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REPORT

drawn up on behalf of the Committee on Economic and
Monetary Affairs and Industrial Policy

on the proposal from the Commission to the Council
(COM(87) 322 - Doc. C 2-143/87) for a directive
supplementing the common system of value added tax and
amending Directive 77/388/EEC
- Removal of fiscal frontiers -

Rapporteur : Mr K. DE GUCHT

N(88)1984E

PE 126.062/fin.

A Series: Reports - B series: Motions for Resolutions, Oral Questions, Written Declarations, etc. - C Series: Documents received from other Institutions (e.g. Consultations)



= Consultation procedure requiring a single reading



= Cooperation procedure (second reading) which requires the votes of the majority of the Members of Parliament



= Cooperation procedure (first reading)



= Parliamentary assent which requires the votes of the majority of the current Members of Parliament

EXPLANATION OF SYMBOLS APPEARING ON THE COVER PAGE OF SERIES A SESSION DOCUMENTS



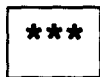
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= Parliamentary assent which requires the votes of the majority of the current Members of Parliament

By letter of 14 September 1987 the President of the Council consulted the European Parliament, pursuant to Article 100A of the EEC Treaty, on the proposal for a Council directive supplementing the common system of value added tax and amending Directive 77/388/EEC as regards the removal of fiscal frontiers.

On 12 October 1987 the President of the European Parliament referred this proposal to the Committee on Economic and Monetary Affairs and Industrial Policy as the committee responsible and to the Committee on the Environment, Public Health and Consumer Protection for its opinion.

At its meeting of 2 October 1987 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr De Gucht rapporteur.

The committee considered the Commission proposal and the draft report at its meetings of 12/14 July 1988, 20/22 September 1988, 18/19 October 1988 and 1/2 December 1988.

At the last meeting the committee decided by 17 votes to 1, with 5 abstentions, to recommend to Parliament that it approve the Commission proposal subject to the following amendments.

The committee then adopted the draft legislative resolution by 16 votes to 0 with 3 abstentions.

The following took part in the vote: Beumer, Chairman; Beazley and Lataillade, Vice-Chairmen; De Gucht, rapporteur, Abelin, Baillot, Besse, von Bismarck, Bonaccini, Bueno Vicente, Cassidy, Chanterie, Falconer, Fourcans, Garriga Polledo (for Arguelles Salaverria), Griffiths (for Seal), Kilby (for Oppenheim), Herman, Metten, Muns Albuixech, O'Malley (for Raftery), Patterson, Quin, Schreiber, Stewart-Clark, Wagner and von Wogau.

The opinion of the Committee on the Environment, Public Health and Consumer Protection is attached.

The report was tabled on 8 December 1988.

The deadline for tabling amendments to this report will appear on the draft agenda for the part-session at which it is to be considered.

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The Committee on Economic and Monetary Affairs and Industrial Policy hereby submits to the European Parliament the following amendments to the Commission's proposal and draft legislative resolution together with explanatory statement:

Proposal for a Council directive supplementing the common system of value added tax and amending Directive 77/738/EEC - removal of fiscal frontiers -

Text proposed by the Commission

Text amended by the European Parliament

Preamble and recitals unchanged

AMENDMENT No. 1

Replace all occurrences of '31 December 1992' by '1 January 1993'.

Article 1

Directive 77/388/EEC is replaced by the following:

Article 1

Directive 77/388/EEC is replaced by the following:

AMENDMENT No. 2

1. (new)

Article 2(1) is replaced by the following:

'1. the supply of goods or services effected for consideration within the territory of the Member States by a taxable person acting as such;'

1. Article 2(2) is replaced by the following:

'2. the importation of goods from third countries'.

AMENDMENT No. 3

1a. Article 2(2) is replaced by the following:

'2. the importation of goods; importation of goods shall mean the entry of goods from third countries into the territory of the Member States as defined in Article 3.'

AMENDMENT No. 4

1b. (new)

Article 3(1) is replaced by the following:

'1. For the purposes of this Directive, the "territory of the Member States" shall be the area of application of the Treaty establishing the European Economic Community as stipulated in Article 227.'

AMENDMENT No. 5

1c. (new)

In Article 4(5), second paragraph, the word 'significant' is deleted.

AMENDMENT No. 6

Not applicable to English version.

AMENDMENT No. 7

1d. (new)

In Article 4(5), third paragraph, the words 'provided they are not carried out on such a small scale as to be negligible' are deleted.

AMENDMENT No. 8

2. Delete Article 7.

2. Article 7 is replaced by the following:

'Article 7

Importation of goods shall mean the entry of goods from third countries into the territory of the country as defined in Article 3.'

