COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 124 final

Brussels, 31 March 1976

PROPOSAL FOR A

COUNCIL DIRECTIVE

concerning indirect taxes on transactions in securities

(submitted to the Council by the Commission)

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 124 final/2

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Brussels, 7 April 1976

CORRIGENDUM

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Page 9, Article 11: the end of this article is to be rephrased as follows:

Instead of "…Directive at the latest by 2 January of the year following that of its adoption.", read

"…Directive at the latest by 1 January of the <u>second</u> year following that of its adoption."

Explanatory Memorandum

I. General considerations

The objective of harmonising the taxes levied on capital movements in the Member States of the European Communities must be seen in conjunction with another objective, the implementation of which has already begun and which is an essential prerequisite for the establishment of a genuine common capital market, namely, the abolitions of obstacles to the free movement of capital.

It would be unfortunate to create the economic conditions necessary for achieving this objective within the Common Market if, in the field of taxation, a situation was allowed to exist which would give rise to discrimination, double taxation and other disparities which might cause a substantial deflection in normal capital flows.

Consequently, it is necessary to harmonise indirect taxes levied on capital movements in the Member States.

A first step has already been taken in this direction. On 17 July 1969, the Council adopted Directive 69/335/EEC concerning indirect taxes on the raising of capital[1], which provides for the abolition of the stamp duty on securities and for the application of a capital duty harmonised between the Member States. On 9 April 1973, the Council also adopted Directive 73/80/EEC fixing common rates for the capital duty with effect from 1 January 1976[2].

It would now seem desirable to proceed to the next stage and to contemplate the harmonisation of indirect taxes on transactions in securities. As currently applied by Member States, they give rise to double taxation and discrimination.

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[1] OJ No. L 249, 3 October 1969, p. 25

[2] OJ No. L 103, 18 April 1973, p. 15

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The risk of double taxation arises because, for the purpose of determining the scope of the tax on transactions in securities Member States' legislation takes into account, where applicable, the place at which the transaction is concluded, the place at which it is carried out and also the status of the contracting parties and that of the professional intermediary who intervenes in the transaction. Consequently, a single transaction in securities may simultaneously give rise to chargeable events in two or more Member States.

Discrimination is particularly evident with regard to the taxation of public loan issues, some Member States granting more favourable treatment to securities forming part of national loan issues than to securities issued by other Member States. Another form of discrimination, as practised in the United Kingdom for example, involves applying half the normal rate of tax to transactions carried out by non-residents. A difference in tax rates, but in this case based on the situation of the head office of companies, is also practised in Ireland. These forms result from the existence of different systems and rates of tax. Clearly, such discrepancies as regards taxes on transactions in securities may, in certain cases, disrupt the movement of capital.

Harmonisation of these taxes would also appear necessary in view of the fact that the different rates of tax currently applied in Member States may, all things being equal, divert the flow of disposals and acquisitions of securities.

If the establishment of a genuine common capital market is to be facilitated, it is necessary to eliminate these discrepancies.

There are two possible ways in which to achieve this objective fully: complete harmonisation of the structures and rates of these taxes, or their simple abolition.

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The Commission considers that the second solution would be the most desirable as regards the establishment of a genuine European capital market, since these taxes hamper efficient management of the securities market - particularly in those Member States which apply the highest rates - by raising the cost of transactions, sometimes significantly. It should, however, be borne in mind that most Member States which apply these taxes could not forgo the revenue from them without difficulty, even though the yield from these taxes is relatively small compared with total tax revenue.

Consequently, the Commission feels that it would not be appropriate at the present time to propose the simple abolition of taxes on transactions in securities.

Furthermore, strict harmonisation of the structures and rates of these taxes would be faced with numerous obstacles. Firstly, there is one Member State, the Grand Duchy of Luxembourg, which does not apply any such tax. Secondly, there were already in existence, prior to the accession of the United Kingdom, Ireland and Denmark to the Community, two systems of taxation for transactions in securities: one based on dual imposition (i.e. tax levied separately on both the disposal and the acquisition of securities) and the other based on the taxation of the transaction as one whole. Since the accession of the three new Member States, the situation has been further complicated by a third system based on the registration of registered securities dealt in in the United Kingdom and in Ireland, the tax being levied when the securities are recorded in the relevant registers kept in those countries.

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II. Immediate objective

In the light of the above considerations, the Commission has decided to present a proposal for a Directive which does not provide for an undue degree of harmonisation.

Since the Commission's objective is the eventual abolition of the tax on transactions in securities, it would be illogical to compel the Grand Duchy of Luxembourg to introduce this tax. It is proposed, therefore, that the introduction or maintenance of the tax in question shall not be obligatory.

