Directive of 17

¹ OJ L 184, 29.6.1982.

² Bull. EC 4-1982, point 2.1.20.

May 1977,³ the exemption, with refund of the tax paid at the preceding stage, of certain transactions carried out in the context of aid to earthquake victims in southern Italy.

2.1.59. On 23 June the Commission transmitted to the Council a communication⁴ informing it of a request from the Netherlands Government for a derogation from the Sixth VAT Directive of 17 May 1977.⁵ The Commission indicated its approval of this request, which was designed to combat certain fraudulent activities on the part of subcontractors and persons providing labour in the building, structural steelwork and shipbuilding industries.

Tax-free allowances

2.1.60. At its 28-29 June meeting the Council adopted the proposal for a fifth Directive relating to the rules governing turnover tax and excise duty applicable in international travel,⁵ which the Commission had transmitted to it on 30 November 1979.⁶ Under this Directive, from 1 January 1983 (for Denmark, from 1 January 1984), travellers aged 15 or over coming from another Member State may import in their personal luggage, free of tax, goods whose total value does not exceed 210 ECU (present limit: 180 ECU). Member States may restrict the value of goods imported by travellers under 15 to 60 ECU (present limit: 50 ECU).

³ OJ L 145, 13.6.1977.

⁴ OJ C 175, 13.7.1982.

⁵ OJ L 206, 14.7.1982.

⁶ Bull. EC 11-1979, point 2.1.38.

BULL. EC 7/8-1982

Financial institutions and taxation

Taxation

Indirect taxes

Turnover tax

2.1.54. On 19 July³ the Commission sent the Council a proposal for a Directive on the arrangements for the refund to taxable persons not established in Community territory

³ OJ C 223, 27.8.1982.

of value-added tax paid by them on imports or purchases of goods and services made in a Member State. This proposal supplements the Directive of 6 December 1979 on the arrangements for the repayment of VAT to taxable persons established in a Member State other than the State of purchase or importation.⁴ At the moment Member States treat non-Community taxable persons in very different ways: some apply more favourable repayment arrangements than others. This is a source of unfair competition between Member States in their trade relations with non-Community countries. The new proposal seeks to remove this difficulty and so contribute to the process of European integration.

⁴ OJ L 331, 27.12.1979.

BULL. EC 9/1982 -

BULL. EC 10/1982 -

BULL. EC 11/1982

Financial institutions and taxation

Indirect taxation

Turnover tax

2.1.39. On 26 November the Commission sent the Council two communications concerning the application of Article 30 of the sixth Council Directive of 17 May 1977 on value-added tax¹ to two applications for derogations made by the Italian Government in connection with conventions between Italy and Switzerland and between Italy and Austria.

These conventions permit exemption from VAT of the temporary importation of equipment and the final importation of materials, fuels and consumable goods used in the event of emergency measures to combat accidental pollution of the common waters (convention between Italy and Switzerland), and for the maintenance of the frontier between Italy and Austria (convention between those two countries).

In accordance with Article 30 of the Directive, the Council's decisions authorizing Italy to conclude these two conventions will be deemed to have been adopted if, within two

¹ OJ L 145, 13.5.1977.

months of the other Member States being informed, the matters have not been raised before the Council.

In its communications to the Council the Commission states that it does not intend to request that the questions be raised before the Council.

Tax-free allowances

2.1.40. On 29 November the Commission sent to the Council a proposal for a directive granting Denmark a further prolongation until 31 December 1987 of the derogation from the rules governing turnover tax and excise duty in international travel.² The

² OJ L 206, 14.7.1982; Bull. EC 6-1980, point 2.1.60.

proposal was made in response to a request by the Danish Government for the derogation to be extended for six years.

The derogation proposed by the Commission provides that the arrangements at present applied in Denmark should be gradually brought into line with the Community arrangements over a five-year period.

Excise duties

Manufactured tobacco

2.1.41. On 15 November the Commission proposed that the Council extend for the fourth time, until the end of 1983, the second stage of harmonization of the structure of excise duties on cigarettes.¹ This extension is required to prevent a legal hiatus after 31 December 1982.

Parliament has several times rejected the proposal for a directive introducing the third stage of harmonization;² as the Commission has not withdrawn its proposal, Parliament decided on 19 November to refer the question back to the appropriate committee once again, in accordance with Rule 35 of its Rules of Procedure.

¹ OJ C 310, 27.11.1982.

² OJ C 264, 11.10.1980; Bull. EC 6-1980, point 2.1.39; Bull. EC 6-1981, point 2.3.7.

BULL. EC 12-1982

Financial institutions and taxation

Taxation

Indirect taxes

Value-added tax

2.1.50. On 21 December the Commission adopted a proposal for a Twelfth VAT Directive designed to establish at Community level the types of business expenditure on which the VAT charged will not be deductible. Until this proposal is adopted by the Council, Member States are free to maintain all the exclusions from the right to deduct input tax at present permitted under their national laws.

Excise duties

2.1.51. Parliament did not deliver its opinion on the proposals for a third stage of harmonization of excise duties on manufactured tobacco until December;² to give itself time to examine these proposals and to limit the uncertainty for the interests concerned, the Council decided on 21 December to extend the second stage by a further year, until 31 December 1983.³

Tax-free allowances

2.1.52. On 30 December the Council adopted a Directive⁴ extending the current derogation whereby Denmark is authorized to apply more restrictive quantitative limits on goods imported by Danish residents after a stay in another country than those provided for under the Community arrangements for tax-free allowances for travellers.⁵

² OJ C 13, 17.1.1983; Bull. EC 2-1982, point 2.1.30.

³ OJ L 369, 29.12.1982.

⁴ OJ L 12, 14.1.1983.

⁵ OJ L 336, 27.12.1977; Bull. EC 11-1982, point 2.1.40.

⁶ Point 2.1.58.

⁷ Point 1.2.3.

BULL. EC 1-1983

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.30. On 17 January the Commission transmitted to the Council a report⁹ on the transitional provisions applicable under the common system of VAT and set out in Article 28 of the Sixth Council Directive of 17 May 1977.¹⁰ These provisions, which are designed to facilitate the move towards the final form of the common VAT system, relate mainly to the freedom to maintain zero-rating, to continue to tax transactions which will have to be exempt under the final arrangements, to continue to exempt transactions which will have to be taxed, to recognize the right to opt for taxation and to derogate from other provisions of the common system.

Article 28 of the Sixth Directive stipulates that all these transitional provisions must be reviewed periodically by the Council on the basis of a report drawn up by the Commission. The report presented is in response to this requirement. In it the Commission describes the present situation and suggests ways of gradually correcting certain anomalies which, if allowed to continue, might distort competition or complicate the task of determining the base of the Communities' own resources accruing from VAT.

The Commission hopes that this will facilitate discussion of the proposals which it will present subsequently to the Council with a view to the possible withdrawal of certain derogations.

2.1.31. On 13 January Parliament endorsed¹¹ the proposal for a Directive on the deferred payment of value-added tax payable by taxable persons on imports from Member States.¹²

¹⁰ OJ L 145, 13.6.1977.

¹¹ OJ C 42, 14.2.1983.

¹² OJ C 201, 5.8.1982; Bull. EC 6-1982, point 2.1.57.

Indirect taxes

Turnover tax

2.1.41. On 24 February the Commission sent to the Council a communication² concerning the application of Article 27(1) to (4) of the Sixth Council Directive of 17 May 1977 on value-added tax³ to a request for derogation submitted by the German and Luxembourg Governments. The purpose of the derogation, as provided in the draft agreement between Germany and Luxembourg, is to simplify the collection of VAT on the transactions relating to the construction and maintenance of a frontier bridge.

2.1.42. At its meeting on 1 February on the internal market⁴ the Council heard an interim report on the question of deferred payment of the VAT payable by taxable persons on importation of goods coming from Member States. The Council instructed the Permanent Representatives Committee actively to continue its examination of the Commission proposal⁵ in the light of the comments made at the meeting and to report back to the next Council meeting.

2.1.43. At its 23 and 24 February session the Economic and Social Committee approved the Commission proposal.

Tax-free allowances

2.1.44. On 4 February the Commission sent to Parliament, the Council and the Economic and Social Committee a report on tax-free allowances benefiting individuals.⁶ The report, prepared at the request of Parliament, describes the system in current operation, identifies areas ripe for further development and those giving rise to difficulties, and examines possible improvements to the system. The report covers travellers' tax-free allowances and tax-free allowances for small parcels sent both within the Community and from non-Community countries.

It is hoped that the report will stimulate general discussion, and it is to be followed by specific proposals for the improvement of the system.

² COM(83)79 final.

³ OJ L 145, 13.6.1977.

⁴ Point 2.1.8.

⁵ OJ C 201, 5.8.1982; Bull. EC 6-1982, point 2.1.57.

⁶ COM(83)47 final.

BULL. EC 2-1983

Financial institutions and taxation

Taxation

BULL. EC 3-1983

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.42. The Council continued examining the Commission proposal for a Directive on the deferred payment of the value-added tax payable on imports.¹ The Commission was asked to contact certain of the delegations and clear up their remaining objections. The Permanent Representatives Committee and afterwards the Council would then be able to take the matter up again.

Tax-free allowances

2.1.43. On 28 March the Council adopted three important Directives in the field of tax-free allowances on imports.² Their purpose, in line with that of the Commission's proposals, is to help bring about a genuine internal market and benefit the man in the street, even if this still has to be within certain limits and subject to certain conditions. A fourth Directive, concerning duty-free admission of fuel contained in the tanks of commercial vehicles, was also adopted.

2.1.44. Two of these Directives, which were the subject of Commission proposals presented to the Council on 10 October 1975³ and are to be implemented by the Member States by 1 January 1984 at the latest, apply, in respect of trade within the Community only, to all indirect taxes, i.e. turnover taxes, excise duties and other consumption taxes. For these first two directives the Council adopted a definition of normal residence. The harmonization of this concept is important: it should obviate situations giving rise to double taxation where a person is claimed as a resident by more than one Member State; such situations have caused many complaints in recent years.

The first relates to the permanent importation of personal property belonging to individuals and introduces exemptions when private persons transfer their normal residence, furnish or leave a secondary residence or import property acquired by inheritance or upon marriage.

The second concerns temporary imports of certain means of transport. The Directive is confined to means of transport which have been taxed and sets period of exemption at six months in any twelve for means of transport for private use and private cars for business use. The period of exemption is increased to seven months for commercial intermediaries. Persons qualifying for exemption may make use of the exemption period in one or several stretches in any one year. Exemption is also granted to students studying abroad, who will be able to use a car registered in their country of normal residence for the effective duration of their

¹ Bull. EC 2-1983, point 2.1.8.

² OJ L 105, 23.4.1983.

³ OJ C 267, 27.11.1975; Bull. EC 10-1975, points 2111 to 2114.

studies, and to workers in frontier regions who use their cars to go to work in another Member State. The six-month exemption period does not apply to these two cases.

2.1.45. The third Directive adopted by the Council, on a proposal presented by the Commission on 13 June 1980,⁴ is confined to VAT. It determines the scope of Article 14 of the Sixth Directive⁵ as regards exemption from VAT on the final importation of certain goods. This Directive is the counterpart of the customs Regulation concerning non-tariff exemptions⁶ and contains an exhaustive list of imports coming either from another Member State or from non-member countries which may be exempted from VAT. The list of exemptions is a long one and includes goods imported for the benefit of charitable or philanthropic organizations, trousseaux, pupils' outfits and study requisites, and samples of little value. Conversely, imports not covered by this new text or by any Community text relating to exemptions⁷ will have to bear VAT in all the Member States. Member States are to take steps to comply with this Directive with effect from 1 July 1984.

⁴ OJ C 171, 11.7.1980; Bull. EC 6-1980, point 2.1.37; OJ C 291, 12.11.1981; Bull. EC 6-1981, point 2.1.41.

⁵ OJ L 145, 13.6.1977.

⁶ Point 2.1.28.

⁷ Point 2.1.44.

2.1.46. The fourth Directive adopted by the Council amends the Directive of 19 July 1968 on the standardization of provisions regarding the duty-free admission of fuel contained in the fuel tanks of commercial vehicles.¹ This Directive means that from 1 July 1984 at the latest Member States will admit duty-free 200 litres of fuel carried in a fuel tank.

Excise duties

2.1.47. On 11 March Parliament adopted its opinion² on the Commission proposal for a Decision authorizing the French Republic to apply in its overseas departments and in metropolitan France, in derogation from Article 95 of the Treaty, a reduced rate of the revenue duty imposed on the consumption of 'traditional' rum produced in the overseas departments.³ With certain reservations and on certain conditions Parliament approved the prolongation of the reduced rate until 31 December 1985.

¹ OJ L 175, 23.7.1968.

² OJ C 96, 11.4.1983.

³ OJ C 107, 28.4.1982; Bull. EC 4-1982, point 2.1.21.

BULL. EC 4-1983

Financial institutions and taxation

Taxation

Convergence of tax systems

2.1.58. On 15 April Parliament delivered a favourable opinion² on the proposal for a Decision establishing a prior information and consultation procedure for tax matters.³

Indirect taxes

Turnover tax

2.1.59. On 28 April the Economic and Social Committee endorsed the proposal for a 13th Council Directive on the harmonization of the laws of the Member States relating to turnover taxes.⁴ This proposal makes arrangements for the refund to taxable persons not established in Community territory of VAT paid by them on imports or purchases of goods and services made in a Member State.

Tax-free allowances

Tax-free allowances for travellers

2.1.60. On 8 and 11 April respectively the Commission sent the Council two proposals for Directives:⁵

(i) The first proposes a programme of successive increases in the tax-free allowance granted to travellers within the Community. The allowance, which has been set at 210 ECU since 1 January 1983, would be increased in four stages: to 280 ECU on 1 January 1984, 320 ECU on 1 January 1985, 360 ECU on 1 January 1986 and 400 ECU on 1 January 1987.⁶

The adoption of such a programme, which meets the wishes already expressed by Parliament, would ensure a steady increase in tax-free allowances over the next few years and demand very little of Member States at each stage. The Commission is also proposing the gradual removal of the present quantitative limits for tea and coffee.

(ii) The other proposal concerns the provisions relating to goods acquired by persons travelling by air or by sea within the Community. Its aim is to harmonize the conditions in which such goods may be sold in shops under customs control at airports

² Point 2.4.17; OJ C 128, 16.5.1983.

³ OJ C 346, 31.12.1981; Bull. EC 12-1981, point 2.1.52.

⁴ Point 2.4.36; Bull. EC 7/8-1982, point 2.1.54.

⁵ OJ C 114, 28.4.1983.

⁶ COM(83) 117 final/2.

and on board aircraft, sea-going vessels and hovercraft, and to lay down the conditions governing the tax-free importation of such goods.⁷

⁷ COM(83) 166 final and final/2.

BULL. EC 5-1983

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.52. On 18 May Parliament delivered a favourable opinion² on the proposal for a Directive on the common arrangements for the refund to taxable persons not established in Community territory of the value-added tax which they have paid on purchases of goods or services in a Member State.³ Parliament considers that the Member States should be required to notify the Commission of the non-Community countries in respect of which they apply the provision entitling them not to make refunds where reciprocity arrangements are not observed.

² OJ C 161, 20.6.1983.

³ OJ C 223, 27.8.1982; Bull. EC 7/8-1982, point 2.1.54.

BULL. EC 6-1983

BULL. EC 7/8-1983

Financial institutions and taxation

Taxation

Indirect taxes

Turnover tax

2.1.49. On 1 July the Commission presented its amendment to the proposal for a Thirteenth Directive⁴ on the harmonization of the laws of the Member States relating to turnover taxes, in particular as regards arrangements for the refund to taxable persons not established in Community terri-

⁴ OJ C 196, 23.7.1983; COM(83)413 final.

tory of value-added tax charged on their purchases of goods or services in a Member State or on their imports of goods into a Member State.⁵ The amendment, which takes account of the opinions expressed by the Economic and Social Committee⁶ and by Parliament,⁷ now requires the Member States to notify the Commission of the non-Community countries to which they apply the provision which allows them to withhold refunds; it obliges the Commission to submit the report on the application of the Directive to Parliament at the same time as it is submitted to the Council.

⁵ OJ C 223, 27.8.1982; Bull. EC 7/8-1982, point 2.1.54.

⁶ OJ C 176, 4.7.1983; Bull. EC 4-1983, point 2.4.36.

⁷ OJ C 161, 20.6.1983; Bull. EC 5-1983, point 2.1.52.

Turnover tax for farmers

2.1.50. On 20 July the Commission sent the Council a report on proposals for improving and adjusting the value-added tax arrangements introduced by certain Member States under the common flat-rate scheme for farmers.¹ The report was presented in accordance with Article 25(11) of the Sixth Council Directive of 17 May 1977.² Its purpose is to review the way in which Article 25 has been applied in the Member States which have made use of the option of applying to farmers a flat-rate scheme to offset the value-added tax charged on their inputs. As well as describing the various national flat-rate schemes, the report analyses the differences observed in the implementation of the common flat-rate scheme of Article 25 by the Member States and presents proposals for improvements.

The report is intended to stimulate discussion among all the parties concerned in preparation for talks on the specific and formal proposals which the Commission is to present to the Council with the aim of securing greater convergence in the application of the common flat-rate scheme for farmers; this related in particular to the scope of the flat-rate compensation schemes, which should be limited to producers who would encounter difficulties if they were subject to the normal simplified VAT scheme.

¹ COM(83)435.

² OJ L 145, 13.6.1977.

BULL. EC 9-1983

Financial institutions and taxation

Taxation

Indirect taxes

Value-added tax

2.1.37. On 22 September the Commission sent to the Council, Parliament and the Economic and Social Committee its first report on the application of the common system of value-added tax, which describes the situation as at 1 January this year.¹ This report, submitted in accordance with Article 34 of the Sixth Council Directive of 17 May 1977,² examines the difficulties encountered in applying the common system since the Directive was adopted.

The difficulties encountered arise either from certain optional provisions in the Directive or from the right to opt for taxation authorized by the Directive or from the interpretation of the Directive or from problems held over by the Directive.

¹ COM(83) 426 final.

² OJ L 145, 13.6.1977.

BULL. EC 10-1983

Financial institutions and taxation

Taxation

Indirect taxes

Turnover tax

2.1.53. On 26 October the Commission sent the Council a proposal for a 15th Directive on the harmonization of the laws of the Member States relating to turnover taxes.⁶ The purpose of this proposal is to extend by two years the time limit set at 1 January 1984 by the Act of Accession of Greece for applying the common system of value-added tax.⁷

Therefore, in accordance with the Decision of 21 April 1970,⁸ Greece's contribution to the 1984 and 1985 Community budgets will continue to be calculated by reference to its share in Community GNP rather than its VAT base: it will pay financial contributions instead of VAT own resources.

⁶ OJ C 317, 23.11.1983; COM(83)634 final.

⁷ OJ L 145, 13.6.1977.

⁸ OJ L 94, 28.4.1970.

tions on the main problems connected with the proposal for a second Directive relating to insurance against civil liability in respect of the use of motor vehicles.¹ The only question remaining is the period of the derogation to be granted to Ireland and Greece.

Taxation

2.1.57. On 17 November Parliament adopted a resolution on tax harmonization in the Community.²

Administrative assistance in tax matters

2.1.58. On 28 November the Commission asked the Council, following the precedent set in the *AETR* (European Road Transport Agreement) case³ for a mandate to negotiate the part of the multilateral Convention on administrative assistance in tax matters within the Council of Europe which falls within the powers of the Community⁴ in order to ensure that the Community rules now applying⁵ are not affected by the Convention, and without prejudice to any new rules which may subsequently be adopted by the Council.

Indirect taxes

Turnover tax

2.1.59. On 17 November Parliament delivered its opinion⁶ on the Commission proposal for a 12th Directive on turnover taxes, which would establish at Community level the type of business expenditure on which tax is not deductible.⁷ It said that the proposed Directive must be so implemented as to eliminate distortions of competition, ensure the tax neutrality of the provisions proposed and prevent expenditure for private purposes from becoming eligible for deduction of VAT. Parliament accordingly proposed a number of amendments which ease the provisions in the Commission proposal.

Excise duties

Manufactured tobacco

2.1.60. On 17 November Parliament adopted a resolution on cigarette tax harmonization.²

¹ Bull. EC 10-1983, point 2.1.51.

² Point 2.4.12; OJ C 342, 19.12.1983.

