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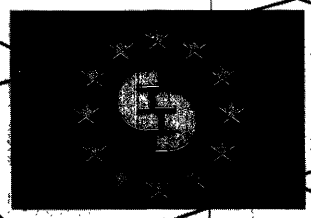

Abolition of Tax Frontiers

EUROPEAN COMMUNITIES

ECONOMIC AND SOCIAL COMMITTEE

Brussels 1991

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CONSULTATIVE ASSEMBLY

ABOLITION OF TAX FRONTIERS

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CONTENTS

PREFACE

The Economic and Social Committee (ESC) has voted by a huge majority for the abolition of tax frontiers. This verdict on the Commission's new tax package proposed in 1989 as a follow-up to the 1987 proposals[1] is in keeping with a long series of ESC positions on tax matters adopted over the last twelve years[2].

In its most recent Opinions the ESC has made some technical comments and concrete suggestions to the Community institutions for bringing about a more adequate tax system in the interests of business, public administration and the general public.

1. On 22 January 1990 the Council decided to ask the ESC for an Opinion on the Commission Communication to the Council entitled "New Commission Approach to Excise-Duty Rates" (COM(89) 551 final) as well as on three proposals for directives to align excise duty rates on (i) cigarettes and other manufactured tobacco, (ii) mineral oils and (iii) alcoholic beverages and the alcohol contained in other products.

2. At the Council's request the ESC also issued Opinions on four proposals for directives concerning the structure of duties as well as the general arrangements for and the holding and movement of products liable for excise duty; these give a commondefinition of taxable products and describe the final scheme to be applied to these products from 1 January 1993.

3. Also in the field of taxation the Council asked the ESC on 25 February 1989 for an Opinion on a Proposal for a Directive on a Common System of Withholding Tax on Interest Income and on a Proposal concerning Mutual Assistance by the Competent Authorities of the Member States in the field of Direct Taxation and Value Added Tax (COM(89) 60 final/3).

The ESC's Position on Excise Duty Rates

4. The ESC first of all stresses that the aim of proposals for harmonization must be to:
   — abolish tax frontiers;
   — avoid significant distortions of competition; and
   — prevent fraud and tax evasion.

   The ESC then points out that the problem of excise duties has to be seen in the larger context of indirect taxation and, more generally, the taxation system as a whole.

   The ESC reaffirms the views expressed in its 1988 Opinions on excise duties whilst accepting that adjustments will have to be made because of the present situation. It cannot approve the Commission Communication (COM(89) 551 final) in its present form. To be able to make an accurate and thorough assessment of the excise duty proposals, the ESC would also need to be familiar with the proposals on the collection of duties, the movement of goods, controls, bonded warehouse regulations and the marking of individual products.

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1 The ESC expressed its support for these 1987 proposals in a series of eight Opinions on the harmonization of indirect taxes issued in July 1988.

2 Cf. among others:
— Information Report of 12 July 1988 on Tax Harmonization, Rapporteur : Mr FREDERSDORF (CES 846/78);
— Opinion of 27 November 1985 on "Completing the Internal Market" - White Paper from the Commission to the European Council, Rapporteur: Mr POETON - Co-Rapporteur: Mr ROUZIER (OJ No. C 344 of 31 December 1985);
— Opinion of 22 May 1986 on a Proposal for Imposing a Standstill on VAT and Excise Duties, Rapporteur: Mr DELLA CROCE (CES 500/86);
— Opinion of 27 November 1986 on Financial Integration in the Community, Rapporteur: Mr DRAGO (CES 970/86);
— Opinion of 28 January 1987 on Turnover Taxes Applicable to Smaller Businesses, Rapporteur: Mr BROICHER (CES 95/87).

The ESC considers that minimum and maximum rates need to be fixed for all excise duty rates confined within mandatory bands. Since significant changes inexisting rates might cause problems for some Member States, convergence towards the new bands should be allowed to continue after the introduction of the Single European Market. The ESC feels that the minimum and target rates proposed by the Commission are too high. The bands proposed in the Opinion should be consolidated at a lower level, especially in the case of certain products. The ESC also stresses that excise duties should be a tax on consumption and not on the factors of production.

Specific Proposals on Excise Duties

Cigarettes and Tobacco (COM(89) 525 final

5. The ESC deplores the absence of a coherent overall policy on tobacco. While some intervention instruments seek to help producers, the effect of taxation policy has been to reduce consumption of EEC tobacco without providing equivalent disincentives to consume imported tobacco. Moreover, the concern for consumer health, which has led the Commission to propose considerably higher target rates than in 1987, has been too unfocused and does not form part of a general health policy. The Commission proposals penalize cheaper products and are unacceptable because they would adversely affect Community tobacco-growing. In short, the ESC's overall opinion of the Commission's proposal is unfavourable.

Mineral Oils (COM(89) 526 final)

6. The ESC repeats the calls in its 1988 Opinion for: an alignment of excise duties at the lowest possible level, bearing in mind Member States' budgetary requirements; the abolition of all excise duties on heavy fuel oils used purely for production purposes, LPG and heating oil; the harmonization of tax advantages already granted to certain economic sectors or activities; and parallel treatment for road tax and other charges relating to the use of vehicles. To sum up, the aims of the Commission proposal are approved but not the means suggested for achieving them.

Alcoholic Beverages (COM(89) 527 final)

7. As well as recalling its 1988 Opinion the ESC proposes the rapid phasing-out of excise duty on wine and beer, a cut in the very high rate of duty on potable alcohol and the abolition of excise duty on solid foods containing alcohol.

Structure and the Movement of Products Subject to Excise Duty (COM(90) 431, 432, 433 and 434 final)

8. The ESC welcomes the Commission's proposals for harmonizing the structures of specific excise duties. However, harmonization measures in this field cannot counteract distortions of competition caused by excise duty disparities. The fact that the Commission confines itself to a small number of excise duties is welcomed. Checks, which are the responsibility of the Member States, should be effective, but their sole purpose should be to prevent tax fraud and smuggling.

   The ESC suggests a number of amendments to the draft directive on the general arrangements for products subject to excise duty and on the holding and movement of such products; these amendments are intended to clarify the Commission text, particularly with regard to the customs territory, the chargeable event, the acquisition of products subject to excise duty, exceptions in the mail-order trade, limitation of cases where a guarantee is required, identification of products, the setting-up of a numbered register, and differentiation between identification markings and tax markings. Subject to these amendments, the ESC regards the Commission proposal as appropriate with a view to the removal of customs checks in intra-Community trade in products subject to excise duty from 1992. Specific remarks are made concerning individual products (alcohol, tobacco, mineral oils).

Withholding Tax on Interest Income (COM(89) 60 final/3)

9. The Commission's proposal to introduce a Community-wide withholding tax on interest income meets with the ESC's approval, subject to certain comments. The proposal to extend mutual assistance is welcomed.

   As part of the liberalization of capital movements this measure seeks to remove or reduce the risks of distortion, tax avoidance and tax evasion linked to the diversity of national systems for taxing savings and for monitoring the application of these systems. The ESC considers that a withholding tax is a justifiable form of taxation for various reasons, including that of fairness, as most Member States already operate a similar system. However, it will still be possible to invest capital in non-EEC countries where there is no such tax, which means that the Community will have to negotiate agreements with the main non-EEC countries. The ESC thinks 10% could be a reference rate for a withholding tax and proposes that interests from savings accounts should be free from tax.

Jean PARDON

Chairman of the Section for Economic,
Financial and Monetary Questions

OPINION
of the Economic and Social Committee
on the
Proposal from the Commission to the Council on transitional arrangements for taxation with a view to establishment of the internal market
(COM(90) 182 final - SYN 274)

Procedure

On 17 July 1990 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the

Proposal for transitional arrangements for taxation with a view to establishment of the internal market
(COM(90) 182 final - SYN 274).

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the subject, drew up its Opinion on 11 September 1990 in the light of the Report by Mr DELLA CROCE.

At its 279th Plenary Session (meeting of 19 September 1990) the Economic and Social Committee adopted the following Opinion by a large majority, with 6 dissenting votes and 6 abstentions:

* * *

1. Introduction

The present proposal represents a change of stance by the Commission following the negative reactions of the Council and Member State Governments to its previous proposals.

In 1987, the Commission had submitted a proposal for a common VAT mechanism with a view to completion of the internal market and the removal of tax frontiers[1].

The aim was to harmonize VAT by reducing the number of rates to two and fixing them within bands of upper and lower limits. The proposal also introduced the principle of "taxation in the country of origin", whereby intra-Community sales and purchases of goods would be afforded the same treatment as transactions within Member States.

The Economic and Social Committee adopted an Opinion on the Commission proposal (CES 740/88), which should be mentioned here[(2)].

The Council subsequently said it was unable to endorse the Commission's approach, partly because a number of Member States had in the meantime expressed clear opposition to the proposals.

On 14 June 1989 the Commission therefore sent a communication[(3)] to the Council and the European Parliament, proposing that a transitional phase be established at the earliest opportunity, lasting until 31 December 1992, so that the necessary adjustments could be made. At the same time, it proposed a minimum standard VAT rate instead of a band, special arrangements for certain transactions and a clearing system based on statistics.

The Economic and Social Committee Opinion was highly critical of the communication[(4)].

On 9 October 1989, the Council said it did not believe a general agreement could be reached before 1 January 1993. It did, however, approve - for a limited period - the principle of charging VAT in the country of destination with differential treatment for certain classes of transaction.

On 13 November 1989 the Council stressed that taxes should be levied in the country of origin, and considered this a medium-term objective. It did, however recognize that VAT on transactions between taxable persons in different Member States would have to be charged in the country of destination, according to the rates and conditions obtaining in that country, in order for VAT arrangements to operate properly.

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(1) COM(87) 322 final - OJ C 252 of 22.9.1987.
(2) CES 740/88 - OJ C 237 of 12.9.1988, page 19.
(3) COM(89) 260 final
(4) CES 1368/89

The Council and the Commission also agreed to carry out a comprehensive study by 31 December 1996 at the latest with a view to deciding how and when to introduce the definitive, uniform VAT system after the transitional period.

2. The Commission proposal

Consequently, whilst reiterating that tax frontiers are to be dismantled once and for all and that the ultimate objective is to levy taxes in the country of origin, the Commission is now making a number of changes to its previous proposals and is proposing to introduce transitional arrangements.

Under the proposals, the following transactions would continue to be taxed at the rates and under the conditions obtaining in the Member State of destination:

— sales to institutional non-taxable persons and to fully exempt taxable persons;

— mail-order sales to private individuals where the seller's annual turnover from mail-order sales in other Member States exceeds ECU 1 million;

— sales of new passenger vehicles (subject to the conditions laid down in Article 2(6)).

During a transitional period from 1 January 1993 to 31 December 1996 (at the latest), goods traded between one Member State and another on the basis of transactions other than those listed in the paragraph above will be taxed in the country of destination.

In other words, sales of goods destined for another EC Member State will be exempt of VAT, whereas acquisitions will be liable to VAT (payable by the person making the acquisition) in the country of destination.

VAT will be paid when regular returns are made, rather than when goods are actually imported.

Tax on purchases by institutional persons not liable to VAT and by fully exempt persons will be payable in the country of origin provided the total volume, in other words the total amount of goods acquired in a Member State other than that of destination, net of VAT, does not exceed ECU 35,000 (ECU 70,000 from 1 January 1995) during the calendar year.

Intra-Community transactions by smaller firms will benefit from the exemption arrangements that already apply to domestic transactions in some Member States.

There will be no restrictions on acquisitions by private individuals where tax is paid to the country where the acquisition takes place. Mail-order purchases by private individuals will be taxed in the country of destination.

According to the Commission, the new system will reduce the administrative burden and costs to be borne by firms, as intra-Community transactions will be subject to the same checks as domestic transactions, based on normal trade documents, particularly invoices.

The only additional obligation will be the breakdown of the amount relating to intra-Community transactions.

3. Comments

The Committee would start by pointing out that the Commission's latest proposal is the direct result of intense political discussions in all Member States, and follows a number of specific statements made by the Council.

This is an important point since the Council must reach its final decisions as soon as possible - 1 January 1993 is fast approaching and it would be advisable to have a clear set of rules beforehand.

It is worth repeating that tax policy as a whole is an essential component of all economic policy. It is crucial to achieving economic and social cohesion in the Community, improving living conditions in a balanced way and ironing out regional disparities.

On the other hand, the arguments raised during the political debate should not be forgotten or played down. The basic reasoning in the Opinions adopted by the Committee since 1988 on VAT and excise duties should also be kept in mind.

