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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.6.2008
COM(2008) 376 final

2008/0120 (COD)

Proposal for a

COUNCIL DIRECTIVE

**on tax exemptions applicable to the permanent introduction from a Member State of the
personal property of individuals**

(Codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals³. The new Directive will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ Annex I, Part A of this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Directive 83/183/EEC and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex II to the codified Directive.

Proposal for a

COUNCIL DIRECTIVE

on tax exemptions applicable to the permanent introduction from a Member State of the personal property of individuals

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

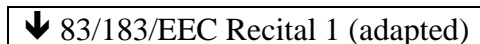
Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Whereas:



- (1) Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals³ has been substantially amended several times⁴. In the interests of clarity and rationality the said Directive should be codified.



- (2) In order for the people of the Member States to become more aware of the activities of the Community, measures to benefit private individuals should be maintained in order to ensure internal market conditions in the Community.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ L 105, 23.4.1983, p. 64. Directive as last amended by Directive 92/12/EEC (OJ L 76, 23.3.1992, p. 1).

⁴ See Annex I, Part A.

↓ 83/183/EEC Recital 2 (adapted)

- (3) In particular, the tax obstacles to the introduction by private individuals of personal property into one Member State from another Member State are such as to hinder the free movement of persons within the Community. Therefore, these obstacles should be eliminated as far as possible by the introduction of tax exemptions.
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↓ 83/183/EEC Recital 3 (adapted)

- (4) These tax exemptions may apply only to the introduction of goods which are not of a commercial or speculative nature. The application of the exemptions should therefore be made subject to limits and conditions.
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↓ 91/680/EEC Recital 6 and
92/12/EEC Recital 20 (adapted)

- (5) The adoption of harmonising measures with regard to excise duty and value added tax has made rules on tax exemptions and duty-free allowances superfluous in those areas .
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↓

- (6) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B,
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↓ 83/183/EEC (adapted)

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I General provisions

Article 1

Scope

1. Every Member State shall, subject to the conditions and in the cases hereinafter set out, exempt personal property introduced permanently from another Member State by private individuals from consumption taxes which normally apply to such property.

2. The following shall not be covered by this Directive:

↓ 91/680/EEC Article 2(2), third
indent (adapted)

(a) value added tax;

↓ 92/12/EEC Article 23(3),
second indent (adapted)

⊗ (b) excise duty; ⊗

↓ 83/183/EEC (adapted)

(c) specific and/or periodical duties and taxes connected with the use within the country ⊗ of property referred to in paragraph 1 ⊗, such as for instance motor vehicle registration fees, road taxes and television licences.

Article 2

Conditions relating to property

1. For the purposes of this Directive, ‘personal property’ means property for the personal use of the persons concerned or the needs of their household. Such property must not, by reason of its nature or quantity, reflect any commercial interest, nor be intended for an economic activity within the meaning of Article ⊗ 9(1) and Articles 10 to 13 ⊗ of ⊗ Council ⊗ Directive ⊗ 2006/112/EC ⊗⁵. However, the tools or instruments necessary to the person concerned for the exercise of his trade or profession shall also be treated as personal property.

2. The exemption for which Article 1 makes provision shall be granted for personal property:

(a) which has been acquired under the general conditions of taxation in force in the domestic market of one of the Member States and which is not the subject, on the grounds of ⊗ exit from the Member State of origin ⊗, of any exemption or any refund of consumption tax. For the purposes of this Directive, goods acquired under the conditions referred to in Article ⊗ 151 of Directive 2006/112/EC with the exception of point (e) of the first subparagraph of paragraph 1 thereof ⊗ shall be deemed to have met those conditions;

↓ 89/604/EEC Art. 1 pt. 1
(adapted)

(b) of which the person concerned has had the actual use before the change of residence is effected or the secondary residence established. In the case of motor-driven ⊗ road ⊗ vehicles (including their trailers), caravans, mobile homes, pleasure boats and private aircraft, Member States may require that the person concerned should have had the use of them for a period of at least six months before the change of residence.

