Opinion of the European Economic and Social Committee on the Proposal for a Council Directive on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries

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On 22 February 2006 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal. The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 7 June 2006. The rapporteur was Mr Burani.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee unanimously adopted the following opinion.

1. Introduction

1.1 The Commission’s proposal concerns the harmonisation of provisions relating to the import from third countries of goods in travellers’ accompanied baggage that are, by their nature, subject to VAT or excise duties. Up to certain limits, such goods have always been imported duty free: the original provision is in Directive 69/169/EEC of 28 May 1969, which has since been modified 17 times and is now to be replaced by the initiative under discussion.

1.2 The system needs to be maintained ‘in order to prevent double taxation, as well as in cases where, in view of the conditions under which the goods are imported, the usual need to protect the economy is absent’ (1). The Commission believes that, whilst the guiding principle remains unchanged, the number of modifications that have been made since the directive was first passed, enlargement, and the configuration of the new external borders constitute a sufficient reason for a complete revision and replacement of the original directive.

1.3 The problem, which per se is a simple one, is complicated by the need to regulate the import of ‘sensitive’ products, i.e. tobacco and alcoholic beverages. Although the problem has always existed, the enlargement of the EU, while leaving the fundamental issues unchanged, introduces new perspectives: the different geographic and social situations of the Member States, the different positions and the wide differences between levels of taxation. The final result will depend on whether it is possible to reach agreement on the Commission’s proposal for harmonisation.

2. General comments

2.1 Originally, the directive applied to people travelling within the Community; since 1991, in line with the principles of the single market, the restrictions on the movement of goods between Member States have, in principle, been abolished. The changes to the external borders of the EU following enlargements mean that new aspects have to be considered; as the Commission says, those borders ‘now include, inter alia, Russia, Ukraine and Belarus’.

2.1.1 The EESC takes note of this, but observes that, in addition to the borders mentioned, there are other borders to the east that raise a problem for the new accession countries because of significant differences in price levels with some neighbouring third countries; nor should it be forgotten that new sea borders have been created since the accession of Cyprus and Malta.

2.1.2 The derogations given to some Member States at different times, in consideration of particular problems, have now all expired, with the exception of that granted to Finland, which is still permitted, until 2007, to apply a limit of not less than 16 litres to the import of beer from third countries. The EESC, which has always expressed its opposition to the system of derogations, welcomes this; however, in this instance, a uniform system for all 25 countries may cause a few problems, which will be described below.

2.2 The proposed directive increases the current duty-free thresholds: from EUR 175 to EUR 500 for air travellers and to EUR 220 for all other travellers. The Commission’s explanatory memorandum justified this measure by saying ‘The cost and effort of travelling by air would suggest that such travel is likely to be less frequently undertaken by individuals compared to those choosing to travel by land or ferry. Additionally, air passengers are by their nature limited to what they can buy and transport, i.e. they would not be able to transport bulky items.’ The real reason, however, seems to be a different one: the fourth ‘whereas’ states that ‘The monetary thresholds should take account of the difficulties faced by Member States which share their borders with third countries with significantly lower prices’.

2.2.1 The EESC believes that the reason for the discrepancy between what is stated in the explanatory memorandum and the fourth ‘whereas’ quoted above is to be found primarily in a tax consideration. It would not make sense to talk about ‘bulky items’ (see previous point): there are goods that are small in size and high in value (cameras, laptop computers, watches, jewels, etc.) that air travellers would be allowed to import, but those travelling by car, rail or cruise ship would not. The other statement, which says that air journeys are ‘less frequent’ than those by sea or land and would require ‘cost and effort’, would appear to be referring to specific situations rather than the phenomenon in general: air journeys (in particular

those with low-cost airlines) are part of everyday life for millions of business people and tourists who travel to third countries each year.

2.2.2 The EESC considers it unacceptable that consideration for particular situations leads to harmonisation standards that discriminate between citizens on the basis of the means of transport they use. Although, as already stated in point 2.1.2 above, the EESC has on several occasions opposed the system of derogations and remains opposed to it in principle, it believes that in this case that system seems to be the only possible way ahead. However, it should be used only when one or more Member States can prove — in accordance with the proportionality principle — that a general limit of EUR 500 will lead to an intolerable loss of their tax revenues.