The proposed Directive lays down the scope of the tax and aims at limiting double taxation, notably by a system which demarcates the powers of taxation between the Member States.

It sets maximum rates with a view to bringing the levels of taxation in the Member States closer into line. Since these maximum rates are relatively low, the rates to be applied will not be such as to encourage diversion of transactions.

A number of exemptions are obligatory, thus introducing an element of harmonisation. However, in view of the objective of abolishing this tax in the longer term, it would seem illogical to extend the existing coverage in the Member States. It is proposed, therefore, that Member States which impose the tax in respect of the transactions in question be permitted to maintain the exemptions they at present apply.

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The difficulties of varying magnitude which would arise if the system applicable in the United Kingdom and in Ireland was replaced by a Community system are such that the Commission has decided to adopt a flexible approach. Under present circumstances, it would not appear advisable wholly to dismantle the system applicable in these countries. Furthermore, it is important to note that the United Kingdom and Ireland apply the highest rates of tax on transactions in securities in the Community and will face the hardest task in bringing these rates down to levels which will comply with the Directive, their budgetary loss thus being greater than in the other Member States.

III. Comments on the individual articles

Article 1

Member States not obliged to levy the tax

Under Article 1 of the proposed Directive, Member States may choose not to impose a tax on transactions in securities. It is to be noted that no such tax is levied in the Grand Duchy of Luxembourg. However, Member States wishing to impose this tax will have to levy it in accordance with the rules laid down in the Directive.

Article 2

Scope of the tax

Any acquisition or disposal of securities for valuable consideration is taxable. The purchase and sale of transactions are considered to be separate taxable transactions. Thus, when two parties A and B conclude an agreement on the sale of a certain number of shares, the harmonised tax is levied in two elements on the operation: once on the sale (tax on the

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sale by A to B) and once on the purchase of securities (tax on the acquisition by B from A).

The advantage of this solution is that it shares the tax burden between the transferee and the transferor and, what is more, in the case of transactions going beyond national frontiers, permits demarcation of the powers of taxation between the Member States concerned.

In order to ensure that the scope of the tax is the same in all Member States, it is also necessary to define which securities are taxable. This definition is given in the Annex to the proposed Directive.

Transactions carried out in a Member State and also transactions carried out in a non-Member country are taxable where they involve a resident of a member country, or a professional intermediary established in a Member State. It is essential to extend Member States' powers of taxation to transactions concluded in a non-Member country which involve a resident of a Member State or a professional intermediary established in a Member State so as to ensure that transactions are not carried out abroad with a view to tax avoidance.

Article 3

Waiver for the United Kingdom and Ireland

A provision enabling the United Kingdom and Ireland to derogate from some of the tax arrangements has been incorporated in the proposed Directive. Under this provision, these Member States may regard the disposal and acquisition of registered securities as a single transaction. In practice, this is a waiver which is restricted to registered securities registered in the United Kingdom or in Ireland and which permits these States to maintain their present arrangements for registering such securities.

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The reason for this waiver lies in the technical difficulties and the repercussions which could ensue in the United Kingdom and in Ireland from a substantial change in the system of control over securities and companies.

It is to be noted that the waiver does not apply to bearer securities or to the rates of tax. As the tax is levied in the United Kingdom and in Ireland in respect of a single chargeable event, this fact being attested by a printed stamp affixed to the transfer document, the rates of tax laid down for transactions effected in accordance with the dual-component system of taxation on which the Directive is based will, therefore, be doubled.

This Article has been expanded slightly to ensure that, in certain cases, this waiver does not result in double taxation. Where a resident of a Member State acquires a certificate representing a registered security, he is required to pay the tax in accordance with Article 2 of the Directive. However, if that same resident, wishing, for instance, to assume all the rights conferred by possession of a registered security, notably the voting right, registers his title to the securities specified in the certificate in the United Kingdom or in Ireland, the tax will again be levied in that country. It is with a view to avoiding such double taxation, for here no transfer of securities takes place, that an appropriate provision has been added to Article 3. As a safeguard clause in the event of this waiver giving rise to diversions of operations on the securities market, the Commission could forward proposals to the Council, which would take, by a qualified majority, a decision on appropriate measures within six months.

Article 4

Transactions exempt from tax

Provision has been made for several common exemptions which are desirable from an economic viewpoint and also with a view to the proper functioning of the capital market.

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Paragraphs 1(a) and (b) - Issue of securities

Issues of securities fulfil a very important economic function since they make an important contribution to meeting the capital needs of general government, industry and commerce. For this reason, the Council has already abolished, with effect from 1 January 1972, stamp duty levied on the issue of all securities in Member States (Article 11 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital).

