

COMMISSION OF THE EUROPEAN COMMUNITIES

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94/0197 (CNS)

Proposal for a

COUNCIL DIRECTIVE

AMENDING DIRECTIVE 77/388/EEC AND DETERMINING THE SCOPE
OF ARTICLE 14(1)(d)
AS REGARDS EXEMPTION FROM VALUE ADDED TAX ON THE
FINAL IMPORTATION OF CERTAIN GOODS

(presented by the Commission)

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EXPLANATORY MEMORANDUM

Article 14(1)(d) of Directive 77/388/EEC¹, as last amended by Directive 94/5/EC of 14 February 1994² provides that, without prejudice to other Community provisions, Member States are to exempt, under conditions which they are to lay down, among other things, for the purpose of preventing any possible evasion, avoidance or abuse, final importation of goods qualifying for exemption from customs duties other than as provided for in the Common Customs Tariff or which would be capable of benefiting from that exemption if they had been imported from a third country.

The scope of Article 14(1)(d) is determined by Council Directive 83/181/EEC of 28 March 1983.³ These provisions are the tax counterpart of the customs measures provided for in Council Regulation (EEC) 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty;⁴ the content of the tax measures in terms of their actual scope is very largely modelled on the customs measures, for reasons to do with the practical application of the exemption.

Since 1 January 1993, the choice of this approach has been vindicated.

Because of the abolition of controls and formalities at intra-Community borders, the concepts of importation and exportation apply only to trade between the Community and third countries.

Consequently, the unity of the single market is guaranteed at the Community's external borders; the customs authorities are responsible for ensuring that Community provisions are complied with at those borders.

1 Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ No L 145, 13.6.1977, p. 1).

2 OJ No L 60, 6.3.1994.

3 OJ No L 105, 23.4.1983, p. 38.

4 OJ No L 105, 23.4.1983, p. 1.

The Commission recently sent the Council a proposal intended to replace the above customs reliefs Regulation. Given the considerable importance it attaches to achieving the closest possible links between the systems for reliefs from customs duties and for tax exemptions, the Commission is proposing at the same time to replace Directive 83/181/EEC. That is the purpose of this proposal, which does though introduce a new approach. At the moment, the parallelism between the two systems is ensured by the customs text being reproduced virtually in full in the tax field. The Commission has opted for a different legislative technique for the present proposal for a tax directive, namely reference to the customs Regulation. Thus, the Directive lays down that Member States may grant exemptions from value added tax on the final importation of certain goods under the same conditions and within the same limits as those laid down in the customs rules.

However, while it is feasible to reproduce in the tax field the essential features of the proposed measures, particularly as regards the structure of the text, simplified application and updating of concepts, the Commission considered it necessary that this proposal retain most of the specific tax provisions currently applicable, as distinct from the customs provisions.

This approach is justified both by the intrinsic nature of the customs and tax regimes and by the fact that the mechanisms involved are different.

Some imports are eligible for relief from customs duties but do not qualify for a tax exemption; this is the case, for example, to goods of an educational, scientific or cultural character in respect of which relief from customs duties is granted under international agreements, whereas a tax exemption would jeopardize the general objectives of the common system of VAT.

Moreover, it is provided that the Member States may exclude from tax exemption certain goods eligible for relief from customs duties on importation; this applies in particular to goods of negligible value imported by way of mail order.

The proposal also specifies that the tax exemption for certain imports of goods is subject to specific conditions; this applies, for example, to articles intended for handicapped persons.

Finally, the possibility for the Member States to continue to grant certain specific exemptions resulting from international agreements is maintained.

At the moment, exemptions for goods contained in travellers' luggage and in small consignments sent by individuals are covered by specific tax Directives. In the customs field, these reliefs are incorporated into the Regulation. With regard to taxation, the legislative technique used means that these exemptions are now also covered by the present proposal for a Directive. The Commission takes the view that all the exemptions in question should be included in a single text and

accordingly proposes that the VAT provisions in Directives 69/169/EEC⁵ (travellers) and 78/1035/EEC⁶ (small consignments) should be repealed. A similar proposal has been made for excise duties.