2.3 The proposed directive keeps the quantitative limits for tobacco and alcohol. With regard to tobacco, reference is made to the WHO Convention, ratified by the EU on 30 June 2005, which recommends that the import of tobacco products by international travellers be prohibited or restricted. In view of this recommendation, the Commission proposes a uniform system of reductions in the quantitative limits on such products ‘in order to ensure equal treatment of all citizens entering the European Union’.

2.3.1 The EESC expresses its agreement, although it has some reservations about the motives relating to tobacco, which, like the other motives, seem to be based on tax rather than health considerations; in effect, Article 9(2) gives Member States the right to apply minimum tobacco import levels which are much lower than normal. Without calling into question the harmful effects of tobacco, the — absurd — implication is that the level of harm varies according to the Member State.

2.4 In addition, the Commission proposes the abolition of quantitative limits for perfumes, coffee and tea. This takes account of the fact that perfumes are no longer subject to excise duty based on EU law, that coffee is subject to such duty in five Member States and tea in just one. In this regard, the explanatory memorandum states a fundamental principle (1): the abolition of quantitative limits is necessary ‘since they no longer reflect the real pattern of taxation of excisable goods in the … 25 Member States’. In other words, the limits are abolished because only a few of the 25 Member States still apply excise duties to the above-mentioned products.

2.4.1 The EESC agrees unreservedly with the abolition of these measures, and incidentally notes that in this case the rule has been applied whereby, keeping in mind the proportionality principle, the common interest prevails over that of individuals.

2.5 It is precisely from the point of view of proportionality that the proposed directive opens itself up to criticism in a number of respects. In general terms, and with reference to the rule mentioned in point 2.4, the EESC draws attention to the need for any initiative to be based on consistent application of a given principle to all the aspects of legislation and not just to some of them. This statement will be explained more clearly in the comments relating to the individual articles.

3. Specific comments

3.1 Articles 2, 4, 5 and 7: scope of the directive. These articles state that exemption from VAT and excise duty shall be granted for goods imported in a traveller’s personal luggage (‘accompanied luggage’) which has passed through a third country. The directive applies only if the person concerned is unable to establish that the goods were acquired in an EU country and do not qualify for any refund of VAT or excise duty. Personal effects which are imported temporarily or re-imported following their temporary export are not taken into account when calculating the value of the goods.

3.1.1 This rule already existed, and still imposes a considerable burden on travellers, who are required to carry invoices proving that articles they already own, especially the more expensive articles, were acquired in an EU country, or to obtain a declaration of temporary export on leaving.

3.1.2 The EESC is aware that no easier solutions exist, but it would point out that in the implementing regulation, or in some other way, the Commission could usefully advise the Member States to publicise this rule as most appropriate, through notices at exit border points and by including it in the general instructions issued by tourist operators and in air and sea tickets.

3.2 Article 8: monetary thresholds. The total value of imported goods qualifying for exemption is EUR 500 for air travellers and EUR 220 for all other travellers. Member States may reduce the threshold to no less than EUR 110 for travellers under the age of fifteen. The value limits apply to all goods, except for tobacco and alcohol, to which quantitative limits apply.

3.2.1 The EESC has already expressed its concern (see point 2.2.2) about this discrimination between citizens according to the mode of transport used. It seems obvious that this distinction is based on the particular situation of certain Member States bordering on third countries where prices are very low, e.g. because of wide tax discrepancies. The problem would be solved by applying the principle of proportionality (see points 2.4.1 and 2.5), with derogations granted in specific cases of proven necessity.

3.2.2 In line with point 2.2.2 above, the EESC confirms its proposal that the EUR 500 threshold be extended as a general principle to include all travellers without distinguishing between the modes of transport used. A higher threshold would have the advantage of freeing up customs officials from the burdensome task of inspecting the wider travelling public, particularly at times of heavy tourist traffic, thus enabling them to pay attention more effectively to genuine cases of smuggling. On this subject, it should be emphasised that the experience and professionalism of customs officers enables them to distinguish relatively easily between tourists (who may at most be guilty of a minor offence) and smugglers, whose actions are punishable under criminal law. The issue of ‘regular’ travellers (neither tourists or workers nor frontier-zone residents), whose imports are part of small-scale local trafficking for profit, has yet to be resolved.