Issues are in general underwritten by a consortium of banks which then sell the securities to the public. Normally, the banks hold the securities for a short period of time only, with the result that, economically speaking, they are actually issued only when the banks dispose of them. This arrangement facilitates the financing of investment since the issuer is assured of receiving immediately the consideration for the securities issued. Consequently, Article 4(b) stipulates that the exemption provided for in respect of the issue of securities is to be extended to the first transfer by members of issuing consortia.

Paragraph 1(c) - Transactions in bonds with a maximum length, at the date of issue, of five years

Given that tax on transactions in bonds becomes progressively heavier the shorter the period to their maturity, the burden of taxation may jeopardize the proper functioning of the bond market. Consequently, a number of short-term bonds are exempt from the tax in several Member States. An exemption from the tax is therefore provided for the disposal

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or acquisition of short-term bonds, i.e. bonds with a maximum length of five years at the date of issue.

Paragraph 1(d) - Acquisitions by the issuer of his own bonds for redemption

This exemption has been included in the Directive in order to ensure that the repurchase by the issuer of his own bonds for redemption is not penalised vis-à-vis other redemption procedures.

Paragraph 2 - Transactions involving professional intermediaries

This paragraph exempts from tax professional intermediaries who intervene in transactions on behalf of transferors or transferees of securities. This exemption is designed to ensure that stock exchange transactions are not subject to tax rates which are double or more the rates of tax levied in respect of transactions in which intermediaries do not intervene.

Thus, if, in the example given on pages 5 and 6 (Article 2), one or more professional intermediaries intervene in a transaction between parties A and B, the only taxable transactions will still be those referred to in that example, namely the disposal by A (tax on the disposal and the acquisition by B (tax on the acquisition).

The exemption from tax of transactions involving one or more professional intermediaries would, therefore, seem to be justified, particularly when it is borne in mind that such intermediaries fulfil a very important economic function. Member States may, however, levy the tax on transactions carried out by professional intermediaries for their own account. It is, none the less, to be noted that collective investment

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undertakings are excluded from this optional provision and are, therefore, exempt from tax in all Member States when they act on their own account. Since transactions in the units or shares of these undertakings are subject to normal tax arrangements, disposal or acquisition by them of securities of other companies should, for the reasons set out in the definitions (page 17 below), be exempted from tax.

Paragraph 3 - Maintenance of exemptions going beyond the scope of the obligatory exemptions

At present, the Member States apply a number of exemptions which go beyond the scope of the obligatory exemptions laid down in the Directive. The Commission has looked into three possible ways of dealing with such exemptions: abolish them, apply uniformly all exemptions applied in the Member States, or maintain the exemptions applied by each Member State.

Abolition of these exemptions, the first solution envisaged, would involve, for the Member States, extension of the scope of the tax and this would run counter to the objective of abolishing this tax in the longer term.

The second possible solution would be the opposite of the first solution. Uniform application of all exemptions applied in the Member States would clearly be the most liberal solution, but it might result, at Community level, in a wide range of minor exemptions which would be justified only at national level.

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Lastly, the third solution mentioned, i.e. the maintenance of national exemptions, would enable the Member States to administer this tax at national level with the necessary degree of flexibility. Moreover, since the major exemptions will be common exemptions in pursuance of Article 4(1) and (2) and since the maximum rates of tax proposed in Article 8 are such that differences in tax levels between Member States will be very narrow, the risk of distortion between Member States resulting from the differences between these additional minor exemptions is minimal.

Consequently, besides the obligatory common exemptions referred to above, exemptions applied by Member States on the date of entry into force of the Directive can be maintained. Similarly, Member States may retain exemptions deriving from bilateral agreements concluded prior to that date. However, certain conditions must be complied with, notably that Member States must refrain from all discriminatory treatment based on the residence of the issuer of the securities or on the residence of those involved in the transaction (see Article 9). They will also have to notify the Commission of the exemptions they intend to maintain.

Paragraph 4 - Introduction of new exemptions

Once the Directive has entered into force, a Member State intending to introduce new exemptions will be required to notify the Commission, which will consult the other Member States and then take a decision on the matter. This provision is designed to safeguard the other Member States against the unforeseen effects of changes in national exemptions.

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The Member State concerned may implement the new exemptions only after receipt of a favourable Commission decision or, in the absence of a Commission decision, after a period of six months.