AMENDMENT No. 9

2a. (new)

In Article 8(1)(a), the last sentence, beginning 'In cases where ...' is deleted.

3. Article 8(2) is replaced by the following:

'2. By way of derogation from paragraph 1(a), where the place of departure of the consignment or transport of goods is in a third country, the place of the supply by the importer within the meaning of Article 21(2) and the place of any subsequent supplies shall be deemed to be within the country of import of the goods.'

3. unchanged

AMENDMENT No. 10

4. Article 9(2)(b) is replaced by the following:

(b) The place where transport services are supplied shall be the place of departure.

'Place of departure' shall mean the place where the transport operation actually commences as given on the ticket or waybill, without taking any intermediate stops into consideration. However, where several

4. Article 9(2)(b) is replaced by the following:

(b) The place where transport services are supplied shall be the place of departure.

'Place of departure' shall mean the place where the transport operation actually commences as given on the ticket or waybill, without taking any intermediate stops into consideration. However, where several

suppliers in turn take part in the same transport operation, the place of departure shall mean each place where the service supplied by each such person begins. For the purposes of this provision, the place of departure for a feeder transport operation to a port, airport or, more generally, to the point where main transport operation starts shall not be regarded as the place of departure for that main operation.

In the case of an outward and inward transport operation, even if this is carried out by the same supplier of the services, the return journey shall be regarded as a separate service, whose place of departure shall be determined in accordance with the previous subparagraph. However, with regard to outward and inward transport operations between one bank and the other of a waterway performed under a single contract, the place for the whole transport operation shall be that where the outward journey commences.'

suppliers in turn take part in the same transport operation, the place of departure shall mean each place where the service supplied by each such person begins. For the purposes of this provision, the place of departure for a feeder transport operation to a port, airport or, more generally, to the point where main transport operation starts shall not be regarded as the place of departure for that main operation.

In the case of an outward and inward transport operation, even if this is carried out by the same supplier of the services, the return journey shall be regarded as a separate service, whose place of departure shall be determined in accordance with the previous subparagraph. However, with regard to outward and inward transport operations between one bank and the other of a waterway performed under a single contract, the place for the whole transport operation shall be that where the outward journey commences. If the transport operation commences outside the Community, the place of departure shall mean the place of entry into the Community.'

Paragraph 5 unchanged

AMENDMENT No. 11

5a. (new)

In Article 9(3)(a) and (b), the words 'within the territory of the country' (two occurrences) are replaced by 'within the territory of the Community'.

AMENDMENT No. 12

6. Article 11B is amended as follows:

- Paragraph 1 is replaced by the following:

'1. The taxable amount shall be the value for customs purposes, determined in accordance with Council Regulation (EEC) No. 1224/80 (1).

(1) OJ No. L 134, 31.5.1980, p. 1'

- Paragraph 2 is deleted.

6. Article 11B is amended as follows:

- Paragraph 1 is replaced by the following:

'1. The taxable amount shall be the value for customs purposes, determined in accordance with Council Regulation (EEC) No. 1224/80 (1), subject to the provisions of the following paragraphs.

(1) OJ No. L 134, 31.5.1980, p. 1'

- unchanged

Paragraph 7 unchanged

AMENDMENT No. 13

7a. (new)

In Article 11C(1), the end of the first subparagraph, beginning with the words 'under conditions ...' and the second subparagraph are deleted.

AMENDMENT No. 14

7b. (new)

Article 11C(3) is replaced by the following:

'3. As regards returnable packing costs, Member States shall include them in the taxable amount and take all measures to see that this amount is adjusted where the packing is in fact returned.'

AMENDMENT No. 15

7c. (new)

The following new paragraph 2a is added to Article 12:

'In the event of changes in the rates, Member States shall inform the Commission and the other Member States as soon as possible, supplying the Commission with all the information the latter considers necessary. The Commission, or another Member State, may request that the implementation of the change in question be deferred for a period of not more than 30 days following the initial date of application.'

AMENDMENT No. 16

Replace the title of Article 13 'Exemptions within the territory of the country' with: 'Exemptions throughout the territory, of the Member States'

AMENDMENT No. 17

7d. (new)

In Article 13B(b), the sentence 'Member States may apply further exclusions to the scope of this exemption' is deleted.

Paragraph 8 unchanged

AMENDMENT No. 18

9. Article 13C(b) is replaced by the following:
(b) the transactions covered in B(g) and (h) above.

9.
Article 13C Options is replaced by the following:
Member States shall allow taxpayers a right of option for taxation in cases of:
(a) those activities covered in A1(g) above;
(b) Letting and Leasing of immovable property;
(c) the transactions covered in B(d)(g) and (h) above.'

AMENDMENT No. 19

9b. (new)
In the introductory phrase of Article 14(1) the words 'which they shall lay down' are deleted.

