

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Decision completing the general guidelines for 1982 concerning financial and technical aid to non-associated developing countries*(Submitted by the Commission to the Council on 16 July 1982)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 442/81 of 17 February 1981 on financial and technical guidelines to non-associated developing countries ⁽¹⁾, and in particular Article 9 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

⁽¹⁾ OJ No L 48, 21. 2. 1981, p. 8.

Considering that the European Council, preoccupied by the continuing growth in tensions in Central America, agreed in its session of 29 and 30 March 1982 that the aid granted by the Community for the development of the countries of Central America and the Caribbean should be increased,

HAS DECIDED AS FOLLOWS:

Sole Article

The general guidelines for 1982 concerning financial and technical aid to non-associated developing countries are set out in the Annex hereto.

ANNEX

The Council has agreed in general terms that the complementary guidelines proposed by the Commission in its communication of 28 May 1982 (COM(82) 257 final) should be maintained.

Proposal for a 13th Council Directive on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory*(Submitted by the Commission to the Council on 19 July 1982)*

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 Sixth 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 ⁽¹⁾, and in particular Article 17 (4) thereof,

Having regard to the proposal from the Commission, Having regard to the opinion of the European Parliament,

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

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

Whereas Article 8 of Eighth Council Directive 79/1072/EEC ⁽¹⁾ on the arrangements for the refund of value added tax to taxable persons not established in the territory of the country provides that in the case of taxable persons not established in the territory of the Community, Member States may refuse refunds or impose special conditions;

Whereas refund arrangements and conditions which vary too much between Member States may create distortion of competition and deflection of trade to the detriment of the taxable persons of a Member State who supply goods or services for nationals of non-member countries where the legislation applicable in that Member State lays down refund arrangements and conditions which are appreciably more restrictive than those in other Community countries;

Whereas such a situation is likely to impair the harmonious development of trade relations between the Community and non-member countries;

Whereas Community rules in this field, while based on the provisions of Directive 79/1072/EEC, must remain sufficiently flexible to take account of the varying situations encountered in non-Community countries.

Whereas certain forms of tax evasion or avoidance should be prevented,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

1. 'taxable person not established in the territory of the Community' shall mean a taxable person as referred to in Article 4 (1) of Directive 77/388/EEC who, during the period referred to in Article 3 (1), has had in that territory neither the seat of his economic activity, nor a fixed establishment from which business transactions are effected, nor, if no such seat or fixed establishment exists, his domicile or normal place of residence, and who, during the same period, has supplied no goods or services deemed to have been supplied in the Member State referred to in Article 2, with the exception of:

(a) transport services and services ancillary thereto, exempted pursuant to Article 14 (1)

(i), Article 15 or Article 16 (1) (b), (c) and (d) of Directive 77/388/EEC;

(b) services provided in cases where tax is payable solely by the person to whom they are supplied, pursuant to Article 21 (1) (b) of Directive 77/388/EEC;

2. 'territory of the Community' shall mean the territories of the Member States in which Directive 77/388/EEC is applicable.

Article 2

Without prejudice to the provisions of Articles 3 and 4, each Member State shall refund to any taxable person not established in the territory of the Community, subject to the conditions set out below, any value added tax charged in respect of services or movable property supplied to him in the territory of the country by other taxable persons or charged in respect of the importation of goods into the country, in so far as such goods and services are used for the purposes of the transactions referred to in Article 17 (3) (a) and (b) of Directive 77/388/EEC or of the provision of the services referred to in Article 1 (1) (b).

Article 3

1. Refunds shall be granted upon application by the taxable person. Member States shall determine the arrangements for submitting applications, including the time limits for doing so, the period which applications should cover, the authority competent to receive them and the minimum amounts in respect of which applications may be submitted. They shall also determine the arrangements for making refunds, including the time limits for doing so. They shall impose on the applicant such obligations as are necessary to determine whether the application is justified and to prevent fraud, in particular the obligation to provide proof that he is engaged in an economic activity in accordance with Article 4 (1) of Directive 77/388/EEC and that, during the period prescribed, he has not carried out any transaction which does not fulfil the conditions laid down in Article 1 (1). The appointment of a tax representative may be required.

2. Where a taxable person referred to in Article 2 is established in a non-Community State which applies to taxable persons established in the Community provisions similar to those of Articles 3, 4, 6 and 7 of Directive 79/1072/EEC, Member States shall grant the refund to that taxable person under conditions equivalent to those of the said Directive.

They shall inform the advisory Committee on value added tax of the application of the preceding subparagraph.

⁽¹⁾ OJ No L 331, 27. 12. 1979, p. 11.

3. Refunds may not be granted under conditions more favourable than those applied to Community taxable persons. Member States may make refunds conditional upon observance of the principle of reciprocity.

Article 4

For the purposes of this Directive, eligibility for refund of tax shall be determined in accordance with Article 17 of Directive 77/388/EEC, as applied in the Member State of refund.

However, where Article 3 (2) of this Directive is not applicable, value added tax shall under no circumstances be refundable in respect of:

- (a) expenditure on the acquisition, manufacture or importation, hire, use, modification, repair and maintenance of passenger cars, pleasure boats, private aircraft and motor cycles;
- (b) transport costs incurred on business travel;
- (c) expenditure on accommodation, food and drink;
- (d) expenditure on entertainment;
- (e) expenditure on amusements and luxuries.

This Directive shall not apply to supplies of goods which are or may be exempted under item 2 of Article 15 of Directive 77/388/EEC.

Article 5

Member States shall bring into force the provisions necessary to comply with this Directive no later than

..... This Directive shall apply only to applications for refunds concerning value added tax charged on purchases of goods or services invoiced or on imports effected on or after that date.

Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive. The Commission shall inform the other Member States thereof.

Article 6

Within three years of the date referred to in Article 5, the Commission shall, after consulting the Member States, submit a report to the Council on the application of this Directive.

Article 7

As from the date on which this Directive is implemented and at all events on the date mentioned in Article 5, the last sentence of Article 17 (4) of Directive 77/388/EEC and Article 8 of Directive 79/1072/EEC shall cease to have effect in each Member State.

Article 8

This Directive is addressed to the Member States.