Article 5

Demarcation of Member States' powers of taxation

In order to avoid double taxation within the Community, it is essential that the Member States' powers of taxation should be closely defined. As most transactions are carried out with the intervention of professional intermediaries, the powers of taxation should be attributed to the Member States in which reside the intermediaries responsible for a disposal or acquisition of securities.

For instance, an Italian resident A sells securities to a Belgian resident B:

- if the transaction involves an intermediary C resident in Italy and acting on behalf of A, and an intermediary D resident in Belgium and acting on behalf of B, the tax on the disposal is payable in Italy and the tax on the acquisition in Belgium;

- if the transaction involves only one intermediary who is resident in Italy, the tax charges on both the disposal and the acquisition are payable in Italy.

This solution will ensure a reasonable overall distribution of tax revenue between Member States in the case of transactions in securities going beyond national frontiers. It also has the advantage that the tax authorities will be able to collect the tax directly from the intermediary.

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Where transactions are carried out with the intervention of a professional intermediary resident in a non-member country or in a Member State that does not apply the tax, or where transactions are carried out without the intervention of a professional intermediary, the tax on the disposal is payable in the Member State in which the transferor resides and the tax on the acquisition in the Member State in which the transferee resides. If, however, the transferor and the transferee do not reside in a Member State, the tax is payable in the Member State in which the transaction is concluded.

Article 6

Definition of a resident of a Member State

The criteria used for defining a resident of a Member State are largely based on those set out in Article 4 of the OECD Model Convention on the avoidance of double taxation.

Article 7

Basis of assessment

In general, the tax is assessed on the basis of the price of the securities agreed between the parties involved. Where no price has been agreed or where the agreed price does not correspond to the actual value of the securities, Member States may assess the tax on the actual value or on the average price of the securities.

The Member States will, therefore, be able to determine the basis of assessment they apply and thus to prevent manipulation of the value of the securities dealt in with a view to avoiding tax on part of that value.

Article 8

Rate of the tax

The proposed Directive lays down maximum tax rates but not common rates. Member States which impose this tax may, therefore, apply rates lower than the maximum rates.

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Two preliminary remarks should be made as regards the rates of the tax:

1. No tax on transactions in securities is levied in the Grand Duchy of Luxembourg.
2. The rates of tax are at approximately the same level in the different Member States, except, however, in the United Kingdom and in Ireland, which impose much higher rates. Normally, these two Member States at present impose a 2% tax on transactions while the rates levied in the other Member States do not exceed 0.7% (see Annex I).

By comparison, and starting from the same basis, the rates proposed in the Directive are 0.3% for bonds and 0.6% for other securities.

The Commission favours this alternative, in preference to the choice of a harmonised rate for each category of securities, since it will mean that only the Member States applying comparatively high rates (United Kingdom and Ireland) will have to reduce them significantly, while some of the other Member States will need to make only small reductions and others may even be able to maintain the rates they apply at present.

The budgetary impact of the Directive will, in any case, be rather limited. As stated above, only the Member States which apply by far the highest rates (United Kingdom and Ireland) risk losing significant revenue in absolute terms, but even they are expected to forgo only about 0.3% and 0.06% of total tax revenue respectively. It is to be noted that revenue accruing from the tax on transactions in securities does not account for a very high proportion of total tax revenues (see Annex II).

Other than the maximum rates laid down in the proposed Directive (1.5% for bonds and 3% for other securities) the only other rates which differ are those fixed for cash transactions and account transactions. This is to avoid an unduly wide range of rates. A lower rate is proposed for bonds, as the possibility for capital gains is less than that of other securities. Consequently, so far as is possible, the tax burden on bonds should be lower than that on other securities, as is already the case in certain Member States.

Each Member State will, therefore, be able to apply a maximum of four rates:

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- a fixed rate of between 0 and 1.5% for transactions in bonds on a cash basis, and another fixed rate, within the same limits for transactions in bonds on an account basis;

- a fixed rate of between 0 and 3% for transactions in securities other than bonds on a cash basis, and another fixed rate within the same limits for transactions in these other securities on an account basis.

Clearly, the introduction of four rates is optional, and Member States are free to apply a single rate if they so wish.

Article 9

Discriminatory treatment

As mentioned earlier, the legislation at present in force in Member States gives rise to certain forms of discrimination. Consequently, a general provision designed to prevent discriminatory treatment based on the residence of the issuer of the securities or on the residence of those involved in the transaction has been included in the Directive.

Article 10

Abolition of any tax otherrthan the harmonised tax and derogations

Article 10(1) of the proposed Directive prohibits Member States from charging any tax on transactions in securities otherrthan the tax provided for in the proposed Directive, which would also be assessed on the basis of the value of the security involved in the transaction.