Paragraphs 10 and 11 unchanged

AMENDMENT No. 20

11a. (new)
Article 14(2) is deleted.

Paragraph 12 unchanged

AMENDMENT No. 21

12a. (new)
In the introductory phrase of Article 15 the words 'which they shall lay down' are deleted.

Paragraph 13 unchanged

AMENDMENT No. 22

14. Article 15(3) is replaced by the following:
'3. the supply of services consisting of work on movable property acquired or imported for the purpose of undergoing such work within the territory as defined in Article 3, and dispatched or transported out of the Community by the person providing the services or by the customer if established in a third country or on behalf of either of them'.

14. Article 15(3) is replaced by the following:
'3. the supply of services consisting of work on movable property acquired or imported for the purpose of undergoing such work within the Community and dispatched ... (rest unchanged)'.

Paragraph 15 unchanged

AMENDMENT No. 23

15a. (new)
In Article 15(4), the last subparagraph, beginning with the words 'The Member States ...' is deleted.

Paragraphs 16, 17 and 18 unchanged

AMENDMENT No. 24

18a. (new)
In Article 15(13), the words 'but excluding the supply of services exempted under Article 13' are deleted.

Paragraphs 19 to 21 unchanged

AMENDMENT No. 25

22. Article 15(15) is replaced by the following:
'15. air and sea transport operations to or from the islands which make up the autonomous regions of the Azores and Madeira, or carried out between the said islands.'

22. Article 15(15) is replaced by the following:
'15. air and sea transport operations to or from Ceuta, Melilla and the Canary Islands and the islands which make up the autonomous regions of the Azores and Madeira, or carried out between the said territories and islands.'

AMENDMENT No. 26

27a. (new)
Article 17(7) is deleted.

AMENDMENT No. 24

28. The following subparagraph is added to Article 18(2):
'Where deductible tax is expressed in the national currency of a Member State other than that in which it is to be deducted, or in the currency of a third country, the amount to be deducted shall be converted into the currencies of the taxable person's country using the average exchange rate for the declaration period.'

28. The following subparagraph is added to Article 18(2):
'Where deductible tax is expressed in the national currency of a Member State other than that in which it is to be deducted, or in the currency of a third country, the amount to be deducted shall be converted into ECU on the day of the transaction; it shall be reconverted into the national currency on the day of the final declaration'

AMENDMENT No. 28

28a. (new)
The first subparagraph of Article 22(4) is replaced by the following: 'Every taxable person shall submit a return within an interval not exceeding two months following the end of each tax period; the tax period shall be two full months, beginning on 1 January 1993.'

AMENDMENT No. 29

29. The following subparagraph is added to Article 22(4):

'The return must also contain on the one hand a declaration of the total amount of VAT relating to transactions carried out for taxable persons in other Member States, and on the other hand a declaration of the total amount of deductible VAT relating to transactions carried out by taxable persons in other Member States. This provision shall not apply to taxable persons whose annual turnover does not exceed 35 000 ECU.'

29. The following subparagraph is added to Article 22(4):

'The return must also contain on the one hand a declaration of the total amount of VAT relating to transactions carried out for taxable persons in other Member States, and on the other hand a declaration of the total amount of deductible VAT relating to transactions carried out by taxable persons in other Member States (rest deleted).'

AMENDMENT No. 30

29a. (new)

The third indent of Article 22(9) is replaced by the following:

'- from the payment of the tax due where the amount is less than 100 ECU'.

AMENDMENT No. 31

29b. (new)

Article 24 is replaced by the following(1):

Special scheme for small and medium-sized undertakings

1.(a) Member States shall apply a tax exemption to taxable persons whose annual turnover is less than the equivalent in national currency of 10 000 ECU.

(b) Member States may, for the first three years following the entry into force of this directive, apply a tax exemption to taxable persons whose annual turnover is less than the equivalent in national currency of 35 000 ECU;

within two years of the entry into force of this directive, the Commission shall, with a view to the completion of the internal market by 1992, submit a report on the impact of this optional exemption on conditions of competition and on the Community's

(1) Cf Commission proposal (OJ No. C 272, 28.10.1986, p. 12) and resolution and amendments adopted by the European Parliament on 18 June 1987 (OJ No. C 190, p. 113)

own resources and, on the basis of this report, submit a proposal on whether an optional exemption system should be continued and, if so, what provisions should be laid down for its application; the Council shall take a decision on this subject within a year, after consulting the European Parliament;

(ba) Member States may apply graduated tax relief to taxable persons whose annual turnover is less than the equivalent in national currency of 35 000 ECU;

2. The exemption shall apply to the supply of goods and services by small businessmen (natural or legal persons).

3. Turnover for the purposes of paragraph 1 shall consist of the amount, exclusive of sales tax, of goods and services supplied as defined in Articles 5 and 6, to the extent that they are taxed, including transactions exempted with refund of tax previously paid in accordance with Article 28(2), and the amount of the transactions exempted pursuant to Article 15, the amount of real property transactions, the financial transactions referred to in Article 13B(d), and insurance services, unless these transactions are ancillary transactions.