For the goods referred to in the second sentence of point (a), Member States may require:

(i) in the case of motor-driven ⊗ road ⊗ vehicles (including their trailers), caravans, mobile homes, pleasure boats and private aircraft, that the person concerned should

⁵ ⊗ OJ L 347, 11.12.2006, p. 1. ⊗

have had the use of them for a period of at least 12 months before the change of residence;

- (ii) in the case of other goods, that the person concerned should have had the use of them for a period of at least six months before the change of residence.

↓ 83/183/EEC (adapted)
→₁ 89/604/EEC Art. 1 pt. 2

3. The competent authorities shall demand proof that the conditions in paragraph 2 have been satisfied in the case of motor-driven ⊗ road ⊗ vehicles (including their trailers), caravans, mobile homes, pleasure boats and private aircraft. In the case of other property, they shall demand such proof only where there are grave suspicions of fraud.

Article 3

⊗ Introduction ⊗ conditions

The ⊗ introduction ⊗ of the property may be carried out ⊗ all at once or in stages ⊗ within the periods laid down in Articles 7, 8, 9 and 10 respectively.

Article 4

Obligations subsequent to ⊗ introduction ⊗

→₁ The motor-driven ⊗ road ⊗ vehicles (including their trailers), caravans, mobile homes, pleasure boats and private aircraft ← ⊗ introduced ⊗ shall not be disposed of, hired out or lent during the period of 12 months following their ⊗ tax exempt introduction ⊗, except in circumstances duly justified to the satisfaction of the competent authorities of the Member State of ⊗ destination ⊗.

Article 5

Specific conditions for certain types of property

↓ 89/604/EEC Art. 1 pt. 3
(adapted)

1. Member States may impose limits on the ⊗ tax exempt introduction ⊗ of goods listed in Article 4(1) of ⊗ Council ⊗ Directive 69/169/EEC⁶. However, those limits may not be less than four times the quantities shown in column II of the said Article, except in the case of tobacco products, the ⊗ tax exempt introduction ⊗ of which may be limited to the quantities shown in the said column.

⁶ OJ L 133, 4.6.1969, p. 6.

2. The exemption on the introduction of riding horses, motor-driven road vehicles (including their trailers), caravans, mobile homes, pleasure boats and private aircraft shall be granted only if the private individual transfers his normal residence to the Member State of destination .

Article 6

General rules for determining residence

1. For the purposes of this Directive, ‘normal residence’ means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.

2. Individuals shall give proof of their place of normal residence by any appropriate means, such as their identity card or any other valid document.

3. Where the competent authorities of the Member State of destination have doubts as to the validity of a statement as to normal residence made in accordance with paragraph 2, or for the purpose of certain specific controls, they may ask for any information they require or for additional proof.

CHAPTER II

Introduction of personal property in connection with a transfer of normal residence

Article 7

1. The exemption for which Article 1 makes provision shall be granted, subject to the conditions laid down in Articles 2 to 5, in respect of personal property introduced by a private individual when transferring his normal residence.

The grant of the exemption shall, without prejudice to any Community transit procedure which may apply, be subject to the drawing-up of an inventory of the property on plain paper accompanied, if the State so requires, by a declaration, the model for and content of which

shall be defined in accordance with the procedure referred to in Article 248a (2) of Council Regulation (EEC) No 2913/92⁷. No reference to value may be demanded on the inventory of the property.

↓ 83/183/EEC (adapted)
→ ₁ 89/604/EEC Art. 1 pt. 4(c) (adapted)
→ ₂ 89/604/EEC Art. 1 pt. 5(a)

2. The last of the property must be introduced not later than 12 months after the transfer of normal residence. →₁ Where, in accordance with Article 3, the property is introduced in stages within that period, only on the occasion of the first introduction may Member States require the submission of a full inventory to which reference may also be made in the event of subsequent removals by other customs offices. Such inventory may be supplemented subject to the agreement of the competent authorities of the Member State of destination. ←

CHAPTER III

Introduction of personal property in connection with the furnishing or relinquishment of a secondary residence

Article 8

1. The exemption for which Article 1 makes provision shall be granted, subject to the conditions laid down in Articles 2 to 5, for personal property introduced by a private individual to furnish a secondary residence.

