

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive amending Directive 77/388/EEC and introducing new simplification measures with regard to value added tax — scope of certain exemptions and practical arrangements for implementing them

(94/C 107/05)

*COM(94) 58 final — 94/0062(CNS)**(Submitted by the Commission on 9 March 1994)*

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas the operation of the internal market can be improved by introducing common rules clarifying the scope of, and arrangements for applying, some of the exemptions provided for in Articles 14 (1), 15 (2) and (10), and 16 (1) of Council Directive 77/388/EEC ⁽¹⁾, as last amended by Directive 94/5/EC ⁽²⁾; whereas the introduction of such common rules is provided for by the aforesaid Directive 77/388/EEC, and in particular Articles 14 (2) and 16 (3) thereof;

Whereas Article 3 of Council Directive 92/111/EEC ⁽³⁾ provides for the adoption of special rules for the taxation of chain transactions between taxable persons; whereas such rules must ensure not only compliance with the principle of neutrality of the common system of value added tax as regards the origin of goods and services but also compliance with the choices made as to the principles governing value added tax and its monitoring arrangements during the transitional period;

Whereas it is necessary to include in the taxable amount on importation all ancillary costs arising from the transport of goods to any place of destination in the Community since that place is known at the time the importation is carried out; whereas, as a result, the supplies of services in question enjoy the exemptions provided for in Article 14 (1) (i) of Directive 77/388/EEC;

Whereas Article 15 (2) of that Directive provides that the Commission shall submit to the Council proposals to establish Community tax rules specifying the scope of, and practical arrangements for implementing, the export exemptions applicable to supplies of goods carried in the personal luggage of travellers;

Whereas Article 15 (10) provides for the adoption of uniform tax rules; whereas it is necessary in this connection to clarify the practical arrangements for implementing the exemptions provided for in that Article; whereas the use of a harmonized certificate for that purpose is likely to simplify the application and monitoring of the exemption for the supplies of goods and services concerned;

Whereas the adoption of a Community procedure for exempting the supplies of goods referred to in Article 15 (10) also makes it possible to exclude such supplies from the special arrangements under Article 28b (B);

Whereas Article 16 (1) (B) to (E), taken together with Article 22 (9) concerning release from obligations, makes it possible to overcome the difficulties encountered by traders participating in transaction chains involving goods placed and kept under warehousing arrangements;

Whereas it is necessary in this connection to ensure that the tax treatment applied to supplies related to goods placed under customs warehousing arrangements can

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.⁽²⁾ OJ No L 60, 3. 3. 1994, p. 16.⁽³⁾ OJ No L 384, 30. 12. 1992, p. 47.

also be applied to transactions involving goods placed under warehousing arrangements other than customs warehousing;

Whereas, subject to consultation of the Committee on Value Added Tax, the Member States are responsible for defining those warehousing arrangements other than customs warehousing; whereas it is necessary nevertheless to exclude from such arrangements goods that are intended to be supplied at the retail stage;

Whereas it is necessary to clarify some of the rules for applying tax when goods cease to be covered by the arrangements provided for in Article 16 (1) (B) to (E), particularly as regards determination of the amount of tax due and the person liable for payment of the tax due;

Whereas the rules governing territorial application and the tax arrangements, applicable in the field of intra-Community goods-transport services function in a simple and satisfactory manner for both traders and the authorities in the Member States;

Whereas by treating a transport operation within a Member State as an intra-Community goods-transport operation where it is directly linked to a transport operation between Member States, it is possible to simplify not only the rules and arrangements for taxing those domestic transport services but also the rules applicable to ancillary services and to services supplied by intermediaries involved in the supply of these various services; whereas, as a result, the authorizations granted temporarily to 10 Member States pursuant to Article 27 of Directive 77/388/EEC will no longer serve any useful purpose as regards the exemption of the various supplies of services linked to an intra-Community goods-transport operation;

Whereas it is necessary to clarify the scope of those provisions of Article 17 (2) (a) that are applicable during the transitional period referred to in Article 281;

Whereas it is accordingly necessary to amend Directive 77/388/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

1. in Article 11 (B) (3) (b):

- the first subparagraph shall be replaced by the following:

'incidental expenses, such as commission, packing, transport and insurance costs, incurred after the

entry of the goods into the territory of the Community up to the first place of destination within the territory of the importing Member State.';

- the third subparagraph shall be replaced by the following:

'The incidental expenses referred to above shall also be included in the taxable amount where they result from transport to another place of destination within the territory of the Community if that place is known when the chargeable event occurs.';

2. in Article 15 (2), the second and third subparagraphs shall be replaced by the following:

'This exemption shall apply to supplies of goods to be carried in the personal luggage of travellers whose domicile or habitual residence is not situated within the territory of the country:

- as soon as the total value of each supply, including value added tax, is more than the equivalent in national currency of ECU 175, fixed in accordance with Article 7 (2) of Directive 69/169/EEC (*), as last amended by Directive 94/4/EC (**),

and

- on condition that the goods are dispatched or transported out of the Community before the end of the third month following that in which the supply is effected.