³ Case 22/70 *Commission v Council* [1971] ECR 263.

⁴ COM(83) 685 final.

⁵ OJ L 336, 27.12.1977; Bull. EC 11-1977, point 2.1.51; OJ L 331, 27.12.1979; Bull. EC 10-1979, points 2.1.38 and 2.1.39.

⁶ OJ C 342, 19.12.1983.

⁷ OJ C 37, 10.2.1983; Bull. EC 12-1982, point 2.1.50.

Financial institutions and taxation

Taxation

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Administrative assistance in tax matters

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Indirect taxes

Turnover tax

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Excise duties

Manufactured tobacco

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² Point 2.4.12; OJ C 342, 19.12.1983.

³ Case 22/70 *Commission v Council* [1971] ECR 263.

⁴ COM(83) 685 final.

⁵ OJ L 336, 27.12.1977; Bull. EC 11-1977, point 2.1.51; OJ L 331, 27.12.1979; Bull. EC 10-1979, points 2.1.38 and 2.1.39.

⁶ OJ C 342, 19.12.1983.

⁷ OJ C 37, 10.2.1983; Bull. EC 12-1982, point 2.1.50.

BULL. EC 12-1983

Financial institutions and taxation

Taxation

Indirect taxes

Turnover tax

2.1.54. On 19 December the Council adopted a proposal for a fifteenth Directive³ authorizing Greece to extend until 31 December 1985 the time limit set at 1 January 1984 by the Act of Accession for applying the common system of value-added tax (VAT).⁴ The extension is necessary because of the technical difficulties experienced by Greece in carrying through a tax reform involving the introduction of VAT.

2.1.55. Parliament gave its opinion on the proposal⁴ on 16 December.⁵ It was in favour of a limited, one-year extension and called on the Commission to monitor very carefully Greece's efforts to introduce the VAT system, and to keep Parliament informed.

The Economic and Social Committee, on the other hand, in an opinion given on 15

December, approved the proposed two-year extension but hoped that no extension beyond 31 December 1985 would be asked for.

2.1.56. On 19 December the Commission sent to the Council, Parliament and the Economic and Social Committee its first report on the application of the special scheme for small undertakings,⁶ drawn up pursuant to the Sixth Council Directive of

³ OJ L 360, 23.12.1983.

⁴ OJ C 317, 23.11.1983; Bull. EC 10-1983, point 2.1.53.

⁵ OJ C 10, 16.1.1984.

⁶ COM(83)748 final.

17 May 1977.⁷ The report describes and analyses the different national schemes (exemption, graduated relief and flat-rate schemes) and puts forward proposals for harmonizing and simplifying the present arrangements.

2.1.57. On 21 December the Commission transmitted to the Council a proposal for a Decision⁸ authorizing Italy to extend once again,⁹ until 31 December 1983, the measures applied by way of derogation from the Sixth Directive of 17 May 1977⁷ to assist the victims of the earthquakes in the southern part of the country. The measures covered by the new derogation consist in an exemption from VAT, with refund of the tax paid at the preceding stage, for transactions carried out during 1983; the extension became necessary because the victims still find themselves in a difficult situation and because the transactions still in progress have to be settled.

Tax-free allowances

Tax reliefs for small consignments

2.1.58. On 13 December the Commission transmitted to the Council a proposal for a

⁷ OJ L 145, 13.6.1977.

⁸ COM(83)756 final.

⁹ OJ L 322, 11.11.1981; Bull. EC 11-1981, point 2.1.45; OJ L 184, 29.6.1982; Bull. EC 6-1982, point 2.1.58.

fourth Directive¹ amending for the third time² the Directive of 19 December 1974.³ The proposal introduces a multiannual programme of increases in the relief allowed on the importation of goods in small consignments of a non-commercial character within the Community. The relief, fixed at 70 ECU since 1 January 1982,² would be increased to 95 ECU in 1984, 105 ECU in 1985, 115 ECU in 1986 and 130 ECU in 1987. Consignments of newspapers, periodicals, brochures and books sent by taxable persons in one Member State to private persons in another would also qualify for relief, up to a value of 22 ECU, the purpose being to promote trade in cultural goods within the Community.

Tax-free allowances for travellers

2.1.59. On 22 December the Council adopted a Directive⁴ extending for six months the derogation accorded in December 1978 whereby Ireland was authorized to exclude from the allowance for persons travelling within the Community any item exceeding 77 ECU in value.⁵

¹ OJ C 3, 6.1.1984; COM(83)730 final.

² OJ L 366, 28.12.1978; Bull. EC 12-1978, point 2.1.54; OJ L 338, 25.11.1981; Bull. EC 11-1981, point 2.1.46.

³ OJ L 354, 30.12.1974.

⁴ OJ L 370, 31.12.1983; COM(83)779 final.

⁵ OJ L 366, 28.12.1978.

2.1.60. On 21 December the Commission transmitted to the Council a proposal for a Directive extending the above derogation once again, this time for a period of five years; however, its scope is to be restricted and the unit-value limit raised progressively so as to minimize the impact of the derogation and to start alignment on the full Community rules.⁶

2.1.61. On 14 December Parliament gave an opinion⁷ on two proposals for Directives—one introducing a multiannual programme of increases in the relief allowed to travellers, the order concerning goods acquired by persons travelling by air or sea within the Community.⁸ Parliament regrets the delay in taking account of increases in the real value of goods since 1972, welcomes the Commission's intention to facilitate trade and movement across frontiers, but hopes that the measures envisaged will not mean extra checks on tax-free shops and their customers.

Excise duties

Cigarettes

2.1.62. Since the Council has not yet been able to agree on the criteria for the third stage of harmonization of the structure of excise duties on cigarettes,⁹ the Commission, in order to safeguard what has been achieved so far, transmitted to the Council on 7 December a proposal for a Directive¹⁰ extending for the fifth time the second stage of harmonization—introduced on 1 July 1978 by the Directive of 19 December 1977.¹¹

⁶ COM(83)779 final; COM(83)786 final.

⁷ OJ C 10, 16.1.1984.

⁸ OJ C 114, 28.4.1983; Bull. EC 4-1983, point 2.1.60.

⁹ OJ C 264, 11.10.1980.

¹⁰ OJ C 348, 23.12.1983; COM(83)734 final.

¹¹ OJ L 338, 20.12.1977.

BULL. EC 1-1984

Financial institutions and taxation

Taxation

Indirect taxes

Tax-free allowances

Tax-free allowances for travellers

2.1.36. On 25 January the Economic and Social Committee delivered opinions² on two proposals for Directives³ — one putting forward a programme of successive increases in the tax-free allowance granted to travellers within the Community, the other concerning the provisions relating to goods acquired by persons travelling by air or by sea within the Community.

Excise duties

Cigarettes

2.1.37. On 25 January the Economic and Social Committee adopted an opinion⁴ on

² Point 2.4.42.

³ OJ C 114, 28.4.1983; Bull. EC 4-1983, point 2.1.60.

⁴ Point 2.4.43.

the Commission's proposal for a Directive extending for the fifth time the second stage of harmonization of the structure of excise duties on cigarettes.¹

¹ OJ C 348, 23.12.1983; Bull. EC 12-1983, point 2.1.62.

BULL. EC 2-1984

Financial institutions and taxation

Taxation

Cooperation between firms in different Member States

2.1.58. In a communication to the Council, Mr Tugendhat has urged the early adoption of Commission proposals concerning tax measures aimed at encouraging cooperation between firms in different Member States.²

The document stresses the Commission's view that for this objective to be achieved, the Council must adopt, besides the Regulation creating the legal structure of a European cooperation grouping,² three propos-

² OJ C 14, 15.2.1974; OJ C 103, 28.4.1978.

als for Directives — on the introduction of a common system of taxation applicable to mergers, divisions and contributions of assets occurring between companies of different Member States;³ on the introduction of a common system of taxation applicable to parent companies and subsidiaries of different Member States;³ and on the elimination of double taxation in connection with the adjustment of transfers of profits between associated enterprises.⁴

Until such cooperation among firms has been established, it will not be possible to make full use of the potential of the wider European market; the Commission is therefore requesting the Council to give a firm political commitment to move in this direction.

Indirect taxes

Turnover tax

2.1.59. On 6 February the Council adopted a Decision⁵ proposed by the Commission⁶ authorizing Italy to derogate until 31 December 1983 from the value-added tax arrangements in the context of aid to earthquake victims in the south of the country.

2.1.60. On 20 February the Commission amended⁷ its proposal for a 12th VAT Directive designed to establish at Community level the items of business expenditure not eligible for deduction of VAT.⁸ The amendments, which take account of the opinion of Parliament,⁹ would: limit the exclusion from the right to deduct input tax in respect of expenditure on passenger cars, motorcycles and transport of persons; provide for a four-year transition period allowing gradual adaptation of national laws; and reintroduce the right to full deduction of input tax in respect of expenditure relating to aircraft, vessels, passenger cars and motorcycles, transport expenses, and expenditure on accommodation, food and drink, provided the firm can furnish proof that the expenditure has been made exclusively for business purposes.

Tax-free allowances

Tax reliefs for small consignments

2.1.61. On 29 February the Economic and Social Committee endorsed a proposal¹⁰ for

³ OJ C 39, 22.3.1969.

⁴ OJ C 301, 21.12.1976.

⁵ OJ L 40, 11.2.1984.

⁶ Bull. EC 12-1983, point 2.1.57.

⁷ OJ C 56, 29.2.1984; COM(84) 84 final.

⁸ OJ C 37, 10.2.1983; Bull. EC 12-1982, point 2.1.50.

⁹ OJ C 342, 19.12.1983; Bull. EC 11-1983, point 2.1.59.

¹⁰ OJ C 3, 6.1.1984; Bull. EC 12-1983, point 2.1.58.

a fourth Directive to amend the Directive of 19 December 1974¹ by introducing a multi-annual programme of increases in the relief allowed on the importation of goods in small consignments of a non-commercial character within the Community.

Tax-free allowances for travellers

2.1.62. On 29 February the Commission amended² its proposals for a sixth and a seventh Directive on duty-free allowances for travellers, which it had sent to the Council on 8 and 11 April 1983.³ The amendments go some way towards meeting the recommendations made in the opinions of Parliament, delivered on 14 December,⁴ and the Economic and Social Committee, delivered on 25 January.⁵

The amendment to the proposal for a sixth Directive, on higher allowances in travel within the Community, specifies more clearly the quantities of distilled beverages and spirits that may be imported duty-free.

In the case of the seventh Directive, on sales in tax-free shops, two changes have been made: the first makes it clear that the value of goods qualifying for quantitative exemptions is not to be included in the value-based allowance; the second requires Member States to take the necessary steps to ensure that the limits laid down in the proposal are complied with, that supporting documents are issued, and that buyers are informed of the limits and conditions applicable to purchases which they may make tax-free.

¹ OJ L 354, 30.12.1974.

² OJ C 81, 22.3.1984; COM(84)103 final; OJ C 72, 13.8.1984; COM(84)102 final.

³ OJ C 114, 28.4.1983; Bull. EC 4-1983, point 2.1.60.

⁴ OJ C 10, 16.1.1984; Bull. EC 12-1983, point 2.1.61.

⁵ OJ C 57, 29.2.1984, Bull. EC 1-1984, point 2.1.36.

BULL. EC 3-1984

Financial institutions and taxation

Taxation

Cooperation between firms in different Member States

2.1.56. After a wide-ranging exchange of views on the communication from Mr Tugendhat,⁶ the Council agreed that priority should be given to work on eliminating obstacles to cooperation between firms situ-

⁶ Bull. EC 2-1984, point 2.1.58.

ated in different Member States, in particular to the proposals on a common system of taxation applicable to mergers, divisions and contributions of assets,⁷ a common system of taxation applicable to parent companies and subsidiaries of different Member States,⁷ the elimination of double taxation in connection with the adjustment of transfers of profits between associated undertakings (arbitration procedure)⁸ and the system of taxation applicable to transactions in securities.⁹

Indirect taxes

Value-added tax

2.1.57. On 21 March the Commission sent the Council a communication¹⁰ concerning the application of Article 27(1) to (4) of the sixth Council Directive of 17 May 1977 on value-added tax¹¹ to a request for derogation submitted by the United Kingdom Government. The purpose of the derogation is to avoid certain types of fraud or tax evasion on supplies of gold, gold coin and gold scrap between taxable persons by the introduction of a special tax accounting scheme.

Tax-free allowances

Motor fuel

2.1.58. On 20 March the Commission sent the Council two proposals for Directives:¹²

(i) the first amends Directive 83/181/EEC of 28 March 1983¹³ determining the scope

⁷ OJ C 39, 22.3.1969.

⁸ OJ C 301, 21.12.1976.

⁹ OJ C 133, 16.6.1976.

¹⁰ COM(84) 144 final.

¹¹ OJ L 145, 13.6.1977.

¹² OJ C 95, 6.4.1984; COM(84) 171 final.

¹³ OJ L 105, 23.4.1983; Bull. EC 3-1983, point 2.1.45.

of Article 14(1)(d) of the sixth Directive¹ as regards exemption from value-added tax on the final importation of certain goods;

(ii) the second amends Directive 83/127/EEC, also dated 28 March 1983, on the standardization of provisions regarding the duty-free admission of fuel contained in the fuel tanks of commercial motor vehicles,² by raising the limit from 50 to 200 litres.

The purpose of these proposals is to remove, from 1 July 1984, for vehicles travelling between Member States, all restrictions on the amount of fuel contained in the normal fuel tanks of commercial road vehicles which may be admitted duty-free, including the restriction concerning frontier traffic. This measure should facilitate the crossing of frontiers by abolishing the levy-

¹ OJ L 145, 13.6.1977.

² OJ L 91, 9.4.1983; Bull. EC 3-1983, point 2.1.46.

ing of VAT and excise duty at frontiers on ordinary transport operations: a limited duty-free allowance as laid down by the Directives adopted in March 1983³ involves additional checks and, if the limit is exceeded, the levying of excise duty and VAT on the excess fuel, and therefore causes delays at frontiers.

Tax-free allowances for travellers

2.1.59. On 29 March the Commission adopted a proposal, to be sent to the Council, for an eighth Directive increasing tax-free allowances in international travel.⁴ The purpose of this proposal, which supplements two earlier proposals for sixth and seventh Directives sent to the Council in April 1983,⁵ is to increase the tax-free allowance for travellers from outside the Community (and hence the tax-free allowance relating to tax-free purchases made by persons travelling within the Community covered by the proposal for a seventh Directive⁵) on the basis of a multiannual programme corresponding to the programme contained in the proposal for a sixth Directive.⁵ The programme would raise the value of this allowance from the present 45 ECU to 60 ECU in 1985 and by stages to 85 ECU in 1988.

Excise duties

Cigarettes

2.1.60. On 16 March Parliament delivered a favourable opinion⁶ on the Commission's proposal to extend the second stage of harmonization of the structure of excise duties on cigarettes.⁷ It emphasized, however, that approval of the fifth extension of the second stage of harmonization must not be interpreted as approval for continuing the approach of harmonizing the ratio between the specific and proportional components of the tax at any further stage of harmonization.

³ OJ L 105, 23.4.1983; Bull. EC 3-1983, point 2.1.45.

⁴ OJ C 102, 14.4.1984; COM(84) 182 final.

⁵ OJ C 114, 28.4.1983; Bull. EC 4-1983, point 2.1.60.

⁶ OJ C 104, 16.4.1984.

⁷ OJ C 348, 23.12.1983; Bull. EC 12-1983, point 2.1.62.

BULL. EC 4-1984

Financial institutions and taxation

Taxation

Indirect taxes

Tax-free allowances

Small consignments

2.1.53. On 10 April Parliament endorsed¹ the proposal for a fourth Directive² amending for the third time³ the Directive of 19 December 1974⁴ (to introduce a multiannual programme of increases in the relief allowed on the importation of goods in small consignments of a non-commercial character into one Member State from another). However, Parliament asked that the amount of relief should be higher than proposed by the Commission.

Travellers

2.1.54. On 30 April the Council adopted a Directive⁵ bringing in the first stage of the multiannual programme of increases in the tax-free allowance for persons travelling within the Community, proposed by the Commission in April 1983.⁶ This will put the allowance up to 280 ECU from 1 July. The Council would consider other proposals made by the Commission at a later date. The Directive also provides for a further extension⁷ of the derogation authorizing Ireland to exclude from the allowance, as long as it remains at 280 ECU, goods whose unit value exceeds 77 ECU.

The Directive allows Greece to defer any change and then to effect a two-stage increase in the allowance (210 ECU until 31 December 1984 and thereafter 250 ECU until 30 June 1985).

Lastly, it replaces and repeals with effect from 31 December 1984 the Directive of 30 December 1982⁸ authorizing Denmark to apply to Danish residents returning to the country more restrictive quantitative limits than those provided for under the Community arrangements for tax-free allowances for travellers. The new provisions amend the timetable for those measures, phasing them out by the end of 1989.

2.1.55. On 10 April Parliament endorsed¹ the proposal for a Directive prolonging the derogation accorded to Ireland relating to the rules governing turnover tax and excise duty applicable in international travel,⁹ but opposed the derogation being maintained in the long term: it should be terminated on 1 January 1989.

¹ OJ C 127, 14.5.1984.

² OJ C 3, 6.1.1984; Bull. EC 12-1983, point 2.1.58.

³ OJ L 366, 28.12.1978; Bull. EC 12-1978, point 2.1.54.

⁴ OJ L 354, 30.12.1979.

⁵ OJ L 117, 3.5.1984.

⁶ OJ C 114, 28.4.1983; Bull. EC 4-1983, point 2.1.60.

⁷ OJ L 370, 31.12.1983; Bull. EC 12-1983, point 2.1.59.

⁸ OJ L 12, 14.1.1983; Bull. EC 12-1983, point 2.1.52.

⁹ OJ C 17, 14.1.1984; Bull. EC 12-1983, point 2.1.60.

Excise duties

2.1.56. On 10 April the Council extended once again, until 31 December 1985,¹⁰ the second stage of harmonization of excise duties which affect the consumption of manufactured tobacco.¹¹

2.1.57. On 13 April Parliament adopted resolutions on the taxation of wine and on the harmonization of taxation of alcoholic drinks.¹²

¹⁰ OJ L 104, 17.4.1984.

¹¹ OJ C 348, 23.12.1983; Bull. EC 12-1983, point 2.1.62.

¹² Point 2.4; OJ C 127, 14.5.1984.

BULL. EC 5-1984

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.66. At its May session the Economic and Social Committee endorsed the proposal for a twelfth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes—common system of VAT: expenditure not eligible for deduction of VAT.²

Tax-free allowances

Fuel allowance

2.1.67. On 21 May Parliament gave its opinion³ on two Commission proposals for Council Directives for the removal, from 1 July, of all restrictions on the amount of fuel contained in the normal fuel tanks of commercial road vehicles which may be admitted tax- and duty-free.⁴ It welcomed the fact that these two proposals had been presented at the same time and approved them without reservation.

² OJ C 37, 10.2.1983; Bull. EC 12-1982, point 2.1.50; OJ C 56, 29.2.1984; Bull. EC 2-1984, point 2.1.60.

³ OJ C 172, 2.7.1984.

⁴ OJ C 95, 6.4.1984; Bull. EC 3-1984, point 2.1.58.

BULL. EC 6-1984

Financial institutions and taxation

Indirect taxes

Turnover taxes

2.1.38. On 13 June Mr Tugendhat sent the Council a communication concerning the proposal for a 14th directive on the harmonization of the laws of the Member States relating to turnover taxes,⁴ the aim of which is to introduce a deferred payment system under which VAT on imports would no longer be collected by the customs authorities but would simply be declared in the importer's periodic VAT return to the tax authorities. In the communication, Mr Tugendhat suggested solutions to the two main obstacles to adoption of the proposal (the problems of fraud and budgetary loss) and once again underlined the importance of the directive in strengthening the internal market.

⁴ OJ C 203, 6.8.1982; Bull. EC 6-1982, point 2.1.57.