This exemption shall be granted only where:

- (a) the person concerned is the owner of the secondary residence or is renting it for a period of at least 12 months;
- (b) the property introduced corresponds to the normal furniture of the secondary residence.

2. The exemption shall also be granted, subject to the conditions mentioned in paragraph 1, where, following the relinquishment of a secondary residence, property is introduced to the normal residence or to another secondary residence, provided that the property in question has actually been in the possession of the person concerned, and that he has had the use of it, →₂ before establishment of a second residence ←.

The last of the property must be introduced not later than 12 months after the secondary residence has been relinquished.

⁷ OJ L 302, 19.10.1992, p. 1.

⊠ CHAPTER ⊠ IV

⊠ Introduction ⊠ of property on marriage

Article 9

↓ 89/604/EEC Art. 1 pt. 6(a)
(adapted)

1. Without prejudice to Articles 2 to 5, any person shall on marrying be entitled to exemption from the taxes referred to in Article 1(1) when ⊠ introducing ⊠ into the Member State to which he intends to transfer his normal residence personal property which he has acquired or of which he has had the use, provided that:

↓ 83/183/EEC (adapted)

- (a) such ⊠ introduction ⊠ takes place within a period beginning two months before the marriage date envisaged and ending four months after the actual marriage date;
 - (b) the person concerned provides evidence that his marriage has taken place or that the necessary preliminary formalities for the marriage have been put in hand.
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↓ 89/604/EEC Art. 1 pt. 6(b)
(adapted)

2. Exemption shall also be granted in respect of presents customarily given on the occasion of a marriage which are received by a person fulfilling the conditions laid down in paragraph 1 from persons having their normal place of residence in a Member State other than the Member State of ⊠ destination ⊠. The exemption shall apply to presents of a unit value of not more than EUR 350 ⊠. Member States may, however, grant an exemption of more than EUR 350, ⊠ provided that the value of each exempt present does not exceed EUR 1 400.

↓ 83/183/EEC (adapted)
→₁ 89/604/EEC Art. 1 pt. 7(b)
(adapted)

3. Member States may make the granting of the exemption dependent on the provision of an adequate guarantee, where property is ⊠ introduced ⊠ before the date of the marriage.

4. Where the individual fails to provide proof of his marriage within four months of the date given for such marriage, the taxes shall be due on the date of ⊠ introduction ⊠.

⊗ CHAPTER ⊗ V

⊗ Introduction ⊗ of the personal property of a deceased person, acquired by inheritance

Article 10

By way of derogation from Articles 2(2) and (3), 4 and 5(2), but without prejudice to the other provisions contained in Articles 2, 3 and 5, any private individual who acquires by inheritance (*causa mortis*) the ownership or the beneficial ownership of personal property of a deceased person which is situated within a Member State shall be entitled to exemption from the taxes referred to in Article 1(1) when ⊗ introducing ⊗ such property into another Member State in which he has a residence, provided that:

- (a) such individual provides the competent authorities of the Member State ⊗ of destination ⊗ with a declaration issued by a notary or other competent authority in the Member State of ⊗ origin ⊗ that the property he is ⊗ introducing has been ⊗ acquired by inheritance;
- (b) the property is ⊗ introduced ⊗ not more than two years after the date on which such individual enters into possession of the property.

⊗ CHAPTER ⊗ VI

Final provisions

Article 11

1. Member States shall endeavour to reduce as far as possible the ⊗ introduction ⊗ formalities for private individuals within the limits and subject to the conditions laid down in this Directive and shall endeavour to avoid ⊗ introduction ⊗ formalities entailing controls which result in substantial unloading and reloading at the ⊗ entry into the Member State of destination ⊗.