Lastly, with a view to consolidating the VAT Directives, it is proposed that the provisions in question be incorporated into the Sixth VAT Directive (77/388/EEC) by amending Article 14(1)(d) of that Directive and by adding Annex K.

The details of the other amendments made by this proposal to Directive 83/181/EEC are set out in the explanatory memorandum accompanying the proposal for a customs Regulation (COM(94) 232), in particular points (a) to (d), the last indent of point (e), and point (f).

5 Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (OJ No L 133, 4.6.1969).

6 Council Directive 78/1035/EEC of 19 December 1978 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries (OJ No L 366, 28.12.1978).

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas Council Directive 83/181/EEC of 28 March 1983¹, as last amended by Directive 91/680/EEC², determines the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods;

Whereas, with a view to achieving the greatest possible parallelism between the system for customs duties and that for value added tax, the system of exemptions laid down by Directive 83/181/EEC was based on the system of reliefs from customs duties laid down by Council Regulation (EEC) No 918/83 of 28 March 1983 on setting up a Community system of reliefs from customs duty,³ as last amended by Regulation (EC) No 355/94,⁴ taking account, however, of the differences as regards objective and structure between customs duties and value added tax;

Whereas the Council has adopted Regulation (EC) No .../94 setting out the cases where relief from import duties or export duties may be granted,⁵ which constitutes a recasting of Council Regulation (EEC) No 918/83; whereas, in order to preserve the parallelism already achieved between the relevant customs and tax provisions, the provisions of Regulation (EC) No .../94 should be reproduced in the Community provisions concerning exemption from value added tax, taking account of the differences as regards objective and the particularities of the mechanisms referred to above;

Whereas, with a view to ensuring consistency, all the exemptions referred to in Article 14(1)(d) of Directive 77/388/EEC,⁶ as last amended by Directive 94/.../EC,⁷ should be included in a single text; whereas, therefore, the present Directive should also cover reliefs in respect of imports of a non-commercial nature effected by travellers in their personal luggage or by means of small consignments, which are currently covered by specific directives, namely Directive 69/169/EEC,⁸ as last amended by Directive 94/4/EC,⁹ and Directive 78/1035/EEC,¹⁰ as last amended by Directive 85/576/EEC;¹¹

Whereas the present provisions should be incorporated into Directive 77/388/EEC; whereas, accordingly, Article 14(1)(d) of that Directive should be amended and supplemented by the introduction of a new Annex K,

HAS ADOPTED THIS DIRECTIVE:

1 OJ No L 105, 23.4.1983, p. 38.
2 OJ No L 376, 31.12.1991, p. 1.
3 OJ No L 105, 23.4.1983, p. 1.
4 OJ No L 46, 18.2.1994, p. 5.
5 OJ No L.....
6 OJ No L 145, 13.6.1977, p. 1.
7 OJ No L.....
8 OJ No L 133, 4.6.1969, p. 6.
9 OJ No L 60, 3.3.1994, p. 14.
10 OJ No L 366, 28.12.1978, p. 34.
11 OJ No L 372, 31.12.1985, p. 30.

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Article 1

Directive 77/388/EEC is hereby amended as follows:

1. Article 14(1)(d) is replaced by the following:

"(d) final importation of goods qualifying for the exemptions from customs duties provided for in Council Regulation (EC) No .../... (hereinafter referred to as "the Regulation"). This exemption shall be granted within the same limits and under the same conditions as those provided for in Part I and in Title I of Part III of the Regulation, subject to the specific provisions set out in the indents below.

This exemption shall also apply:

- to the importation of goods, within the meaning of Article 7(1)(b), which would be capable of benefiting from the exemptions set out above if they had been imported within the meaning of Article 7(1)(a);
- under the conditions provided for in Article 32(4) of the Regulation, to goods imported into the territory of Spain by travellers coming from the Canary Islands.

Imports of goods listed at point A.1 in Annex K shall be excluded from the scope of the exemption.

Member States may also exclude from the scope of the exemption the imports of goods listed at point A.2 in Annex K.