Paragraph 2 of this Article does, however, derogate from this rule as regards capital duty and, in certain cases, transfer duties on immovable property, other transfer duties, and value added tax.

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At present, taxes levied on capital transfers (whether in the form of taxes levied on transfers of property, on gifts, on inherited assets) are an important source of revenue for the Member States. Consequently, transactions in securities may at present be taxed both as transactions (subject to the transactions tax) and as capital transfers (subject to one or another capital transfer tax). The prime aim of the derogations in Article 10 is to permit the continued application of these taxes and to ensure that the transactions tax is not used as a means to avoid capital transfer taxes, whose incidence is in general considerably higher.

Definitions

A number of definitions have been included in an Annex to the proposed Directive.

The definition of securities liable for tax and those which may be treated as such within the meaning of the Directive is largely based on Council Directive 69/335/EEC concerning capital duty.

More particularly, debt participations which form part of a global loan and which are transferable have been included in the definition because, in some Member States, they are very often used as financing instruments in the same way as are bonds.

Since the definition of a professional intermediary varies between Member States, it is necessary to give a common definition of intermediaries and to list those whose services are normally used.

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Collective investment undertakings, which include investment companies and unit trusts, appear on this list. They channel large sums of capital and, through them, savers in general and savers not familiar with the securities market in particular are able to invest indirectly in securities, notably shares. In this connection, it should be pointed out that one of the aims of all Member States is to make the market in shares more attractive to savers so as to provide industry and commerce with easier access to funds. They perform the economically important function of promoting savings while at the same time providing small investors with a spread of investments, however few shares or units they hold. In addition, these undertakings have more expertise than ordinary savers in selecting securities and in investing in the other Member States, thereby promoting mobility of capital within the Community.

For these reasons, which are both social and economic, investments carried out via collective investment undertakings as intermediary should not be taxed more heavily than if carried out directly without their intervention. By treating collective investment undertakings as professional intermediaries and by exempting them from the tax where they act on own account, the economic double taxation which would result from the taxation of transactions made by these undertakings in acquiring the securities of other companies, and the taxation of transactions in their own shares or units, will be avoided.

As regards the issue of securities, other than the issue of securities by the issuer himself, it was considered appropriate to include under this heading issues resulting from capitalization of reserves.

ANNEX I

SUMMARY TABLE

OF THE RATES OF TAX APPLIED IN MEMBER STATES ON TRANSACTIONS IN SECURITIES

Germany	Belgium	Denmark	France	Ireland	Italy	Luxembourg	Netherlands	U.K.
I. Rates expressed in %, in ‰ and in lire (national legislation)								
1 - 2.5‰ [a]	0.7 - 3.5‰ [b]	5% [c]	1.5 & 3‰ [d]	1 and 2% [e]	Lit 1-75 [f] for every Lit 100,000	- [g]	1.2‰ [h]	1 & 2% [i]
II. Rates expressed in ‰ (except for Italy), the purchase and sale being regarded as separate transactions (see Article 2 of the proposed Directive)								
0.5 - 1.25‰	0.7 - 3.5‰	2.5‰	1.5 & 3‰	5 and 10‰	Lit 1-75 for every Lit 100,000	-	1.2‰	5 and 10‰

III. Proposed maximum rates - Article 8 of the proposed Directive:
- bonds: 1.5‰ (0.15%) on the purchase, 1.5‰ (0.15%) on the sale;
- other securities: 3‰ (0.3%) on the purchase, 3‰ (0.3%) on the sale.

(a) Single tax on purchases of securities.

(b) Tax payable separately on the sale (disposal) and on the purchase (acquisition).

(c) The purchase and sale are considered as a single transaction but the tax burden is shared between the purchaser and the seller.

(d) Tax payable separately on the purchase and on the sale. For that part of any transaction exceeding FF 1 million and for contango transactions, the rate is 1.5‰.

(e) Single tax levied on the registration of Securities dealt in; 1% for securities of companies with their registered office in Ireland, 2% for securities of companies with their registered office in another Member State.

(f) The tax is levied on each tranche of Lit 100,000 or each fraction of Lit 100,000; it varies according to the legal status of the persons involved in the transaction and according to the nature and duration of the contract.

(g) The Grand Duchy of Luxembourg does not charge any such tax.

(h) The tax is payable on the purchase and on the sale.

(i) Single tax levied on the registration of securities dealt in; the rates differ according to the residence of the transferor; 2% for residents, 1% for non-residents.

Revenue from the tax on transactions in securities in Member States

Year	Germany	Belgium	Denmark	France	Ireland	Italy	Luxembourg	Netherlands	United Kingdom
Revenue: (a) in national currency (million) (b) million units of account EUR[2]									
1973 a)	107	691	25	363	1.2	9,470	-	25	89
b)	35	15	3.4	69.5	2.1	11.9	-	8	154.6
1974 a)	64	593	11	364	0.9	10,346	-	16	100
b)	21	12.9	1.5	69.7	1.5	13	-	5.1	173.7
1975[1] a)	124	534	14	400	0.8	10,500	-	20	100
b)	40.6	12.7	1.9	76.6	1.4	11.1	-	6.4	173.7
Revenue from the tax as a percentage of total tax revenue[3]									
1973	0.09	0.17	0.33	0.16	0.22	0.07	-	0.07	0.5
1974	0.05	0.11	0.14	0.13	0.14	0.06	-	0.03	0.5
1975[1]	0.10	0.10	0.14	0.14	0.1	0.06	-	0.04	0.5

[1] Since the relevant statistics are not yet available, the 1975 figures are estimates.

[2] As at 1 January 1976.

[3] In the case of Germany, the percentage given refers to total Federal revenue.

PROPOSAL FOR A COUNCIL DIRECTIVE

concerning indirect taxes on transactions in securities

The Council of the European Communities,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

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

Whereas the movement of capital within the Community is hampered by the differences existing between the laws in force in the Member States with regard to taxes on capital movements; whereas, in order to achieve free movement of such capital, it is, therefore, essential that these laws be harmonised so as to eliminate the major disparities;

Whereas, in order to attain this objective, the Council adopted, in 1969, a Directive concerning indirect taxes on the raising of capital, which abolishes stamp duty on securities and harmonises as between Member States the duty on contributions to capital companies(1); whereas, in 1973, it also adopted a Directive fixing common rates of capital duty which entered into force on 1 January 1976(2);

Whereas it is advisable to continue in this direction by similarly harmonising indirect taxes on transactions in securities; whereas these taxes as at present levied by Member States often give rise, as between those States, to double taxation, discrimination and other differences of a nature such as to distort the normal flow of capital;

Whereas the abolition of indirect taxes on transactions in securities would have been the most desirable means of eliminating such disparities with regard to the proper functioning of the capital market but cannot be contemplated at the present time in view of the budgetary requirements of Member States;

(1) OJ No. L 249, 3 October 1969, p. 25
(2) OJ No. L 103, 18 April 1973, p. 15.

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Whereas, with a view to attaining in substance the above objectives, it is necessary to establish convergent structures in Member States for the administration of these taxes in order to ensure, in respect of intra-Community transactions, a demarcation of the powers of taxation between the Member States and, as far as possible, to avoid double taxation;

Whereas Member States which so desire should, none the less, remain free to abolish or not to introduce such taxes in their legislation;

Whereas, on account of the technical difficulties and repercussions which could ensue from the United Kingdom and Ireland from a substantial change in the system of control over securities and companies, it seems desirable that the said States should be permitted to derogate, in part and under certain circumstances, from the system provided for in this Directive in respect of transactions in registered securities registered in the United Kingdom or in Ireland;

Whereas, for economic reasons, a number of common exemptions should be laid down; whereas, among the measures to facilitate the eventual abolition of these taxes, it would appear advisable to permit Member States to maintain the exemptions applicable in each of them on the date of entry into force of the Directive;

Whereas, with regard to rates, it would appear that disturbances on the capital market could be adequately averted by imposing maximum rates of tax, since this would permit Member States which so wish to obtain a reasonable level of revenue from this tax, whilst leaving open the possibility of applying lower rates,

HAS ADOPTED THIS DIRECTIVE:

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Article 1

Member States which impose a tax on transactions in securities shall levy it in accordance with this Directive.

Article 2

1. For the purposes of this Directive, a taxable transaction is the disposal or the acquisition of securities for valuable consideration, where the transaction is concluded in a Member State or is concluded in a non-Member country by a resident of a Member State. Each disposal or acquisition of securities constitutes a separate taxable transaction.

2. Collection of the tax may be deferred for not more than four months from the conclusion of the transaction.

Article 3

1. Notwithstanding Articles 2 and 5, the United Kingdom and Ireland may regard as a single taxable transaction the disposal and acquisition of registered securities registered in the United Kingdom or in Ireland.

2. The tax shall not be levied in the United Kingdom or in Ireland where a resident of a Member State who has acquired a certificate representing a registered security issued in the United Kingdom or in Ireland, registers in either of the two countries his title to the securities specified in the certificate.

3. Should it be found that application of paragraph 1 leads to diversions in transactions on the securities market, the Council, on a proposal from the Commission, shall take a decision on appropriate measures by a qualified majority within six months.

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Article 4

1. The Member States shall take the necessary steps to exempt from the tax the following transactions:

(a) the issue of securities, and the first acquisition of securities immediately consequent upon such issues;

(b) the first assignment by members of issuing consortia who have acquired securities with a firm option, and the first acquisition of securities corresponding to that assignment;

(c) the disposal and the acquisition of bonds with a maximum length, at the date of issue, of five years;

(d) acquisitions by the issuer of his own bonds for redemption.

2. Transactions involving one or more professional intermediaries shall be liable to the tax only in respect of the operations of the transferors and the transferees. The Member States may, however, levy the tax on transactions carried out by professional intermediaires for their own account, with the exception of transactions carried out by collective investment undertakings.

3. Without prejudice to subsequent Community provisions, Member States may also retain, subject to the application of paragraphs 1 and 2 above and of Article 9, exemptions more extensive than those specified in paragraph 1 or other exemptions, whether such exemptions are specified in national legislation or result from a more limited field of application of the tax than is established by Article 2 above, on condition that such exemptions apply on the date of entry into force of this Directive. Member States shall notify the Commission thereof not later than one month after entry into force of the Directive.

4. Where a Member State intends to introduce new exemptions, it shall so inform the Commission in good time and in writing. The Commission shall consult the other Member States and take a decision on the matter. The Member State concerned may only implement the new exemptions after receipt of a favourable Commission decision or, in the absence of a Commission decision, within six months of the date of notification to the Commission.

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Article 5

The Member States' powers of taxation shall be determined as follows:

1. Where the professional intermediaries intervening in a transaction reside in Member States which apply the tax:

- the tax on the disposal shall be payable in the Member State in which the professional intermediary acting for the transferor resides and the tax on the acquisition shall be paid in the Member States in which the professional intermediary acting for the transferee resides.

2. Where no professional intermediary intervenes or where the intervening professional intermediaries reside in non-member countries or in Member States that do not apply the tax:

(a) where both parties to the transaction reside in a Member State that applies the tax:

- the tax on the disposal shall be payable in the Member State in which the transferor resides and the tax on the acquisition in the Member State in which the transferee resides;

(b) where one of the parties to the transaction resides in a non-member country or in a Member State that does not apply the tax:

- the tax on the disposal or the tax on the acquisition shall be payable in the Member State in which the transferor or the transferee resides;

(c) where both parties to the transaction reside in a non-member country or in a Member State that does not apply the tax:

- the tax on the disposal and the tax on the acquisition shall be payable in the Member State in which the transaction is concluded.

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Article 6

1. The question whether a natural person other than a professional intermediary is resident in a Member State shall be determined in accordance with the following rules, which shall be applied in the order in which they are listed:

(a) a person shall be treated as resident in the Member State in which he has a permanent place of residence. If he has a permanent place of residence in two or more Member States, he shall be deemed to reside in that Member State with which he has the closest economic and social ties (principal place of residence);

(b) if a person has no permanent place of residence in any Member State, he shall be treated as resident in the Member State in which he stays habitually;

(c) if, applying rule (a), the principal place of residence cannot be determined and if, applying rule (b), the person is found to stay habitually in two or more Member States, he shall be deemed to reside in that Member State of which he is also a national;

(d) if he is a national of two or more Member States, or if he is not a national of any Member State, the competent authorities of the Member State shall settle the question by agreement.

2. A person other than a natural person or professional intermediary shall be deemed to reside in a Member State when he acts as a transferor or transferee of securities and when, according to the circumstances, either the effective management control, the registered office or a permanent establishment is situated in that Member State.

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3. A professional intermediary shall be deemed to reside in the Member State in which he has his permanent establishment. A professional intermediary who has permanent establishments in two or more Member States shall, for the purposes of Article 5, be deemed to reside in the Member State in which the permanent establishment acting for the transferor or for the transferee of the securities is situated.

Article 7

1. The tax shall be assessed on the agreed price. Where no price has been agreed or where the agreed price differs from the actual value of the securities concerned, Member States may assess the tax on this value or on the average price of the securities.

2. Interest on fixed-income securities which has accrued between the last coupon payment and the date of a transaction, and expenses incidental to a transaction, such as brokerage of intermediaries, commission and the tax on the transaction itself, shall be excluded from the basis of assessment.

Article 8

1. The rate of the tax shall not exceed:

(a) 1.5‰ for bonds;

(b) 3‰ for other securities.

Within these limits, the rate applicable to transactions made on account in the bonds mentioned at (a) and in the other securities mentioned at (b) may differ from that applicable to cash transactions.

2. In the case of transactions in the registered securities referred to in Article 3(1), the rate of the tax shall be twice that applied in accordance with paragraph 1.

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Article 9

Member States shall refrain from all discriminatory treatment based on the residence of the issuer of the securities or on the residence of those involved in the transaction.

Article 10

1. No form of tax assessed on the basis of the value of the security involved in the transaction, whether or not charged at a flat rate, other than the tax provided for in this Directive, shall be charged on transactions in securities.

2. Notwithstanding paragraph 1, Member States may charge:

(a) capital duty, as defined by Council Directive 69/335/EEC of 17 July 1969(1);

(b) transfer duties on immovable property where, as a result of transactions in shares in companies, funds, associations or other legal persons whose assets consist in whole or in part of immovable property situated in their territory, the purchaser acquires all the assets or a position by virtue of which he is able to exercise control over these companies, funds, association or other legal persons. In this case, transfer duties shall apply only in respect of the value of the immovable property, such value being determined in accordance with national legislation;

(c) value added tax applicable to interests or giving the holder thereof de jure or de facto rights of ownership or possession over immovable property or part thereof;

(d) transfer duties on transactions in securities effected for a consideration other than their market value.

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(1) OJ No. L 249, 3 October 1969, p. 25.

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Article 11

Member States shall bring into force such provisions by way of laws, regulations or administrative action as may be necessary to comply with the provisions of this Directive at the latest by 1 January of the year following that of its adoption.

Article 12

Member States shall ensure that the texts of the main provisions of internal law which they subsequently adopt in the field covered by this Directive are forwarded to the Commission.

Article 13

So that the relevant conclusions can be drawn for further harmonization of taxes on transactions in securities, the Commission shall submit a report to the Council, every two years after the application of the Directive by Member States, on subsequent developments in the field covered by this Directive.

Article 14

This Directive is addressed to the Member States.

Annex

Definitions

I. For the purpose of this Directive, the following shall be considered to be securities:

1. Shares and other stocks in the following "capital companies":

   (a) companies under Belgian, Danish, German, French, Irish Italian, Luxembourg, Netherlands and United Kingdom law known respectively as:

   - sociéte anonyme/naamloze vennootschap, aktieselskab, Aktiengesellschaft, société anonyme, companies incorporated with limited liability (excluding private limited companies), società per azioni, société anonyme, naamloze vennootschap, companies incorporated with limited liability (excluding private limited companies);

   - société en commandite par actions/commanditaire vennootschap op aandelen, kommandit-aktieselskab, Kommanditgesellschaft auf Aktien, société en commandite par actions, società in accomandita per azioni, société en commandite par actions, commanditaire vennootschap op aandelen;

   (b) any company, firm, association or legal person the shares in whose capital or assets can be dealt in on a stock exchange;

   (c) any company, firm, association or legal person operating for profit, whose members have the right to dispose of their shares to third parties without prior authorization and are only responsible for the debts of the company, firm, association or legal person to the extent of their shares;

2. bonds, including convertible and exchangeable bonds (i.e. securities issued to represent a loan and transferable by the forms of commercial law);

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3. shares or units in collective investment undertakings;

4. subscription rights and similar securities;

5. certificates representing such securities;

6. letters of allotment.

whether or not issued in a Member State, whether registered or bearer securities, whether or not quoted on a stock exchange.

II. For the purposes of this Directive, the following may be considered to be securities:

1. shares in société de personnes à responsabilité limitée/ personenvennootschap met beperkte aansprakelijkheid, Gesellschaft mit beschränkter Haftung, société à responsabilité limitée, private limited companies, società a responsabilità limitata, société à responsabilité limitée, private limited companies;
2. loan participations forming part of a global loan which are transferable;

3. securities or shares in any company, firm, association or legal person operating for profit other than those specified in definitions I and II, 1 and 2 above, where in a Member State they are considered to be "capital companies".

III. For the purposes of this Directive, a taxable transaction is concluded by the written or verbal agreement of the parties to the transaction.

IV. For the purposes of this Directive, a professional intermediary is a natural or legal person who, in a professional capacity, intervenes in transactions in securities. This definition includes commission agents, banks and other institutions recognised as dealers in securities, stock brokers, intermediate brokers and jobbers, except where they act as nominees or as administrators of capital assets, e.g. trustees. This

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definition also includes collective investment undertakings, by which is understood investment companies and unit trusts whose principal object is the collective investment of capital collected by means of offers to the public, and whose operations are based on principle of distribution of risks.

V. For the purposes of this Directive, "issue of securities" means the allotment of securities by the issuer, including that resulting from capitalization of reserves.