

COMMISSION OF THE EUROPEAN COMMUNITIES

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PROBLEMS POSED BY EXCISE HARMONISATION

(Communication from the Commission to the Council)

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1. On 7 March, 1972, the Commission submitted to the Council a draft directive (the "Framework" directive) to govern the harmonisation of consumer taxes other than VAT⁽¹⁾. The proposal provided that by the time of the abolition of fiscal frontiers, Member States would apply five, and only five, excises - on mineral oils, manufactured tobacco, alcohol, beer and wine. On the same date, the Commission also submitted proposals for harmonising the excises on alcohol, beer and wine, together with a draft directive laying down rules for the application of excises on mixtures of beer, wine or alcohol, and a draft Council decision for the setting up of a regulatory committee on excise duties, to deal with measures for implementing the excise harmonisation directives.

2. On 9 August 1973, the Commission submitted a draft directive for harmonising excises on mineral oils⁽²⁾.

3. As regards harmonisation of excises on manufactured tobacco, the first directive establishing the principles on which the harmonised excise should be levied, together with a first stage in the harmonisation process, was adopted by the Council on 19 December 1972⁽³⁾, as part of a series of Community measures on tobacco. The Council is at present examining two further proposals on tobacco excises, one for the definition of tobacco products⁽⁴⁾, and one for the criteria to apply in a second stage of harmonisation⁽⁵⁾. This communication is not therefore concerned with the question of harmonisation of excises on tobacco.

4. The various excise proposals stemmed from the Council resolution of 22 March 1971⁽⁶⁾ for the gradual achievement of economic and monetary union.

(1) OJ C. 43 - 29.4.1972

(2) OJ C. 92 - 31.10.1973

(3) OJ L. 303 - 31.12.1972

(4) OJ C. 72 - 27.6.1974

(5) OJ C. 45 - 27.2.1976

(6) OJ C. 28 - 27.3.1971

The proposals were designed to achieve a harmonised system of excise taxation throughout the Community, both as to the excises to be levied and as to their structures. They constituted a first step towards the ultimate aim of the abolition of fiscal frontiers and free movement of goods and persons throughout the Community. However, as these initial proposals related only to the structures of the excises, the liberty of Member States to fix the levels of excise rates was unaffected. A variety of transitional provisions were included in the proposals, to facilitate the adaptation of the excises in individual Member States to the proposed harmonised systems.

5. With the exception of the draft wine directive and the draft directive on mixed beverages, all the excise proposals received favourable opinions from the Economic and Social Committee⁽¹⁾ and the European Parliament⁽²⁾. The Parliament regarded the mixed beverages proposal as premature. As regards the draft wine directive, the Economic and Social Committee expressed doubts as to its utility in advance of the abolition of fiscal frontiers, and the European Parliament proposed that harmonisation of excises on wine should be achieved by their abolition rather than (as proposed by the Commission) by their extension to those Member States which did not apply this excise.

6. In response to the opinions, the Commission withdrew the proposal on mixed beverages and made some small amendments to the proposals on alcohol and on mineral oils. However, the Commission maintained unchanged the proposal for the introduction in all Member States of an excise on wine, for reasons of competition.

7. To date, little progress has been made with these proposals at Council level. This has in part been due to the need recently to give priority to discussions on the Sixth VAT Directive, in order to meet the 1 January 1978 deadline for linking part of the Community's own resources to VAT. However,

(1) OJ C. 36 - 1.6.1973 and OJ C. 109 - 19.9.1974

(2) OJ C. 48 - 25.4.1974 and OJ C. 32 - 11.2.1975.

even when allowance has been made for the VAT work load, Council discussions on the excises have been limited, and the results, meagre.

8. The draft framework directive and those for harmonising the excises on beer, wine, and alcohol, together with the Excise Committee decision, were discussed in the Council on a number of occasions at the level of experts and of permanent representatives. However, no agreement could be reached amongst the delegations. Late in 1974, a report on this group of proposals was submitted by the Permanent Representatives Committee for discussion at Ministerial level, but the proposals have not as yet been examined by the Council. In addition to differences on technical points, a fundamental cause of disagreement lay in the refusal of certain delegations to discuss the structures of excise rates.

9. As regards the draft directive on excises on mineral oils, the Council has held only one meeting (at the expert level) on this proposal.

10. In the Commission view, harmonisation in the excise field is long overdue. First there is the need for harmonisation of indirect taxes within the Community to proceed in a balanced fashion. The Council has now adopted the Sixth Directive on VAT, which provides for a harmonised basis of assessment. In addition, on 1 July of this year, the enlarged Community completed the process of dismantling customs duties between Member States and of establishing a common external tariff. By contrast, harmonisation in the excise field has to date been limited to initial steps related to the excises levied on cigarettes. There is thus the danger of marked disparities in the rate at which harmonisation evolves in different sectors of indirect taxation. Consequently, delay in adopting the excise proposals to some extent frustrates the frontier simplifications and the increased neutrality of competition which could be expected to flow from progress in other sectors. This effect must tend to slow down harmonisation overall.