There is a clear need for a transitional period, as advocated by the Committee in its Opinion of 19 December 1989 (CES 1368/89), during which sales of goods continue to be taxed in the country of destination. Member States must however be allowed sufficient time to prepare for the definitive arrangements.

All aspects of the final arrangements must be clearly spelled out in all measures taken to help Member States adapt to the new system without incurring new budget problems or harming the competitiveness of their economies.

When indirect taxation is finally harmonized, it should be harmonized sufficiently closely and steps taken to prevent any harmful effects on the Member States' budget, economic and social policies, so as not to jeopardize the introduction of economic and monetary union in the Community.

The Commission's efforts to persuade the Council to simultaneously approve the transitional phase and the definitive arrangements therefore deserve support.

The definitive rates which will be applied or authorized should be made known as soon as possible, a clearing system should be defined, whereby taxes are systematically levied in the country of consumption, and measures to prevent fraud and tax evasion need to be spelled out.

The Commission's proposed transitional period is to run from 1 January 1993 until 31 December 1996. The Commission therefore believes that the final objective can be achieved within a period of four years (possibly less). Although it is extremely difficult to judge whether the transitional period is adequate, it must be pointed out that the length of the period will depend on the ability and determination of Member States to use it in order to approximate their VAT rates and take all the measures needed to comply with commitments arising from the final system. Measures to suppress fraud and tax evasion will play an important part.

It is important for VAT rates to be aligned, in stages, before the single European market comes into force. In past Opinions the Committee has called for mandatory convergence of Member States' national rates within a fixed band. Mandatory convergence was not provided for in the Commission proposal set out in the communication of 14 June 1989, mentioned above. Unless a schedule for convergence is drawn up, and individual Member States are given assistance, we are likely to find ourselves in exactly the same situation at the end of 1996 as we are in now, making it impossible for the new system to come into operation.

Given that the proposal for transitional arrangements stems from the realization that the social, economic and political conditions needed to implement a definitive system do not exist at present, our first concern must be to ensure that the right conditions do prevail by the end of the transitional period. Major decisions will therefore have to be taken in all areas of taxation, not only indirect taxation. Action will also have to be taken to adapt the economic and social situations in the various Member States, which have hitherto developed independently of each other, in the light of the way of life, the culture and the traditions of their citizens.

It would certainly be advisable to keep open the option of extending the transitional period in case a significant number of the decisions involved have not been taken by 31 December 1996. It will be easier to extend the transitional period in this way once it has been seen to work successfully in practice.

The special arrangements outlined in the proposal also raise certain questions and need to be more clearly defined.

The special arrangements for mail-order sales cover only orders from catalogues.

Goods can be advertised in other ways however (e.g. door-to-door leaflets, television, newspapers and magazines), with the same results as catalogues; they should also be taken into consideration.

The Commission seems to be aiming to restrict the scope of mail-order sales under the terms of the special arrangements, whereas in fact it should be extended to all distance sales, although they should be governed by comprehensive legislation other than that under discussion here.

The limit of ECU 1 million on mail-order turnover also seems somewhat arbitrary.

Arrangements applicable to small and medium-sized firms and exempt taxable persons warrant special attention. First and foremost, Member States must be asked to harmonize their present systems. The new rules must then be set out more clearly than in the present proposal. The new system must in any event avoid distortions of competition.

The combination of free purchasing arrangements for private persons, taxation in the country of origin for institutional persons not liable to VAT and fully exempt persons and the threshold for mail-order sales (firms with a turnover of less than ECU 1 million) could have a significant effect on the tax revenue of net importing countries.

4. Conclusions

The Commission proposal offers a way round the numerous problems besetting the harmonization of indirect taxation at the present time, and as such meets with the Committee's approval. This, however, is on the understanding that its suggestions and comments, particularly in section 3, are taken on board.

This is an important proposal, as it has major repercussions on the entire economies of the countries concerned and in some cases calls for substantial revision of tax arrangements. The final arrangements are not therefore confined to indirect taxation: the whole system of taxation will have to be reformed if it is to be uniform and fair.

Member States which are net importers from the Community may also experience budgetary difficulties during the transition period: the Commission and the Council should therefore take the necessary steps to deal with problems which may ensue. It should also be remembered that an appropriate offset system will have to operate when the definitive arrangements are in place.

Priority should be given to minimizing the scope for fraud.

The proposal for transitional arrangements should therefore be closely linked with the proposal for administrative cooperation in the field of indirect taxation.

Done at Brussels, 19 September 1990.

The Chairman of the Economic and Social Committee	The Secretary-General of the Economic and Social Committee
Alberto MASPRONE	Jacques MOREAU

OPINION
of the Economic and Social Committee
on the
Proposal for a Council Regulation (EEC) concerning administrative cooperation in the field of indirect taxation
(COM(90) 183 final - SYN 275)

On 17 July 1990 the Council decided to consult the Economic and Social Committee, under Article 100a of the Treaty establishing the European Economic Community, on the

Proposal for a Council Regulation (EEC) concerning administrative cooperation in the field of indirect taxation

(COM(90) 183 final - SYN 275).

The Committee instructed the Section for Economic, Financial and Monetary Questions to prepare its work on the subject. When work was in progress, Mr GIACOMELLI was appointed Rapporteur-General.

At its 279th Plenary Session (meeting of 19 September 1990) the Economic and Social Committee adopted the following Opinion nem. con. with one abstention:

* * *

1. Introduction

The Committee (Section) approves the content of the present proposal which seeks, in line with the conclusions of the ECOFIN Council meeting held on 13 November 1989, to create a specific Community legal instrument for improving the effectiveness of administrative cooperation on indirect taxation (VAT and excise duties). The Committee's (Section's) approval is nevertheless subject to the following provisos: (a) the formalities falling on firms must be reduced, (b) checks must be even-handed and not excessively meticulous and (c) the legal basis and form of the Commission proposal must be revised. The arguments for a directive rather than a regulation are set out further on.

2. Introductory comments and explanations

The case for the Commission proposal

The proposed amendment to the draft Council directive supplementing the common system of value-added tax and amending Directive 77/388/EEC provides for the establishment of a transitional VAT-based taxation scheme. The Commission argues that this and the present proposal are warranted by the creation of the internal market and the abolition of fiscal frontiers. The present proposal can, moreover, be viewed as a corollary of the first one.

Both proposals seek to *abolish checks on intra-Community cross-border traffic as of 1 January 1993.* The first proposal, which will be dealt with separately, is principally designed to maintain, with some changes, VAT-based taxation in the country of destination, although it does confirm the medium-term aim of charging VAT in the country of origin. The second proposal concerns a regulation (rather than a directive) which would be directly applicable in every Member State; the explanatory memorandum and the draft regulation proper indicate that the proposal springs from *the need to strengthen existing provisions for administrative cooperation or mutual assistance in matters of indirect taxation, the main argument being the abolition of fiscal frontiers.*

As there will no longer be any customs checks at intra-Community frontiers, national fiscal controls will be based first and foremost on the verification of traders' accounts for intra-Community transactions. It is vital that the current mutual assistance arrangements be backed up by "a much more developed and comprehensive system of cooperation", as proposed in Council Directive 79/1070/EEC of 6 December 1979 (OJ L 331/8). This is necessary as each Member State will be responsible for checking the accounts of its own taxable persons, in order not only to curtail the risk of evasion and irregularities, particularly under the transitional arrangements, but also to ensure that the tax is collected in the country of destination, i.e. where the goods are consumed. Appropriate arrangements were provided for in document COM (87) 323 of 5 August 1987 on the introduction of a VAT clearing mechanism for intra-Community sales. The idea of a clearing house has been dropped in the

meantime, but the abolition of fiscal frontiers, to be accompanied by the abolition of the Single Administrative Document accompanying goods principally for the purposes of fiscal control, nevertheless requires an improvement in administrative cooperation, which has hitherto been confined to mutual assistance in the event of evasion or suspected evasion.

Finally, the Commission refers to the conclusions of the ECOFIN Council of 13 November 1989; the Council ruled out the idea of country-of-origin based taxation in the near future, due to major disagreements between Member States inter alia on (a) the principles and procedures for concomitant alignment of VAT rates and (b) compensation arrangements between debtor and creditor States. The Council did, however, accept the need for checks to ensure effective protection against the risk of evasion. These arrangements would essentially be based on (a) national monitoring of business returns, (b) regular information exchange and (c) the communication of documentation established by the administration. The Council felt that administrative cooperation "must not give rise to any obstacle on grounds of national legislation and will supplement existing mutual assistance procedures".

The Commission views the present proposal as a major component of the three-tier measures : (i) transitional VAT scheme, (ii) administrative cooperation, (iii) statistics, designed to *eliminate controls at intra-Community frontiers in the Internal Market* as of 1 January 1993. The legislation must effectively combat evasion and also help build up trust between the administrations responsible for applying the new arrangements. At her press conference on 8 May 1990, Commissioner SCRIVENER pointed out that such trust was necessary both for the transitional and the final VAT scheme; the final scheme should in theory replace the transitional one from 1 January 1997, following an *overall examination* of the matter by the Council to determine, on the Commission's proposal, arrangements for final standardization of the common VAT system (cf COM(90) 182 final - SYN 274 of 19 June 1990, point 3).

Current situation

The proposal covers administrative cooperation on indirect taxation. It should be noted that Community legislation does not yet provide for mutual assistance in the administration of excise duties as it does in the case of VAT. In accordance with Articles 1 and 2, the regulation therefore had to make express reference to these excise duties. In the event, the indirect taxes concerned are listed in Article 5, Title II: value-added tax; excise duty on manufactured tobacco products; excise duty on alcoholic beverages and alcohol contained in other products; excise duty on mineral oils. Consequently Titles I, III et seq. implicitly apply also to administrative cooperation and to exchange of information on such duties.

For administrative cooperation on VAT, the Commission decided to invoke the legislative framework provided by Council Directive 79/1070 EEC concerning mutual assistance by the competent authorities of the Member States in the field of indirect taxation.

The Commission also cited two other references: (i) Regulation EEC 1468/81 on mutual assistance in customs and agricultural matters, as amended by Regulation EEC 945/87, and (ii) the 1967 Naples Convention which provides for mutual assistance between customs administrations, but is not a Community instrument.

If, as the Commission states, current Community legislation on mutual assistance provides a sound basis for administrative cooperation on VAT, it would appear that these measures have not been widely deployed, as Member States have decided that their own national checking procedures, using import and export documents, are adequate for effective control.

Information received from the relevant authorities, does indeed indicate that these instruments, namely Council Directive 79/1070/EEC - have only been used haphazardly, in cases of evasion or suspected evasion, and within the limits set down in Article 7(2) (Provisions relating to secrecy) and 8 (Limits to exchange of information) of Council Directive 77/799/EEC on assistance in matters of direct taxation, extended to VAT by Directive 79/1070/EEC.

Administrative cooperation is due to become standard practice once fiscal frontiers have been removed; it will be part of a system of checking procedures based on Member States' own "a

posteriori" checks of tax declarations. Current arrangements are based on "a priori" checks of transactions by the customs. The Commission holds the view that it can fulfil the mandate assigned by the Council by proposing *a new legal instrument* to improve administrative cooperation between Member States on indirect taxation.

The arrangements to apply from 1 January 1993

Checks will be carried out under national tax arrangements and will be based on "a posteriori" verification of tax declarations.

Periodical VAT declarations show:

— total VAT payments and deductions;
— the volume of intra-Community sales and purchases.

This is sufficient to process VAT.

Checks are carried out on firms' accounts (on the spot and on the basis of documentation) thus allowing:

— checks on firms' stocks;
— checks on exemption conditions in connection with the shipment of goods to another Member State,
  — order forms,
  — invoices,
  — certificates,
  — transport documents.

Improved cooperation between administrations will allow:

— mutual assistance in cases of evasion or suspected evasion;
— "on request" cooperation in respect of routine checks;
— spontaneous assistance and communication of information.

Provision has been made, inter alia, for administrations to make reciprocal checks by means of random sampling, on whether a declared export is matched by an equivalent import and vice versa. Any information requested in this way must be communicated to the applicant Member State within 3 months.

The reduction in paperwork (such as abolition of the transit advice note, soon to be followed by abolition of the Single Administrative Document) will thus be reflected in firms' statistics. Proposals in this sphere, such as the Amended proposal for a Council Regulation (EEC) on the statistics relating to the trading of goods between Member States (COM(90) 177 final - SYN 181 of 27 June 1990), mean that the Single Administrative Document (with up to 55 entries) will be replaced by a form comprising only 10 statistical entries for the largest firms (under 20% of Community firms). Other firms, however, will only have to supply two additional figures in their periodical VAT declarations, i.e. their total Community imports and total Community exports.