For the purposes of applying the second subparagraph:

- "domicile or habitual residence" means the place entered as such in a passport, identity card or other identity documents which the Member State within whose territory the supply takes place recognizes as valid,
- proof of exportation shall be furnished by means of the invoice or other document in lieu thereof, endorsed by the customs office where the goods left the Community.

Each Member State shall transmit to the Commission specimens of the stamps it uses for the endorsement referred to above. The Commission shall transmit this information to the tax authorities in the other Member States.

(*) OJ No L 133, 4. 6. 1969, p. 6.

(**) OJ No L 60, 3. 3. 1994, p. 14.';

3. in Article 15 (10), the second and third subparagraphs shall be replaced by the following:

'This exemption shall apply within the limits laid down by the host Member State. It shall be subject to possession by the supplier of the goods or services of an exemption certificate corresponding to the specimen shown in Annex J. That certificate, duly endorsed by the competent authorities designated by the host Member State, shall be given to him by the buyer of the goods or the recipient of the services. However, where the goods or services supplied are intended for official use, Member States may waive the endorsement requirement, subject to any conditions they may lay down.

Member States shall indicate by appropriate means the department responsible for issuing the exemption certificate provided for in the second subparagraph.

In cases where the goods are not dispatched or transported out of the country, and in the case of services supplied within the territory of the host Member State, the benefit of the exemption may be accorded by means of a refund of the tax.

The Commission shall present to the Council as soon as possible proposals for laying down Community tax rules specifying the scope of the exemption provided for above.'

4. in Article 16:

- in paragraph 1, the introductory phrase shall be replaced by the following:

'1. Without prejudice to other Community provisions, Member States may, subject to the consultations provided for in Article 29, take special measures designed to exempt all or some of the following transactions, provided that they are not aimed at final use and/or consumption and that the amount of value added tax due on cessation of the arrangements on situations referred to at A to E below corresponds to the amount of tax which should have been due had each of these transactions been taxed within the territory of the country.'

- in paragraph 1 (B), (e) shall be replaced by the following:

'(e) placed, within the territory of the country, under warehousing arrangements other than customs warehousing.

For the purposes of this Article, warehouses other than customs warehouses shall be taken to be:

- for products subject to excise duty, the places defined as tax warehouses by Article 4 (b) of Directive 92/12/EEC (*),
- for goods other than those subject to excise duty, the places defined as such by the Member States. However, Member States may not provide for warehousing arrangements other than customs warehousing where the goods in question are intended to be supplied, in their unaltered state or after processing, at the retail stage.

(*) OJ No L 76, 23. 3. 1992, p. 1.'

- in paragraph 1, D shall be replaced by the following:

'D. supplies of goods and of services carried out:

- (a) in the places listed in B (a), (b), (c) and (d) and still subject to one of the arrangements specified therein;
- (b) in the places listed in B (e) and still subject, within the territory of the country, to the arrangement specified therein.

Where they exercise the option provided for in (a) for transactions effected in a customs warehouse, Member States shall take the measures necessary to ensure that they have defined warehousing arrangements other than customs warehousing which permit the provisions in (b) to be applied.'

5. in the second indent of Article 28 (B) (1), the full stop shall be replaced by a comma and the following indent shall be added:

'— the supply of goods is not exempted pursuant to Article 15(10).'

6. in the first indent of Article 28b (C) (1), the comma shall be replaced by a full stop and the following subparagraph shall be added:

'The transport of goods where the place of departure and the place of arrival are situated within the territory of the country shall be treated as intra-Community transport of goods where such transport is directly linked to transport of goods where the place of departure and the place of arrival are situated within the territories of two different Member States.'

7. in Article 28c (E) (1):

- the introductory phrase shall be replaced by 'The following paragraphs shall be added to Article 16.'

— the following paragraph shall be inserted:

'1b. For the purpose of determining the amount of tax due on cessation of the arrangements or situations listed in paragraphs 1 (A) to (E), the transactions referred to in that paragraph shall be regarded as having been effected and the tax thus due as becoming chargeable when the goods cease to be covered by those arrangements or situations.

By way of derogation from the first subparagraph of Article 21 (1) (a), the person liable to pay the value added tax due in accordance with paragraph 1 hereof shall be the person who causes the goods to cease to be covered by the arrangements or situations listed in that paragraph.'

8. in Article 28 (1), Article 17 (2) (a) shall be replaced by the following:

'(a) value added tax due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;

9. the Annex to this Directive shall be added as Annex J.