11. Secondly, major differences still exist between the Member States in the coverage and the methods of assessment of the excises. As a few examples: different Member States classify similar or substitutable

products in different excise categories, so that they incur very different tax burdens; producers of the same goods operating in different Member States benefit from widely divergent periods of tax deferment, as on occasion do domestically produced and imported products in the same Member State; permitted losses in the manufacturing process or in warehouse differ between Member States; some Member States permit tax-free warehousing facilities not permitted by others. Such differences in the excise structures distort competition and hinder the free circulation of goods. And as the excises are in general levied at high rates, the resulting competitive distortions are frequently severe.

12. Thirdly, the continued delay in harmonising the excises means that the distortions and discriminations to which their different structures give rise, have of necessity to be dealt with by other means. The Commission has been obliged to open proceedings under Article 169 of the Treaty in a number of cases where the excises levied by Member States do not appear to conform with the provisions of Article 95. In the majority of these cases, discrimination arises because similar domestic and imported products are so classified for tax purposes that their fiscal treatment differs. The Commission is of course aware that discrimination also arises from differences in tax rates, rather than in classification. The Commission is, however, of the view that most infringements could be eliminated by the adoption of the draft directives for harmonisation of excise structures which have already been proposed.

13. Notwithstanding this prolonged inactivity in the excise field, the Council, in replies to questions in the European Parliament⁽¹⁾, has recognised on several occasions the utility of the excise proposals and in particular those for harmonising taxes on alcoholic drinks. Moreover, the Commission has noted with satisfaction the Council's stated intention, in its written reply to parliamentary question No. 709/76⁽²⁾, to recommence work on the Commission's excise harmonisation proposals, now that the Sixth VAT Directive has been adopted. Given this willingness to re-commence work

(1) OJ C. 209 - 11.9.1975

(2) OJ C. 127 - 31.5.1977

in this field, the Commission has considered how best the work may be carried forward, taking into account the changed circumstances since the excise proposals were put forward.

14. As stated earlier, the excise proposals were drawn up as part of the plan for economic and monetary union, as a first step towards the abolition of fiscal frontiers. The Commission accepts that the obstacles presented by current economic difficulties are such that the approximation of tax levels (and consequently, the abolition of fiscal frontiers) can be achieved only in the long term. The Commission has also recognised, in paragraph 3 of its Action Programme for Taxation⁽¹⁾, that "tax harmonisation must support work on the convergence of economic policies, without imposing restrictions on the Member States earlier than is necessary, especially as regards the rates of the main taxes and charges". Accordingly, the Commission has already proposed in the tax field "to concentrate on essentials and to restrict Community measures to those which are absolutely indispensable".

15. Judged against these criteria, the Commission accepts that the draft framework directive is not immediately relevant to the day-to-day functioning of the Community. It is therefore neither necessary nor useful to pursue Council discussions of the framework proposal at the present time. However, the Commission continues to attach great importance to this proposal, which is still of value in indicating the direction in which the harmonisation of the excises should develop. It is hoped that discussions can be re-commenced when the future evolution of economic and monetary union is more clear than at present.

16. Turning to the remaining proposals - those for harmonising the structure of the excises on alcohol, beer, wine and mineral oils - the Commission would not give them all the same priority. In the long term, in common with the draft framework directive, all these proposals have an essential part to play in the abolition of fiscal frontiers. However, given that this is no longer an immediate objective, there is much to be said for a selective approach.

(1) EEC Bulletin No. OE 9/1975.

17. As a first priority, the time now seems ripe for the Council to resume work on the proposals for harmonised excises on alcohol and on beer. All the Member States already levy excises on these products, and it is widely recognised that divergencies in the structures of these excises in particular are the cause of considerable competitive distortions. Both excises are frequent sources of breaches of the Treaty obligations of the Member States, which have to be resolved by one means or another. It is evident that the re-commencement of work on these proposals would necessitate an open-minded approach, the discussions covering the proposals in their entirety, including those provisions on the rates structures.

18. The Commission remains committed to the proposed framework directive and to the proposal for a harmonised excise on wine. However, the framework directive must await further progress towards economic and monetary union. As regards the wine excise, the widely divergent views on this question within the Council, and its political delicacy, are such that it is not realistic to anticipate agreement on this proposal for some time to come.

19. As regards the mineral oils directive, the Commission recognises that progress with this proposal is to some extent linked to discussions on the common energy and transport policies. Nevertheless, adoption of the proposal without prejudice to future developments in these common policies would of itself achieve useful results.

20. In conclusion, the Commission proposes to the Council:

- (a) immediately to re-commence discussions on the proposals to harmonise the excises on alcohol and beer, with a view to their adoption by 1 May 1978;
- (b) subsequently, to re-commence discussion on the proposal to harmonise the excises on mineral oils, with a view to its adoption by the end of 1978.