In the absence of any indication to the contrary, the impression prevails that the proposed instrument will apply to both the transitional and final schemes, irrespective of the decisions taken by the Council on VAT or excise duties.

Notwithstanding recent Commission proposals on excise duties (heavily criticized by the Committee in its Opinions on these proposals: CES 1328/89, CES 63/90, CES 135/90 and CES 275/90 of 5 July 1990), the proposed arrangements seem even less concrete than those on VAT; in any case, the tax will continue to be charged in the country of destination, i.e. where the goods are consumed. The operation of integrated monitoring systems for goods attracting excise duty and being transported under exemption arrangements still has to be defined in detail. The Commission merely notes that the cooperation arrangements here will have to be similar to those for VAT.

Administrative cooperation

There will be two distinct but related types of cooperation under the new legal instrument.

Existing mutual assistance procedures for dealing with cases of evasion or serious irregularity (still to be defined) will be continued. These procedures will operate largely on a bilateral basis, but will need to be incorporated into a Community framework and codified in a Community instrument (regulation).

Furthermore, a new type of adminstative cooperation is to be introduced in order to achieve the principal goal of the present proposal: to exchange information for the purposes of checking intra-Community transactions subject to VAT and excise duties, after fiscal checks at intra-Community frontiers have been abolished.

Provision has been made for three categories of assistance:

Assistance on request, where the initiative lies with the applicant authority;

Automatic assistance, where both applicant and requested authorities agree in advance to exchange information;

Spontaneous assistance, where one authority deems it necessary to take the intitiative without being requested to do so.

Assistance on request is and will probably remain the most frequently used category.

3. General comments: remarks on the content and form of the proposal

If the system is to operate flexibly and without excessive evasion, closer cooperation between national indirect tax authorities will be vital once fiscal controls and formalities have been abolished in the run-up to the internal market; this will undoubtedly hold true for both transitional (as proposed by the Commission) and definitive arrangements (to be adopted by the Council after examination of the Commission's ad hoc sugggestions, for implementation by 1 January 1997).

The current *legal basis* for the proposal is *Article 100 A* of the Treaty; this is dubious insofar as it is intended to disregard Article 100 A (2) which states that "paragraph 1 shall not apply to fiscal provisions". It seems that the Commission intends to circumvent the unanimity rule by implicitly giving a restrictive interpretation of the derogation contained in paragraph 2 and deciding that paragraph 1 will apply irrespective of paragraph 2; the Commission view is that since the proposed measures to step up administrative cooperation on indirect taxation are purely executive they only require a qualified majority. This is by no means certain; fiscal provisions cover the tax, its introduction, assessment basis, rate, establishment and collection; close scrutiny of the Commission proposal reveals that it deals specifically with the establishment of the taxes, in that Article 1 introduces cooperation between administrations and with the Commission in order to ensure a) compliance with legislation on indirect taxation and b) correct establishment of the taxes.

Moreover, it is reasonable to ask why no reference has been made to Article 99 of the Treaty since, within the framework of wider improved administrative cooperation which implies the correct assessment of indirect taxes, the proposed new provisions broach the issue of alignment of legislation on turnover taxes, excise duties and other indirect taxes, insofar as such alignment is necessary to secure the establishment and operation of the internal market within the deadline set in Article 8A (which is not disputed here). In any case, point 5 of the explanatory memorandum does not provide convincing arguments for using Article 100A as the legal basis. If the Commission has opted for a regulation instead of a directive it should be aware that regulations can also be adopted under Article 99. In any case and in the absence of more convincing arguments to the contrary, Article 99 appears to provide the most appropriate bedrock for the proposal.

It is extremely significant to point out here that in reply to a question raised by the Ad Hoc Group on the Abolition of Fiscal Frontiers, the EC Council's legal service issued an Opinion on 16 July last

stating categorically that "Article 99 of the EC Treaty is the proper legal basis for application of the Commission proposal." The Opinion contained highly pertinent arguments which in some respects overlapped with those put forward by the Committee (Section).

It is equally debatable whether *a regulation* is the best and most appropriate instrument for this case. Assistance between fiscal administrations in applying tax legislation to individuals or taxable persons (Article 7(2) and Article 9 of the Proposal) and in assessing the correct tax in most Member States requires statutory legislation rather than executive action. In other words, whether or not procedures such as this Commission Proposal are enacted will depend on a) national parliaments and b) Member States' unanimity.

A regulation would be directly applicable to the individual, and would give no role to the Member State; the Proposal in question provides for contact between taxable persons via their respective Member States, with no Community involvement; so there is no need for a Regulation, nor would one be warranted. Point 16 of the Explanatory Memorandum is not a strong enough argument for a Regulation on its own.

The most appropriate legal instrument is therefore a *Directive* based on Treaty Article 99, both in terms of interpretation of the Treaty (fiscal provisions as set out in Article 100A (2)) and in terms of the Proposal's content.

Moreover, close examination of Article 19 of the Proposal (consultation and coordination procedures) reveals optional arrangements, vague measures, undetermined procedures all of which leave a considerable amount of latitude more appropriate to a Directive but incompatible with a Regulation which is interpreted literally and is directly applicable. This is yet another argument for a Directive, together with the fact that the instrument which the present Proposal is designed to replace (Article 22 of the Proposal repeals this text) is also a Directive.

4. Specific comments

second recital

— the second recital is based on false premises i.e. it refers to "fiscal harmonization measures taken for completion of the internal market"; in the current situation this is controversial at the very least; a Regulation adopted by the Council under these conditions would subsequently expose it to restrictions to which it had implicitly subscribed and which would prejudge a final decision which was its prerogative. This recital should therefore be amended to read as follows: "whereas in order to give full effect to the abolition of frontier controls while avoiding fiscal revenue losses for Member States, the measures taken for the transitional period in the interests of completing the internal market require the establishment .... etc."

third recital

— the third recital quite rightly refers to provisions whose objective is, by setting up a cooperation system, *to abolish frontier controls* in line with Article 8A of the Treaty. This is in fact the aim of the present Proposal which, contrary to the second recital, cannot invoke *fiscal alignment measures* which have not yet been taken; notwithstanding the third recital, the Proposal effectively provides for an alignment of *fiscal measures* under the terms of Article 100A (2); as indirect taxation is involved, the legal basis of Article 99 then comes into play.

eleventh (penultimate) recital

— the second last recital lists instances where a Member State is entitled to refuse to undertake research or supply information; these same cases, however, are not listed in Article 18 and paragraph 1 of this Article cites only one example, namely the likelihood of prejudicing public policy! Consequently this oversight should be remedied by completing the list in Article 18 (1).

Article 1

As has already been pointed out in the general comments, the proposal in question *effectively entails the harmonization of fiscal provisions insofar as it seeks*, through cooperation between the administrative authorities responsible in the Member States for the application of the indirect tax legislation, to ensure *compliance with such legislation as well as a correct assessment of the taxes in question*. Article 1 thus inexplicitly brings into play EEC Treaty Article 99 which is concerned with the harmonization of legislation on indirect taxation.

Article 3

Article 3 provides for the logical and necessary cooperation between the competent authorities of the Member States. Except in special cases, such cooperation will be mainly bilateral in kind. The Commission is also involved, insofar as Community legislation is or will be affected and steps have to be taken to ensure compliance with Community provisions on indirect taxation.

The second paragraph of Article 3 states at the end that the competent authorities shall communicate "any specific or general information to the Commission when this may be of interest at Community level". It would be helpful here if the Commission would make clear exactly what type of information it has in mind. Vague wording is out of place in proposals as far-reaching as this.

Article 5

Article 5, which deals with administrative assistance, is concerned with requests made by the applicant authority to the requested authority to divulge all information necessary to ensure compliance with the legislation on indirect taxation. The Article then lists the taxes and duties falling within the scope of the proposal: VAT plus excise duties on manufactured tobacco products, alcoholic beverages and mineral oils. Would it not have been better to have defined the scope of the proposal in Article 1 rather than in Article 5 so that the reader would have got his bearings right from the start?

Article 5 would also be more complete if it were to incorporate the second sentence of Article 2(1) of Directive 77/799/EEC on mutual assistance in the field of direct taxation (now equally applicable, via Directive 79/1070/EEC, to mutual assistance in the field of indirect taxation) which states that the requested authority need not comply with the request if it appears that the applicant authority "has not exhausted its own usual sources of information which it could have utilized, according to the circumstances, to obtain the information requested without running the risk of endangering the attainment of the sought after result".

Assistance on request will no doubt be the most frequently used type of cooperation during the transitional period.

Article 7

Article 7 deals with cases of coordinated tax examinations where two or more authorities have a common or related interest, each in its own territory, in examining the indirect tax affairs of a person or persons with a view to exchanging the information which they so obtain. It is questionable whether such a provision can be effective if, as the first paragraph states, "each authority involved shall decide whether or not it wishes to participate in a particular coordinated tax examination". The provision should at least set out the criteria which can justify a party wishing to opt out of a coordinated tax examination.

Article 11

This Article is concerned with the information referred to in Article 3 being exchanged automatically, regularly and without prior request "for categories of cases which shall be determined by the competent authorities under the procedures laid down in Article 19)".

It is not easy to express a view on the exact scope of Article 11 since it is an outline provision and certain parts still remain to be clarified under the procedures laid down.

Article 13(1)(b)

This provision is initially confusing. It would therefore help to word it more clearly so that the uninitiated can understand it better.

Article 13(2)

Like a number of other provisions, this paragraph suffers from the uncertainty surrounding Article 19.

Article 13(3)

Are the "other Member States" who are to receive the information referred to in paragraphs 1 and 2 the Member States actually affected or concerned by such information? If this is the case, then it should be spelt out in paragraph 3.

Article 15

Comment is inappropriate here as the first part of Article 15(1) depends on arrangements still to be agreed under the procedures laid down in Article 19. Article 15(2) should also make provision for refusals to supply information, with an obligation on the requested authority to state its reasons (e.g. when the request from an applicant authority is accompanied by an application from a court authority). Refusal to supply information is moreover provided for in Directive 77/799/EEC on mutual assistance in the field of direct taxation (which through Directive 79/1070/EEC likewise regulates mutual assistance in the field of indirect taxation).

Article 16

This important Article is difficult to interpret. It is therefore regrettable that its provisions likewise depend on procedures which still remain to be determined under the provisions laid down in Article 19, which are moreover insufficiently explicit.

Article 17

The opening lines of Article 17(1) expressly state that any information communicated shall be of a confidential nature and shall be covered by the obligation of professional secrecy. This would seem to be redundant since access to such information is to be confined exclusively to civil servants who are bound to secrecy by their terms of employment. The wording of the equivalent provision (Article 7(1) of the directive on mutual assistance in the field of direct taxation, likewise applicable to indirect taxation through directive 79/1070/EEC) is clearer and more concise and so should be incorporated lock, stock and barrel in Article 17(1) of the present proposal.

Article 18

It has already been pointed out above that Article 18(1) is incomplete insofar as it cites only one of the reasons given in the eleventh (penultimate) recital of the proposal entitling Member States to refuse to carry out enquiries or to provide information. Apart from the case where the provision of information would be contrary to public policy, the recital also states that a Member State has the right of refusal where its laws prevent its indirect tax administration from undertaking such enquiries or from collecting or using such information for its own purposes (the "own account" use of information originating rather in Article 5(2).

Article 18(1) should therefore be completed accordingly.

Article 19

Given the uncertainties which pervade this outline provision concerning as yet unspecified consultation and coordination procedures, not to mention other reasons given under the "General comments", it is virtually inconceivable that a Regulation should be proposed as the legal instrument for administrative cooperation in the field of indirect taxation when a Directive - which would also repeal and replace an existing Directive on the same subject - would be more appropriate. Provisions such as those in Article 19 are more appropriate for a Directive than a Regulation which must be based on criteria of clarity, precision and literal interpretation. This is all the more so since taxation is concerned.

It would also undoubtedly have been simpler to invoke Article 9 of the Directive on mutual assistance in the field of direct taxation (likewise valid for indirect taxation), incorporating it, mutatis mutandis, into the present proposal and leaving Member States and their competent authorities as much freedom as possible to work out the actual details of cooperation, subject to observance of the principles of subsidiarity and national fiscal sovereignty.

General Comment

In the light of the above comments, the word "regulation" should be replaced by "directive" in the various clauses of the new proposal.

Final comment

The Committee would stress that, in order to ensure the successful aboliton of tax frontiers on 1 January 1983, there must be neither discussion nor deferred decision in the Council on the package of three measures relating respectively to the transitional VAT arrangements (COM(90) 182 final), administrative cooperation in the field of indirect taxation (COM(90) 183 final) and statistics relating to the trading of goods between Member States (COM(90) 177 final). The three proposals are closely interlinked and the relevant discussions and decisions should occur *simultaneously*.