(1) See ibid, 1) CONTEXT OF THE PROPOSAL — Grounds for and objectives of the proposal, 4th bullet point.
3.3 Article 9: quantitative limits for tobacco. Exemption from VAT and excise duties for tobacco is subject to quantitative limits. The normal limits are 200 cigarettes, 100 cigarillos, 50 cigars or 250 grammes of smoking tobacco. Member States may fix minimum quantitative limits (of 40 cigarettes, 20 cigarillos, 10 cigars or 50 grammes of smoking tobacco) which may be applied by the Member States to all travellers, or only to travellers other than air travellers.

3.3.1 While it disagrees with the concept of different quantitative limits, as noted with regard to monetary thresholds, the EESC would also add that the minimum limits would cause considerable inconvenience to EU tourists travelling by car passing through different countries (EU or non-EU) whose final destination is not the country in which the minimum limits are applied. Considering the importance of tourism and the need to promote rather than hamper it with measures requiring the adoption of rigorous border controls, the EESC suggests that an exemption clause be adopted specifically for these cases.

3.4 Article 10: quantitative limits for alcohol. As with tobacco, the existing quantitative limits are maintained for alcohol, adapted and subdivided into two categories as follows: (a) 1 litre of distilled beverages and spirits of an alcoholic strength exceeding 22 % vol. or undenatured ethyl alcohol of 80 % vol. and over, (b) 2 litres of ‘intermediate products’ and sparkling wines. The two limits cannot be cumulated. In addition to the above quantities, 4 litres of still wine and 16 litres of beer may be imported free of tax or duties. These exemptions do not apply to travellers under the age of 17.

3.4.1 The EESC broadly endorses the measures proposed, but would draw attention to certain important details. First, alcohol above 80 % vol., which falls into category (1), is generally sold only at 98 % or 99 % vol., and 1 litre of such a product can be used to make 3 litres of alcoholic beverage at 33 % vol. Thus there is no particular logic in equating this with 1 litre of distilled beverages or spirits. As regards the category of ‘sparkling wines’, which includes both high-value wines (e.g. champagne) and wines of a very different nature, the EESC considers that a distinction should no longer be made between ‘sparkling’ and ‘still’ wines as they both concern ‘wines’ with no bearing on their value.

3.4.2 However, we have an explicit reservation with regard to the quantities of wine and beer exempted: there is a definite lack of proportion between the 4 litres of wine and 16 litres of beer, which penalises travellers from countries where beer is not regularly consumed. Rather than establishing the same limit, it is necessary to fix separate quantitative and alternative limits for each of these beverages.

3.5 As regards fuel, the exemption applies to the fuel contained in the vehicle’s tank and to 10 litres in a portable container, but derogations are allowed where restrictive national provisions exist.

3.5.1 The EESC asks the Commission to radically revise this rule. In the first place, the position of fuel distributors does not justify extending the exemption to portable containers in addition to fuel tanks; this option should be removed, if only in consideration of the danger involved in transporting fuel outside of fuel tanks. It should also be borne in mind that in many countries this practice is forbidden under the highway code. The prohibition should be extended to any additional containers built in to the vehicle; for lorries, which often have two containers, the prohibition should apply to any container not approved at the time of their registration.

3.5.2 Secondly, restrictive national provisions, even where justified by the price disparities between neighbouring countries, should not be extended to tourists from countries other than those where the restrictions apply, for the same reasons given in point 3.3.1. If they are still considered necessary, restrictions could be included with those covering residents of border regions and cross-border workers, as provided for in Article 14 of the proposal for a Directive.

3.6 Article 14: frontier zone residents and workers. Special arrangements, which underpin the existing rules, apply for people residing in a frontier zone and for frontier workers (workers living in an EU country who work in the frontier zone of a neighbouring third country, or residents of a third country who work in the frontier zone of a neighbouring EU country). For these categories, the Member States may lower the monetary thresholds and/or quantitative limits. The proposal defines a ‘frontier zone’ as an area which, as the crow flies, does not extend more than 15 kilometres from the frontier. The EESC feels that this delimitation is arbitrary and does not take into account the geographical, economic and social characteristics of each frontier zone: each Member State should be able to delimit its own zones according to circumstances; moreover, greater flexibility would allow some Member States to address the worrying issue of the ‘unconventional smuggling’ that takes place at the land borders of Eastern European countries.

3.7 Finally, the date on which the Directive should enter into effect is set as 31 December 2006. This can be considered reasonable only if the legislative process proves to be rapid and smooth.

Brussels, 5 July 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND