COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 700 final

Brussels, 17 January 1977.

Proposal for a Council Directive
on the harmonization of provisions laid down by law,
regulation or administrative action relating to the
rules governing turnover tax and excise duty applicable
in international travel

(submitted to the Council by the Commission)

COM(76) 700 final

EXPLANATORY MEMORANDUM

I. General

The rules governing intra-Community tax exemptions granted to individuals have, since their inception, deteriorated somewhat due to the steady upward movement of prices and to exchange rate fluctuations. In the first place, price rises tend gradually to erode the real value, and hence the impact of, Community exemptions. Secondly, as a result of the present monetary situation in the Community, the exemption amounts converted into the various currencies are not in fact the same. In addition to being a source of double taxation (or non-taxation) this situation opens the possibility for the application of Community rules in this field to appear discriminatary.

The purpose of this proposal, the preparation of which the Commission had announced in its Ninth General Report, is to resolve both sets of difficulties. It also contains various other amendments to the provisions of the Council Directives of 28 May 1969 and 12 June 1972 ; these amendments relate to intra-Community travel involving transit through a non-member country and to measures for tax remission or tax-free purchase.

II. Observations

Article 1

Article 1 provides for increases in the tax exemptions granted to individuals pursuant to the provisions of the Council Directive of 28 May 1969, as amended by the Council Directive of 12 June 1972 :

- the tax exemption fixed at 125 units of account by the latter Directive is raised to 200 units of account ;
- for travellers under 15 years old, Member States may reduce the exemption to 50 units of account (previously at 30 units of account).

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There are two reasons for such an increase which is designed to maintain the purchasing power of the Community exemptions. In the first place, it is a question of counterbalancing price increases incurred during recent years, and in the second, it is a question of the consequenceof replacing the unit of account based on gold parities declared to the IMF by the European Unit of Account (EUA), in order to specify the exemption limit. This replacement would otherwise produce in most Member States a decrease in the exemption levels at importation.

Articles 2 and 3(b)

Articles 2 and 3(b) set out special arrangements for persons who undertake intra-Community travel involving transit through the territory of a non-member country or starting from a part of another Member State in which turnover taxes and/or excise duties are not chargeable.

Under the proposed arrangements, if such persons wish to claim the Community tax exemptions, they must, on entering a Member State, produce evidence that the goods contained in their luggage have been acquired subject to the general conditions governing taxation on the domestic market of a Member State. Only exemptions granted in respect of relations between the Community and non-member countries will be granted to travellers unable to produce such evidence. (Overflying without landing is not regarded as transit).

This requirement is designed to prevent the possibility of fraud (as a result of the route taken for the journey) whereby travellers would claim Community exemptions in order to import into a Member State goods purchased in a non-member country during transit through that country or through a part of another Member State in which turnover taxes and/or excise duties are not chargeable.

Evidence ~~to counter this~~ is required under article 2 of the proposal for various goods for which the value does not exceed 200 Units of Account and under Article 3(b) for goods having exemptions based on quantity.

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Articles 3(a) and 4

For duty-free importation of still wines which Member States must allow in intra-Community trade, article 3(a) increases the exemption to 5 litres. The exemption was previously 3 litres.

Under Article 4, the minimum quantity of still wines which Member States may allow to be imported by the frontier zone residents referred to in Article 5(1) of the Council Directive of 28 May 1969 as amended by Article 3 of the Council Directive of 12 June 1972 is one litre. Under the previous arrangements, the minimum amount was 0.50 litre.

The purpose of these new provisions is to encourage the trade of Community wines.

Article 5

Article 5(a) of the proposal amends Article 6(2) of the Council Directive of 28 May 1969 by deleting reference to the rules relating to sales made at airport shops under customs control and on board aircraft. The reference is superfluous since the matter of tax-free sales is dealt with in paragraph 1 of the Article. The Commission has also withdrawn its proposal concerning this matter. The purpose of this Article is also to make it compulsory for Member States to grant remission of turnover tax at the request of travellers who satisfy a number of conditions laid down in paragraphs 3 and 4 of the Article.

Under Article 5(b), which amends Article 6(3) of the Council Directive of 28 May 1969, Member States may no longer fix an amount of remission of turnover tax which exceeds that of the Community exemptions for goods purchased at the retail trade stage and intended to be carried in the luggage of persons whose domicile, habitual residence or place of work is situated in a Member State.

These provisions are designed, therefore, to avoid double taxation which, at present, is still a possibility.

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Article 6

This Article 6 is designed to introduce a mechanismefor keeping the real value of Community exemptions constant.

Since the Council Directive of 28 May 1969 fixed only the nominal amounts of the exemptions, the amounts had to be subsequently adjusted, by means of a new Council Directive, in order that the purchasing power of the exemptions should move in line with the cost of living in the Community as a whole. This was one of the purposes of the Council Directive of 12 June 1972 ; similarly, the purpose of Article 1 of this proposal for a Directive is to restore the value of Community exemptions. This latest adjustment takes place after a period of several years during which the real amount of these exemptions has been gradually eroded.