BULL. EC 7/8-1984

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.82. On 23 July the Commission sent the Council a proposal for a sixteenth VAT Directive designed to eliminate the double taxation that still occurs when goods are acquired by individuals in one Member State and imported into another Member State.⁵ This will be achieved through arrangements for refunding the residual VAT originally paid in the exporting Member State and taxing the goods in the importing Member State on the same basis. However, in order to simplify as far as possible the procedures for intra-Community trade between individuals, the Commission is proposing that the planned refund arrangements should apply only to goods of a value exceeding a specified limit (840 ECU at present) and which were last sold or imported with payment of VAT less than three years

⁵ OJ C 226, 22.8.1984; COM(84) 318 final.

previously; where the most recent transaction dates back more than three years, only goods worth more than 2 000 ECU would qualify for the refund and taxation arrangements. In essence, the procedure would therefore apply only to goods that retain considerable value throughout their life (cars, vessels, jewellery, etc.). In the case of goods which increased in value, no refund would be made in the exporting Member State, with only the increase in value being taxed in the importing Member State.

2.1.83. In response to the Council Decision of 30 June,⁶ the Commission put forward on 17 July a proposal for a twentieth Directive⁷ allowing a derogation from the sixth VAT Directive⁸ whereby the Federal Republic of Germany would be authorized to grant, for the period from 1 July 1984 to 31 December 1988, special aid to its farmers limited to 5% of their sales, using VAT as the instrument.⁹ On 1 January 1989, the level of aid would be reduced to 3%.

2.1.84. On 17 August the Commission transmitted to the Council a proposal for a seventeenth Directive concerning ex-

⁶ OJ L 185, 12.7.1984; Bull. EC 6-1984, point 2.1.88.

⁷ OJ C 214, 14.8.1984; COM(84) 391 final.

⁸ OJ L 145, 13.6.1977.

⁹ Point 2.1.117.

emption from value-added tax on the temporary importation of goods other than means of transport.¹ The proposal has two main purposes. First, it introduces a VAT-exempt temporary importation system for goods coming from other Member States or from non-member countries which mirrors the Community temporary importation arrangements adopted by the Council at the end of 1982,² under which goods other than means of transport are exempt from import duties. Such parallelism is provided for in the sixth VAT Directive.³ Second, the proposal lists a wide variety of goods (professional, medical and scientific equipment, commercial samples) that qualify for the exemption when moving within the Community. By thus reducing tax barriers to the free movement of goods temporarily imported from one Member State into another, the Commission is aiming to make it easier for individuals to exercise the freedom to travel and provide services throughout the Community. The exemption would apply to all goods imported for a period of less than 24 months and which remained in the ownership of a person established outside the Member State of importation.

2.1.85. The Community sent the Council on 8 August a communication⁴ concerning a request for derogation from application of Article 27(1) to (4) of the sixth VAT Directive³ submitted by the Governments

¹ OJ C 244, 13.9.1984.

² OJ L 376, 31.12.1982.

³ OJ L 145, 13.6.1977.

of the Netherlands and the Federal Republic of Germany. The purpose of the derogation is to simplify the collection of VAT in respect of building and maintenance work in the harbour at Emdem. Since the Federal Republic of Germany will assume responsibility for the work, all the operations will be subject to German VAT alone.

Tax-free allowances

Tax reliefs for small consignments

2.1.86. On 3 July the Commission, after receiving the opinions of Parliament⁵ and the Economic and Social Committee,⁶ transmitted to the Council an amendment⁷ to its proposal for a fourth Directive⁸ amending for the third time⁹ the Directive of 19 December 1974¹⁰ and introducing a multiannual programme of increases in the relief allowed on the importation of goods in small consignments of a non-commercial character within the Community. The Commission took up one of the amendments requested by Parliament, agreeing to delete the provision whereby consignments of newspapers, periodicals, brochures and books would qualify for relief if they were intended solely for the personal or family use of the recipient.

Motor fuel

2.1.87. On 4 July,¹¹ the Economic and Social Committee delivered a favourable opinion on two Commission proposals,¹² for Council Directives removing, from 1 July 1984, all restrictions on the tax-free admission of fuel contained in the normal fuel tanks of commercial road vehicles.

Tax-free allowances for travellers

2.1.88. On 4 July¹³ the Economic and Social Committee endorsed the Commission's proposal to increase tax-free allowances for travellers from outside the Community¹⁴ and the proposal for a Directive extending the derogation accorded to Ireland in respect of turnover tax and excise duty applicable in international travel.¹⁵

⁴ COM(84) 477 final.

⁵ OJ C 127, 14.5.1984; Bull. EC 4-1984, point 2.1.53.

⁶ OJ C 103, 16.4.1984; Bull. EC 2-1984, point 2.1.61.

⁷ OJ C 189, 17.7.1984; COM(84) 372 final.

⁸ OJ C 3, 6.1.1984; Bull. EC 12-1984, point 2.1.58.

⁹ OJ L 366, 28.12.1978; Bull. EC 12-1978; Bull. EC 12-1978, point 2.1.54; OJ L 338, 25.11.1981; Bull. EC 11-1981, point 2.1.46.

¹⁰ OJ L 354, 30.12.1974.

¹¹ OJ C 248, 17.9.1984.

¹² OJ C 95, 6.4.1984; Bull. EC 3-1984, point 2.1.58.

¹³ OJ C 248, 17.9.1984.

¹⁴ Point 2.4.46; OJ C 102, 14.4.1984; Bull. EC 3-1984, point 2.1.59.

¹⁵ OJ C 17, 14.1.1984; Bul. EC 12-1983, point 2.1.60.

BULL. EC 9-1984

Financial institutions and taxation

Taxation

Indirect taxes

Capital duty on the raising of capital

2.1.38. On 20 September the Commission sent the Council a proposal for a Directive⁴ amending the Council Directive of 17 July 1969 concerning indirect taxes on the raising of capital (capital duty).⁵

The proposal allows Member States to exempt from capital duty or to charge at a single rate not exceeding 1% the transactions covered by the 1969 Directive and provides for mandatory exemption of transactions currently subject to the reduced rate. The proposal was drawn up with the aim of facilitating the contribution of risk capital to firms and reducing their tax burden, thus helping to revive investment.⁶

Turnover taxes

2.1.39. On 13 September Parliament adopted a resolution⁷ in which it noted the Council's failure to adopt the proposal for a 14th Directive on the deferred payment of value-added tax payable by firms subject to the tax in respect of goods imported from Member States.⁸

2.1.40. On 27 September the Economic and Social Committee gave its opinion⁹ on the proposal for a 20th Council Directive¹⁰ allowing a derogation from the sixth VAT Directive¹¹ whereby the Federal Republic of Germany would be authorized to grant, from 1 July 1984 to 31 December 1988, special aid to German farmers limited to 5% of their sales, using VAT as the instrument.

Direct taxes

2.1.41. On 11 September the Commission sent the Council a proposal for a Directive on the harmonization of the laws of the Member States relating to tax arrangements for the carryover of losses of undertak-

ings.¹² This question forms part of the much wider issue of the rules on the determination of business profits, i.e. the tax base.

As the Commission pointed out in its communication on tax and financial measures in favour of investment,⁶ presented to the Council on 29 April 1983, favourable rules on the carry-back or carry-forward of losses could help to improve the tax environment for firms, thereby facilitating investment and increasing their competitiveness at world level.

The proposal provides not only for the carry-forward of losses to subsequent financial years without any time limit, but also for the carry-back of losses to previous financial years, with a two-year time limit applying for budgetary reasons. This latter provision, which will generally result in tax being refunded, will help to improve the financial position of firms. Firms are moreover free to exclude exempted profits, profits taxed at reduced rates or indeed distributed profits from offsetting.

⁶ Bull. EC 4-1983, points 1.3.1 to 1.3.5.

¹² OJ C 253, 20.9.1984; COM(84) 404 final.

BULL. EC 10-1984

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.50. The Council decided to grant authorization, published on 5 October,³ for a derogation sought by the Governments of the Netherlands and the Federal Republic of Germany⁴ from application of Article 27 of the sixth VAT Directive.⁵ The derogation, which is effective from 10 September 1984, applies in the context of a draft agreement between the two Governments and makes all the construction and maintenance work in the harbour at Emden subject to German VAT alone.

³ OJ L 264, 5.10.1984.

⁴ Bull. EC 7/8-1984, point 2.1.85.

⁵ OJ L 145, 13.6.1977.

⁴ OJ C 267, 6.10.1984; COM(84) 403 final.

⁵ OJ L 249, 3.10.1969.

⁶ Bull. EC 4-1983, points 1.3.1 to 1.3.5.

⁷ Point 2.4.9; OJ C 274, 15.10.1984.

⁸ OJ C 203, 6.8.1982; Bull. EC 6-1982, point 2.1.57.

⁹ Point 2.4.21.

¹⁰ OJ C 214, 14.8.1984; Bull. EC 7/8-1984, point 2.1.83.

¹¹ OJ L 145, 13.6.1977.

2.1.51. On 23 October the Council decided to authorize France to derogate from the application of Article 27(1) to (4) of the sixth VAT directive⁵ in respect of automatic gaming machines.⁶ The purpose of the derogation is to prevent tax evasion or avoidance in connection with such machines by introducing for a period of four years an arrangement whereby any deductible tax credits will not be refunded but set against tax due in subsequent tax periods.

⁵ OJ L 145, 13.6.1977.

⁶ OJ L 285, 30.10.1984.

BULL. EC 11-1984

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.47. On 21 November the Economic and Social Committee delivered its opinion¹ on the proposal for a seventeenth Directive, concerning exemption from value-added tax on the temporary importation of goods other than means of transport.²

Tax-free allowances

Tax-free allowances for travellers

2.1.48. On 7 November the Commission, in order to take account of Parliament's opinion,³ amended⁴ its proposal for a Directive prolonging the derogation accorded to Ireland relating to the rules governing turnover tax and excise duty applicable in international travel.⁵ The new version proposes an increase in the relationship, expressed in percentage terms, between the unit value limit and the overall exemption and states expressly that the derogation is to come to an end on 1 January 1989.

¹ Point 2.4.30.

² OJ C 244, 13.9.1984; Bull. EC 7/8-1984, point 2.1.84.

³ OJ C 127, 14.5.1984; Bull. EC 4-1984, point 2.1.55.

⁴ OJ C 304, 15.11.1984; COM(84) 586 final.

⁵ OJ C 17, 24.1.1984; Bull. EC 12-1983, point 2.1.60.

Direct taxes

Income tax and non-resident employed persons

2.1.49. On 12 November Mr Tugendhat reminded the Council of the importance which the Commission attached to its proposal for a Directive on more equitable tax arrangements for the incomes of persons working in one Member State and living in another.⁶ He stressed that adoption of the proposal would contribute to the establishment of a people's Europe as called for by the European Council meeting at Fontainebleau.⁷

Combating tax evasion and avoidance

2.1.50. On 29 November the Commission sent the Council and parliament a communication on Community action to combat international tax evasion and avoidance,⁸ the aim being to give a fresh impetus to such action at a time when the whole Community is facing an economic crisis with serious budgetary implications.

The Commission advocates the following measures: finding ways, with the Member States, of making full use of the possibilities for administrative assistance afforded by existing Directives; extending assistance in the recovery of tax claims to include direct taxes;⁹ and an early decision by the Council on certain proposals presented by the Commission. On the latter point, action is urged in particular on the request from the Nordic

⁶ OJ C 21, 16.1.1980; Bull. EC 12-1979, point 2.1.58.

⁷ Bull. EC 6-1984, points 1.1.1 to 1.1.9 (section 6); Bull.

EC 9-1984, point 1.1.1 *et seq.*

⁸ COM(84) 603 final.

⁹ OJ L 331, 27.12.1979; Bull. EC 12-1979, point 2.1.55.

countries to participate in Community mutual assistance procedures;¹ the recommendation for a Decision authorizing the Commission to conduct negotiations on the multilateral Council of Europe convention on administrative assistance in tax matters;² and the proposal for an arbitration procedure for the elimination of double taxation in connection with the adjustment of transfers of profits between associated enterprises.³

¹ Bull. EC 2-1980, point 2.1.31.

² Bull. EC 11-1983, point 2.1.58.

³ OJ C 301, 12.12.1976.

BULL. EC 12-1984

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.77. On 4 December the Council sent the Commission a proposal for an 18th Directive⁹ — providing for the removal in two stages (on 1 January 1986 and 1 January 1988) of most of the derogations at present allowed, in particular those listed in Annexes E (transactions that are normally exempt but that may be taxed during the

⁹ OJ C 347, 29.12.1984; COM(84) 649 final.

transitional period) and F (transactions that are normally taxed but that may be exempted during the transitional period) to the Directive of 17 May 1977 concerning the common system of value-added tax.¹

2.1.78. On 5 December the Commission sent the Council a proposal for a 19th Directive,² clarifying and amending a number of provisions of the Directive of 17 May 1977, notably the principle of territoriality as applied to certain transport operations, the expressions 'fixed establishment' and 'forms of transport', and the definition of the taxable amount on importation.

2.1.79. On 13 December Parliament endorsed³ the proposal for a 17th Directive concerning exemption from value-added tax on the temporary importation of goods other than means of transport.⁴ Observing that the same point in time must be taken for the purpose of establishing the value of the goods concerned and the rate of customs duties and of VAT to be applied, it regretted that this problem had not been resolved in the proposed Directive and urged that a solution be incorporated without delay into the proposal for a 19th VAT Directive.⁵

¹ OJ L 145, 13.6.1977; Bull. EC 5-1977, points 1.3.1 to 1.3.4.

² OJ C 347, 29.12.1984; COM(84) 648 final.

³ OJ C 12, 14.1.1985.

⁴ OJ C 244, 13.9.1984; Bull. EC 7/8-1984, point 2.1.84.

⁵ Point 2.1.78.

BULL. EC 1-1985

Financial institutions and taxation

Taxation

Indirect taxes

Capital duty

2.1.13. On 17 January Parliament delivered its opinion⁴ on the proposal for a Directive⁵ amending the Council Directive of 17 July 1969 concerning indirect taxes on the raising of capital (capital duty).⁶ It welcomed the proposal, which aims to abolish indirect taxes on the raising of capital and will help to bring about the free movement of capital in the Community, but considered that progress towards this goal was extremely slow and that, bearing in mind the stimulative effect which the abolition of capital duty would have, Member States should forgo this tax in the relatively near future.

2.1.14. On 30 January the Economic and Social Committee too gave its opinion⁷ on the proposal to amend the capital duty Directive.⁵

Turnover Tax

2.1.15. On 30 January the Economic and Social Committee delivered an opinion⁷ on the proposal for a 16th VAT Directive to eliminate double taxation of goods acquired by individuals in one Member State and imported into another.⁸

Tax-free allowances

2.1.16. On 17 January Parliament delivered its opinion⁴ on the proposal for an eighth Directive increasing tax-free allowances in international travel.⁹ It considered that the proposed gradual increases (to 85 ECU in 1988) in tax-free allowances for travellers coming from non-Community countries were too low and too bureaucratic in execution. It therefore requested that the allowances should be increased, as from 1 January 1985, to 150 ECU for travellers aged 15 or over and to 50 ECU for travellers aged under 15.

⁴ OJ C 46, 18.2.1985.

⁵ OJ C 267, 6.10.1984; Bull. EC 9-1984, point 2.1.38.

⁶ OJ L 249, 3.10.1969.

⁷ Point 2.4.34.

⁸ OJ C 226, 28.8.1984; Bull. EC 7/8-1984, point 2.1.82.

⁹ OJ C 102, 14.4.1984; Bull. EC 3-1984, point 2.1.59.

Direct taxes

2.1.17. On 17 January Parliament delivered its opinion¹ on the proposal for a Directive on the harmonization of the laws of the Member States relating to tax arrangements for the carryover of losses of undertakings.² It approved the very liberal approach of the Directive, which should allow companies to maximize reductions or refunds of tax, but asked the Commission to ensure that, when implemented, the system did not give rise to abuses or fraud. For this purpose, it requested that the consequences of the implementation of the Directive should be covered by the Council Directive of 19 December 1977 on mutual assistance by the Member States in the field of direct taxation.³

¹ OJ C 46, 18.2.1985; the debate on the opinion is reported at point 2.4.9.

² OJ C 253, 20.9.1984; Bull. EC 9-1984, point 2.1.41.

³ OJ L 336, 27.12.1977; Bull. EC 12-1977, point 2.1.69.

BULL. EC 2-1985

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.41. On 1 March the Commission transmitted to the Council amendments²

² OJ C 68, 15.3.1985; COM (85) 58 final.

to its proposal for a 17th VAT Directive—exemption from value-added tax on the temporary importation of goods other than means of transport¹—to take account of two changes that Parliament had called for.²

The first amendment is designed to ensure that purely national firms are not disadvantaged under the proposed arrangements compared with multinational companies, while the aim of the second amendment is to emphasize that, if the benefit of the arrangements is transferred to a second person, then that person must fulfil all the obligations which were incumbent on the person to whom the benefit of the arrangements was originally granted.

¹ OJ C 244, 13.9.1984; Bull. EC 7/8-1984, point 2.1.84.

² OJ C 12, 14.1.1985; Bull. EC 12-1984, point 2.1.79.

BULL. EC 3-1985

Taxation

Indirect taxes

Tax-free allowances

Tax-free allowances for travellers

2.1.45. On 12 March the Commission, taking account in part of Parliament's opinion,² amended³ its proposal for an eighth Directive increasing tax-free allowances in international travel.⁴

The amendments are designed to increase the tax-free allowances for travellers coming from outside the Community, raising them as soon as possible to 100 ECU for travellers over 15 and to 50 ECU for travellers under 15.

Direct taxes

2.1.46. On 27 March the Economic and Social Committee delivered a favourable opinion (→ point 2.4.20) on the proposal for a Council Directive on the harmonization of the laws of the Member States relating to tax arrangements for the carryover of losses of undertakings.⁵

² OJ C 46, 18.2.1985; Bull. EC 1-1985, point 2.1.16.

³ COM(85) 82 final.

⁴ OJ C 102, 14.4.1984; Bull. EC 3-1984, point 2.1.59.

⁵ OJ C 253, 20.9.1984; Bull. EC 9-1984, point 2.1.41.

BULL. EC 4-1985

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.45. In accordance with Article 2 of the Directive of 19 December 1983,¹ the Commission transmitted to the Council and to Parliament on 10 and 12 April respectively a report² on the progress made by Greece in giving effect to the first and second Council Directives of 11 April 1967³ and the sixth Council Directive of 17 May

¹ OJ L 360, 23.12.1983; Bull. EC 12-1983, point 2.1.54.

² COM(85) 141 final.

³ OJ 71, 14.4.1967.

1977⁴ on the harmonization of the laws of the Member States relating to turnover taxes, and any other Directives, adopted or to be adopted, relating to the common system of value-added tax.

2.1.46. On 19 April Parliament delivered its opinion⁵ on the proposal for a twentieth Directive⁶ allowing a derogation from the sixth VAT Directive⁴ whereby the Federal Republic of Germany would be authorized to grant, for the period from 1 July 1984 to 31 December 1988, special aid to its farmers limited to 5% of their sales — reduced to 3% from 1 January 1989 — using VAT as the instrument. It called for the percentage of this aid to be fixed each year by the Council prior to each step in the dismantling of monetary compensatory amounts — the aid not to be greater than the loss of income suffered by German farmers — on a proposal from the Commission and after it had been consulted. Parliament also argued that this aid mechanism should be fiscally neutral and should be the subject of an annual report covering in particular its effect on the Community's own resources. Finally, it proposed that the aid should not be granted beyond 31 December 1991.

Excise duties

2.1.47. On 24 April the Commission transmitted to the Council two proposals for Directives supplementing the 1972 proposals for harmonizing taxes on alcoholic drinks.⁷ The first lays down certain rules on indirect taxes affecting the consumption of alcoholic drinks.⁸ It provides for a single excise duty rate to be applied, by reference to volume, to still wine (non-sparkling wines) in Member States imposing an excise duty on that type of beverage. It also provides that the ratio between the excise duty on wine and that on beer may not, for a given quantity, exceed the ratio of the alcoholic strength of the wine to that of beer in the most-sold category. Finally, it complements the rules governing excise duties with provisions concerning the application of VAT to alcoholic beverages. The second proposal concerns the harmonization of excise duties on fortified wine and similar products ('intermediate products').⁹ This group of products is therefore now dealt with in a separate proposal for a Directive, whereas the Commission's original 1972 proposal⁷ concerning excise duty on alcohol covered both spirits and intermediate products. The purpose of the proposal is to make it possible to establish neutral conditions of competition between

⁴ OJ L 145, 13.6.1977.

⁵ OJ C 122, 20.5.1985.

⁶ OJ C 214, 14.8.1984; Bull. EC 7/8-1984, point 2.1.83.

⁷ OJ C 43, 29.4.1972.

⁸ OJ C 114, 8.5.1985; COM(85) 150 final.

⁹ OJ C 114, 8.5.1985; COM(85) 151 final.

similar products that are competing with each other within one Member State and between producers from different Member States. It also provides that the total excise duty burden on intermediate products must be between 20% and 65% of the total excise duty burden on a spirits product with the same alcoholic strength as the intermediate product.

BULL. EC 5-1985

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.36. Following the opinion delivered by Parliament on 19 April,¹ the Commission amended² on 3 May its proposal for a 20th VAT Directive.³ The Commission's amendments concern the duration of the aid (which is to be limited to the period up to 31 December 1991) and provide for an annual report to be submitted on the measures taken by the Federal Republic of Germany, covering in particular their effect on the Community's own resources.

¹ OJ C 122, 20.5.1985; Bull. EC 4-1985, point 2.1.46.

² OJ C 131, 30.5.1985; COM(85) 209 final.

³ OJ C 214, 14.8.1984; Bull. EC 7/8-1984, points 2.1.83 and 2.1.117.

BULL. EC 6-1985

Financial institutions and taxation

Taxation

Indirect taxes

Capital duty

2.1.54. On 10 June the Council amended¹ its Directive of 17 July 1969² concerning indirect taxes on the raising of capital.³ The aim is to facilitate contributions of risk capital to businesses by reducing their tax cost. Such measures—in conjunction with other action taken to overcome the economic crisis—are prompted by the need to stimulate investment.

Turnover taxes

2.1.55. On 11 June the Council reached agreement on the proposal for a 20th VAT Directive,⁴ designed to authorize the Federal Republic of Germany, by way of derogation from the sixth Directive,⁵ to use the VAT mechanism to grant special aid to farmers to compensate for the dismantling of monetary compensatory amounts. The Council was able to approve the Directive after addition of the following statement proposed by the Commission, dealing with the latter's responsibilities in relation to own resources: 'On the basis of information furnished by the Federal Republic of Germany and after consulting the Advisory Committee on Own Resources, the Commission shall fix the definitive amount of VAT own resources relating to the operations covered by this Directive for which the Federal Republic of Germany is liable. For this purpose, a special closing date appropriate to this procedure shall be adopted.' The substance of this agreement will be finalized only after a conciliation meeting with Parliament.

¹ OJ L 156, 15.6.1985.

² OJ L 249, 3.10.1969; OJ L 303, 13.11.1974.

³ OJ C 267, 6.10.1984; Bull. EC 9-1984, point 2.1.38.

⁴ OJ C 214, 14.8.1984; Bull. EC 7/8-1984, point 2.1.83.

⁵ OJ L 145, 13.6.1977.

2.1.56. On 28 June the Commission sent the Council a communication¹ concerning the application of Article 27(1) of the sixth Council Directive of 17 May 1977 on value-added tax² to a request for derogation submitted by the United Kingdom. This derogation, which is limited to a period of two years, is intended to prevent tax evasion by introducing a system for the application of VAT in cases where the marketing structure of certain firms is based upon the sale of their products to unregistered retailers.

The Council will be deemed to have taken a decision to this effect if, by the end of two months, neither the Commission nor any Member State has requested that the matter be raised by the Council.

¹ COM(85) 267 final.

² OJ L 145, 13.6.1977.

Tax exemption

2.1.57. On 11 June the Council reached agreement on a compromise concerning four proposals for Directives dealing with tax exemptions (for travellers,³ for small consignments⁴ and for fuel⁵ presented by the Commission in 1983 and 1984.

Exemptions for travellers

2.1.58. The personal exemption granted to adult travellers (sixth Directive)³ in respect of articles purchased, after tax, will increase to 350 ECU from 1 October 1985, and the exemption for children under 15 will go up to 90 ECU. Greece, Ireland and Denmark will enjoy derogations from these exemptions.

These figures are to be reviewed every two years to prevent a drop in their real value as time goes on.

The following quantitative exemptions will apply from 1 October:

still wine: 5 litres (equivalent to a standardized cardboard box of 6 bottles) (for Denmark: 4 litres);

tea: 200 g;

coffee: 1 000 g.

2.1.59. Since the Commission considered that the Directive approved by the Council did not conform to the guidelines drawn up by the European Council, it sent the Council on 11 June a fresh proposal for a Directive on the subject, dealing with the procedure for adapting the amounts of the exemptions.⁶

Exemptions for small consignments

2.1.60. The Council also agreed that the tax exemption for small postal consignments of a non-commercial character sent from one Member State to another (fourth Directive)⁴ should be increased to 100 ECU from 1 October, with a derogation for Ireland limiting the exemption to 75 ECU per item. These figures will be reviewed periodically by the Council with a view to maintaining their real value.

2.1.61. As regards small consignments of a non-commercial character sent from a

³ OJ C 114, 28.4.1983; Bull. EC 4-1983, point 2.1.60; OJ C 81, 22.3.1984; Bull. EC 2-1984, point 2.1.62.

⁴ OJ C 3, 6.1.1984; Bull. EC 12-1983, point 2.1.58; OJ C 189, 17.7.1984; Bull. EC 7/8-1984, point 2.1.86.

⁵ OJ C 95, 6.4.1984; Bull. EC 3-1984, points 2.1.58 and 2.1.162.

⁶ COM(85) 321 final.

non-member country to one of the Member States, the Commission sent the Council on 20 June a proposal for a third Directive¹ amending that of 19 December 1978.² This would set the amount of the VAT and excise exemption at the same level as the customs exemption contained in the proposal for a customs regulation.³

Exemptions for fuel

2.1.62. As regards the two proposals for Directives concerning the exemption for fuel in the fuel tanks of coaches,⁴ the Council agreed that the exemption limit should be raised to 600 litres from 1 October. The Council will decide before 1 July 1986, on a proposal from the Commission, on the increase in the maximum exemptions for fuel in the fuel tanks of lorries.

Direct taxes

2.1.63. On 25 June the Commission sent the Council amendments⁵ to its proposal for a Directive on the harmonization of the laws of the Member States relating to tax arrangements for the carryover of losses of undertakings.⁶ Taking into account the opinion delivered by Parliament on 17 January,⁷ the Commission proposes that the period for which losses may be set off should be extended from two to three years.

It also proposes a new wording for Article 2, to make it clearer that Member States remain free to apply their national rules in determining to what extent profits or losses of permanent establishments or subsidiaries in other countries should be taken into account.

¹ OJ C 167, 6.7.1985; COM(85) 305 final.

² OJ L 366, 28.12.1978.

³ OJ C 324, 5.12.1984; Bull. EC 11-1984, point 2.1.35.

⁴ C 95, 6.4.1984; Bull. EC 3-1984, points 2.1.58 and 2.1.162.

⁵ OJ C 170, 9.7.1985; COM(85) 319 final.

⁶ OJ C 253, 20.9.1984; Bull. EC 9-1984, point 2.1.41.

⁷ OJ C 46, 18.2.1985; Bull. EC 1-1985, point 2.1.17.

BULL. EC 7/8-1985

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.73. On 16 July the Council adopted⁵ the seventeenth VAT Directive, concerning

⁵ OJ L 192, 24.7.1985.

exemption from value-added tax on the temporary importation of goods other than means of transport.⁶ The Directive applies to a wide range of goods that will in future qualify for exemption when imported for a maximum duration of 24 months provided they remain the property of a person established outside the territory of the Member State of importation.

2.1.74. On 16 July the Council also adopted,⁷ in accordance with the agreement reached in June,⁸ the twentieth VAT Directive,⁹ authorizing the Federal Republic of Germany, by way of derogation from the sixth Directive,¹⁰ to use the VAT mechanism to grant special aid to farmers by way of compensation for the dismantling of monetary compensatory amounts.

2.1.75. The Council decision¹¹ granting the United Kingdom a derogation under Article 27(1) of the sixth VAT Directive¹⁰ was deemed to have been adopted¹² on 13 June since, within two months of the other Member States being informed in April, neither the Commission nor any Member State had requested that the matter be raised by the Council. The derogation is intended to prevent tax evasion under certain marketing arrangements.

2.1.76. On 3 July the Economic and Social Committee delivered its opinion (→ point 2.5.39)¹³ on two proposals, the first for an eighteenth Directive¹⁴ (on the abolition of

⁶ OJ C 244, 13.9.1984; Bull. EC 7/8-1984, point 2.1.84; OJ C 68, 15.2.1985; Bull. EC 2-1985, point 2.1.41.

⁷ OJ L 192, 24.7.1985.

⁸ Bull. EC 6-1985, point 2.1.55.

⁹ OJ C 214, 14.8.1984; Bull. EC 7/8-1984, points 2.1.83 and 2.1.117; OJ C 131, 30.5.1985; Bull. EC 5-1985, point 2.1.36.

¹⁰ OJ L 145, 13.6.1977; Bull. EC 5-1977, points 1.3.1 to 1.3.4.

¹¹ Bull. EC 6-1985, point 2.1.56.

¹² OJ L 199, 31.7.1985.

¹³ OJ C 218, 29.8.1985.

¹⁴ OJ C 347, 29.12.1984; Bull. EC 12-1984, point 2.1.77.

certain derogations provided for in the Directive of 17 May 1977 concerning the common system of value-added tax¹) and the second for a nineteenth Directive² (clarifying and amending certain provisions of the 1977 Directive).

Tax exemption

2.1.77. On 8 July the Council adopted³ four Directives dealing with tax exemptions (for travellers, for small consignments of a non-commercial character and for fuel) on which it had reached agreement in June.⁴

¹ OJ L 145, 13.6.1977; Bull. EC 5-1977, points 1.3.1 to 1.3.4.

² OJ C 347, 29.12.1984; Bull. EC 12-1984, point 2.1.78.

³ OJ L 183, 16.7.1985.

⁴ Bull. EC 6-1985, points 2.1.57 to 2.1.60.

Direct taxes

Cooperation between firms from different Member States

2.1.78. On 5 July the Commission sent to the Council a communication on tax measures aimed at encouraging cooperation between firms from different Member States.⁵ This amends the Commission's proposal of 16 January 1969 on the common tax arrangements applicable to companies and subsidiaries of different Member States.⁶ The Commission has thus taken account of the problem posed by the withholding tax levied in the Federal Republic of Germany on dividends distributed to parent companies situated in other Member States.

The following compromise arrangement has been proposed:

- the German withholding tax should not exceed 10%;
- the Member States which at present levy a withholding tax on dividend payments to companies situated in Germany would reduce it in proportion to the reduction granted in their favour by Germany; the rate should not, however, exceed 5%.

The Commission also proposes that a clause be inserted to deal with the situation that would result from a reduction of the present difference between the two rates of corporation tax in Germany, and that the conditions be specified on which the derogation for Greece will apply.

This new proposal is part of a comprehensive scheme launched by Mr Tugendhat in January 1984⁷ and accorded priority by the Council the following March.⁸

⁵ COM(85) 360 final.

⁶ OJ C 39, 2.3.1969.

⁷ Bull. EC 2-1984, point 2.1.58.

⁸ Bull. EC 3-1984, point 2.1.56.

BULL. EC 9-1985

Financial institutions and taxation

Taxation

Indirect taxes

Value-added tax

2.1.48. On 12 September Parliament passed a resolution (→ point 2.5.11)² on certain legal problems relating to the consultation of Parliament on the granting of VAT relief to German farmers to compensate for the dismantling of MCAs.³

Tax exemption

2.1.49. Increased exemption from turnover tax and excise duty on imports in international travel will take effect on 1 October; the Council decided to raise the exemptions in July,⁴ in an effort to facilitate travel inside the Community and give its citizens more tangible evidence of the common market's existence.

Goods of a non-commercial character contained in the personal luggage of travellers arriving from other Member States may be imported into any Member State if they have been bought on the open market in a Member State and their value does not exceed 350 ECU. The authorities may reduce these allowances to 90 ECU in the case of travellers under 15 years old. In order to maintain their real value the level of these allowances will be reviewed every two years, starting on 31 October 1987, as will the derogations authorized.

The quantitative allowances for certain products will be as follows:

² OJ C 262, 14.10.1985.

³ OJ L 192, 24.7.1985; Bull. EC 7/8-1985, point 2.1.74.

⁴ OJ L 183, 16.7.1985; Bull. EC 7/8-1985, point 2.1.77.

There are no quantitative allowances for tobacco products or alcohol and alcoholic beverages for travellers under 17; there are no such allowances for coffee products either for travellers under 15.

Denmark is authorized to apply certain limits to its own residents returning from a short stay abroad. Ireland is authorized to exclude from the exemption goods with a unit value of more than 77 ECU.

Exemptions for small consignments

2.1.50. On 25 September the Economic and Social Committee delivered an opinion (→ point 2.5,27) on the proposal to amend¹ the Directive of 19 December 1978 on imports of small consignments of goods of a non-commercial character from outside the Community.²

¹ OJ C 167, 6.7.1985; Bull. EC 6-1985, point 2.1.61.

² OJ L 366, 28.12.1978.

Product	Volume or quantity
Tobacco products:	
cigarettes	300
or cigarillos (cigars of a maximum weight of 3 grammes each)	150
or cigars	75
or smoking tobacco	400 g
Alcohol or alcoholic beverages:	
(i) distilled beverages and spirits of an alcoholic strength exceeding 22% vol; undenatured ethyl alcohol of 80% vol and over	a total of 1.5 l
or distilled beverages and spirits, and aperitifs with a wine or alcohol base, tafia, saké or similar beverages of an alcoholic strength not exceeding 22% vol; sparkling wines, fortified wines and	a total of 3 l
(ii) still wines	a total of 5 l
Perfumes and toilet waters	75 g 3/8 l
Coffee or coffee extracts and essences	1 000 g 400 g
Tea or Tea extracts and essences	200 g 80 g

BULL. EC 10-1985

Taxation

Indirect taxes

2.1.54. At its October session the Economic and Social Committee gave its opinion on two proposals for directives (→ point 2.5.58). The first lays down certain rules on indirect taxes affecting the consumption of alcoholic drinks, and the second concerns the harmonization of excise duties on fortified wines and similar products.²

² OJ C 114, 8.5.1985; Bull. EC 4-1985, point 2.1.47.

BULL. EC 11-1985

Financial institutions and taxation

Taxation

Indirect taxes

Standstill on VAT and excise duties

2.1.65. On 21 November the Commission transmitted to the Council a proposal for a Directive imposing a standstill on VAT and excise duties² as foreshadowed in its White Paper on completing the internal market.³

In the case of VAT, the proposal prohibits Member States from making any changes to the number and level of the rates they apply as at the date of the adoption of the Directive but permits them to move towards the ultimate objective of approximated rates by reducing the current discrepancies between the number and level of the rates they apply. With regard to the number of rates, those Member States which apply more than three rates will be able to reduce that number to three and those which apply a single rate will be able to increase that number to two. Member States will also be free to adjust their standard rates towards but not beyond the mid-point of the range of rates in force in the Community at the time the proposal is adopted. A similar adjustment may be made to reduced rates.

In the case of excise duties, the proposal covers only those duties which are not to

² OJ C 313, 4.12.1983; COM(85) 606 final.

³ Bull. EC 6-1985, point 1.3.1 *et seq.*

be harmonized and which will therefore have to be abolished, except where they do not involve adjustments at frontiers. It prohibits Member States from introducing new excise duties of this kind and from increasing rates or extending the scope of those which already exist.

Turnover taxes

2.1.66. On 7 November the Commission transmitted to the Council a report⁴ in accordance with Article 12 of the eighth

⁴ COM(85)586 final.

VAT Directive of 6 December 1979.¹ This report provides information on the operation of the arrangements for refunding VAT to taxable persons in another Member State and sets out the improvements which Member States would like to see made to the system set up by the eighth Directive.

2.1.67. At its November part-session Parliament gave its opinion² on the proposal for a third Directive amending that of 19 December 1978 on small consignments of a non-commercial character sent from a non-member country to one of the Member States.³

¹ OJ L 331, 27.12.1979.

² OJ C 345, 31.12.1985.

³ OJ C 167, 6.7.1985; Bull. EC 6-1985, point 2.1.61.

BULL. EC 12-1985

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.84. On 23 December the Commission adopted for transmission to the Council a proposal for a Directive on VAT rules applicable to the operation of a future cross-Channel fixed link.³

The proposal is intended to grant France and the United Kingdom a derogation from the normal rules of the Council Directive

³ COM(85) 858 final.

of 17 May 1977 on the common system of value-added tax: uniform basis of assessment⁴ as regards the use of a future fixed link across the Channel and in particular for the exemption from VAT of the toll charges which will be levied together with the continuing right to deduct VAT paid on inputs.

Tax exemption

2.1.85. On 20 December the Council adopted a Directive⁵ amending the Directive of 19 December 1978⁶ as regards small consignments of a non-commercial character sent from a non-member country to one of the Member States.⁷

Excise duties

2.1.86. On 12 December the Commission sent the Council a proposal for a Directive extending the second stage of harmonization of the structures of excise duties on cigarettes.⁸ The previous extension had been adopted on 10 April 1984.⁹

⁴ OJ L 145, 13.6.1977.

⁵ OJ L 372, 31.12.1985.

⁶ OJ L 366, 28.12.1978.

⁷ OJ C 167, 6.7.1985; Bull. EC 6-1985, point 2.1.61.

⁸ COM(85) 683 final.

⁹ OJ L 104, 17.4.1984.

BULL. EC 1-1986

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.57. On 15 January the Commission sent the Council a proposal for a 21st VAT Directive¹ authorizing Greece to extend, for the second time,² the 1 January 1984 deadline laid down in the Act of Accession for introducing the common system of VAT; the new extension is from 31 December 1985 to 31 December 1986. This proposal is in response to the request made by the Greek Government on 14 October 1985, in the context of the programme of measures designed to improve the economic situation in Greece, that it be allowed an additional period of one year for the introduction of VAT.³ The new exemption is subject to certain conditions, one of them being that Greece pay its contribution to the 1986 Community budget on the basis of the VAT base specified in the preliminary draft budget.

2.1.58. On 29 January the Economic and Social Committee delivered a favourable opinion on the proposal (→ point 2.4.30), expressing the hope that it was the last such proposal.

2.1.59. On 14 January Parliament adopted an opinion⁴ on the proposal for a 16th VAT Directive designed to eliminate the double taxation that still occurs when goods are acquired by individuals in one Member State and imported into another.⁵ It endorsed the general thrust but asked the Commission to explore ways of further simplifying the formalities and suggested amendments to that effect.

Excise duties

2.1.60. On 14 January Parliament delivered an opinion⁶ on two proposals for Directives⁷ to supplement the 1972 proposals for harmonizing taxes on alcoholic drinks.⁸ Making it clear once again that in

its view excise duties on alcoholic drinks should be harmonized simultaneously,⁹ it deplored that fact that the Commission had restricted the scope of its first proposal, concerning certain rules on indirect taxes on the consumption of those drinks, and considered that the standstill provisions should also apply to excise duty differentials. As regards the second proposal, concerning the harmonization of excise duties on fortified wine and similar products, referred to as intermediate products, Parliament asked that 'similar products' be defined to mean only quality liqueur wines specifically and exclusively of agricultural origin, and approved the exceptional arrangements introduced for 'vins doux naturels'.

2.1.61. On 29 January the Economic and Social Committee gave its opinion on the proposal for a Directive extending the second stage of harmonization of the structures of excise duties on cigarettes (→ point 2.4.29).¹⁰

⁹ OJ C 175, 15.7.1985; Bull. EC 6-1985, point 2.5.13.

¹⁰ Bull. EC 12-1985, point 2.1.86.

¹¹ OJ L 350, 27.12.1985; Bull. EC 12-1985, point 2.1.90.

BULL. EC 2-1986 -

BULL. EC 3-1986

Financial institutions and taxation

Taxation

Indirect taxes

¹ COM(85) 821 final.

² OJ L 360, 23.12.1983; Bull. EC 12-1983, point 2.1.54.

³ Bull. EC 11-1985, point 1.3.5.

⁴ OJ C 36, 17.2.1986.

⁵ OJ C 226, 28.8.1984; Bull. EC 7/8-1984, point 2.1.82.

⁶ OJ C 36, 17.2.1986.

⁷ OJ C 114, 8.5.1985; Bull. EC 4-1985, point 2.1.47.

⁸ OJ C 43, 29.4.1973.

Turnover taxes

2.1.70. After receiving the opinions of Parliament and the Economic and Social Committee, the Commission amended on 25 March its proposal for a sixteenth Council Directive on value added tax—a proposal to eliminate the double taxation which continues to burden goods acquired by private individuals in one Member State and imported into another (→ point 2.1.90).

2.1.71. On 18 March the Commission, acting under Article 27(1) and (4) of the Sixth Council Directive of 17 May 1977 on value added tax,¹ sent the Council a proposal for a Decision authorizing the United Kingdom to apply a special measure in respect of the non-deductible VAT charged on fuel used in company cars,² by way of derogation from Articles 5(6) and 17(6) of the sixth Directive.

Excise duties

2.1.72. On 14 March Parliament gave its opinion³ on the proposal for a Directive extending the second stage of harmonization of the structures of excise duties on cigarettes.⁴ This is the sixth extension, and Parliament endorsed it only on condition that the Commission would present by the end of the year new proposals for the third stage of harmonization taking account of the needs for a tax structure that will fit in with the programme for achieving the internal market, the free movement of goods and the free setting of prices of manufactured tobacco.

¹ OJ L 145, 13.6.1977; Bull. EC 5-1977, points 1.3.1 to 1.3.4.

² COM(86) 135 final.

³ OJ C 88, 14.4.1986.

⁴ Bull. EC 12-1985, point 2.1.86.

BULL. EC 4-1986

BULL. EC 5-1986

Financial institutions and taxation

Taxation

Indirect taxes

2.1.62. On 22 May the Economic and Social Committee endorsed (→ point 2.4.22) the proposal for a Directive imposing a standstill on VAT and excise duties.⁵

⁵ OJ C 313, 4.12.1985; Bull. EC 11-1985, point 2.1.65.

Turnover taxes

2.1.63. On 29 May the Commission presented to the Council and Parliament a report⁶ on the operation, in 1984, of the mechanism introduced by the twentieth Directive of 16 July 1985⁷ authorizing the Federal Republic of Germany to use, by way of derogation from the sixth Directive,⁸ VAT as an instrument for granting special aid to farmers to compensate for the dismantlement of monetary compensatory amounts. While recognizing that it is currently impossible to compare the compensation provided in this way with the actual losses incurred as a result of the revaluation of the German mark's 'green rate', the Commission concludes that the German legislation is consistent with the terms of the 20th Directive. The Commission also reports that it has no reason to believe that the smooth operation of agricultural markets has been disrupted by the aid.

2.1.64. On 16 May Parliament delivered its opinion⁹ on the proposal for a 21st Directive¹⁰ authorizing Greece to defer for the second time¹¹ — until 31 December 1986 instead of 31 December 1985 — the deadline laid down by the Act of Accession for the introduction of the common system of VAT (1 January 1984). Taking note of the difficulties pointed out by the Greek Minister for National Economy in October 1985,¹² Parliament approved the proposal, subject to the Commission cooperating with the Greek Government in monitoring Greece's detailed programme for introducing VAT on 1 January 1987 and to Greece honouring its commitment to pay its financial contribution for 1986 on the basis of the VAT base specified in the preliminary draft budget. It also recommended that this deferment be the last to be granted.

2.1.65. On 21 May the Economic and Social Committee delivered a favourable opinion (→ point 2.4.23) on a proposal for a Directive concerning VAT rules applicable to the operation of a future cross-Channel fixed link.¹³

⁶ COM(86)260 final.

⁷ OJ L 192, 24.7.1986; Bull. EC 7/8-1985, point 2.1.74.

⁸ OJ L 145, 13.6.1977; Bull. EC 5-1977, points 1.3.1 to 1.3.4.

⁹ OJ C 148, 16.6.1986.

¹⁰ OJ C 356, 31.12.1985; Bull. EC 1-1986, point 2.1.57.

¹¹ First deferment: OJ L 360, 23.12.1983; Bull. EC 12-1983, point 2.1.54.

¹² Bull. EC 10-1985, point 2.1.2; Bull. EC 11-1985, point 1.3.5.

¹³ OJ C 358, 31.12.1985; Bull. EC 12-1985, point 2.1.84.

BULL. EC 6-1986

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

2.1.101. On 16 June the Council adopted,² on a proposal from the Commission,³ a 21st VAT Directive—authorizing Greece to extend, for the second time,⁴ the January 1984 deadline laid down in the Act of Accession for introducing the common system of VAT; the new extension is from 31 December 1985 to 31 December 1986.

Excise duties

2.1.102. Also on 16 June the Council adopted,² on a proposal from the Commission,⁵ a Directive extending once again the second stage of harmonization of the structures of excise duties on cigarettes.⁶

² OJ L 164, 20.6.1986.

³ OJ C 356, 31.12.1985; Bull. EC 1-1986, point 2.1.57.

⁴ OJ L 360, 23.12.1983; Bull. EC 12-1983, point 2.1.54.

⁵ OJ C 349, 31.12.1985; Bull. EC 12-1985, point 2.1.86.

⁶ OJ L 104, 17.4.1984.

BULL. EC 7/8 1986

Financial institutions and taxation

Taxation

Indirect taxes

Turnover taxes

Special scheme for small and medium-sized businesses

2.1.89. In July the Commission adopted for transmission to the Council a proposal

for a Directive on the harmonization of the laws of the Member States to ensure greater convergence of systems of value-added tax;³ the proposal sets new exemption limits and simplifies procedures for charging and collecting VAT from small firms. The proposal therefore amends Article 24 of

³ COM(86) 444 final.

the sixth VAT Directive of 17 May 1977,⁴ which concerns special schemes for small businesses.

Under the proposed new exemption limits, Member States would be free to exempt firms with an annual turnover of less than 35 000 ECU, and would be obliged to exempt firms with a turnover of less than 10 000 ECU. The proposed simplified VAT procedures for small firms mainly involve flat-rate percentages for charging and collecting VAT, applicable to all firms, whatever their size, with an annual turnover of less than 150 000 ECU. The objective is to relieve such businesses of excessive administrative costs by simplified accounting.

The proposal is in line with the Commission's priority objectives: internal market⁵ and renewed growth,⁶ the latter following on from the former, which assign a special role to small businesses as the optimum expression of the spirit of enterprise and individual effort. In this context, and in accordance with instructions from the European Council,⁷ the Commission is launching a series of initiatives intended to create an administrative and legal environment more propitious to the establishment and development of small businesses.

2.1.90. On 21 July the Council authorized the United Kingdom under the tenth VAT

⁴ OJ L 145, 13.6.1977.

⁵ Bull. EC 6-1985, point 1.3.1 *et seq.*

⁶ OJ L 377, 31.12.1985; Bull. EC 10-1985, point 1.3.1 *et seq.*

⁷ Bull. EC 3-1985, point 1.2.3; Bull. EC 11-1985, point 1.1.1 (Conclusions of the Presidency on the economic and social situation); Bull. EC 6-1986, point 1.1.4.

Directive¹ to apply flat-rate measures in respect of the non-deductible value-added tax charged on fuel expenditure in company cars.²

Tax exemption

Duty-free admission of fuel

2.1.91. On 10 July the Commission sent the Council two proposals for Directives:³

(i) the first amends for the second time⁴ the Directive of 28 March 1983 (83/181/EEC)⁵ determining the scope of Article 14(1)(d) of the sixth Directive⁶ as regards exemption from VAT on the final importation of certain goods;

¹ OJ L 208, 3.8.1984.

² OJ L 212, 2.8.1986.

³ OJ L 183, 22.7.1986; COM(86) 383 final.

⁴ OJ L 183, 16.7.1985; Bull. EC 7/8-1985, point 2.1.77.

⁵ OJ L 105, 23.4.1983; Bull. EC 3-1983, point 2.1.45.

⁶ OJ L 145, 13.6.1977.

(ii) the second amends the Directive of 19 July 1968 (68/297/EEC)⁷ on the standardization of provisions regarding the duty-free admission of fuel contained in the fuel tanks of commercial motor vehicles.

The purpose of the two proposals is to increase from 200 litres to 600 litres the duty-free allowance for fuel contained in the standard fuel tanks of commercial motor vehicles used for goods transport and travelling inside the Community. In July 1985 the Council had already approved an increase in the allowance for fuel in the tanks of commercial vehicles transporting passengers (i.e. coaches)⁸ and had undertaken to increase the allowance for goods transport vehicles in 1986.

⁷ OJ L 175, 23.7.1968.

⁸ OJ L 183, 16.7.1985; Bull. EC 6-1985, point 2.1.62.

BULL. EC 9-1986

Financial institutions and taxation

Taxation

Indirect taxes

Tax-free allowances

Duty-free admission of fuel

2.1.59. On 17 September the Economic and Social Committee delivered its opinion on two proposals for Directives,³ the first amending for the second time⁴ the Directive of 28 March 1983 (83/181/EEC)⁵ determining the scope of Article 14(1)(d) of the Sixth Directive⁶ as regards exemption from VAT on the final importation of certain goods, and the second amending the Directive of 19 July 1968 (68/297/EEC) on the standardization of provisions regarding the duty-free admission of fuel contained in the fuel tanks of commercial motor vehicles⁷ (→ point 2.4.32).

³ OJ C 183, 22.7.1986; Bull. EC 7/8-1986, point 2.1.91.

⁴ OJ L 183, 16.7.1985; Bull. EC 7/8-1985, point 2.1.77.

⁵ OJ L 105, 23.4.1983; Bull. EC 3-1983, point 2.1.45.

⁶ OJ L 145, 13.6.1977; Bull. EC 5-1977, points 1.3.1. to 1.3.4.

⁷ OJ L 175, 23.7.1968.

BULL. EC 10-1986

Financial institutions and taxation

Taxation

Indirect taxes

Standstill on VAT and excise duties

2.1.78. On 9 October Parliament delivered an opinion⁵ on the Commission's proposal to the Council for a Directive

⁵ OJ C 283, 10.11.1986.

imposing a standstill on VAT and excise duties.¹

With a view to the achievement of the objective of a single market through the establishment of an area without internal frontiers, Parliament calls on the Commission to give priority to the formulation and implementation of measures for harmonizing VAT and excise duty rates. It points out that harmonization will have to take place in accordance with an ordered programme of successive stages that takes into account the financial, economic and social consequences for each Member State. The Commission is requested to provide information on the consequences of the different ways of calculating VAT rates.

Tax allowances

Duty-free admission of fuel

2.1.79. On 10 October Parliament delivered an opinion² on two proposals for Directives,³ one amending the Directive of 28 March 1983 (83/181/EEC)⁴ determining the scope of Article 14(1)(d) of the sixth VAT Directive⁵ as regards exemption from VAT on the final importation of certain goods, and the other amending the Directive of 19 July 1968 on the standardization of provisions regarding the duty-free admission of fuel contained in the fuel tanks of commercial motor vehicles.⁶

¹ OJ C 313, 4.12.1985; Bull. EC 11-1985, point 2.1.65.

² OJ C 283, 10.11.1986.

³ OJ C 183, 22.7.1986; Bull. EC 7/8-1986, point 2.1.91.

⁴ OJ L 105, 23.4.1983.

⁵ OJ L 145, 13.6.1977.

⁶ OJ L 175, 23.7.1968.

Parliament emphasizes that it is essential for all the fuel contained in the normal fuel tanks of commercial vehicles to be allowed in duty-free if checks and formalities at intra-Community frontiers are to be dispensed with and progress made towards the elimination of those frontiers and the unhindered flow of transfrontier goods transport. For this to be achieved, urgent action is required on harmonizing the VAT and excise duties charged on fuels without distorting competition or altering trade patterns.

Bull. EC 1-1987

Customs union and indirect taxation

Indirect taxation

Standstill on VAT and excise duties

2.1.39. In the light of the opinion⁶ delivered by Parliament on 9 October the Commission transmitted to the Council on 23 January an amended proposal⁷ for a Directive imposing a standstill on VAT and excise duties.⁸ The amendment taken up by the Commission is that those Member States which apply a single rate should be able to increase that number to two or three.

Turnover taxes

2.1.40. On 9 February the Commission transmitted to the Council a proposal⁹ for a Directive amending for the third time the Directive of 28 March 1983¹⁰ determining the scope of Article 14(1)(d) of the sixth VAT Directive¹¹ as regards exemption from value-added tax on the final importation of certain goods.

The proposal contains a number of minor amendments to the 1983 Directive. It also incorporates, at Parliament's request, a number of amendments intended to facilitate the importation into one Member State from another of goods of negligible value, printed advertising matter, mint postage stamps, official publications and election material.

With regard to imports of goods of negligible value from one Member State into another, the Commission has also proposed that a mandatory exemption be applied to goods of a total value not exceeding 22 ECU.

Tax exemptions

2.1.41. On 4 February the Commission sent the Council a proposal¹² for a Directive amending for the first time the Directive of 28 March 1983 on tax exemptions within the Community for certain means of trans-

port temporarily imported into one Member State from another.¹ The proposal, which as called for by the *ad hoc* Committee on a People's Europe, is designed to help complete the internal market by facilitating the temporary importation of vehicles by nationals of Member States and the free movement of people within the Community. It also extends the scope of the 1983 Directive by providing for a number of situations in which the residents of a Member State are permitted to use vehicles temporarily imported from another Member State (rehire of private vehicles, extension of the exemption to members of the family resident in the country of importation, company cars, immobilization abroad and short-term hire). It also extends the exemption to a student's spouse and increases the period of temporary importation from 6 to 9 months in any 12 where professional ties exist in another Member State.

¹ OJ L 105, 23.4.1983; Bull. EC 3-1983, point 2.1.43.

Bull. EC 2-1987 -

Bull. EC 3-1987

Customs union and indirect taxation

Indirect taxation

Tax exemptions

Allowances granted to travellers

2.1.69. On 16 March,¹³ the Council adopted, on a proposal from the Commission,¹⁴ a Directive amending the Directive of 28 May 1969,¹⁵ as regards a derogation granted to Denmark relating to the rules governing turnover tax and excise duty on imports in international travel.

¹³ OJ L 78, 20.3.1987.

¹⁴ Bull. EC 12-1986, point 2.1.135.

¹⁵ OJ L 133, 4.6.1969; OJ L 183, 16.7.1985.

⁶ OJ C 283, 10.11.1986; Bull. EC 10-1986, point 2.1.78.

⁷ OJ C 30, 7.2.1987; COM(87) 17 final.

⁸ OJ C 313, 4.12.1985; Bull. EC 11-1985, point 2.1.65.

⁹ COM(87) 21.

¹⁰ OJ L 105, 23.4.1983; Bull. EC 3-1983, point 2.1.44.

¹¹ OJ L 145, 13.6.1977.

¹² OJ C 40, 18.2.1987; COM(87) 14 final.

Bull. EC 4-1987

Customs union and indirect taxation

Indirect taxes

Turnover taxes

2.1.54. On 11 April the Council authorized a derogation measure⁸ requested by the United Kingdom, pursuant to the Sixth Council Directive of 17 May 1977 on value-added tax.⁹

The request concerned anti-avoidance measures to prevent taxable persons artificially reducing the price of supplies or imports of goods or of supplies of services to totally or partially exempt persons, with whom they have certain family, legal or business ties, specified in national legislation. The free market value may be taken as the consideration for the transaction, irrespective of whether the latter is actually taxed or not, where otherwise there would be loss of tax.

The Commission had informed the other Member States of the request in a letter dated 10 February 1987. As neither the Commission nor any Member State requested that the matter be raised by the Council within two months of that date, the Council's decision was deemed to have been adopted on 11 April.

2.1.55. On 6 April Parliament gave its Opinion on the proposals¹⁰ from the Commission to the Council for an Eighteenth and a Nineteenth Directive on the harmonization of the laws of the Member States relating to turnover taxes.

The proposal for an Eighteenth Directive concerned the removal of certain derogations provided for in Article 28(3) of the Council Directive of 17 May 1977 on a common system of VAT.¹¹

For its part, Parliament thought that certain proposals for derogations should be amended to avoid distortions of competition between public and private enter-

prises and to facilitate the development of amateur sport in particular. It considered that the transitional period provided for in the Sixth VAT Directive had expired on 1 January 1983 and, consequently, invited the Commission to put forward a proposal for a Council Directive abolishing all transitional provisions from 1 January 1990 (from 1 January 1992 in the case of Spain and Portugal).

Parliament approved, subject to amendments, the proposal for a Nineteenth Directive, which, like the Eighteenth, amends certain provisions of the Council Directive of 17 May 1977.¹ It stressed, however, that there was a need to adapt the latter to the computerization of transactions and to adopt the deferred payment arrangements (proposal for a Fourteenth VAT Directive).² It also invited the Commission to draw up proposals concerning the approximation of VAT rates to make it possible to introduce a clearing system, and invited the Council to adopt the proposal for a Seventh VAT Directive.³

Tax exemptions

Tax exemptions applicable to imports of personal goods

2.1.56. On 14 April, the Economic and Social Committee adopted an Opinion on a proposal amending the Council Directive of 28 March 1983 on tax exemptions applicable to removals (→ point 2.4.45).⁴

¹ OJ L 145, 13.6.1977; Bull. EC 5-1977, points 1.3.1 to 1.3.4.

² OJ C 203, 6.8.1982; Bull. EC 6-1982, point 2.1.57.

³ OJ C 26, 1.2.1978; Bull. EC 12-1977, point 2.1.65; OJ C 136, 31.5.1979; Bull. EC 5-1979, point 2.1.45.

⁴ OJ C 5, 9.1.1987; Bull. EC 12-1986, point 2.1.162.

Tax exemptions

2.4.45. The Economic and Social Committee delivered a unanimous Opinion on the proposal amending for the first time the Council's Directive of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals.¹ The Committee welcomed the Commission proposal, considering it to be a real contribution towards implementing freedom of movement for the Community's citizens. It sug-

¹ OJ C 5, 9.1.1987; Bull. EC 12-1986, point 2.1.162.

⁸ OJ L 132, 21.5.1987.

⁹ OJ L 145, 13.6.1977; Bull. EC 5-1977, points 1.3.1 to 1.3.4.

¹⁰ OJ C 125, 11.5.1987.

¹¹ OJ C 347, 29.12.1984; Bull. EC 12-1984, points 2.1.77 and 2.1.78.

gests, however, that the allowances in respect of certain highly taxed goods which generally form part of removals should be considerably increased and that the period within which goods may be imported exempt of tax should be extended to two years.

Financial institutions and company law

Company law, company taxation and capital movements

Taxation of transactions in securities

2.1.70. On 14 April the Commission sent to the Council an amended proposal⁴ for a Council Directive relating to indirect taxes on transactions in securities.⁵ This proposal aims at abolishing indirect taxes on such transactions and should be viewed from the standpoint of establishing a European capital market. Since the amendments in question are substantial, the Commission considers that further consultation of Parliament and the Economic and Social Committee is necessary. The proposal Opinions were delivered in October 1976⁶ on the original proposal.⁵

⁴ OJ C 115, 30.4.1987; COM(87) 139 final.

⁵ OJ C 133, 14.6.1976; Bull. EC 4-1976, point 2.1.15.

⁶ OJ C 259, 4.11.1976; OJ C 297, 16.12.1976.

Bull. EC 5-1987

Customs union and indirect taxation

Indirect taxation

turnover taxes

2.1.66. On 13 May the Economic and Social Committee adopted an opinion on a proposal amending for the third time the Directive of 28 March 1983 determining the scope of Article 14(1)(d) of the sixth VAT Directive as regards exemption from value-added tax on the final importation of certain goods (→ point 2.4.28).⁸

⁸ OJ C 53, 28.2.1987; Bull. EC 1-1987, point 2.1.40.

Tax exemptions

2.1.67. On 13 May the Economic and Social Committee adopted an opinion on a proposal amending the Directive of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (→ point 2.4.29)¹

¹ OJ C 40, 18.2.1987; Bull. EC 1-1987, point 2.1.41.

Turnover tax

2.4.28. The Committee unanimously approved the proposal for amending for the third time the Council Directive determining the scope of Article 14(1) (d) of the sixth VAT Directive as regards exemption from value-added tax on the final importation of certain goods.⁶

Tax exemptions

2.4.29. The Committee unanimously approved the proposal for amending the Council Directive on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another.⁷ However, it was afraid that the new arrangements under Article 4 of the proposal might lead to abuse of the temporary import concessions in respect of company cars.

⁶ Bull. EC 1-1987, point 2.1.40.

⁷ Bull. EC 1-1987, point 2.1.41.

Bull. EC 6-1987

Customs union and indirect taxation

Indirect taxation

Turnover taxes

2.1.68. On 25 June, in the light of the

opinion delivered by Parliament,⁷ the Commission amended⁸ its proposal for an 18th Council Directive on the harmonization of the laws of the Member States relating to turnover taxes,⁹ which concerns the elimination of certain derogations provided in Article 28(3) of the Council Directive of 17 May 1977 on value-added tax.¹⁰

2.1.69. On 4 June the Commission sent the Council a communication¹¹ on the application of Article 27 of the sixth Council Directive of 17 May 1977¹⁰ to a request for a derogation made by the United Kingdom Government.

The United Kingdom request concerns a two-year extension of the derogation¹² granted on 13 June 1985 authorizing the application, for the purpose of combating tax avoidance, of a special system for collecting value-added tax in cases where the marketing structure of certain firms is based on the sale of their products to unregistered resellers.

Since neither the Commission nor a Member State had requested that the matter be raised within the time laid down in Article 27(4), the Council Decision was deemed to have been adopted on 25 May.¹³

⁸ OJ C 183, 11.7.1987; COM(87) 272 final.

⁹ OJ C 347, 29.12.1984; Bull. EC 12-1984, point 2.1.77.

¹⁰ OJ L 145, 13.6.1977; Bull. EC 6-1977, points 1.3.1 to 1.3.4.

¹¹ COM(87) 247 final.

¹² OJ L 199, 31.7.1985; Bull. EC 6-1985, point 2.1.56.

¹³ OJ L 188, 8.7.1987.

2.1.70. On 30 June the Commission sent the Council and Parliament a report¹ on the operation, in 1985, of the mechanism introduced by the 20th Council Directive of 16 July 1985² authorizing the Federal Republic of Germany to use, by way of derogation from the sixth Directive,³ VAT as an instrument for granting special aid to farmers to compensate for the dismantling of monetary compensatory amounts.

The Commission emphasized that both its own calculations and those of the German authorities showed that the special aid provided slight overcompensation for the losses incurred by German farmers as a result of the revaluation of the German mark's 'green rate'. However, it recognized that German legislation was consistent with the terms of the 20th Directive and indicated that it had no reason to believe that the smooth operation of agricultural markets was disrupted by the aid.

2.1.71. During its June part-session Parliament expressed its general approval⁴ of the proposal⁵ for amending Article 27 of the Council Directive of 17 May 1977³ in respect of the special scheme applicable to small and medium-sized businesses.

However, Parliament wished to see the period during which Member States may apply an exemption to small and medium-sized businesses whose turnover is between 10 000 and 35 000 ECU restricted to the first three years following the entry into force of the new Directive.

³ OJ L 145, 13.6.1977; Bull. EC 6-1977, points 1.3.1 to 1.3.4.

⁴ OJ C 190, 20.7.1987.

⁵ OJ C 272, 28.10.1986; Bull. EC 7/8-1986, point 2.1.89.

¹ COM(87) 292 final. Previous report: Bull. EC 5-1986, point 2.1.63.

² OJ L 192, 24.7.1985; Bull. EC 7/8-1985, point 2.1.74.

³ OJ L 145, 13.6.1977; Bull. EC 6-1977, points 1.3.1 to 1.3.4.

2. Commission plan for eliminating tax frontiers within the Community

1.2.1. On 7 August the Commission sent to the Council and to Parliament a communication containing a package of proposals for doing away with tax controls at the Community's internal frontiers so as to complete the single Community market by 1992¹ (→ point 2.1.86). The proposals were drawn up in response to a request from the Council² and fit into the strategy mapped out in the White Paper on completing the internal market³ approved by the Milan European Council in June 1985.⁴ According to the White Paper, completing the internal market involves dismantling barriers of all kinds, notably tax barriers, and hence a major drive to bring systems of indirect taxation closer into line. The Single Act, which entered into force on 1 July,⁵ reaffirms this objective and lays down as a legal obligation the creation of 'an area without internal frontiers in which the free movement of goods, persons and capital is ensured'.

With a view to eliminating tax frontiers while, at the same time, causing as little disruption as possible to national policies on indirect taxation, the Commission has based itself on the following principle: approximation—to the extent necessary to do away with frontier controls—of the structure of indirect taxation in Member States in order to eliminate distortions of competition or trade.

Taken together, the measures proposed by the Commission constitute a plan for approximating the structures and rates of consumption taxes that is built around the general practice in Member States.

1.2.2. As regards VAT, the Commission is proposing adoption of a two-rate system (a standard rate and a reduced rate). To allow Member States a maximum margin of manoeuvre, a 14 to 20% band will be introduced for the standard rate and a 4 to 9% band for the reduced rate, which will apply to certain basic necessities.

The plan also involves amendments to the sixth VAT Directive that are needed to

ensure that VAT chargeable in intra-Community trade is paid in the same way as on the domestic market. As regards intra-Community trade, the removal of tax frontiers spells the end for the present system, under which goods are exempt from tax on exportation and attract tax on importation.

The Commission is also proposing a clearing mechanism to ensure that, once frontier controls have been removed, Member States will continue to receive the revenue to which they are entitled, with tax collected on export sales in one Member State being passed on the Member State in which the supplies are finally consumed. In essence, it involves a central account through which Member States will draw or pay money periodically according to whether they are net importers or exporters in the Community. Member States will calculate the amount to be paid into or drawn from the central account on the basis of the information contained in taxable persons' VAT returns.

1.2.3. The problems relating to excise duties are more complicated than those in the VAT field since not only rates but also structures differ widely between Member States. Any substantial degree of flexibility that might be allowed in respect of authorized excise duty rates will have to be examined in the light of the permissible margin for VAT rates. This is because VAT is calculated on the price of goods inclusive of excise duties. Consequently, the Commission has proposed that, as a general rule, any margin of flexibility in approximating rates should be reserved for VAT rates since these have the widest coverage and hence the largest impact on Member States' budgets.

In determining excise duty rates, the Commission's general approach has been to secure some measure of equity between Member States and to cause minimum disruption in each sector. The method adopted has varied according to the particular circumstances or characteristics of each sector but has, generally speaking, been based on a Community average. This approach can, of course, be given tangible expression only if common excise duty rates are applied to a harmonized structure in the Community.

¹ COM(87) 320 final to 328 final.

² Bull. EC 6-1986, point 2.1.9.

³ Bull. EC 6-1985, point 1.3.7.

⁴ Bull. EC 6-1985, point 1.2.5.

⁵ Bull. EC 6-1987, point 2.4.5.

Proposals for Directives on the harmonization of the structure of excise duties have been before the Council since 1972 and rapid progress on them is what is needed now.

1.2.4. A timetable is also planned whereby the Community rates for VAT and excise duties would take effect not later than 31 December 1992. Member States will need to take the necessary steps in the intervening period to move towards those rates while retaining their full freedom of manoeuvre.

In addition, the Commission is putting forward a convergence proposal covering both VAT rates and the main excise duty rates that aims to ensure that Member States not only do not diverge from the overall objective between now and 1992 but actually move closer towards it. Once adopted, this proposal would be the first step by Member States towards fulfilling their legal obligations in respect of the tax aspects of the internal market. It replaces the now obsolete 'standstill' proposal currently before the Council.¹ By the same token, the Commission is withdrawing its proposal for a 14th Directive on deferred payment of VAT payable on importation.²

The Commission is aware of the social and budgetary problems to which its proposals might give rise in some Member States and has, therefore, stressed that it would be prepared to envisage, at the request of any Member State concerned, appropriate solutions, e.g. in the form of temporary derogations not prejudicial to the main objective.

1.2.5. When presenting these proposals to the press, Lord Cockfield, Commission Vice-President with special responsibility for the internal market, stated that this plan would contribute to attainment of the Commission's fundamental objective, namely revitalizing the Community economy. He made the point that the most immediate benefits of the measures proposed would accrue to industry and commerce, which would be able to take account of the Community dimension in their marketing strategies and would not be faced with the extra costs associated with administrative formalities and with the time spent in transporting goods. For their part, individuals in the Community would be able to travel around easily without having to worry

about whether they had exceeded their duty-free allowances, which are still in force, or whether they could drive their cars in a particular Member State.

*

The Commission is convinced that its proposals will contribute to the integration and growth of the Community economy and will satisfy as far as possible the legitimate concern of Member States that their economic and tax systems should not be unduly disrupted.

Customs union and indirect taxation

Indirect taxes

2.1.86. On 7 August the Commission presented to the Council and to Parliament a communication accompanied by a set of proposals for Directives aimed at removing intra-Community tax frontiers (→ point 1.2.1 *et seq.*). The proposals are concerned with:

- (i) supplementing the common system of value-added tax and amending the Directive of 17 May 1977⁹ — Approximation of VAT rates;¹⁰
- (ii) supplementing the common system of value-added tax and amending the Directive of 17 May 1977⁹ — Removal of tax frontiers;¹¹
- (iii) instituting a process of convergence of rates of value-added tax and excise duties;¹²
- (iv) harmonizing taxes on cigarettes;¹³
- (v) harmonizing taxes on manufactured tobacco other than cigarettes;¹⁴
- (vi) approximating the rates of excise duty on mineral oils;¹⁵
- (vii) approximating the rates of excise duty on alcoholic beverages and on the alcohol contained in other products.¹⁶

Also included was a draft proposal on the introduction of a VAT clearing mechanism for intra-Community sales.¹⁷

⁹ OJ L 145, 13.6.1977.

¹⁰ OJ C 250, 18.9.1987; COM(87) 321 final.

¹¹ OJ C 252, 22.9.1987; COM(87) 322 final.

¹² OJ C 250, 18.9.1987; COM(87) 324 final.

¹³ OJ C 251, 19.9.1987; COM(87) 325 final.

¹⁴ OJ C 251, 19.9.1987; COM(87) 326 final.

¹⁵ OJ C 262, 1.10.1987; COM(87) 327 final.

¹⁶ OJ C 250, 18.9.1987; COM(87) 328 final.

¹⁷ COM(87) 323 final.

¹ OJ C 313, 4.12.1985; Bull. EC 11-1985, point 2.1.65; OJ C 30, 7.2.1987; Bull. EC 1-1987, point 2.1.39.

² OJ C 203, 6.8.1982; Bull. EC 6-1982, point 2.1.57.

Turnover taxes

2.1.87. On 6 July the Commission amended¹⁸ its proposal for a 19th Council

¹⁸ COM(87) 315 final.

Directive¹ on the harmonization of the laws of the Member States relating to turnover taxes, amending the Directive of 17 May 1977² — Common system of value-added tax. The Commission took account of a number of amendments requested by Parliament and the Economic and Social Committee in the opinions they delivered in April 1987³ and July 1985⁴ respectively.

2.1.88. On 23 July the Council decided⁵ to respond favourably to a United Kingdom request for a derogation from Article 17 of the Directive of 17 May 1977.²

The UK is authorized until 30 September 1990 to allow an optional, simplified system of VAT payments for enterprises with an annual turnover of less than 340 000 ECU. Under that system the enterprises concerned cannot deduct input tax until it has been paid to the supplier. Before 30 September 1990 the Council is to determine, on the basis of a report by the Commission on the application of the authorization, whether it will be extended.

The Council agreed that this decision would not prejudice the work under way on the 22nd VAT Directive instituting a simplified common value-added tax scheme for small and medium-sized businesses.⁶

¹ OJ C 347, 29.12.1984; Bull. EC 12-1984, point 2.1.78.

² OJ L 145, 13.6.1977.

³ OJ C 125, 11.5.1987; Bull. EC 4-1987, point 2.1.55.

⁴ OJ C 218, 29.8.1985; Bull. EC 7/8-1985, point 2.1.76.

⁵ OJ L 213, 4.8.1987.

⁶ OJ C 272, 28.10.1986; Bull. EC 7/8-1986, point 2.1.89.

Bull. EC 9-1987

Customs union and indirect taxation

Indirect taxation

2.1.66. The Commission informed the Council on 18 September of its decision to withdraw its proposals for a 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 (14th VAT Direc-

tive)³ and for a Directive imposing a standstill on VAT and excise duties.⁴

The two proposals had been rendered superfluous by the package of proposals⁵ drawn up in connection with the White Paper and transmitted to the Council on 7 August.

³ OJ C 201, 5.8.1982; Bull. EC 6-1982, point 2.1.57.

⁴ OJ C 313, 4.12.1985; Bull. EC 11-1985, point 2.1.65; OJ C 30, 7.2.1987; Bull. EC 1-1987, point 2.1.39.

⁵ Bull. EC 7/8-1987, point 1.2.1 *et seq.*

Financial institutions and company law

Company law, company taxation and capital movements

Taxes on transactions in securities

2.1.74. In September the Economic and Social Committee adopted an opinion on an amended proposal for a Directive⁵ relating to indirect taxes on transactions in securities (→ point 2.4.33).

⁵ OJ C 115, 30.4.1987; Bull. EC 4-1987, point 2.1.70.

Taxation of securities transactions

2.4.33. By a large majority, with two votes against and two abstentions, the Committee adopted an opinion on the amended proposal⁵ for a Directive relating to indirect taxes on transactions in securities. It considered that adoption of the Directive would further the integration of the securities market, promote the unification of the Community's capital markets and encourage business investment, with consequential benefits for the competitiveness of the European economy and job creation. It urged the Commission to continue its work for the achievement of these objectives and to devote particular attention to the elimination of the remaining obstacles, particularly those of a financial nature.

⁵ OJ C 115, 30.4.1987; Bull. EC 4-1987, point 2.1.70.

Bull. EC 10-1987

Customs union and indirect taxation

Indirect taxation

Turnover taxes

2.1.58. On 27 October Parliament adopted an opinion¹ on the proposal for a Directive² to amend for the third time the Directive of 28 March 1983³ determining the scope of Article 14(1)(d) of the sixth VAT Directive⁴ as regards exemption from VAT on the final importation of certain goods.

Tax exemptions

2.1.59. On 27 October Parliament adopted an opinion¹ on the proposal for a Directive⁵ to amend the Directive of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals.³

2.1.60. On the same day Parliament adopted an opinion¹ on the proposal for a Directive⁶ to amend the Directive of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another.³

¹ OJ C 318, 30.11.1987.

² OJ C 53, 28.2.1987; Bull. EC 1-1987, point 2.1.40.

³ OJ L 105, 23.4.1983; Bull. EC 3-1983, point 2.1.44.

⁴ OJ L 145, 13.6.1977.

⁵ OJ C 5, 9.1.1987; Bull. EC 12-1986, point 2.1.162.

⁶ OJ C 40, 18.2.1987; Bull. EC 1-1987, point 2.1.41.

Financial institutions and company law

Company law, company taxation and capital movements

Taxation of transactions in securities

2.1.72. On 27 October Parliament adopted an opinion⁴ endorsing the Commission's amended proposal for a Directive relating to indirect taxes on transactions in securities,⁵ and asking to be informed of

⁴ OJ C 318, 30.11.1987.

⁵ OJ C 133, 14.6.1976; OJ C 115, 30.4.1987; Bull. EC 4-1987, point 2.1.70.

any further changes that the Commission might make. Parliament called on the Council too to keep it informed and to institute a fresh consultation procedure if the Council proposed to make substantial changes.

Bull. EC 11-1987

Customs union and indirect taxation

Indirect taxation

2.1.88. On 16 November the Council had a preliminary exchange of views on the Commission's communication and proposals for Directives on the elimination of tax frontiers.⁶

Turnover taxes

2.1.89. On 16 November the Council continued its examination of the proposal for an 18th Directive on the harmonization of the laws of the Member States relating to turnover taxes,⁷ which concerns the elimination of certain derogations provided in Article 28(3) of the sixth VAT Directive of 17 May 1977.⁸

2.1.90. To take account of the changes suggested by Parliament in the opinion it delivered on 18 June,⁹ the Commission sent to the Council on 4 November a number of amendments¹⁰ to the proposal¹¹ for a Directive amending the sixth VAT Directive of 17 May 1977⁸ in respect of the special scheme for small businesses. The amendments increase the upper limit on turnover from 150 000 ECU to 200 000 ECU, offer small businesses the possibility of choosing a tax period of less than one year and enable taxable persons eligible for the simplified scheme to opt for the normal VAT scheme.

⁶ Bull. EC 7/8-1987, point 1.2.1 *et seq.*

⁷ OJ C 183, 11.7.1987; Bull. EC 6-1987, point 2.1.68; OJ C 347, 29.12.1984; Bull. EC 12-1984, point 2.1.77.

⁸ OJ L 145, 13.6.1977; Bull. EC 6-1977, points 1.3.1 to 1.3.4.

⁹ OJ C 190, 20.7.1987; Bull. EC 6-1987, point 2.1.71.

¹⁰ OJ C 310, 20.11.1987.

¹¹ OJ C 272, 28.10.1986; Bull. EC 7/8-1986, point 2.1.89.

2.1.91. The Commission withdrew its proposal for a seventh Directive on the harmonization of the laws of the Member States relating to turnover taxes — common system of value-added tax to be applied to works of art, collectors' items, antiques and used goods.¹

Discussions in the Council had led the Presidency to adopt a formulation for the Directive which would have increased the differences between Member States, would not have instituted a permanent system for taxation and would not have covered cross-border transactions. This would have deprived the proposal of its original purpose.

At its meeting on 16 November the Council took note of the withdrawal of the proposal and of the Commission's intention to put up a new proposal in the near future.

¹ OJ C 26, 1.2.1978; OJ C 136, 31.5.1979.

BULL EC 12-1987

Customs union and indirect taxation

Indirect taxation

Tax exemptions

2.1.93. On 29 December the Commission sent the Council a proposal for a Directive⁶ to amend for the ninth time the Directive of 28 May 1969 on the harmonization of provisions laid down by law relating to exemption from turnover tax and excise duty on imports in international travel,⁷ aimed at updating the reliefs to maintain their value in real terms.

2.1.94. On 1 December the Commission sent the Council a proposal for a Directive⁸ to amend for the fifth time the Directive of 19 December 1974 on the tax reliefs to be allowed on the importation of goods in small consignments of a non-commercial character within the Community,⁹ this also being aimed at updating the reliefs so as to maintain their value in real terms.

⁶ COM(87) 570 final.

⁷ OJ L 133, 4.6.1969.

⁸ OJ C 5, 9.1.1988; COM(87) 583 final.

⁹ OJ L 354, 30.12.1974.

Bull EC 1-1988

Customs union and indirect taxation

Indirect taxation

Turnover taxes

2.1.34. On 15 January the Commission sent the Council a proposal for a Decision¹ authorizing the Netherlands to apply until 31 December 1989 a measure derogating from Articles 2 and 17 of the sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes.² The Dutch Government had asked for a derogation under Article 27(1) of the Directive on 2 October 1987.

Tax reliefs

2.1.35. On 28 January the Economic and Social Committee gave its opinion (→point 2.4.40) on the proposal for a Directive³ amending for the fifth time the Directive of 19 December 1974 on the tax reliefs to be allowed on the importation of goods in small consignments of a non-commercial character within the Community.⁴

¹ COM(88) 14 final.

² OJ L 145, 13.6.1977.

³ OJ C 5, 9.1.1988; Bull. EC 12-1987, point 2.1.94.

⁴ OJ L 354, 30.12.1974.

Bull EC 2-1988

Customs union and indirect taxation

Indirect taxation

Tax exemptions

2.1.52. On 25 February the Economic and Social Committee adopted an opinion endorsing the proposal to update the exemptions from turnover tax and excise duty on imports in international travel⁶

⁶ Bull. EC 12-1987, point 2.1.93.

Bull EC 3-1988

Bull EC 4-1988

Customs union and indirect taxation

Indirect taxation

Elimination of tax frontiers

2.1.67. At an economic and financial affairs meeting on 18 April the Council heard a statement by the Chairman of the Economic Policy Committee introducing the Committee's report on the economic aspects of the approximation of indirect taxation in the Community¹ which the Council had asked for in November 1987.²

¹ Bull. EC 7/8-1987, point 1.2.1 *et seq.*

² Bull. EC 11-1987, point 2.1.88.

Bull EC 5-1988

Customs union and indirect taxation

Indirect taxation

2.1.57. On 3 May the Commission sent the Council an amended text¹³ to take account of opinion given by Parliament¹⁴ on its proposal for a Directive¹⁵ amending for the third time the Directive of 28 March 1983¹⁶ determining the scope of Article 14(1)(d) of the Sixth VAT Directive¹⁷ as regards exemption from value-added tax on the final importation of certain goods.

2.1.58. On 30 May the Commission sent the Council amended texts¹⁸ to take account of the opinions given by Parliament¹⁹ on its two proposals for Directives^{20,21} amending

¹³ COM(88) 271 final.

¹⁴ OJ C 318, 30.11.1987; Bull. EC 10-1987, point 2.1.58.

¹⁵ OJ C 53, 28.2.1987; Bull. EC 1-1987, point 2.1.40.

¹⁶ OJ L 105, 23.4.1983; Bull. EC 3-1983, point 2.1.44.

¹⁷ OJ L 145, 13.6.1977.

¹⁸ COM(88) 297 final; OJ C 179, 8.7.1988; COM(88) 298 final.

¹⁹ OJ C 318, 30.11.1987; Bull. EC 10-1987, points 2.1.59 and 2.1.60.

²⁰ OJ C 40, 18.2.1987; Bull. EC 1-1987, point 2.1.41.

²¹ OJ C 5, 9.1.1987; Bull. EC 12-1986, point 2.1.162.

the Directive of 28 March 1983 on tax exemptions within the Community for certain temporarily imported means of transport¹ and the Directive of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals.¹

¹ OJ L 105, 23.4.1983; Bull. EC 3-1983, point 2.1.44.

Bull EC 6-1988

Customs union and indirect taxation

Indirect taxation

Tax exemptions

2.1.101. On 13 June, acting on a proposal from the Commission,¹⁴ the Council

¹⁴ OJ C 53, 28.2.1987; Bull. EC 1-1987, point 2.1.40; Bull. EC 5-1987, point 2.1.57.

adopted a Directive¹ amending that of 28 March 1983² determining the scope of Article 14(1)(d) of the Directive of 17 May 1977 (Sixth VAT Directive)³ as regards exemption from value-added tax on the final importation of certain goods. The exemption applies to imports either from non-member countries or from other Member States. The amended version has been aligned on the Regulation of 3 May⁴ which introduces relief from customs duty for imports of certain goods from non-member countries.

¹ OJ L 151, 17.6.1988.

² OJ L 105, 23.4.1983; Bull. EC 3-1983, point 2.1.44.

³ OJ L 145, 13.6.1977.

⁴ OJ L 123, 17.5.1988; Bull. EC 5-1988, point 2.1.54.

Bull EC 7/8-1988

Customs union and indirect taxation

Indirect taxation

Removal of tax frontiers

2.1.49. At its July session the Economic and Social Committee adopted opinions concerning all the proposals for Directives designed to remove tax frontiers,⁴ the respective aims of which are:

(i) to supplement the common system of value-added tax and amend the Directive of 17 May 1977⁵ with regard to the approximation of VAT rates;⁶

(ii) to supplement the common system of value-added tax and amend the Directive of 17 May 1977 with regard to the removal of tax frontiers;⁷

(iii) to institute a process of convergence of rates of value-added tax and excise duties;⁶

(iv) to approximate taxes on cigarettes;⁸

(v) to approximate taxes on manufactured tobacco other than cigarettes;⁸

(vi) to approximate the rates of excise duty on mineral oils;⁹

(vii) to approximate the rates of excise duty on alcoholic beverages and on the alcohol contained in other products;⁶

(viii) to set up a Community VAT clearing mechanism for intra-Community sales (→ points 2.4.54 to 2.4.61).

Turnover taxes

2.1.50. On 19 July¹⁰ the Council adopted, on a proposal from the Commission,¹¹ a Decision authorizing the Netherlands to apply a measure derogating from Article 21(1)(a) of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes.⁵ This proposal follows a request for a derogation submitted by the Dutch Government on 18 April under Article 27(1) of the Sixth Directive.

⁴ Bull. EC 7/8-1987, point 1.2.1 *et seq.*

⁵ OJ L 145, 13.6.1977.

⁶ OJ C 250, 18.9.1987.

⁷ OJ C 252, 22.9.1987.

⁸ OJ C 251, 19.9.1987.

⁹ OJ C 262, 1.10.1987.

¹⁰ COM(88) 398 final.

¹¹ OJ L 269, 29.9.1988.

Tax reliefs

2.1.51. On 7 July Parliament adopted an opinion (first reading)¹² on the proposal for a Directive amending for the ninth time the Directive of 28 May 1969¹³ on the harmonization of provisions laid down by law,

¹² OJ C 235, 12.9.1988.

¹³ OJ L 133, 4.6.1969.

regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel,¹ proposing certain amendments of a technical nature.

2.1.52. Also on 7 July Parliament adopted a legislative resolution² embodying at the first reading its opinion endorsing the proposal for a Directive amending for the fifth time the Directive of 19 December 1974,³ on the tax reliefs to be allowed for the importation of goods in small consignments of a non-commercial character within the Community⁴.

¹ OJ C 102, 16.4.1988; Bull. EC 12-1987, point 2.1.93.

² OJ C 235, 12.9.1988.

³ OJ L 354, 30.12.1974.

⁴ OJ C 5, 9.1.1988; Bull. EC 12-1987, point 2.1.94.

Indirect taxation

2.4.54. By 112 votes to 8 with 11 abstentions, the Committee adopted an opinion on the global Commission communication on completion of the internal market: approximation of indirect tax rates and harmonization of indirect tax structure.⁸

The Committee wholly endorsed the aim of doing away with tax controls at borders. It recalled that the internal market could only be achieved by means of a global strategy involving the removal of technical, physical, fiscal and administrative barriers

⁸ Bull. EC 7/8-1987, point 1.2.1 *et seq.*

accompanied by the essential macro-economic policies.

The Committee felt that the Commission should reconsider whether it was necessary to approximate VAT rates applicable to goods and services, since these were not normally traded by non-liable persons, and the application of different VAT rates did not lead to distortions of competition.

2.4.55. By a large majority with eight votes against and three abstentions, the Commission adopted an opinion on the proposal for a Directive supplementing the common system of value-added tax¹ and amending the Directive of 17 May 1977—Approximation of VAT rates.²

The Committee broadly endorsed the proposal to limit the number of VAT rates to two, while being conscious of the difficulties of putting this into practice (impact on prices and wages policy and on social policy). It also felt that the proposed tax bands should be narrowed.

2.4.56. By a large majority, with three votes against and nine abstentions, the Committee adopted an opinion on the proposal for a Directive supplementing the common system of value-added tax³ and amending the Directive of 17 May 1977—Removal of tax frontiers.²

As most of the amendments proposed by the Commission were the necessary consequence of the removal of tax frontiers, the Committee felt that a specific opinion on the subject would be superfluous.

2.4.57. By a large majority, with two votes against and eight abstentions, the Committee adopted an opinion on the completion of the internal market—Introduction of a VAT clearing mechanism for intra-Community sales.⁴ The Committee considered the proposed system to be a complex one, as it involved very extensive checks on the part of the various administrations and the establishment of a large Community department.

In its view, the clearing mechanism (should it be finally adopted) could only operate successfully if certain problems were resolved, such as the calculation of compensation in the case of transactions involving more than two Member States or carried out through the intermediary of a non-member country.

2.4.58. By a large majority, with four votes against and three abstentions, the Committee adopted an opinion on the proposal for a Directive instituting a process of convergence of rates of value-added tax and excise duties.¹

The Committee stressed the link between this proposal and the proposals on the approximation of VAT rates (→ point

¹ OJ C 250, 18.9.1987; Bull. EC 7/8-1987, point 1.2.1 *et seq.*

² OJ L 145, 13.6.1977.

³ OJ C 252, 22.9.1987; Bull. EC 7/8-1987, point 1.2.1 *et seq.*

⁴ Bull. EC 7/8-1987, point 1.2.1 *et seq.*

2.4.55) and on the removal of tax frontiers (→ point 2.4.56). It questioned the wisdom of confining the proposal to prohibiting further divergence while allowing convergence towards the proposed rates for 1992. It would appear more advisable to require all the Member States to come into line gradually with the final objective.

2.4.59. By a large majority, with two votes against and no abstentions, the Committee adopted an opinion on two proposals for Directives on the approximation of taxes on cigarettes and on the approximation of taxes on manufactured tobacco other than cigarettes.⁵

The Committee felt unable to deliver an informed opinion on the proposals, as they related solely to the structure and basic rates of excise duties on tobacco, and did not deal with other related problems such as the method for calculating the base and collecting duties, or the situation in the tobacco industry in general and with regard to employment in particular.

2.4.60. The Committee adopted *nem. con.*, with four abstentions, an opinion on

⁵ OJ C 251, 19.9.1987; Bull. EC 7/8-1987, point 1.2.1 *et seq.*

the proposal for a Directive on approximation of the rates of excise duty on mineral oils.¹

The Committee endorsed the aims of the proposal, which was part of the overall plan to complete the internal market. However, it made a number of criticisms concerning the implementing arrangements proposed by the Commission. The Committee felt that it would be more appropriate to approximate the taxation systems at the lowest possible level, bearing in mind the budgetary constraints on the Member States, rather than to adopt the upper limit.

The Committee also called on the Commission to present an outline as soon as possible of the method for repaying excise revenue to the Member States where consumption actually took place. It considered that a knowledge of this procedure was essential in order to be able to assess this proposal or any other proposal on the approximation of rates of excise duties.

2.4.61. By 80 votes to 13 with 6 abstentions, the Committee adopted an opinion on the proposal for a Directive on the approximation of the rates of excise duty on alcoholic beverages and on the alcohol contained in other products.²

The Committee approved the proposal in principle, as it was designed to avoid distortions of competition and obviate the need for border controls. However, it felt that the matter deserved closer examination by the Commission, and that all the Member States should be specifically consulted.

¹ OJ C 262, 1.10.1987; Bull. EC 7/8-1987, point 1.2.1 *et seq.*

² OJ C 250, 18.9.1987; Bull. EC 7/8-1987, point 1.2.1 *et seq.*

Bull EC 9-1988-

Bull EC 10-1988

Customs union and indirect taxation

Indirect taxation

Tax reliefs

2.1.50. On 5 October the Commission amended⁶ to take account of Parliament's opinion⁷ its proposal for a Directive⁸ amending for the ninth time Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel.⁹

2.1.51. On the same day the Commission amended¹⁰ to take account of Parliament's opinion¹¹ its proposal for a Directive¹² amending for the fifth time Directive 74/651/EEC on the tax reliefs to be allowed on the importation of goods in small consignments of a non-commercial character within the Community.¹³

⁶ OJ C 272, 21.10.1988; COM(88) 540 final.

⁷ OJ C 235, 12.9.1988; Bull. EC 7/8-1988, point 2.1.51.

⁸ OJ C 102, 16.4.1988; Bull. EC 12-1987, point 2.1.93.

⁹ OJ L 133, 4.6.1969.

¹⁰ OJ C 272, 21.10.1988; COM(88) 539 final.

¹¹ OJ C 235, 12.9.1988; Bull. EC 7/8-1987, point 2.1.52.

¹² OJ C 5, 9.1.1988; Bull. EC 12-1987, point 2.1.94.

¹³ OJ L 354, 30.12.1974.

Bull EC 11-1988 -

Bull EC 12-1988

Customs union
and indirect taxation

Indirect taxation

Turnover taxes

2.1.95. On 21 December the Commission adopted, for transmittal to the Council, a proposal³ for a Directive to supplement the common system of value-added tax and amend Articles 32 and 28 of Directive 77/388/EEC of 17 May 1977 (sixth VAT Directive) on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment,⁴ with regard to the arrangements applicable to second-hand goods, works of art, antiques and collectors' items. This is to replace the proposal⁵ for a seventh VAT Directive, which the Commission decided to withdraw in November 1987.⁶ It supplements the common VAT system, in accordance with the obligation imposed by Article 32 of the sixth Directive, for which it is substituted.

2.1.96. On 23 December the Commission transmitted to the Council its second report on the application of the common VAT system.⁷ The report, drawn up pursuant to Article 34 of the sixth Directive,⁴ reviews what the Commission and the Member States are doing to improve the operation of the system and iron out the difficulties of application created in particular by the rights and options still available under the Directive. The report also describes the principal Directives proposed or adopted on the basis of the sixth Directive during the period in question.

Tax reliefs

2.1.97. On 21 December the Council adopted Directive 88/664/EEC⁸ amending for the ninth time Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel;⁹ the new amendment adjusts the reliefs with effect from 1 July 1989 so as to maintain their value in real terms.

2.1.98. On 7 December the Commission sent the Council a proposal¹⁰ for a Directive further amending Directive 69/169/EEC⁹ as regards travellers' allowances; the purpose of the proposal is to extend, in modified form, the derogation granted to Denmark.¹¹

2.1.99. On 21 December the Council adopted Directive 88/663/EEC¹² amending for the fifth time Directive 74/651/EEC of 19 December 1974 on the tax reliefs to be allowed on the importation of goods in small consignments of a non-commercial character within the Community;¹³ the new amendment adjusts the reliefs with effect from 1 July 1989 so as to maintain their value in real terms.

³ COM(88) 846 final.

⁴ OJ L 145, 13.6.1977.

⁵ OJ C 26, 1.2.1978; OJ C 136, 31.5.1979.

⁶ Bull. EC 11-1987, point 2.1.91.

⁷ COM(88) 799 final. First report: Bull. EC 9-1983, point 2.1.37.

⁸ OJ L 382, 31.12.1988, Commission proposal: OJ C 102, 16.4.1988; Bull. EC 12-1987, point 2.1.93; OJ C 272, 21.10.1988; Bull. EC 10-1988, point 2.1.50.

⁹ OJ L 133, 4.6.1969.

¹⁰ COM(88) 731 final.

¹¹ OJ L 78, 20.3.1987; Bull. EC 3-1987, point 2.1.69.

¹² OJ L 382, 31.12.1988, Commission proposal: OJ C 5, 9.1.1988; Bull. EC 12-1987, point 2.1.94; OJ C 272, 21.10.1988; Bull. EC 10-1988, point 2.1.51.

¹³ OJ L 354, 30.12.1974.

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Customs union and
indirect taxation**Indirect taxation***Tax reliefs*

2.1.29. On 25 January the Economic and Social Committee endorsed the proposal¹⁰ to amend Directive 69/169/EEC of 28 May 1969¹¹ in respect of a derogation for Denmark from the arrangements relating to tax reliefs on imports in international travel.¹⁰

¹⁰ Bull. EC 12-1988, point 2.1.98.

¹¹ OJ L 133, 4.6.1969.

BULL. E.C 2-1989

2. Taxation of savings**Liberalization of capital
movements and taxation**

1.2.1. In accordance with Directive 88/361/EEC of 24 June 1988 on the liberalization of capital movements,¹ on 8 February the Commission adopted for transmission to the Council two proposals for Directives² due to come into effect on 1 July 1990. The first is intended to align more closely the ways in which savings are taxed in the various Member States while the second will strengthen mutual assistance by the competent authorities of the Member States in the field of direct taxation.

Reducing the risk of imbalances

1.2.2. The aim of the proposed measures is to eliminate or reduce the risk of distortion, avoidance and evasion. Particularly in those Member States which have not yet abolished all exchange controls, there is a risk that the liberalization of capital movements will lead to greater tax evasion. From 1 July 1990 Community residents will be free to transfer their savings into bank accounts in any other Member State without necessarily declaring the income to the tax authorities

of their Member State of residence. Since in a number of Member States there is no withholding tax on bank interest paid to non-residents, investments would tend to move towards those countries, so escaping all forms of taxation. Capital movements of that type, motivated only by tax considerations, would clearly run counter to the optimal allocation of resources which is the purpose of establishing a Community financial area.

Withholding tax on interest

1.2.3. The first proposal for a Directive provides for all the Member States to introduce a withholding tax at a minimum rate of 15% on interest paid to Community residents. This would remove the incentive to invest in a Member State which had more favourable tax provisions than the investor's country of residence while at the same time imposing a minimum level of taxation on income from capital. A withholding tax would not in any way be a novelty. Nine Member States already have one, although only three apply it to both residents and non-residents.

¹ OJ L 178, 8.7.1988; Bull. EC 6-1988, point 2.1.8.

² COM(89) 60 final.

Great freedom for the Member States

1.2.4. The proposal is not intended to bring about complete harmonization of the taxation of savings, which is not necessary at the moment. It leaves the Member States very considerable room for manoeuvre. Although, in general, the withholding tax constitutes simply an advance payment of income tax, with any overpayment being refunded, the Member States may, in the case of their own residents, regard it as being in full discharge of tax liability. They may also exempt certain types of interest, such as interest paid on small savings, which should be encouraged for economic and social reasons. Member States may exempt their own residents from withholding tax if they have a system of automatic declaration to the tax authorities of interest payments made by banks or if the recipient is not subject to income tax or profits tax. Member States may also choose not to levy the withholding tax on interest payments constituting industrial or commercial income on which full tax checks can be carried out. Member States have very considerable freedom as regards the rate of the tax, provided this is not lower than 15%. They may apply a higher rate to their own residents and may levy different rates depending on the nature of the financial product, as some do already.

The Commission deliberately set the rate of withholding tax at a low level both to reduce its impact on those Member States which either have no such tax at the moment or levy it only at a lower rate and to avoid the risk of flights of capital and a shift of financial activities to non-member countries.

Preserving the international role of Community financial centres

1.2.5. The Commission has paid particular attention to the maintenance and development of the Community as an international financial centre and accordingly has given the Member States the option to exempt from withholding tax both interest on Eurobonds and interest paid to residents of non-member countries. It also wishes to ensure that the tax does not increase the costs of Community firms, which have to retain their competitiveness on the world market.

In order to limit the slight but real risk that introduction of a withholding tax could encourage Community residents to invest their savings in non-member countries which do not impose such a tax, the Commission considers that the Community

should open negotiations with its major trading partners in order to extend the scope of the system.

Greater cooperation between tax authorities

1.2.6. The second proposal for a Directive seeks to amend Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by tax authorities.¹ The aim is to facilitate the exchange of information between tax authorities where there are well-founded suspicions of tax evasion by removing all administrative barriers without, however, jeopardizing banking secrecy.

Initial discussion in the Council

1.2.7. The Council of Ministers held an initial policy discussion of these proposals at its economic and financial affairs meeting on 13 February.

¹ OJ L 336, 27.12.1977.

Customs union and indirect taxation

Indirect taxation

Tax reliefs

2.1.52. On 17 February Parliament endorsed (first reading)¹ a proposal² amending Directive 69/169/EEC of 28 May 1969³ as regards a derogation granted to the Kingdom of Denmark relating to the rules governing travellers' allowances on imports.

¹ OJ C 69, 20.3.1989.

² OJ C 26, 1.2.1989; Bull. EC 12-1988, point 2.1.98.

³ OJ L 133, 4.6.1969.

Financial institutions
and company law

Company law, company taxation
and capital movements

Taxation of savings

2.1.74. On 8 February the Commission adopted for transmission to the Council two proposals for Directives concerning tax measures in support of the liberalization of capital movements (→ point 1.2.1 *et seq.*).

2.1.42. On 3 April the Commission adopted,⁴ for transmission to the Council, a proposal for a Decision authorizing the United Kingdom, pursuant to Article 27(1-4) of Council Directive 77/388/EEC of 17 May 1977 (Sixth VAT Directive),⁵ to extend for 12 months a measure derogating from Article 21 of that Directive with regard to certain transfers of assets to groups of undertakings.

⁴ COM(89) 158 final.
⁵ OJ L 145, 13.6.1977.

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Taxation

Indirect taxation

Tax reliefs

2.1.27. Acting on a proposal from the Commission,⁵ on 13 March the Council adopted a Directive amending Directive 69/169/EEC of 28 May 1969⁶ as regards a derogation granted to Denmark relating to the rules governing travellers' allowances on imports.

⁵ OJ C 26, 1.2.1989; Bull. EC 12-1988, point 2.1.98.

⁶ OJ L 133, 4.6.1969.

BULL. E.C 4-1989

Taxation

Indirect taxation

Turnover tax

Sixth VAT Directive

1. Approximation of indirect taxation

1.1.1. On 17 May the Commission adopted for transmission to the Council a communication on completion of the internal market and approximation of indirect taxes that proposes a number of new guidelines for the approximation of VAT and excise duty rates.¹

The new approach, which reaffirms the objectives set out in the Commission's initial proposals of 4 August 1987 (approximation of rates, and removal of tax frontiers incompatible with a genuine single market),² is based on a three-pronged strategy:

(i) introduction of a transitional convergence phase (to run until the end of 1992) during which Member States would be given every encouragement to speed up the approximation of VAT and excise duty rates, procedures would be simplified for traders (abolition of the transit advice note) and there would be a gradual and substantial increase in allowances for people travelling within the Community (from ECU 800 at the beginning of 1990 to ECU 1 600 at the beginning of 1992);

(ii) as regards VAT, adoption of a minimum standard rate as an alternative to the proposed rate band; maintenance of the

proposal for a reduced-rate band of 4 to 9%; introduction of the possibility for those Member States which so desired to retain zero-rating for a very small number of products, subject to certain conditions; introduction of special arrangements for certain clearly defined commercial transactions (mail-order sales; sales of cars; sales to institutional non-taxable persons or to exempt taxable persons; arrangements for suspending VAT on intra-Community sales between associated enterprises); as for the revenue accruing to Member States, replacement of the central clearing fund initially envisaged by a simplified mechanism for refunding surplus VAT balances calculated on the basis of intra-Community trade statistics;

(iii) amendments to the proposals relating to excise duties in order to take account of the widely differing levels of taxation in Member States and of the need to protect health (alcohol and tobacco) and to promote energy savings and environmental protection (petroleum products).

¹ COM(89) 260 final.

² OJ C 250, 18.9.1987; OJ C 251, 19.9.1987; OJ C 252, 22.9.1987; OJ C 262, 1.10.1987; Bull. EC 7/8-1987, point 1.2.1 *et seq.*

Taxation

Indirect taxation

Removal of tax frontiers

2.1.46. On 17 May the Commission adopted for transmission to the Council a communication proposing a number of new guidelines for the approximation of VAT and excise duty rates (→ point 1.1.1 *et seq.*).

Turnover taxes

2.1.47. On 16 May the Commission adopted for transmission to the Council a proposal for a Decision¹ authorizing the United Kingdom to apply for an indefinite period a measure derogating from Article 11(A)(1)(a) of Council Directive 77/388/EEC of 17 May 1977 (Sixth VAT Directive).² This derogation had previously been authorized for two successive two-year periods, on 13 June 1985³ and 25 May 1987.⁴ Its purpose is to counter tax avoidance in connection with certain marketing structures based on the sale of goods through persons not registered for VAT purposes by taxing supplies to such persons on the basis of the open-market value as determined at the retail stage.

¹ COM(89) 240 final.

² OJ L 145, 13.6.1977.

³ OJ L 199, 31.7.1985; Bull. EC 6-1985, point 2.1.56.

⁴ OJ L 188, 8.7.1987.

1. European Council

Madrid, 26 and 27 June

Taxation

1.1.5. The European Council was concerned at the delay in finding a solution to the problem of the taxation of savings and stressed the need to ensure that the liberalization of capital movements did not facilitate tax fraud. The European Council asked the Council to increase its efforts to find a satisfactory solution to the problems of taxation of savings in order to reach an agreement before 1 July 1990.

The European Council welcomed the fact that detailed discussions had now begun in the field of the approximation of indirect taxation on the basis of the new approaches proposed by the Commission⁴ and taking account of the Member States' suggestions, and that a procedure for the continuation of those discussions had been laid down. The European Council emphasized the need to reach agreement on the broad lines of a solution in this area before the end of the year, having regard to all the problems involved, in order to ensure that the internal market came into operation on schedule.

⁴ Bull. EC 5-1989, point 1.1.1.

Taxation

2.1.38. The European Council, meeting in Madrid, emphasized the need to reach agreement swiftly on the taxation of savings and the approximation of indirect taxation (→ point 1.1.5).

Indirect taxation

Turnover tax

2.1.39. On 19 June the Council approved in substance the proposal for an 18th VAT Directive,² under which a number of temporary derogations from the Sixth Council Directive of 17 May 1977 on VAT (77/388/EEC)³ will be abolished as from 1 January 1990, 1991, 1992 and 1993 respectively.

2.1.40. On 20 June the Commission endorsed for transmission to the Council a proposal for a Decision authorizing the United Kingdom under Article 27 of the Sixth VAT Directive (77/388/EEC)³ to introduce a measure derogating from Article 11 of that Directive in respect of building land. Under the measure, the

United Kingdom intends to tax industrial and commercial buildings and the land on which they are sited on the basis of their open market value at the point in time when actual use commences.

2.1.41. On 21 June the Economic and Social Committee endorsed the proposal for a Directive supplementing the common arrangements of VAT as regards special arrangements for second-hand goods, works of art, antiques and collector's items.⁴ However, the Committee drew attention to certain undesirable side-effects which may result from the proposed taxation arrangements in certain cases although it acknowledged that those side-effects were of marginal importance and inevitable.

¹ Bull. EC 10-1987, point 2.3.10; Bull. EC 12-1988, point 2.3.18; Bull. EC 3-1989, point 2.5.11 and 2.5.12; Bull. EC 5-1989, point 2.5.9.

² OJ C 347, 29.12.1984; Bull. EC 12-1984, point 2.1.77; OJ C 183, 11.7.1987; Bull. EC 6-1987, point 2.1.68.

³ OJ L 145, 13.6.1977.

⁴ OJ C 76, 28.3.1989; Bull. EC 12-1988, point 2.1.95.

Taxation

Direct taxation

2.1.32. On 12 July the Economic and Social Committee adopted its opinion on the proposals for Council Directives² designed to introduce a common system of withholding tax on interest income and amend Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and value-added tax.³ The Committee approved both proposals but suggested that the Commission consider to what extent capital investments in tax-free bonds could be compatible with a Community system of this kind. It was also concerned about the fact that capital investments in non-member countries could continue without payment of such a tax.

² OJ C 141, 7.6.1989, point 1.2.1 *et seq.*

³ OJ L 336, 27.12.1977.

Indirect taxation

Turnover taxes

2.1.33. Acting on the Commission's proposal of 4 December 1984,⁴ as amended⁵ on 25 June 1987 in the light of the opinions of the Economic and Social Committee⁶ and the European Parliament,⁷ on 18 July the Council adopted Directive 89/465/EEC (Eighteenth Directive) on the harmonization of the laws of the Member States relating to turnover taxes.⁸ The new Directive abolishes some of the derogations provided for in Council Directive 77/388/EEC of 17 May 1977 (Sixth Directive).⁹

2.1.34. Acting on a Commission proposal,¹⁰ on 18 July the Council adopted⁸ Decision 89/466/EEC authorizing the United Kingdom to apply a measure derogating from Article 11 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes.⁹

2.1.35. Acting on the Commission's proposal of 10 July,¹¹ on 28 July the Council adopted¹² Decision 89/487/EEC authorizing the French Republic to apply a measure derogating from Article 17(6) of the Sixth VAT Directive.⁹ The measure is aimed at excluding expenditure in respect of accommodation, food, hospitality and entertainment from the right to deduct VAT previously charged, in order to prevent tax evasion and avoidance.

2.1.36. Acting on the Commission's proposal of 12 July,¹³ on 28 July the Council adopted Decision 89/488/EEC¹⁴ authorizing the French Republic to apply a measure derogating from Article 17(2) of the Sixth Directive.⁹ The measure is intended to exclude expenditure in respect of goods and services, in cases where private use of those goods and services accounts for more than 90 % of their total use, from the right to deduct VAT previously charged.

⁴ OJ C 347, 29.12.1984; Bull. EC 12-1984, point 2.1.77.

⁵ OJ C 183, 11.7.1987; Bull. EC 6-1987, point 2.1.68.

⁶ OJ C 218, 28.8.1985; Bull. EC 7/8-1985, point 2.1.76.

⁷ OJ C 125, 11.5.1987; Bull. EC 4-1987, point 2.1.55.

⁸ OJ L 226, 3.8.1989.

⁹ OJ L 145, 13.6.1977.

¹⁰ Bull. EC 6-1989, point 2.1.40.

¹¹ COM(89) 346 final.

¹² OJ L 239, 16.8.1989.

¹³ COM(89) 358 final.

¹⁴ OJ L 239, 16.8.1989.

Tax reliefs

2.1.37. On 5 July the Commission adopted for transmission to the Council a proposal¹ for a Directive for the progressive increase up to 1 January 1992 of the tax reliefs provided for in Directive 69/169/EEC of 28 May 1979,² as last amended by Directive 88/663/EEC of 21 December 1988,³ goods purchased by travellers inclusive of all duties in a Community Member State. The proposal is to increase the value of the tax relief applicable to goods subject to VAT from ECU 390 to ECU 800 on 1 January 1989, ECU 1 200 on 1 January 1991 and ECU 1 600 on 1 January 1992 and to double the quantities laid down for products subject to excise duties.

2.1.38. On 27 July the Commission adopted a communication concerning the temporary importation of a private vehicle for business or private use⁴ in which it considers the development of the case-law of the Court of Justice and comes to the conclusion that there is a need for rapid adoption by the Council of the Commission proposal of January 1987 on tax exemption within the Community.⁵

¹ OJ C 245, 26.9.1989.

² OJ L 133, 4.6.1969.

³ OJ L 382, 31.12.1988; Bull. EC 12-1988, point 2.1.97.

⁴ COM(89) 359 final.

⁵ OJ C 40, 18.2.1987, Bull. EC 1-1987, point 2.1.41.

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Taxation

Indirect taxation

Removal of tax frontiers

2.1.36. At its economic and financial affairs meeting on 9 October, the Council adopted conclusions regarding the removal of tax frontiers. It considered that the introduction of a system of taxation in the

country of origin, as proposed by the Commission,¹ presupposed the fulfilment of conditions which could not be satisfied before 1 January 1993. In its view, therefore, VAT and excise duties should continue to be levied in the Member States of consumption after that date for a limited period. Specifying that the solution contemplated would have to result in a reduction of the present burden on firms and administrations and to prevent distortions of competition without obstructing free movement, it spelt out a number of guidelines for the system of taxation to be applied after 1992.

The Commission reserved its position on the Council's conclusions. It also posed four fundamental questions designed to test the system envisaged by the Council, bearing in mind the essential requirements of the internal market:

- (i) Will the proposed system be compatible with the objective of abolishing the Community's internal frontiers?
- (ii) Will there be adequate provision for combating fraud?
- (iii) Will there be a genuine reduction in the administrative burden on firms?
- (iv) Will there be arrangements to facilitate the transition towards taxation in the country of origin?

2.1.37. On 25 October Parliament adopted a resolution on fiscal matters² in which it asserted the following principles. All tax controls at or near internal frontiers should cease from the end of 1992, tax rates should be brought together within a band based on the average for the Community, any system which did not eliminate tax frontiers in this way should be adopted only for a limited transitional period during which steps would have to be taken to secure the necessary convergence, and any transitional or permanent system would have to reduce substantially the burden of administering VAT.

2.1.38. On 25 October, with a view to abolishing tax controls at internal frontiers on 1 January 1993, the Commission adopted a new approach to excise-duty rates,³ amending⁴ accordingly its August 1987 proposals for Directives on:

- (i) the approximation of taxes on cigarettes and on manufactured tobacco other than cigarettes;⁵

- (ii) the approximation of the rates of excise duty on mineral oils;⁶

- (iii) the approximation of the rates of excise duty on alcoholic beverages and on the alcohol contained in other products.⁷

In accordance with its new guidelines for indirect taxation,⁸ the Commission therefore proposed a more flexible approach to excise duties that was compatible with the fundamental objective of abolishing tax frontiers, namely, the setting of minimum rates for all dutiable products, except certain petroleum products for which rate bands are essential in order to avoid distortions of competition. The provisions governing the rates applicable will have to be complied with by Member States not later than 1 January 1993. In addition, taking a longer-term view, the Commission fixed, except for mineral oils, which will be similarly dealt with at a later stage, benchmark values or target rates' that, as things stood, represented the most balanced approach to convergence. Lastly, it made provision for a two-yearly review procedure for the minimum rates and the target rates after 1992.

¹ OJ C 250, 18.9.1987; OJ C 251, 19.9.1987; OJ C 252, 22.9.1987; OJ C 262, 1.10.1987; Bull. EC 7/8-1987, point 1.2.1. *et seq.*; Bull. EC 5-1989, point 1.1.1.

² OJ C 304, 4.12.1989.

³ COM(89) 551 final.

⁴ COM(89) 525, COM(89) 526 and COM(89) 527.

⁵ OJ C 251, 19.9.1987; Bull. EC 7/8-1987, points 1.2.3 and 2.1.86.

⁶ OJ C 262, 1.10.1987; Bull. EC 7/8-1987, points 1.2.3 and 2.1.86.

⁷ OJ C 250, 18.9.1987; Bull. EC 7/8-1987, points 1.2.3. and 2.1.86.

⁸ Bull. EC 5-1989, point 1.1.1.

Tax reliefs

2.1.39. On 19 October the Economic and Social Committee endorsed the proposal for a Directive¹ amending Council Directive 69/169/EEC of 28 May 1969² with a view to increasing in real terms the exemption from turnover tax and excise duty on imports in international travel. It took the view that the exemptions designed to protect the Danish retail trade should be regarded as transitional measures which should not be allowed to compromise the free movement of goods and individuals within the Community after 1 January 1993.

¹ OJ C 245, 26.9.1989; Bull. EC 7/8-1987, point 2.1.37.

² OJ L 133, 4.6.1969.

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Taxation

Indirect taxation

Removal of tax frontiers

2.1.27. On 13 November the Council (Economic and Financial Affairs) adopted conclusions on the abolition of tax frontiers, following adoption of an initial approach in October.² While retaining the medium-term objective of switching to a uniform system of taxation in the country of origin, as proposed by the Commission,³ the Council confirmed its desire to maintain, for a limited period and in the case of transactions between taxable persons in different Member States, a system of VAT based on taxation of the recipient in the country of destination at the rate and under the conditions obtaining in that country.

Under the arrangements adopted, businesses will have to keep at the disposal of the authorities the requisite information for effective tax checks and are to submit regular returns that are to be as simple as possible. The nature of the obligations imposed to that effect will be decided on a proposal from the Commission. Monitoring will be based on the processing of business returns and administrative cooperation between the national authorities, in addition to existing mutual assistance procedures. Differential treatment will be accorded to certain classes of transaction (purchases of registered vehicles and distance selling) in order to avoid distortions of competition without hampering the free movement of goods. Products subject to excise duty will move without tax being levied between warehousekeepers authorized by the authorities of the Member States, the excise duty being paid in the Member State of consumption. The Commission's proposals⁴ concerning excise duty rates will be examined at a future Council meeting.

The Council did not reach agreement on the abolition of quantitative and *ad valorem* restrictions on travellers' purchases and the derogations granted to certain Member States in that connection.

While noting that some progress had been made, the Commission reiterated the reservations it had already entered after the Council meeting of 9 October.⁵ It issued the following statement on 15 November:

'The Commission notes that, at its meeting on economic and financial affairs on 13 November 1989, the Council reached partial agreement on the maintenance of VAT collection based on the country of destination. It considers that the transitional nature of this system is not adequately guaranteed. It regrets that the Council has failed to reach agreement on an initial approximation of rates and on a commitment to abolish travellers' tax allowances. The Commission, which has demonstrated its flexibility in facilitating an agreement, considers that the Council has for its part not yet shown the political will necessary for tax frontiers to be abolished by 1 January 1993.'

Turnover taxes

2.1.28. On 23 November the European Parliament endorsed⁶ the proposal for a Directive⁷ supplementing the common system of value-added tax with regard to the arrangements applicable to second-hand goods, works of art, antiques and collector's items. It suggested amendments aimed at safeguarding Member States' heritage, exempting items donated to officially recog-

² Bull. EC 10-1989, point 2.1.36.
³ OJ C 250, 18.9.1987; OJ C 251, 19.9.1987; OJ C 252, 22.9.1987; OJ C 262, 1.10.1987; Bull. EC 7/8-1987, point 1.2.1 *et seq*; Bull. EC 5-1989, point 1.1.1.
⁴ Bull. EC 10-1989, point 2.1.38.
⁵ Bull. EC 10-1989, point 2.1.36.
⁶ OJ C 323, 27.12.1989.
⁷ OJ C 76, 28.3.1989; Bull. EC 12-1988, point 2.1.95.

nized charity organizations and works of living artists, and determining the taxable amount for the activities of certain intermediaries.

Tax reliefs

2.1.29. On an amended¹ proposal² from the Commission and following the opinions adopted by the European Parliament³ and the Economic and Social Committee,⁴ on 23 November the Council adopted Directive 89/604/EEC⁵ amending Directive 83/183/EEC of 28 March 1983⁶ on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals.

2.1.30. On 23 November the European Parliament endorsed⁷ the proposal⁸ for a Directive amending Council Directive 69/169/EEC of 28 May 1969⁹ to increase in real terms the tax-paid allowances in intra-Community travel. It proposed two amendments aimed at highlighting that the restrictions still applied in the area will be phased out by 1 January 1993.

¹ OJ C 179, 8.7.1988; Bull. EC 5-1988, point 2.1.58.
² OJ C 5, 9.1.1987; Bull. EC 12-1986, point 2.1.162.
³ OJ C 318, 30.11.1987; Bull. EC 10-1987, point 2.1.59.

- ⁴ OJ C 150, 9.6.1987; Bull. EC 4-1987, point 2.4.45.
- ⁵ OJ L 348, 29.11.1989.
- ⁶ OJ L 105, 23.4.1983; Bull. EC 3-1983, point 2.1.44.
- ⁷ OJ C 323, 27.12.1989.
- ⁸ OJ C 245, 26.9.1989; Bull. EC 7/8-1989, point 2.1.37.
- ⁹ OJ L 133, 4.6.1969.

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1. European Council

Strasbourg, 8 and 9 December

1.1.4.

With regard to indirect taxation, it notes with satisfaction the progress made during the last few months with the formulation of a transitional system which will lighten the burden on undertakings and administrations and enable border checks to be eliminated (→ point 2.1.45).⁷

It considers that these arrangements need to be supplemented by the elements which will be essential in particular to enable the progressive approximation of VAT rates and to resolve the problems connected with the removal, on 1 January 1993, of limits on purchases by private individuals for their personal consumption when travelling within the Community.

The European Council asks the Council to adopt as soon as possible, on a proposal from the Commission, the decisions which will make the process of the complete abolition of fiscal frontiers irreversible.

⁷ Bull. EC 10-1989, point 2.1.36; Bull. EC 11-1989, point 2.1.27.

Indirect taxation

Abolition of tax frontiers

2.1.45. At its economic and financial affairs meeting on 18 December, the Council supplemented the guidelines concerning the approximation of indirect taxation⁵ it had adopted on 13 November.⁶ Where the standard rate of VAT is concerned, Member States undertook not to depart, before 1 January 1993, from the 14% to 20% rate band proposed by the Commission. In addition, before 1 January 1991 the Council would decide on the rate band or minimum rate applicable from 1

January 1993 within this 14% to 20% range. Also before 1 January 1991 it would decide on the level and scope of the reduced rates and zero rates which could continue to be applied without distorting competition. While taking note of the results achieved, the Commission stated that it could not fully endorse this agreement in view of Denmark's reservation about the abolition on 1 January 1993 of restrictions on purchases made by private individuals when moving within the Community.

2.1.46. On 19 December the Economic and Social Committee adopted a favourable opinion on the Commission's proposals on the approximation of indirect taxation.⁵ It emphasized that, while it would be impossible, given the tight deadline, for taxation in the country of origin to be introduced by the end of 1992, it hoped that the duration of the provisional arrangements to be introduced would be as brief as possible and that the principle of the abolition of frontier controls would not be called into question.

⁵ Bull. EC 5-1989, point 1.1.1.

⁶ Bull. EC 11-1989, point 2.1.27.

Turnover taxes

2.1.47. On a proposal from the Commission,¹ the Council adopted on 21 December Decision 89/683/EEC² authorizing France to apply, in respect of trade in fresh industrial waste and recuperable material, a measure derogating from Articles 2 and 10 of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes.³ This measure is designed primarily to prevent certain types of tax evasion or avoidance, a secondary consideration being to simplify the procedure for collecting VAT.

¹ COM(89) 614 final.

² OJ L 398, 30.12.1989.

³ OJ L 145, 13.6.1977.