5. Conclusion

Assuming that Directive 79/1070/EEC of 6 December 1979, even if duly amended, will be unable to cope with the situation prevailing after 1 January 1993 (when there will be a system of ex post facto tax controls, following the abolition of checks on intra-Community cross-border traffic), it is necessary and indeed essential to step up mutual assistance and administrative cooperation in the field of indirect taxation. Subject to the above comments, the Committee (Section) therefore endorses the Commission's proposals on the assumption that definitive solutions will eventually be found in the fields of taxation, administrative cooperation and intra-Community trade statistics, thus ensuring that tax revenue is justly and equitably allocated to the entitled parties, i.e. the Member State where the goods in question are finally consumed, without a complex, expensive compensatory mechanism on which the Committee expressed such strong reservations in its Opinion (ESC 742/88) of 7 July 1988 on document (COM(87) 323.

Done at Brussels, 19 September 1990.

The Chairman of the Economic and Social Committee	The Secretary-General of the Economic and Social Committee
Alberto MASPRONE	Jacques MOREAU

OPINION
of the Economic and Social Committee
on the
Commission Communication to the Council entitled
New Commission Approach to Excise-Duty Rates
(COM (89) 551 final)

On 22 January 1990 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the

> *Commission Communication to the Council entitled "New Commission Approach to Excise-Duty Rates"*
>
> *(COM(89) 551 final).*

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the matter, adopted its Opinion on 21 June 1990. The Rapporteur was Mr DELLA CROCE.

At its 278th Plenary Session (meeting of 5 July) the Economic and Social Committee adopted the following Opinion by a large majority, with 7 votes against and 4 abstentions:

* * *

1. The Commission proposal

In 1987 the Commission proposed single rates for the whole of the Community.

To introduce an element of flexibility in the case of VAT, the Commission proposed that standard rates be allowed to vary within a band of six percentage points whilst reduced rates would have a spread of five percentage points. In the case of excise duties, however, the Commission opted for rigidity, claiming that:

> *"any flexibility in the rate of duty which might be permitted would be compounded with the permitted margin for VAT rates and would therefore result in tax-induced price differentials well in excess of 5%."*[1].

Agreeing with the comments made by the Member States and European Parliament, the Commission now rejects the case for rigidity and proposes some degree of flexibility.

This degree of flexiblity would consist of setting minimum rates for all dutiable products with the exception of certain petroleum products (diesel, heating gas-oil, heavy fuel oil) where rate bands would have to be fixed because of the higher risks of distorted competition.

The Commision also proposes benchmark i.e. "target rates" which, in the case of tobacco and alcoholic beverages, are higher than the single rates envisaged in the Commission's previous proposal.

The target rates are to be the long-term objective of all the Member States.

The Commission has also committed itself to presenting proposals on the movement of products subject to excise duties, as well as on the operation of interconnected warehouses for the movement of goods under duty-suspension arrangements.

2. Comments

The problem of excise duties has to be seen in the larger context of indirect taxation and for that matter the taxation system as a whole.

Being consumer taxes, excise duties have very different histories in the Member States of the Community. On occasions they have been used to solve practical and urgent budgetary problems and at other times they have been used to curb the consumption of individual products either in the general interest or to protect public health.

Generally speaking, and particularly in the past, excise duties have met with popular hostility because they have tended to reduce purchasing power and in some cases even be charged on basic necessities.

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(1) COM(87) 320 final, page 15.

Efforts have been made in the Community to reduce the number of products subject to excise duties so that the principal dutiable products left today are alcoholic beverages, tobacco and mineral oils. Nevertheless, those tax rates and structures still in existence vary greatly from Member State to Member State; trying to harmonize them is therefore no easy matter.

The Single European Market will clearly have to be underpinned by a uniform taxation system if goods are to circulate freely without distorting competition. Having said this, the excise duty problem will not be easy to solve unless it is tackled within the context of general taxation policy (and not only indirect taxation).

It is important first of all to say how difficult it is to deliver an Opinion on a general communication which deals solely with excise duties but does not make clear the position and intentions of the Commission regarding the actual implementation of the new system. We are told nothing about how the duties will be collected, what arrangements will govern the movement and storage of goods, and what controls will or may have to be imposed.

The Committee regrets these lacunae which circumscribe the scope of this Opinion.

The campaign to harmonize excise duties is limited in the latest proposal to a) fixing minimum rates and b) setting target values for longer-term convergence.

This is done to introduce an "element of flexibility", a concept which on careful analysis is misplaced.

Member States in fact will be required, from 1 January 1993, to raise their current rates if they fall below the proposed minimum rates, whereas they will be under no obligation to make adjustments should their rates be higher.

The proposed package thus falls short of what is required if the Single European Market is to become a reality and tax frontiers are to be dismantled.

In 1987 the Commission in fact said that the Single Market could only be achieved if common rates of excise duty were charged on harmonized structures.[2]

It is also necessary to make clear that excise duties can only be fully justified if they are based on objective tax criteria for each category of product; at the present time the differences in such tax criteria are substantial.

The combination of widely differing excise duties and VAT rates can have a very considerable impact on consumer prices and consequently on terms of competition.

Implementation of the present Commission proposal will thus have little effect on real harmonization. Are we therefore not entitled to ask whether there is any real point in tinkering with present arrangements and encroaching on the autonomy of individual Member States when the results will in any case be of dubious or limited value?

What the dismantling of tax frontiers and the free movement of private individuals (an inviolable objective) will undoubtedly do is make it easy and convenient to purchase goods wherever taxes and therefore prices are lower, thereby generating a considerable trade flow.

Restrictions on the movement of goods might consequently be introduced even if such action is incompatible with the Single European Market.

In the absence of any very close approximation of excise duties, it might be necessary to draw up rules and agreements on the purchase and transport of dutiable goods even though such rules and agreements should not prejudice free competition and not affect the rights of individual European citizens. Any controls should therefore be aimed solely at preventing tax fraud and unauthorized business and should be carried out in exactly the same way as they are at national level.

Under no cicumstances will it be possible to have the kind of controls we currently have at our frontiers.

Excise duties should be harmonized at the lowest possible levels, provided the latter are compatible with economic requirements and with policies designed to restrict the consumption of individual products, sometimes for health reasons.

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(2) COM(87) 320 final

Harmonization should also take into account the need to avoid undue distortions of competition between products subject and those not subject to excise duties.

Excise duties tend in any case to be an obsolete form of taxation so we cannot preclude the possibility of their being abolished in the more or less long-term future.

Economic requirements are by their very nature likely to ensure compliance with the principle whereby excise duties should be a tax on consumption and not on the factors of production - a principle which the Commission has itself defended (doc (73) 1234 fin - 1 August 1973).

On the other hand we also need to remember that excise duties are a very important source of revenue in some Member States. A very significant drop in excise duties would therefore entail significant changes in these countries' taxation systems. Time will accordingly be needed to implement the changes.

Since this is the reality we are confronted with, it will be necessary to act in a highly pragmatic manner, lay down appropriate time-scales and make appropriate adjustments to present arrangements. This means laying precise obligations on all Member States and pre-determining the stages of convergence, even if these carry us beyond the introduction of the Single Market.

The whole operation must be conducted in such a way that the abolition of frontiers does not give rise to fraud, tax evasion or serious distortions of trade. Nor must an unnecessarily heavy burden be placed on commercial activities.

3. Conclusions

The Economic and Social Committee reaffirms the validity of the Opinions on excise duties delivered in 1988 whilst accepting that adjustments will have to be made because of the present situation.

The Commission's present communication requires substantial modifications before it can be approved.

To be able to make an accurate and thorough assessment of the excise duty proposals, we would also need to be familiar with the proposals on the collection of duties, the movement of goods, controls, bonded warehouse regulations, the marking of individual products and all other relevant aspects.

Minimum and maximum rates need to be fixed for all categories of goods subject to excise duties. By doing so, rates will be confined within mandatory bands.

Since significant changes in existing rates might cause problems for some Member States, convergence towards the new bands should be allowed to continue after the introduction of the Single European Market.

In general, the minimum and target rates proposed by the Commission are too high. The bands mentioned in the present Opinion should be consolidated at a lower level, especially in the case of certain products.

The Opinions which the Committee will be delivering on individual proposals will provide more detailed and specific information.

Done at Brussels, 5 July 1990.

The Chairman of the Economic and Social Committee	The Secretary-General of the Economic and Social Committee
Alberto MASPRONE	Jacques MOREAU

OPINION

of the

Economic and Social Committee

on the

Amended proposal for a Council Directive on

the approximation of taxes on cigarettes

and the

Amended proposal for a Council Directive on

the approximation of taxes on manufactured tobacco other than cigarettes

(COM(89) 525 final)

On 22 January 1990 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the

Amended proposal for a Council Directive on the approximation of taxes on cigarettes

and the

Amended proposal for a Council Directive on the approximation of taxes on manufactured tobacco other than cigarettes

(COM(89) 525 final).

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 21 June 1990. The Rapporteur was Mr DELLA CROCE.

At its 278th Plenary Session (meeting of 5 July 1990), the Economic and Social Committee adopted the following Opinion by a large majority, with five dissenting votes and no abstentions.

* * *

1. The Commission proposal

As for other goods subject to excise duties, the Commission has modified its position and abandoned the idea of having a single rate. It now proposes that minimum mandatory rates should be introduced on 1 January 1993. The period after that date will see gradual alignment on bench mark values known as "target rates".

The proposed rates are tabulated below:

Previous proposal		Minimum on 1 January 1993	Target
Cigarettes (1000)	19.5 Ecu + 12-54% retail price	15 Ecu + 45% retail price	21.5 Ecu + 54% retail price
Cigars and cigarillos	34-36%	25%	36%
Smoking tobacco	54-56%	50%	56%
Snuff	41-43%	37%	43%

The Commission thus proposes a mixed tax (fixed specific duty plus ad valorem duty) for cigarettes, and an ad valorem tax for other tobacco items. VAT is to be added to the excise duty for the calculation of the percentage figure.

The Council is to examine the rates every two years and make any necessary adjustments.

The Commission proposes an ad valorem tax for manufactured tobacco other than cigarettes. However, it also proposes a derogation allowing Member States which on 31 December 1992 apply either a purely specific tax or a mixed tax to use a mixed structure for a further five years, provided that its total value is no lower than the minimum rates. This will allow these Member States to make the transition gradually.

2. General comments

As with all products on which excise duty is levied, the price of cigarettes and tobacco is subject to a duty whose sole purpose is to limit consumption and/or increase tax receipts in a simple manner. The effect on the final price is considerable, and is in part divorced from the value of the product and in part linked exclusively to quantity. The significant differences in existing tax structures make it difficult to arrive at a unified structure.

At the same time, while the Commission's intention of intervening solely to strike a middle point between differing positions so as not to upset the internal market is understandable from a practical viewpoint, it is difficult to justify in more general terms.

The changes could have a very wide impact on agricultural and production policy, trade, and health protection.

A more general approach is thus needed.

The Commission states that it is abandoning the proposal to use single rates because it recognizes the need for flexibility.

There is no doubt that the rules originally proposed were too rigid. However the new flexibility must leave Member States some freedom to vary their rates and structures, whilst laying down a process at the end of which the situation will be the same throughout the Community.

The flexibility proposed by the Commission is in fact illusory.

Member States which currently apply rates lower than the minimums proposed will have to alter their structures and increase their rates up to these minimums; Member States whose duties are already above the minimums will not be obliged to do anything. The only flexibility is the theoretical freedom to move closer to the target rates, which are merely indicative. For these rates, the Commission uses the phrase "in the longer term". This can have no practical significance, as it sets no specific time-limit.

The differences between rates after 1 January 1993 would still be considerable. It might be felt that these differences could create problems for the Single Market, particularly as the content of the other proposals needed to implement the Directive is not yet known.

Furthermore, it is very difficult (if not practically impossible) to consider the problem fully without being acquainted with such proposals as those on collection of the tax, transportation of the products, free warehouses, and authorizations for the tax to be paid in the country of consumption.

It is reasonable to assume that Member States are likely to align their VAT rates downwards, on competition grounds. This is less likely in the case of excise duties because of budgetary requirements - though these also apply to VAT - and because other criteria are at play (tradition, the need to limit consumption, and so on).

This is particularly true of tobaccos, whose consumption is discouraged for health reasons.

The Committee Opinion on the original proposal[1] remains valid, and particularly the conclusions thereof.