Under the mechanism envisaged, the exemption amounts expressed in units of account will be adjusted each year in line with a Community index reflecting movements in the cost of living in the Community as a whole. The index chosen is that for private consumption on the economic territory of the Community as a whole (base year = 1970). Calculated on a Community basis in that it is a weighted average of the indices of the nine Member States, the index is published, for each calendar year, by the Statistical Office of the European Communities in its "National Accounts ESA Aggregates" at the end of the October of the following year.

In view of the practical conditions governing publication, the calendar year is taken as the annual adjustment period. A period of two months would appear to be necessary in which to perform all the operations ranging from the determination of the new amounts in Units of Account to publication - the coverage of which should be as wide as possible - of the exemption amounts expressed in the Member States' own currencies. The exemption amounts fixed in accordance with this procedure will be applicable, therefore, from 1 January to 31 December. In addition, given the arrangements made for publication of the index, there should be an agreement to use, for the purpose of calculating the amounts in Units of Account to apply during a given calendar year, the previous year's index. For instance, the amounts expressed in Units of Account applicable during 1978 will be fixed at the end of 1977 on the basis of the index for 1976.

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As regards procedure, the Commission will, each year, after publication of the index, fix the new amount of the exemptions in Units of Account and inform Member States of it not later than 30 November.

Article 7

This Article provides that the tax exemptions granted to travellers in intra-Community and international travel will now be determined on the basis of the European Unit of Account (EUA), the method of calculation of which is based on a composite "basket" of Member States' currencies and was fixed by Council Decision No 75/250/EEC of 21 April 1975 and subsequently by Commission Decision No 3289/75 of 18 December 1975. Use of the European Unit of Account has gradually been extended to various areas of Community activity. Until now, the amounts expressed in units of account were converted into national currency by Member States at a rate resulting from the respective gold parities of the unit of account and of these currencies. As a result of the present currency fluctuations, the values expressed in national currencies are no longer in fact equal. Hence, Member States do not grant the same exemptions, particularly in intra-Community trade. This situation gives rise, in some cases, to double taxation and, in others, to non-taxation. Use of the European Unit of Account should enable the present difficulties to be overcome. Provided the value of the European Unit of Account deviates only slightly from the free market rate, the amounts of the exemptions expressed in national currency can be regarded as being virtually the same. However, they will not be exactly equal since the exemptions will be adjusted only once a year ; the exemption amounts applicable in a given year will be converted into national currencies at the EUA's conversion rate given in the last Official Journal published in November. To minimise this drawback, paragraph 4 stipulates that, should the conversion rate for the EUA fluctuate widely in a given year, the Commission may, acting on its own initiative or at the request of a Member State, present a proposal adjusting the conversion rate. The Council will take a decision on this proposal, by a qualified majority, within two months of its presentation.

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As a transitional measure, Member States are required, on the entry into force of this proposal, to carry out the conversion of the tax exemption in Units of accounts into national currency at the EUA rate given in the last Official Journal published during the month before adoption by the Council of the directive. However, Member States may retain the exemption amounts in force at the time of adoption of the directive if introduction of the EUA would result in lower amounts.

Proposal for a Council Directive

on the harmonization of provisions laid down by law, regulation or administrative action relating to the rules governing turnover tax and excise duty applicable in international travel

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Council Directive No 69/169/EEC of 28 May 1969 (1), as amended by the Council Directive No 72/230/EEC of 12 June 1972 (2), 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 ;

Having regard to the proposal of the Commission ;

Having regard to the Opinion of the European Parliament ;

Having regard to the Opinion of the Economic and Social Committee ;

Whereas it is appropriate to persue the action undertaken in respect of tax exemptions granted to individuals in international travel so that the populations of the Member States should become more strongly conscious of the reality of the common market ;

Whereas travel between Member States should be facilitated by an increase in exemptions from turnover tax and excise duty, the amounts of which, as fixed by the Council Directive of 28 May 1969, as amended by the Directive of 12 June 1972, have been reduced, in real terms, by the rise in the cost of living in the Community as a whole ;

Whereas, so as to safeguard the real value of the concessions, the amount of the exemptions granted to travellers should be reviewed each year ;

Whereas, in order to reduce the difficulties and instances of double taxation resulting from fluctuations in Member States' currencies and from the present provisions governing tax remission, it is desirable, firstly, to draw as close as possible to economic reality by using the European Unit of Account, as defined by the Commission Decision of

(1) O.J. No L 133, 4.6.1969
(2) O.J. No L 139, 17.6.1972

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18 December 1975 (3), for converting units of account into Member States' currencies and, secondly, to harmonize the rules governing tax remission at the retail stage ;

HAS DECIDED AS FOLLOWS :

Article 1

Article 2 of the Council Directive of 28 May 19 9 as amended by Article 1 of the Council Directive of 12 June 1972 shall be amended as follows :

(a) in paragraph 1, the words "two hundred units of account" shall be substituted for "one hundred and twenty-five units of account" ;

(b) in paragraph 2, the words "fifty units of account" shall be substituted for "thirty units of account" ;

(c) in paragraph 3, the words "two hundred units of account" shall be substituted for "one hundred and twenty-five units of account".

Article 2

Article 2 of the Council Directive of 28 May 19 9 as amended by Article 1 of the Council Directive of 12 June 1972 shall be amended as follows :

(a) in paragraph 1, the sentence : "This exemption shall be granted also where the travel includes transit through territory other than that of a Member State" shall be deleted ;

(3) OJ No L 327, 19.12.1975

(b) the following paragraph shall be added :

"4. Where the travel referred to in paragraph 1 :

- involves transit through the territory of a non-member country, for which overflying without landing shall not be regarded as transit within the meaning of this Directive,

- begins in a part of the territory of another Member State in which turnover tax and/or excise duty is not chargeable,

the traveller must be able to establish that the goods transported in his luggage have been acquired subject to the general conditions governing taxation on the domestic market of a Member State and do not qualify for any refunding of turnover tax and/or excise duty, failing which, the provisions of Article 1 shall apply.

However, the total value of the goods exempted from turnover tax and/or duty may not exceed the amounts provided for in paragraphs 1 or 2."

Article 3

Article 4(1) of the Council Directive of 28 May 1969 as amended by Article 2 of the Council Directive of 12 June 1972 shall be amended as follows :

(a) at 1(b), at the line beginning "still wines", column "II, Travel between Member States", the words "to a total of 5 litres" shall be substituted for "to a total of 3 litres" ;

(b) the following paragraph shall be added :

"4. Where the travel referred to in Article 2(1) :

- involves transit through the territory of a non-member country, for which overflying without landing shall not be regarded as transit within the meaning of this Directive,

- begins in a part of the territory of another Member State in which turnover tax and/or excise duty is not chargeable,

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the traveller must be able to establish that the goods transported in his luggage have been acquired subject to the general conditions governing taxation on the domestic market of a Member State and do not qualify for any refunding of turnover tax and/or duty, failing which, the quantities set out in paragraph 1, Column I, shall be applicable.

However, the total quantity of goods exempted from turnover tax and/or duty may not exceed the quantities provided for in paragraph 1, Colum II."

Article 4

Article 5(1) of the Council Directive of 28 May 1969 as amended by Article 3 of the Council Directive of 12 June 1972 shall be amended as follows : At (b), under the heading "still wines" the words "1 litre" shall be substituted for "0.50 litre".

Article 5

Article 6 of the Council Directive of 28 May 1969 as amended by Article 4 of the Council Directive of 12 June 1972 shall be amended as follows :

(a) the following shall be substituted for paragraph 2 :

"2. As regards sales at the retail trade stage, travellers, leaving a Member State, may request, in the cases and under the conditions provided for in paragraphs 3 and 4, the remission of turnover tax on goods to be carried in their personal luggage outside the territory of that Member State. No remission may be granted in respect of excise duty."

(b) the following shall be substituted for the third subparagraph of paragraph 3 :

"Member States may exclude their residence from the benefit of this tax remission."

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Article 6

There shall be added after Article 6 of Directive 69/169/EEC the following Article :

"Article 6a

1. The Commission shall adjust each year the amounts of exemption referred to in Article 2 in the light of any change in the index of the prices of private consumption on the economic territory of all the Member States as recorded during the previous year by the Statistical Office of the European Communities.

2. The Commission shall inform Member States by 30 November of each year of the amounts referred to in paragraph 1".

Article 7

Article 7 of Directive 69/169/EEC shall be amended to read as follows :

"1. For the purposes of this Directive, "unit of account" shall mean the European Unit of Account (EUA) as defined in Decision 3289/75/EESC.

2. The equivalent in national currency which shall apply from 1 January of each year shall be that obtaining on the last day of the preceding October on which the equivalents of the European Unit of Account in all the currencies of the Community are available. On the entry into force of the measures adopted by Member States to implement this Directive, the equivalent in national currency which shall apply shall be that obtaining on the last day of the month preceding the adoption of the Directive by the Council.

3. Member States may round off the amounts in national currency resulting from the conversion of the amounts in European Units of Account provided for in Articles 1 and 2.

4. Should the conversion rate for the European Unit of Account fluctuate widely during a given year, the Commission may, acting on its own initiative or at the request of a Member State concerned, propose to the Council that the conversion rate be adjusted. The Council shall take a decision on this proposal by a qualified majority within two months of receiving it.

5. Member States may retain the exemption amount in force on the date of adoption of the Directive if introduction of the European Unit of Account would entail lower exemption amounts when expressed in national currency."

Article 8

Member States shall bring into force not later than three months following its notification the measures necessary to comply with this Directive and shall inform the Commission thereof.

Article 9

This Directive is addressed to the Member States.