2. Member States may retain and/or introduce more liberal conditions for granting tax exemptions than those laid down in this Directive, with the exception of those laid down in →₁ Article 2(2)(a) ←.

3. Without prejudice to Article 2(2), Member States may not, by virtue of this Directive, apply within the Community tax exemptions less favourable than those which they accord to imports by private individuals of personal property from third countries.

Article 12

⊗ 1. ⊗ 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, and in particular any resulting from the application of the provisions of Article 11(2) and (3). The Commission shall inform the other Member States of the latter provisions.

⊗ 2. ⊗ Every two years the Commission shall, after consulting the Member States, send the ⊗ European Parliament and the ⊗ Council a report on the implementation of this Directive in the Member States.



Article 13

Directive 83/183/EEC, as amended by the Directives listed in Annex I, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 14

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

↓ 83/183/EEC Art. 13

Article 15

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the Council
The President
[...]



ANNEX I

Part A

Repealed Directive with list of its successive amendments (referred to in Article 13)

Council Directive 83/183/EEC
(OJ L 105, 23.4.1983, p. 64)

Council Directive 89/604/EEC
(OJ L 348, 29.11.1989, p. 28)

Council Directive 91/680/EEC
(OJ L 376, 31.12.1991, p. 1)

Only as regards Article 2(2), third indent

Council Directive 92/12/EEC
(OJ L 76, 23.3.1992, p. 1)

Only as regards Article 23(3), second indent

Part B

List of time-limits for transposition into national law (referred to in Article 13)

Directive	Time-limit for transposition
83/183/EEC	1 January 1984
89/604/EEC	1 July 1990
91/680/EEC	1 January 1993 ¹
92/12/EEC	1 January 1993 ²

¹ Member States shall bring into force such laws, regulations and administrative provisions as are necessary for their arrangements thus adapted to Article 1, points 1 to 20 and 22 to 24 and Article 2 of Directive 91/680/EEC to enter into force on 1 January 1993.

² With regard to Article 9(3) the Kingdom of Denmark is authorised to introduce the laws, regulations and administrative provisions required for complying with this provision by 1 January 1993 at the latest.

ANNEX II

CORRELATION TABLE

Directive 83/183/EEC	This Directive
Article 1(1)	Article 1(1)
-	Article 1(2)(a)
-	Article 1(2)(b)
Article 1(2)	Article 1(2)(c)
Article 2(1)	Article 2(1)
Article 2(2), first subparagraph, point (a)	Article 2(2), first subparagraph, point (a)
Article 2(2), first subparagraph, point (b)	Article 2(2), first subparagraph, point (b)
Article 2(2), second subparagraph, introductory wording	Article 2(2), second subparagraph, introductory wording
Article 2(2), second subparagraph, first indent	Article 2(2), second subparagraph, point (i)
Article 2(2), second subparagraph, second indent	Article 2(2), second subparagraph, point (ii)
Article 2(2), second subparagraph, final wording	-
Article 2(3)	Article 2(3)
Articles 3 to 6	Articles 3 to 6
Article 7(1)(a)	Article 7(1), first subparagraph
Article 7(1)(b)	Article 7(1), second subparagraph
Article 7(2)	Article 7(2)
Article 8(1), first subparagraph	Article 8(1), first subparagraph
Article 8(1), second subparagraph, introductory wording	Article 8(1), second subparagraph, introductory wording
Article 8(1), second subparagraph, points (i) and (ii)	Article 8(1), second subparagraph, points (a) and (b)
Article 8(2)	Article 8(2)

Articles 9, 10 and 11

Article 12(1)

Article 12(2)

Article 12(3)

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Article 13

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Articles 9, 10 and 11

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Article 12(1)

Article 12(2)

Article 13

Article 14

Article 15

Annex I

Annex II