In particular, it must be emphasized that the proposal as a whole takes insufficient account of the circumstances of an internal market without customs barriers. In such a market, it is not only the excise levels that will be important, but also their structure and the methods of collection and control.

Since the basic principle of abolition of tax and customs frontiers cannot be called into question, the problem of controls will become signficant. However, free movement of persons must be guaranteed, and individuals will be able to purchase goods (even if excise duty is levied on them) in any Member State and take them wherever they wish. Controls must only apply to businesses, i.e. to goods destined for sale. Excise duty will thus have to take on the nature of a consumer tax, and fraud will have to be combatted.

The low weight and high value of tobacco products means that consumers can buy them far from their place of residence. Excise duty represents a high proportion of their price. In the absence of border controls, a wide divergency of rates would thus encourage cross-border shopping.

For countries which currently apply low excise rates, the proposal will mean significant price rises, particularly of the most popular brands. The effects which this could have on inflation are difficult to predict.

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(1) CES 744/88

In some cases, it might even lead to a significant increase in smuggling from third countries.

VAT is to be aggregated with the mixed tax proposed for cigarettes (specific excise duty plus ad valorem duty) and with the ad valorem tax proposed for other tobacco items.

In this way, VAT on tobacco loses its basic characteristic; it is assimilated into an excise duty, and requires prior determination of the retail price.

This represents a serious distortion of normal VAT implementation.

It is a serious affront to a tax which is the keystone of the whole indirect taxation system, and whose regulations are the greatest success of the Community's tax policy.

3. Specific comments on the proposal on cigarettes

The Committee Opinion on the original proposal recognized that a mixed tax was the only basis for a compromise on a common system.

Doubts remain, however, as to the judiciousness of the proposed mix of specific duty and ad valorem duty. The aggregate sum (inclusive of VAT) might also be felt inequitable.

Harmonization of the components of the tax on cigarettes must allow retail prices as a whole to reflect fairly the differences in prices net of tax. The burden of adjustment must be shared fairly between Member States.

The arithmetical mean proposed by the Commission would signify that 30% divergences in prices net of tax would entail divergences of only 10% in retail prices.

The proposal will penalize consumers of cheaper brands of cigarette in the seven Member States where the specific duty is currently much lower than even the proposed minimum rate. This would increase consumption of higher-priced brands.

It would also have adverse effects on Community tobacco production.

Seven countries would have to increase their specific duties as follows:

Belgium	274%
Greece	1415%
Spain	1192%
France	483%
Italy	625%
Luxembourg	706%
Portugal	470%

These percentages are high partly because they refer to very low specific duties. Nevertheless they highlight the major differences in tax structure. The changes to this structure would be significant, and would be difficult for the countries concerned to stomach; apart from anything else, the Community would be adopting a very different approach to the one used by these countries hitherto.

Although the changes in the structure of excise duties would not greatly affect average prices, they would have a significant impact on the prices of the cheaper brands.

4. Specific comments on manufactured tobacco other than cigarettes

An ad valorem tax is proposed for these products.

As two of the three countries where consumption of smoking tobacco is highest currently use a mixed tax, it might be better to use this system in future, as the Committee suggested in its 1988 Opinion (see Point 5.4.1. of the Opinion of 7 July 1988).

The proposed derogation for the duty rate on smoking tobacco seems wrong. Article 3b allows Member States which impose a mixed tax (specific plus ad valorem) to continue to do so for up to five years, provided that the sum of the ad valorem components is not less than the minimum rates laid down in Article 3a. For smoking tobacco, this rate is 50%. Article 3 of the proposal specifies that the total tax burden resulting from the combination of excise duty and VAT should be 56%. This makes it impossible to insert a fair rate of specific duty into the total tax burden.

Cigars and cigarillos

These products require special attention, not least because the Community cigar industry is suffering a structural crisis. The rate now being proposed is considerably lower than the rate proposed in 1987, but is still too high. It would be better to turn the proposed minimum rate into the target rate, and set a lower minimum.

Snuff and chewing tobacco

These products account for only 0.8% of manufactured tobacco consumption, and it is anachronistic to continue to levy excise duty on them.

Their use should be discouraged, but other methods than taxation should be found to achieve this goal.

5. Conclusions

The Committee would draw attention to its Opinion (CES 744/88) on the original Commission proposal. Its comments on the need to know how the taxes are to be collected, controls, and the possible customs warehouse arrangements, all remain particularly relevant. The Committee remains especially concerned about the lack of documentation regarding the effects of the proposal on the structure of the tobacco industry, employment, agriculture, government revenue, and consumer spending.

The Community clearly lacks a coherent overall policy on tobacco. While some intervention instruments seek to help producers, taxation policy tends to reduce consumption of Community tobacco without giving similar disincentives for the consumption of imported tobacco. Competition problems are also aggravated by a reduction in consumer price differentials and the need to set price levels in advance.

The Commission proposal allows all rates above the minimum to remain unaltered indefinitely, while it requires major changes to be made in cases where the rates are currently low. This in no way achieves the desired flexibility, and jeopardizes the goal of harmonization.

The concern for consumer health which has led the Commission to propose considerably higher target rates than in 1987 seems too generic, and does not form part of a general health policy.

The Commission proposals penalize cheaper products. This is unacceptable, not least because it would adversely affect Community tobacco-growing.

It does not seem fair to particularly penalize the less well-off consumers who currently purchase the cheaper brands.

In the light of the above considerations, the Committee's overall opinion of the Commission proposal cannot be a positive one.

Done at Brussels, 5 July 1990

The Chairman of the Economic and Social Committee	The Secretary-General of the Economic and Social Committee
Alberto MASPRONE	Jacques MOREAU

OPINION

of the Economic and Social Committee

on the

Amended Proposal for a Council Directive on the approximation of the rates of excise duty on mineral oils

(COM(89) 526 final)

On 22 January 1990, the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the

Amended Proposal for a Council Directive on the approximation of the rates of excise duty on mineral oils
(COM(89) 526 final).

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 21 June 1990. The Rapporteur was Mr DELLA CROCE.

At its 278th Plenary Session (meeting of 5 July 1990) the Economic and Social Committee adopted the following Opinion by a large majority, with seven votes against and two abstentions.

* * *

1. Commission Proposal

The Commission's August 1987 proposal on mineral oils is also being made more flexible.

By analogy with its proposals for other products on which excise duty is levied, the Commission is proposing to lay down only a minimum rate, to be applied from 1 January 1993 onwards, for petrol (leaded and unleaded), LPG, methane and kerosene used as engine fuel.

On the other hand, bands of rates (with maxima and minima) are proposed for diesel, heating gas oil and heavy fuel oil.

The reason given by the Commission for this different treatment is that it is necessary to distinguish between products which are essentially destined for final private consumption and those whose consumption is mainly commercial.

The proposed minimum rates are as follows:

Leaded petrol ECU 337 per 1000 litres
Unleaded petrol ECU 287 per 1000 litres
LPG and methane ECU 84.5 per 1000 litres
Kerosene (propellant) ECU 337 per 1000 litres

The proposed bands of rates are as follows:

Diesel ECU 195-205 per 1000 litres
Heating gas oil ECU 47- 53 per 1000 litres
Heavy fuel oil ECU 16- 18 per 1000 kg
Kerosene used as fuel for other purposes ECU 47- 53 per 1000 litres

The Commission is deferring its proposal on the benchmark values on which all rates will have to be aligned.

2. Comments

The comments on the previous proposal made in Committee Opinion CES 745/88 (Rapporteur : Mr BROICHER) still apply almost in full. Explicit reference will be made to these comments in the conclusions below.

The harmonization of the excise duties on mineral oils must take account of not only the effects on national budgets, the need to abolish frontier checks and the impact on competition but also the great importance of assisting the establishment of a Community energy policy, and the protection of the environment.

Accordingly, the fiscal policy to be adopted towards these products should be influenced by energy policy with its economic and ecological components.

When laying down the excise duties, account should also be taken of other taxes and duties which in some cases have a direct or indirect effect on mineral oils. The uses to which the products are to be put should also be taken into consideration. For heating, distinctions should be made on the basis of the differences in mean temperatures.

At the same time as harmonizing the excise duties on mineral oils, the Commission should undertake to submit detailed proposals without delay on the taxation of all energy sources and their uses, thereby prompting a general debate on this major issue.

The Commission makes a few general remarks on the matter, but otherwise does not seem to take account of this priority demand. Its proposal is based on the calculation of arithmetic means.

The Commission has thus missed a chance to intervene in an important area and to gear fiscal harmonization to solving major energy consumption issues.

The Commission's decision to lay down only minimum rates for some products does not seem wise.

The proposed minimum rates are very high on average and very close to the single rates proposed in 1987. The minimum rate for diesel is even well above the single rate proposed previously. The Committee would also stress the case for not levying a duty on LPG.

The bands of rates are certainly a wiser choice because both countries with low and countries with high rates will be forced to bring their rates closer together.

In contrast with its submissions for alcohol and tobacco, the Commission has merely spelt out the principle of benchmark values, though it has committed itself to submitting a proposal by 31 December 1990. Irrespective of whether the principle of benchmark values should be accepted, it must be pointed out that lack of knowledge about the proposal adds to the confusion. If the benchmark values are important, they should be made known immediately; if they are not, the whole proposal is weakened, to say the least.

3. Conclusions

The main points of the Opinion on the previous proposal (CES 745/88, Rapporteur: Mr BROICHER) should be summarized at this point:

— there would seem to be a case for harmonizing excise duties on mineral oils at the lowest possible level, bearing in mind Member States' budgetary requirements;

— it would be advisable to abolish all excise duties on heavy fuel oils used purely for production purposes;

— it is questionable whether a specific tax on heating oil is acceptable and whether all energy sources should not be treated equally;

— tax advantages already granted by Member States for some economic sectors or specific uses should be harmonized;

— the taxation of vehicle fuels cannot be dealt with in isolation. Road tax and other charges relating to the possession and use of vehicles must also be taken into consideration.

The present Commission proposal's aim - but not its means - can be endorsed.

The bands should be adopted for all products, with the compulsory maxima and minima being quite close to each other.

Some derogations - albeit limited in time - could be provided for countries which run into serious difficulties because of their budgets or differences in the systems.

The rates should be as low as possible, while making due allowance for general and ecological requirements. The inflationary effect of price variations is a point to be borne in mind, too.

Done at Brussels, 5 July 1990.

The Chairman of the Economic and Social Committee	The Secretary-General of the Economic and Social Committee
Alberto MASPRONE	Jacques MOREAU

APPENDIX

to the Opinion of the Economic and Social Committee

The following amendment was rejected during the debate, but received at least 25% of the votes cast.

Page 38, add a new paragraph

"2.9. In order to prevent serious disturbances in trade in mineral oils, especially in frontier regions, private individuals should not be allowed - even for their personal use - to transport them across frontiers in trailers or commercial vehicles (which could easily be hired even with a driver).

*Authorization should be confined to the content of vehicles' **tanks**, with spot checks being carried out within frontiers to detect infringements."*

Voting

For: 20
Against: 24
Abstentions: 21

OPINION
of the Economic and Social Committee
on the
Amended Proposal for a Council Directive on
the Approximation of the Rates of Excise Duty on
Alcoholic Beverages and on
the Alcohol contained in Other Products
(COM(89) 527 final)

On 22 January 1990 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the

Proposal for a Council Directive on the approximation of the rates of excise duty on alcoholic beverages and on the alcohol contained in other products (COM(89) 527 final).

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 21 June 1990. (Rapporteur: Mr DELLA CROCE).

At its 278th Plenary Session (meeting of 5 July 1990) the Economic and Social Committee adopted the following Opinion by a large majority, with 6 dissenting votes and 3 abstentions:

* * *

1. The Commission proposal

The Commission has made significant changes to its Draft Directive of 21 August 1987 (COM(87) 328 final), which prescribed Community-wide rates of excise duty for all products.

In the explanatory memorandum to its new proposal, the Commission admits that its original approach to harmonization was too rigid and it therefore introduces flexibility.

However, the Commission stresses that this more flexible approach must on no account jeopardize the fundamental principle involved, i.e. abolition of customs and tax frontiers so as to avoid creating excessive distortions of competition, diversions in the flow of trade and loss of revenue.

The mainstay of the proposal is the fixing of minimum rates for all product categories as of 1 January 1993. It also sets higher "target" rates which Member States are expected to move towards after 1 January 1993. Subsequent amendments to rates will only be authorized if they are conducive to the process of convergence on the target rates.

At two-yearly intervals, the Council will review both minimum and target rates and make the necessary adjustments.

The proposed rates are as follows:

	Minimum rate	Target rate	Previously proposed rate
Beer	ECU 0.748 per hl/degree Plato	1.496	1.32
Still wine	9.35 hl	18.7	17
Sparkling wine	16.5 hl	33	30
Potable alcohol	1118.5 hl	1398.1	1271
Intermediate products	74.8 hl	93.5	85

The Commission has dropped its proposal to impose excise duties on alcohol contained in perfume and cosmetics (in 1987 it had proposed an excise duty of ECU 424 per hl).

2. General comments

The Committee Opinion on the original Commission proposal (CES 746/88) remains valid, subject to the comments made in this Opinion.

In particular it is worth remembering that the Committee found the Commission's proposal to set common rates too rigid, and advocated some degree of flexibility.

More precisely, the Committee put the case for allowing a limited number of disparities to continue within a narrow band of rates. It also accepted the possibility of introducing a system of provisions and derogations which would allow rates to be standardized after 31 December 1992, provided the process of convergence was unquestionably under way.

Now, however, the Commission is proposing so much flexibility that it could defeat the purpose of the whole exercise, which is to standardize excise duties so as to ensure that they have a neutral effect on the movement of goods.

The introduction of a compulsory minimum rate is obviously a step in the right direction, but rates will continue to vary enormously given the heavy excise duties imposed on alcoholic beverages and alcohol products in some Member States.

It should however be remembered that the aim of standardization is to:

— abolish tax frontiers

— avoid significant distortions in competition

— prevent fraud and tax evasion.

There must be a real link between the proposals and these objectives.

The differences between the minimum rates proposed by the Commission and the highest rate currently applied in the Member States are as follows:

Beer	1 - 13.17	IRL
Still wine	1 - 27.42	IRL
Sparkling wine	1 - 31	IRL
Potable alcohol	1 - 2.23	IRL
Intermediate products	1 - 4.97	IRL

Although the highest rates are levied in Ireland, there are substantial differences between the proposed minimum levels and the rates applied in other Member States.

These disparities would have a drastic effect on consumer prices, particularly for beer, wine and sparkling wine.

Maximum rates will also have to be set if we are to achieve harmonization. Maximum and minimum rates will have to be as close as possible.

Moreover, if minimum limits only were imposed, this could lead to higher average limits, thereby increasing revenue and making the ultimate abolition of excise duties an even remoter prospect. The Committee's comments on the Commission's general communication also apply here (CES 831/90).

Member States should recognize the need to reduce VAT for competition reasons, the sole obstacle here being the impact on budget revenue. But there are additional complications in the case of excise duties, such as differing traditions and the desire to curb consumption of various products.

The target rates now recommended by the Commission are about 10% higher than the standard rates envisaged in its previous proposal.

The Commission claims that this increase is justified on health grounds. It seems strange that the Commission did not take health considerations into account in its initial proposal, and in any case there is nothing to indicate that a difference of 10% will be enough to influence consumer trends.

In the case of wine, for example, the Commission argues that the increase of ECU 0.17 per litre will have a significant effect on alcohol abuse.

However, the health issues should be dealt with quite differently and more carefully.

Alcohol abuse is still a major problem in our society and adequate resources must be deployed to combat it.

Alcohol is normally consumed in moderate quantities as part of the everyday diet, and thus gives no cause for concern.

However, excessive consumption can result in alcohol abuse, with health and pathological effects. This is a problem which must be tackled in full knowledge of the facts, rather than in response to preconceived ideas.

Rigorous statistical surveys on consumer trends, the development of disease, the social classes concerned and the environments in which alcohol abuse is particularly common, should therefore be carried out and acted on.

At present it is impossible for the Committee to discuss these issues in any detail.

It will therefore confine itself to a few, inevitably general, remarks.

Consumption of wine is decreasing in countries where it is not taxed and increasing in countries where heavy excise duties are imposed.

Consumption of high quality, expensive wines is increasing, whereas consumption of low and medium quality, i.e. cheaper, wines is declining.

In the case of liqueurs, i.e. beverages with a high alcohol content, consumer trends again bear no relation to prices and taxes. In fact demand for the expensive products is increasing significantly, while the market for the cheaper ones is contracting, regardless of long-standing social customs.

Generally speaking, consumption of non-alcoholic beverages is steadily increasing, even though they are disproportionately expensive considering the ingredients used.

Thus it can be seen that prices have little impact on overall consumer trends, and none whatsoever on alcohol abuse. Other means, in addition to fiscal ones, must therefore play a leading role in action to combat alcoholism.

3. Specific comments on each product

Beer. The minimum rate proposed by the Commission is significantly lower than the standard rate proposed in 1987, whilst the target rate, as with other products, has increased by over 10%.

The Commission admittedly sets a low figure for the minimum rate, but it would seem reasonable to propose that excise duty on beer be phased out altogether as soon as possible.

It also has to be recognized that there are certain parallels between beer and wine consumption, although competition and substitution between the two products are probably not a problem.

Still wine. This should not be subject to excise duty as it is an item of everyday consumption.

It is worth remembering that in five Member States wine is not taxed at all, and in France taxes are negligible (for reasons which are not revenue-related). Thus at the present time about 90% of all wine consumed in the Community is not liable to excise duty.

The minimum rate of excise duty proposed for wine (ECU 9.35 per hl) would not even cover the administrative costs - evasion would be easy and widespread in countries which do not at present charge excise duty, making it harder to collect VAT dues as well.

Sparkling wine. The Commission is proposing a much higher rate of duty for sparkling wine than for still wine because, it claims, sparkling wine is generally more expensive than still wine and represents a different segment of the market. There is no justification whatsoever for this. Sparkling wine almost always has a lower alcohol content and costs no more than good quality still wine. The only real difference is the presence of carbon dioxide. From an economic point of view, the value-added of sparkling wine is higher (labour and technology).

Potable alcohol. The Commission advocates a very high rate of duty on potable alcohol. The obligatory minimum rate is to be 80% of the target rate (as against 50% for other products). This is unacceptable: liqueurs would be beyond the means of consumers in many countries, and the traditionally less expensive products (such as brandy) would be priced right out of the market. The Commission proposals are lacking in logic in that they do nothing to address present problems in the market arising from differences in taxation. They require fundamental revision as far as potable alcohol is concerned.

It would be ill-advised to charge excise duty on solid foods which contain alcohol (chocolates, sweets, mustard, etc.). They do not pose any health risks and making them dutiable would only have a harmful effect on competition.

It should also be remembered that these products are currently duty-free in three Member States.

Intermediate products. Once again, the Commission is proposing particularly heavy excise duties, with the minimum rate fixed at 80% of the target rate. Intermediate products deserve special attention, and all the comments made in the previous Committee Opinion apply here. The definition of intermediate products also needs to be sufficiently precise and narrow.

Beverages with a moderate alcohol content (certain aperitifs in particular) should also be given favourable rates.

4. Conclusions

The proposals to merely fix minimum rates and recommend target rates, without any obligation to converge, are not commensurate with the aim of harmonization.

All the points raised in the previous Committee Opinion (CES 746/88) hold true for this Opinion.

Rules on customs warehouses, methods of collecting taxes, transport, monitoring and prevention of fraud and tax evasion are extremely important. It is very difficult to make a detailed assessment of the proposal without knowing the Commission's views on these questions.

The explanatory memorandum is inadequate, particularly as it fails to consider the implications for Member State budgets, consumption and inflation.

Done at Brussels, 5 July 1990

The Chairman of the Economic and Social Committee	The Secretary-General of the Economic and Social Committee
Alberto MASPRONE	Jacques MOREAU

OPINION
of the Economic and Social Committee
on the
Proposal for a Council Directive on
the general arrangements for products subject
to rexcise duty and on the holding and movement of such products
(COM(90) 431 final)
Proposal for a Council Directive on
the harmonization of the structures of excise duties
on alcoholic beverages and on the alcohol contained in other products
(COM(90) 432 final)
Proposal for a Council Directive amending
Council Directives 72/464/EEC and 79/32/EEC on
taxes other than turnover taxes which are levied on
the consumption of manufactured tobacco
(COM(90) 433 final)
Amended Proposal for a Council Directive on
the harmonization of the structures of excise duties on mineral oils
(COM(90) 434 final)

On 22 November 1990 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the

Proposal for a Council Directive on the general arrangements for products subject to excise duty and on the holding and movement of such products (COM(90) 431 final)

Proposal for a Council Directive on the harmonization of the structures of excise duties on alcoholic beverages and on the alcohol contained in other products (COM(90) 432 final)

Proposal for a Council Directive amending Council Directives 72/464/EEC and 79/32/EEC on taxes other than turnover taxes which are levied on the consumption of manufactured tobacco (COM(90) 433 final)

Amended Proposal for a Council Directive on the harmonization of the structures of excise duties on mineral oils (COM(90) 434 final)

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 15 January 1991. The Rapporteur was Mr PETERSEN.

At its 283rd Plenary Session (meeting of 31 January 1991), the Economic and Social Committee adopted the following Opinion by a large majority, with 3 votes cast against and 2 abstentions:

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Preliminary Comments

At the end of 1989 the Commission presented draft Directives laying down minimum rates of duty for the three major groups of excise duty - on alcohol, tobacco products and mineral oils - to which the Member States would have to adapt their excise duty rates by the end of 1992[1]. Rate bands should apply only to a few mineral oil products (diesel oil as well as light and heavy heating oil) because of the increased risk of distortions of competition. In addition the draft Directives contain target rates to apply throughout the Community in the long term.

Further draft Directives for harmonization of excise duty structures were announced. In addition the Commission undertook to make proposals to regulate traffic in excisable goods and for the operation of interconnected tax warehouses used for trade in goods on which the payment of duty has been suspended. The draft Directives are those considered below.

2. General arrangements for products subject to excise duty (COM(90) 431 final)

Introduction

This draft Directive constitutes the basis for a general excise system which should lead to the removal of intra-Community frontiers and excise checks at frontiers from 1 January 1993 onwards. It forms part of the overall strategy for approximation of rates and harmonization of the structure of indirect taxes.

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1 COM(89) 525 final
COM(89) 526 final
COM(89) 527 final

The proposal lays down the special applicability of the rules for the holding and circulation of excisable products. It applies to alcohol, tobacco products and mineral oil products. These goods are not subject to any taxes other than excise duties and value added tax. On goods other than those mentioned above, Member States may only levy excise
duties (e.g. for environmental protection reasons) if they lead neither to taxation on entry into the national territory and remission of tax on leaving the national territory, nor to controls at intra-Community frontiers.

Excise duty becomes chargeable in the Member State where the products in question are released for consumption.

The movement of products subject to excise duty under duty-suspension arrangements takes place via interconnected tax warehouses.

The opening of such warehouses is subject to certain conditions and to authorization by the competent tax authorities.

The movement of products subject to excise duty under duty-suspension arrangements is carried out on the basis of an administrative document or of a commercial document - whichever is preferred by the warehousekeeper.

Provisions on controls and supervision arrangements are based on the principle of subsidiarity. The Member States can take all measures on their own territory to ensure that excise duties are paid where the final retail sale takes place. The use of tax markings or other means of control is permissible, provided that it is not discriminatory.

In order to ensure the payment of duties to the State where actual consumption takes place, to make it possible for already taxed goods to be brought back into circulation under duty-suspension arrangements and to avoid double taxation, reimbursement procedures are provided for.

General Comments on the Commission Proposal

The Committee welcomes the Commission's proposals on the harmonization of the general system and of the structures of the specific excise duties. The Commission thereby recognizes that, in addition to approximation of duty rates in the Member States, an approximation of the structures (however minimal) is also necessary. The disparities existing in the Community, e.g. on taxable items, levy methods, exemptions and payment conditions, lead to distortions of competition. There can be no doubt that these distortions of competition must also be removed.

However, harmonization measures in this field cannot ensure that the distortions of competition caused by existing excise rate disparities are counteracted. The effects of structural disparities are less marked than those of the present considerable differences in rates. The Committee would therefore stress that the Commission was correct to point out in 1987 (in COM(87) 320 final) that the aim of a single market can only be achieved if uniform excise rates are levied on the basis of a harmonized tax structure.

It is to be welcomed that the Commission has confined itself to a few specific excise duties.

The Commission has put controls in the hands of the Member States. The general principle should be that any control measures and supervision arrangements to safeguard the "country of consumption" principle and to avoid tax evasion should not bring about an unnecessary worsening in trade conditions. There is a need, above all, to ensure that small and medium-sized enterprises in particular do not have to meet additional transport and administrative costs which would constitute an unnecessary barrier to deliveries by these enterprises to other EC Member States. In addition, the measures should be adapted to the possible tax risk.

In its Opinion of 5 July 1990[2], the Committee mentioned that the removal of customs controls and the free movement of goods which are essential for completion of the Single Market will make the sale of goods easy and lucrative where the duties, and hence-ceteris paribus-the prices, are lower,

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2 OJ No. C 225/48 of 10 September 1990.

thereby giving rise to substantial cross-frontier trade. Nonetheless, the Commission should be careful to ensure that this does not give rise to restrictive rules for the movement of goods, which would be incompatible with a European Single Market. The necessary controls must instead be effective but should be directed solely to preventing tax evasion and improper traffic in goods. It would in fact be disastrous if, after completion of the Single Market, they continued to be carried out at the Community's internal frontiers as at present.

If the suggested changes are made, the Committee regards the Commission proposal as sufficient to allow for the abolition of frontier controls on intra-Community trade in excisable goods by 1992, even if there should be no progress by then in the harmonization of excise duty rates.

Specific Comments

As in other EC Regulations or Directives, concepts of relevance to the uniform application of excise duty Directives (chargeable event, chargeability, person liable to excise, duties, release of products for consumption, etc.) should be legally defined for all Member States. This could, for example, be done in the General Provisions of Title I.

Article 2

With regard to the customs territory of the Community, the Committee would refer to Council Regulation (EEC) No. 2151/84 of 23 July 1984. The Committee assumes that the Regulation on the Community Customs Code[3] will also come into force on 1 January 1993. There should therefore be a reference in the final version of this Directive to Article 3 of the Customs Code, where the Community customs territory is defined.

Article 3(2)

For the sake of clarity, the words "(the entry taxes for imports from third countries)" should be inserted after the words "excise duty".

Article 3(3)

Does not apply to English version.

Article 4(2)

Chargeability is not here related to an objectively clear situation but to a rather vague occurrence, the time of which cannot be exactly determined. The definition used in the second sentence of this paragraph (the making available of products when they leave any arrangement under which payment of duties and taxes is suspended) needs to be clarified by the Member States, particularly with regard to the beginning of the prescribed period for payment.

Article 5(1)

For completeness as regards "acquisition", indent a) should read:

> *"The sale or acquisition of products subject to excise duty in a Member State other than that in which the product has been released for trade shall give rise to chargeability to excise duty in the Member State where the sale or acquisition takes place."*

Indent c) means that large quantities of excisable goods sent by mail-order from one Member State can be obtained by final consumers in another Member State without chargeability arising in the country of consumption. This would lead to a deviation from the "country of consumption" principle and could lead to considerable distortions of trade. The basis for it is the annual value of 1 million ECU laid down for mail-order trade in Article 28 of Draft Directive COM(90) 182 - Transitional

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3 Proposal for a Council Regulation (EEC) No. .../... to lay down the Customs Code of the Communities (COM(90) 71 final) - OJ No. C 128 of 23 May 1990, page 1.

System for Value Added Tax. Only above this established annual value would mail-order give rise to chargeability in the country of destination, i.e. every case of mail-order trade in which this annual value is not exceeded would not form a basis for chargeability in the country of destination. Definitions of mail-order trade (for purposes of turnover tax and for special excise duty) should be clearly differentiated here.

Article 6(1)

It is assumed that this provision covers both the duty-paid and the duty-free sectors (cf. also COM(90) 430, point 6.). This should be expressly stated in this paragraph.

Article 8 a)

In Article 8 a) authorization for warehouse traffic is made dependent on provision of a guarantee which should be supplemented to read as follows:

> *"... a guarantee, if there are indications of a risk to the excise duty which are justified in the view of the relevant Member State"*

This restriction is sufficient for trouble-free operation of the single market, and less onerous for the economic actor concerned.

Article 9

The term used in the German version ("vorläufiger Zollverkehr") is unknown. The divergences here between the English, French and German texts of the Draft Directive should be corrected.

Article 10(2)

The phrase "irregular removal" requires definition.

Article 11(2)

For certain products subject to excise duty (mineral oil) ensuring identification by the procedure laid down here is impracticable and unnecessary. The description of goods which is already usual in the Community dispatch procedure would be enough.

Article 11(5)

In this case the national arrangements must be made in such a way that abuse of this generous rule is excluded. Since this case does not concern an economic actor authorized to carry out warehouse traffic, this requirement would be met by the consignee presenting the goods to the relevant customs office on receipt of them.

Article 12(1)

To prevent abuse of the accompanying documents, the Committee recommends setting up a numbered document register on which the withdrawal of documents must be recorded in each case.

Article 13(1)

The proposed arrangements clearly apply only to authorized warehousekeepers. If the consignee is not an authorized warehousekeeper, it may be necessary for the competent financial authorities to have a specific obligation to assist him.

Article 14(1)

It is not clear from the text of the provision who is liable to payment of excise in these cases. Suitable additional wording is desirable.

Article 15

The Commission has refrained from regulating payment deadlines. This - as the Commission concedes in the first paragraph on page 13 of the Commentary on the Articles - can lead in financial terms to distortions of competition.

Article 15(2)

The proposed wording is misleading, since it fails to distinguish between national identification marks and tax identification markings. Identification marks proper, with no fiscal significance, have no place in this draft Directive; identification marks with a dual (i.e. also fiscal) function, however, are already covered by the term "tax identification markings".

Article 15(5)

Before "Article 12(1)", insert "11(1) in conjunction with".

Article 16(1)

Instead of the permissive wording "may ..... be the subject of ...", this paragraph should, like paragraph (2), provide for obligatory reimbursement. It should be reworded as follows:

> *"... duty-suspension arrangements, and in such cases excise duties shall be reimbursed in the Member State of release...*

Moreover, Article 16(1) appears to mean that an already taxed item can be transferred back into warehouse traffic, and can then be further traded as if it were tax-free. However, the phrase "by derogation from Article 11(1)" seems to contradict this interpretation.

Article 16(2)

Here, as in Article 11(5), an obligation at national level to present the goods must be justified.

Article 17

If the excise duty is imposed by means of a tax marking, reimbursement must be made conditional on the destruction or invalidation of the tax marking under official supervision.

3. Harmonization of the structures of excise duties on alcoholic beverages and on the alcohol contained in other products

(COM(90) 432 final)[4]

Introduction

This Commission proposal for a Directive supersedes earlier proposals for a larger degree of harmonization - some of which were tabled in the seventies. These were the draft Directives on harmonization of excise duties on:

— Alcohol	COM(72) 225/02
— Wine	COM(72) 225/03
— Beer	COM(72) 225/04
— Fortified wine and similar products	COM(85) 151.

This single proposals, covering all alcoholic beverages defines (a) the various categories of chargeable alcoholic beverages - beer, still and sparkling wine, intermediate products and spirits - and the divisions within these categories, (b) the exemptions and (c) the special conditions to apply to small businesses.

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[4] The products covered by this draft Directive are listed in Article 15. They are those denoted by CN Codes 2204-2206, with an alcohol content above 22% by volume, and all those denoted by CN Codes 2207 and 2208.

Thus, for example, Member States may lay down a reduced rate (as much as 20% below the standard rate) for small breweries whose annual production does not exceed 60,000 hectolitres, though this reduced rate may not be less than the Commission's minimum rate. Similarly, wines with a particularly low alcoholic strength may qualify for a reduced rate.

An optional exemption from excise duty is proposed for home-made beer or wine, and a mandatory exemption is proposed for alcoholic beverages or products with an alcoholic strength not exceeding 1.2% vol, completely denatured alcohol and denatured alcohol contained in perfumes, toiletries, cosmetics and medicines for external use.

The quantity of alcohol or alcoholic beverage contained in manufactured products is to be subject to the duty applicable to the category to which the alcohol or alcoholic beverage belongs.

Comments

Article 3(1)

The Commission proposes to charge a rate per hectolitre/degree Plato on beer. This approach is not completely without its problems since it is technically difficult to lay down dividing lines. However, the fact that fractions of a degree Plato can be ignored is to be welcomed.

Article 3(2)

The possibility of being able to divide beers into categories according to the Plato measurement will meet with difficulties in those Member States where the current rates on beer are below the minimum proposed by the Commission. Since under the proposal Member States are not to go below the minimum rate in any category, they would be forced to increase their upper rates. A grading of rates by category does not make any sense unless it allows Member States to drop below the minimum rate in the lower categories.

Article 4(1)

The same reservations apply to the proposal that the reduction granted to small breweries may not go below the minimum rate. If Member States wanted to apply this reduction, they would have to increase still further the rate for non-privileged breweries.

Article 4(3)

The Committee proposes that this paragraph be made into a separate Article, drafted on the lines of Article 9 (wine).

Furthermore, the Committee holds to the view which it voiced in earlier Opinions (CES 746/88 of 7 July 1988, point 2.10., CES 832/90 of 5 July 1990, point 3.1. and 3.2.) that beer - just like wine - is part of the normal diet in many countries of the Community, and hence that both these drinks should be exempt from excise duty. If nevertheless they are to be subject to excise duty, the rates should be kept as low as possible. A scheme should be drawn up which treats all breweries favourably regardless of their size, e.g. a fully graded scheme for all based on production volumes.

The call for duty-free beer also applies to wine. An overwhelming proportion of wine consumed in the Community is subject to little or no excise duty.

Article 11

A separate tax regime should apply to natural sweet wine with a registered designation of origin in view of its particular nature, as defined in Article 13(2) of Regulation 4252/88.

This principle should be underlined in Article 12 and the reference made therein to the customs nomenclature should be deleted.

Article 14(2)

It should be noted that in the earlier Opinion (CES 832/90 of 5 July 1990, paragraph 3.4.) the Committee expressed the view that the Commission had advocated an unacceptably high rate of duty on potable alcohol putting liqueurs and other high quality spirit products beyond the means of consumers in many countries. The Committee went on to say that the Commission's proposals on potable alcohol are lacking in logic, in that they do nothing to address the present differences in taxation levels between various alcoholic beverages, and therefore require fundamental revision as far as potable alcohol is concerned. The Committee wishes to re-emphasize this point.

Article 17(1)(c)

The exemptions for alcohol used in the manufacturing sector for the production of perfumes, toiletries, cosmetics or medicines for external use are welcomed.

Article 17(1)(d)

As the Committee has already stated in its Opinion CES 832/90 of 5 July 1990 (point 3.4.1.), it does not seem expedient to charge excise duties on solid foods which contain alcohol. Such products pose no health risks and making them subject to duty would only have unfavourable effects on competition.

The Committee therefore proposes that the sub-paragraph should read:

> *"when used for the production of foodstuffs and confectioneries which are not alcoholic drinks;*

On social grounds, the Committee favours the addition of a point (f) in Article 17(1) to exempt wine and beer which producers give to their employees as a fringe benefit.

Article 17(2)

The Committee supports the "mutual-recognitiondenaturants" principle. However, there is a danger that market transparency will be blurred by the information procedure proposed by the Commission. The Committee therefore supports the Commission in its efforts to harmonize denaturants and denaturing methods.

Unlike the previous structural proposals from 1972, the present draft does not lay down any rules for small and fixed-quality distillers. At the moment these distillers enjoy special rights in three countries of the Community. The European Court of Justice has already examined these special rights in one case and found them to be compatible with Article 95 of the EEC Treaty. If maintained, these special rights would be unlikely to distort competition. Small and fixed-quantity distilleries - just like small breweries and small wine-growers - should therefore be given special treatment, thereby enabling special rights under national law to be retained for the present.

The question of the relative burden of excise duties on different categories of beverages should be addressed by the Commission's proposals. In particular, it is necessary to establish a proper relationship between the duties on different categories of beverage and it is therefore suggested that a new article be included after Article 18 which provides that, after agreement has been reached on fiscal approximation, the excise duties levied by Member States shall not be changed so as to increase the difference between the duties on the different beverages - expressed in ECU per hectolitre of pure alcohol.

4. Amendment of Directives 72/464/EEC and 79/32 EEC on taxes, other than turnover taxes, levied on tobacco goods

(COM(90) 433 final)

Introduction

The excise duty on tobacco is the only specific excise duty to have had its structure already partially harmonized. The purpose of the present proposal is to make certain amendments to Directives

72/464/EEC and 79/32/EEC which the Commission considers necessary for the establishment and functioning of the internal market. These changes concern in particular:

— the shortening of the programme for harmonizing - in the case of cigarettes - the ratio between the total tax burden and the specific excise duty, as already provided for in COM(87) 325 and COM(89) 525;

— the updating of the manufacturing and importing concepts;

— the calculating of VAT on the basis of the maximum retail selling price.

The main point about the excise duty on tobacco - as indeed about all the other excise duties - is that the harmonization of structure and rates must form one entity. Even after the Commission proposals of December 1989 there will still be considerable differences in rates after 1 January 1993. As the Committee has already indicated in point 2.4. of its Opinion CES 834/90 of 5 July 1990, the removal of internal frontiers will be made more difficult by this fact.

At the moment the ratio between the specific and proportional components of the excise duty on tobacco differs between the North and South of the Community, and the prime aim of harmonization should be to eliminate the difference.

Specific comments

Article 1(2), first sentence

Article 1(2) of the proposal makes provision for the amendment of Article 5(1) of Directive 72/464/EEC. The Commission uses the term "maximum retail selling price" here. However, the Committee thinks that manufacturers and importers must determine the "retail selling price" and not merely the "maximum retail selling price", thereby fixing not only a ceiling price but also a floor price. The basis of assessment for the excise duty on tobacco is not only the quantity but also the value, and this assessment is performed by the manufacturer or importer as the person liable for the duty. The only way to ensure that the duty to be paid is based on the price paid by the consumer is to fix both a maximum and a minimum price. It will not be enough to fix only a maximum price, for downward variations in price are bound to result in the duty paid being more than it would if based on the price paid by the consumer at the retail trade stage.

Article 1(2), second sentence

The term "manufacturer" is defined in the second sentence. What is meant by "importer" should also be spelt out in a new third sentence. Reference could be made here to Article 1(1) of the proposal, which amends Article 4(1) of Directive 72/464/EEC and restricts the term to the importing of cigarettes from non-member countries.

Article 1(4)

Article 1(4) of the proposal provides for the inclusion of a new Article 6a) in Directive 72/464/EEC. This will deal with optional exemptions from excise duty insofar as they have not been regulated elsewhere. The Committee thinks that the following exemptions should be added after indents (a) to (c):

— cigarettes used as official test samples;

— cigarettes used for testing purposes in a registered manufacturing establishment;

— cigarettes given free of charge by manufacturers to employees as a fringe benefit.

In addition, the exemptions listed in Article 6a) should be amplified as follows:

— manufactured tobacco which is denatured under administrative supervision should be included in b);

— c) must be broadened to include all scientific tests.

There is no risk of competition being distorted even if only a few Member States take advantage of the exemptions. Large-scale shortfalls in revenue are not likely either.

By way of *further comment*, the Committee suggests that, given the high minimum rate for smoking tobacco in proposal COM(89) 525, Article 3 of Directive 72/464/EEC and Article 1 of Directive 79/32/EEC be amended so as to divide smoking tobacco into:

— "fine-cut smoking tobacco suitable for hand rolling", and

— "other smoking tobacco".

5. Harmonization of the structures of excise duties on mineral oils
(COM(90) 434 final)

Introduction

The proposed Directive supersedes an earlier proposal from the year 1973 (COM(73) 1234). It defines excisable products on the basis of the Combined Nomenclature (CN) Codes; deals with aspects of the production process, chargeable event and tax payment which are peculiar to mineral oils; and covers tax exemptions as well as reduced tax rates for specific types of final consumption.

Specific comments

Article 2(1)

The Commission lists excisable mineral oil products on the basis of Combined Nomenclature (CN) Codes. The list is thus longer than the one established under existing legal provisions, with the excise tax net now encompassing products which, with one or two exceptions, are not in fact used as heating or motor fuel either for economic or technical reasons. It might, however, have been wiser to limit excisable products to the most common refinery products. Substitution products should be covered by a catch-all provision insofar as they are used as heating or motor fuels.

For practical purposes it is also unhelpful if excisable products are described in terms of "suitability" and "usability" (criteria which are hard to establish) rather than on the basis of objective physical criteria.

Article 3

The Commission has laid down a standard temperature of 15 degrees Celsius for the purpose of defining the tax base. In Member States with a lower reference temperature this will lead to hidden tax increases.

The "kilo" unit of weight for heavy fuel oils or products used as such should be interpreted as "mass" or as "weight in air" ("Gewicht in Luft").

As part of the harmonization process, efforts should also be made to standardize methods for calculating the weight of different mineral oils. Different methods (calculation by mass and by "weight in air") create a whole host of problems when it comes to trade involving mineral oils: the non-comparability of mass and "weight in air" hinders comparison of prices and taxable quantities (problem of assessing wastage in transit).

Article 4(2)

In the case of mineral oils consumed within an establishment where mineral oils are produced, the basic principle is tax exemption except where such consumption is for purposes not related to the production of mineral oils or for the propulsion of motor vehicles. To define this chargeable event more precisely, it would perhaps be more appropriate to replace the negative definition in the proposal by a positive one.

Article 5(2)

The Commission's definition allows Member States not to regard as mineral-oilÑproducing establishments those establishments in which the only products manufactured are lubricants not subject to the harmonized excise duty. This provision could be dropped since its content is self-evident merely from the definition of excisable products.

Article 6

The draft text contains no definition of the term "operations".

Article 8(1)c)

The Commission excludes natural gas from the list of chargeable products covered by the Draft Directive, except where it is used as motor fuel. It is not clear whether the intention here is to totally exempt natural gas from taxation as a raw material and energy source in the Community, or whether the Commission merely wishes to avoid uniform Community regulations. In the latter case national taxes would continue to be permissible provided that they do not make intra-Community border controls and compensation necessary. Since the natural gas supply system is a closed circuit, controls away from borders are quite conceivable.

Natural gas is currently subject to taxation in some but not in other Member States. It is to be feared that if this inconsistency is allowed to continue, it will lead to noticeable distortions of competition both within the EC and visvis non-Member States. Harmonization, as the Committee has emphasized on several occasions (cf. CES 833/90 of 5 July 1990, point 3.1.), should avoid distortion of competition between competing energy sources.

In its Opinions of 5 July 1990 (CES 833/90) and 7 July 1988 (CES 745/88) the Committee has already called for the abolition of excise duties on heavy fuel oil, stating that it would be advisable to abolish all excise duties on heavy oil fuels used purely for production purposes, and that it is debatable whether an excise duty on light heating oil alone is acceptable, since all energy sources must be treated equally.

In point 2.1.2. of document CES 745/88 the Committee quotes the Commission's statement (made in COM(73) 1234 final) to the effect that excise duties on mineral oils are a tax on (final) consumption and not a tax on production, the latter being liable to increase industrial production costs.

One Member State is currently operating a tax refund system, modelled on the VAT system, for the industrial use of energy sources. This example should be taken up throughout the Community.

Article 9

In the Committee's view there is a danger that national controls are not in themselves sufficient to prevent the misuse of mineral oils used as heating or motor fuel at reduced rates. The Commission should therefore submit draft Community standards for the colouring and marking of such mineral oils, before tax borders are abolished.

Done at Brussels, 31 January 1991.

The Chairman of the Economic and Social Committee	The Secretary-General of the Economic and Social Committee
François STAEDELIN	Jacques MOREAU

OPINION
of the Economic and Social Committee
on the
Proposal for a Council Directive on a Common System of Withholding Tax on Interest Income
and on the
Proposal for a Council Directive amending 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
(COM(89) 60 final/3)

On 25 February 1989 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the

Proposal for a Council Directive on a Common System of Withholding Tax on Interest Income

Proposal for a Council Directive amending 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

(COM(89) 60 final/3).

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the matter, adopted its Opinion on 4 July 1989. The Rapporteur was Mr BROICHER.

At its 268th Plenary Session (meeting of 12 July 1989) the Economic and Social Committee adopted the following Opinion by 85 votes to 7, with 29 abstentions.

* * *

The Commission's proposal to introduce a Community-wide withholding tax on interest meets with the approval of the Committee, subject to the following comments. The proposal to extend mutual assistance is welcomed.

1. Preliminary remarks

Under the Directive on the full liberalization of capital movements, adopted by the Council on 24 June 1988[1], the last barriers to capital flows will be removed in eight of the Member States by mid-1990. Transitional provisions will be applicable in the other four Member States until 1992 and, if deemed to be necessary, may be extended by three years in two of the four Member States.

Liberalization of the capital market is a prerequisite for achievement of the single market. Where Member States have different systems for taxing interest income, there is a possibility that - unless other considerations are involved - capital investment decisions will be guided by tax and not economic factors.

The Council Directive of 24 June 1988 accordingly stipulates that the Commission shall submit proposals aimed at eliminating or reducing risks of distortion, tax evasion and tax avoidance linked to the diversity of national systems for the taxation of savings and for controlling the application of these systems. The Commission fulfils this obligation in presenting the two Directives now under discussion.

2. General comments on the withholding tax

The Committee is united in its belief that the withholding tax is an appropriate form of taxation from various points of view, including the principle of equity. Interest payments are taxed immediately, thereby providing a secure source of income in the Member States. By being levied at source, the withholding tax on interest income bears some resemblance to the wage tax levied on earned income at source. Earned income is taxed at source in most Member States.

(1) OJ No. L 178 of 8 July 1988, page 5

Most Member States already have a withholding tax on interest. The impending liberalization of the capital market therefore necessitates Community regulations to forestall (point 1.2.) the misallocation of capital resources resulting from investments being attracted to areas with the most favourable tax systems.

One of the main reservations of the Committee about the draft Directive is that even Community regulations will not prevent capital from being invested in tax-free bonds. The Commission should consider how far this investment loophole can be rendered compatible with a Community-wide withholding tax system. Eurobonds should, however, be exempted from the withholding tax for the reasons put forward by the Commission.

The Committee has similar reservations about the fact that it will still be possible to invest capital in non-member countries where there is no withholding tax. In other words, will the EC and the most important non-member countries not have to reach joint agreement on the taxation of interest before the withholding tax can actually become an instrument of just and equitable taxation? We need to look at the question of whether or not implementation of the EC Directive should be dependent on a commitment by the Community's most important trading partners to operate parallel schemes themselves. Otherwise, as the most recent examples show, a major outflow of capital from the Community to non-member countries can be expected.

The Commission is well aware of this problem but merely refers to the need for subsequent negotiations.

3. Specific comments on the withholding tax

Article 4

The higher the rate of the withholding tax, the greater the attractiveness of tax avoidance. Setting a rate of around 10% would therefore be desirable. The Committee also feels that a lower rate will considerably facilitate the passage of the Directive through the Council, where a unanimous vote is required.

Article 4(3)

Consideration should be given here to whether, and to what extent, bilateral agreements should take precedence over the Directive.

Article 5

To keep the administrative expenditure of the authorities and credit institutions within bounds, the Commission would have to consider whether interest accruing from negligible sources, e.g. savings accounts, might not be exempted from the withholding tax. Consideration should also be given to whether the rules on exemptions should or should not be binding on all Member States.

Done at Brussels, 12 July 1989.

The Chairman of the Economic and Social Committee	The Secretary-General of the Economic and Social Committee
Alberto MASPRONE	Jacques MOREAU

APPENDIX

Taxation of Interest on Capital
Position as of 1 January 1989

MEMBER STATE	RESIDENTS	NON-RESIDENTS	RESIDENTS	NON-RESIDENTS
	Withholding tax on interest on bonds (subject to the provisions of double taxation conventions)	Withholding tax on interest on bonds (subject to the provisions of double taxation conventions)	Withholding tax on interest on bank and savings accounts (subject to the provisions of double taxation conventions)	Withholding tax on interest on bank and savings accounts (subject to the provisions of double taxation conventions)
LUXEMBOURG				
NETHERLANDS	Automatic communication from banks to administration		Automatic communication from banks to administration	
PORTUGAL	25%	25%	20%	20%
BELGIUM	25%		25%	
DENMARK	Automatic communication from banks to administration			
FRANCE	Automatic communication from banks to tax administration or different rates discharging of debt	0%	Automatic communication from banks to tax administration or different rates discharging of debt	
IRELAND	35% (exceptions)	35% (exceptions)	35%	0%
SPAIN	20% (exceptions)	20% (exceptions)	20%	20%
UNITED KINGDOM	25% (exceptions)	25% (exceptions)	25% residents	0%
GREECE	Companies: — with permanent establisment: 25% — without permanent establishment: 49% Persons: at progressive rates of income tax; 0% public loans and bonds of corporations engaged in industrial activities	Companies: — with permanent establisment: 25% — without permanent establishment: 49% Persons: at progressive rates of income tax; 0% public loans and bonds of corporations engaged in industrial activities	Companies: — with permanent establisment: 25% — without permanent establishment: 49% Persons:	Companies: — with permanent establisment: 25% — without permanent establishment: 49% Persons:
GERMANY	10%	10%	10%	10%
ITALY	12.5% - discharging of debt (no choice for the beneficiary)	12.5% - discharging of debt (no choice for the beneficiary)	30%	30%

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