Exemption of imports of goods listed at point A.3 in Annex K is subject to the specific conditions contained in that list.

Member States may also continue to grant the special exemptions listed at point B in Annex K;";

2. The annex to this Directive is added as Annex K.

Article 2

1. The provisions concerning value added tax laid down in the following Directives shall cease to have effect on 31 December 1994:

- Directive 69/169/EEC, as last amended by Directive 94/4/EC;
- Directive 78/1035/EEC, as last amended by Directive 85/576/EEC.

2. Directive 83/181/EEC, as last amended by Directive 91/680/EEC, shall cease to have effect on 31 December 1994.

3. In all Community instruments where reference is made to the above Directives, such reference shall be deemed to be a reference to Article 14(1)(d) of Directive 77/388/EEC, as amended by this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1995. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field covered by this Directive.

Article 4

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

A. LIST OF FINAL IMPORTS OF GOODS SUBJECT TO THE SPECIAL PROVISIONS OF ARTICLE 14(1)(d)**1. Imports of goods excluded from exemption from VAT**

- (a) Used household effects for furnishing a secondary residence (Title III, Chapter IV of the Regulation);
- (b) Educational, scientific and cultural materials other than those referred to at point B in Annex I to the Regulation, whatever the use for which they are intended, and other than those referred to at point 3(d) below; scientific instruments and apparatus (Title V, Chapter 1 of the Regulation), and instruments and apparatus intended for medical research, establishing medical diagnoses or carrying out medical treatment (Title V, Chapter II of the Regulation).

2. Imports of goods which the Member States may exclude from exemption from VAT

- (a) Goods of negligible value imported by way of mail order (Title II of the Regulation);
- (b) Vehicles intended for mixed use for commercial or professional purposes and imported by natural persons transferring their normal place of residence (Title III, Chapter I of the Regulation);
- (c) Goods and equipment imported on the occasion of a transfer of activities (Title VI, Chapter I of the Regulation); goods and equipment in respect of which the Member States have availed themselves of the second subparagraph of Article 17(6) of this Directive may be excluded in whole or in part until the entry into force of the common rules referred to in the first subparagraph of that Article.

3. Imports of goods where exemption from VAT is subject to specific conditions

- (a) Basic necessities: exemption is granted only on condition that the goods are acquired free of charge (derogation from Article 59(1)(a) of the Regulation);
- (b) Articles intended for handicapped persons: exemption is granted on condition that the articles, spare parts, components, specific accessories or tools:
 - are imported by institutions or organizations that are principally engaged in the education of, or the provision of assistance to, handicapped persons and are authorized by the competent authorities of the Member States to receive such articles exempt from tax;

- are donated to such institutions or organizations free of charge and with no commercial intent on the part of the donor (derogation from Article 63 of the Regulation);
- (c) Equipment imported on the occasion of a transfer of activities: exemption is subject to the additional condition that the goods are to be used for the purposes of an activity not exempted under Article 13 of this Directive (derogation from Article 73 of the Regulation);
- (d) Collectors' pieces and works of art of an educational, scientific or cultural character which are not intended for sale and are imported by museums, galleries and other institutions approved by the competent authorities of the Member States for the purpose of duty-free admission of these goods: exemption is granted only on condition that the articles in question are imported free of charge or that, if they are imported against payment, they are not supplied by a taxable person (derogation from Article 42 and point B of Annex II to the Regulation).

B. LIST OF SPECIAL EXEMPTIONS FROM VAT WHICH MEMBER STATES MAY CONTINUE TO GRANT

- (a) Exemptions arising from the privileges and immunities granted by them under cultural, scientific or technical cooperation agreements concluded with third countries;
- (b) The special exemptions justified by the nature of frontier traffic and granted by them under frontier agreements concluded with countries outside the Community;
- (c) Exemptions in the context of agreements entered into on the basis of reciprocity with third countries that are Contracting Parties to the Convention on International Civil Aviation (Chicago 1944) for the purpose of implementing Recommended Practices 4.42 and 4.44 in Annex 9 to the Convention (ninth edition, July 1990)."

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DOCUMENTS

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