Article 2

The provisions relating to transport services and ancillary transport activities in the following Council Decisions shall cease to have effect on the date on which this Directive is implemented:

— Decisions 93/555/EEC, 93/556/EEC, 93/557/EEC, 93/558/EEC, 93/559/EEC, 93/560/EEC, 93/561/EEC, 93/562/EEC and 93/563/EEC (1),

— Decision 94/8/EC (2).

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 October 1994. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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

Article 4

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Article 5

This Directive is addressed to the Member States.

(1) OJ No L 273, 5. 11. 1993, pp. 33 *et seq.*

(2) OJ No L 7, 11. 1. 1994, p. 13.

ANNEX

'ANNEX J

EUROPEAN COMMUNITY

VAT AND EXCISE DUTY EXEMPTION CERTIFICATE
(Directive 77/388/EEC, Article 15 (10);
Directive 92/12/EEC, Article 23 (1))

Serial No (optional):

1. ELIGIBLE INSTITUTION/INDIVIDUAL

Designation/name:
.....
Street, house number:
Postal code, place:
(Host) Member State:

2. COMPETENT AUTHORITY FOR ISSUING THE STAMP
(name, address and telephone No):

.....
.....

3. DECLARATION FROM THE ELIGIBLE INSTITUTION OR INDIVIDUAL

The eligible institution or individual (*) hereby declares:

(a) that the goods and/or services supplied set out in point 5 are destined (*):

- for the official use of
 - a foreign diplomatic mission
 - a foreign consular representation
 - an international organization
 - an armed force of a State being a party to the North Atlantic Treaty (NATO force)
- for the personal use of a staff member of the following institution:

..... (designation of the institution) (see point 4)

(b) that the supply of the goods and/or services set out in point 5 complies with the conditions and limitations applicable to the exemption in the host Member State mentioned in point 1; and

(c) that the information above is furnished in good faith. The purchaser hereby undertakes to pay to the Member State where the supplies of goods and/or services take place, the VAT and/or the excise duty which would be due if these supplies did not comply with the conditions of exemption, or when the goods and/or services were not put to the intended use.

Place, date

Name and status of signatory
Signature

MINIMUM INFORMATION TO BE GIVEN IN EXPLANATORY NOTES

1. For the supplier, this certificate serves as a supporting document for the tax exemption of the supplies of goods and/or services to eligible institutions/individuals referred to in Article 15 (10) of the sixth VAT Directive 77/388/EEC, as well as in Article 23 (1) of Directive 92/12/EEC. Accordingly, one certificate shall be drawn up per supplier. Moreover, the supplier is required to keep this certificate as part of his records in accordance with the legal provisions applicable in his Member State.
2. (a) The certificate shall be drawn up on form printed in one of the official languages of the European Community. It shall be completed in a language recognized by the host Member State.
(b) If the list of the goods and services (point 5 (B) of the certificate) refers to a purchase order form drawn up in a language other than a language recognized by the host Member State, a translation must be attached by the eligible institution/individual.
(c) On the other hand, if the certificate is drawn up in a language other than a language recognized by the Member State of the supplier, a translation of the information concerning the goods and/or services in point 5 (B) must be attached by the eligible institution/individual.
(d) A recognized language means one of the languages officially in use in the Member State or any other official language of the Community which the Member State declares can be used for this purpose.
3. By its declaration in point 3 of the certificate, the eligible institution/individual indicates the elements necessary for the evaluation of the request for exemption in the host Member State.
4. By its declaration in point 4 of the certificate, the institution certifies that the eligible individual is a staff member of the institution.
5. (a) The reference to the purchase order form (point 5 (B) of the certificate) must contain at least the date and order number. The order form should contain all the elements that figure at point 5 of the certificate. If the certificate has to be stamped by the competent authority of the host Member State, the order form shall also be stamped.
(b) The VAT identification number and/or the tax warehouse number as defined in Article 4 (b) of Directive 92/12/EEC of the supplier shall be given, if it is known by the eligible institution/individual.
(c) The currencies are indicated by means of a three-letter code in conformity with the dates of the international ISO/DIS 4217 standard established by the International Standard Organization (*).
6. The declaration mentioned above is authenticated at point 6 by the stamp of the competent authority of the host Member State. These authorities can delegate their approval with the prior agreement of another authority of their Member State, for example the Ministry for Foreign Affairs. It is up to the authority competent for tax matters to make such agreements.
7. To simplify the procedure, the competent authority can dispense with the obligation of the eligible institution to ask for the stamp in the case of exemption for official use. The eligible institution should mention this dispensation at point 7 of the certificate.

(*) As an indication, some codes relating to currencies currently used:

BEF (Belgian franc), DEM (German mark), DKK (Danish krone), ESP (Spanish peseta), FRF (French franc), GBP (Pound sterling), GRD (Greek drachma), IEP (Irish pound), ITL (Italian lira), LUF (Luxembourg franc), NLG (Netherlands guilder), PTE (Portuguese escudo) and USD (United States dollar).