However, disposals of tangible or intangible capital assets of a business shall not be taken into account for the purposes of calculating turnover.

4. Taxable persons exempt from tax shall not be entitled to deduct tax in accordance with the provisions of Article 17, nor to show the tax on their invoices or on any other documents serving as invoices.

5. Taxable persons coming under the exemption scheme may opt either for the normal value added tax scheme or, where appropriate, for a simplified scheme.

6. Member States shall introduce a simplified scheme for charging and collecting the tax in accordance with the following provisions:

(a) the scope of the simplified scheme for charging and collecting the tax shall be limited to businesses with an annual turnover of less than

the equivalent in national currency of 200 000 ECU;

(b) notwithstanding the first subparagraph of Article 10(2), the chargeable event shall be the payment for the goods or services supplied;

(c) as a corollary, and notwithstanding Article 17(1), the right to deduct shall arise at the time of payment for the goods or services by the taxable person;

(d) the transitional provisions of Article 28(3)(d) derogating from the principle of immediate deduction laid down in the first subparagraph of Article 18(2) shall not be applicable;

(e) the taxable person shall make a return at least once a year, each Member State endeavouring to ensure that the date of the return is the same as that of the return required from the taxpayer in respect of direct taxation;

(f) the taxable person shall make monthly or quarterly advance payments equal to one-twelfth or one-quarter, respectively, of the net amount of value added tax paid the previous year, unless he declares on his own responsibility that such advance payments are greater than the tax actually due for the current year. He shall make adjustments depending on the real net amount of value added tax indicated in his annual returns and pay any balance due when the return is filed. If the balance is in his favour, the undertaking in question may either request the Member State to repay the amount thereof in the month following the adjustment, or use the credit as a means of payment of another tax debt;

(g) Member States may introduce, for certain groups of taxable persons whose purchases are sufficiently homogeneous in relation to their turnover, flat-rate percentages for calculating deductible VAT as a proportion of their turnover, provided this does not lead to a reduction of tax. Member States wishing to introduce flat-rate percentages shall inform the Commission in accordance with the procedure set out in paragraph 8.

6a. Taxable persons who are eligible for the simplified scheme may opt for the normal value added tax scheme.

7. A Member State may be authorized to retain:

(a) its existing exemption scheme on condition that such regime is more favourable to small and medium-sized businesses than that set out in paragraphs 1 to 5;

(b) its existing simplified regime, on condition that this regime is calculated to simplify the obligations of taxable persons, in particular as regards the charging and collection of the tax, in a manner which is no less favourable to small and medium-sized businesses than that set out in paragraph 6.

8. A Member State which wishes to introduce the measures referred to in paragraph 6(g) or to retain its existing special scheme as provided for in paragraph 7 shall inform the Commission and shall provide it with all relevant information. For the measures referred to in paragraph 6(g), the Member States shall provide details of the information used to calculate the flat-rate percentages and of the volume of purchases made at different rates in the economic sector concerned.

9. The Commission shall inform the other Member States of the measures envisaged by the Member State, pursuant to paragraph 7, within two months and shall submit, if it considers it appropriate, a proposal to the Council with a view to authorizing such measures. The Council shall decide by qualified majority after the European Parliament has given its opinion.

10. The level of the Community exemption provided for in paragraph 1(a) and (b)a and the amount of turnover set out in paragraph 6(a) shall be revised each year, by a decision of the Commission, in order to maintain their values in real terms. The Commission's decision shall be taken by 1 October each year and shall take effect from 1 January the following year.

11. The equivalent in national currency of the ECU which shall apply for the implementation of this directive shall be fixed once a year by the Commission. The rates applicable shall be those obtained on the first working day of October, with effect from 1 January the following year.

Article 2

Article 2

First paragraph unchanged

AMENDMENT No. 32

Second paragraph (new)
'In relation to Article 28(5), the Council shall undertake to take a decision, acting unanimously on a proposal from the Commission after consulting the European Parliament, by 30 June 1991 at the latest'

AMENDMENT No. 33

Article 2a (new)
'The Commission shall submit a proposal revising Annex D to Directive 77/388/EEC in time for the Council to take a decision by 30 June 1992 at the latest.'

Article 3

Article 3

1. The following Directives shall cease to apply on 31 December 1992:

AMENDMENT No. 34

1. The following Directives, in the versions currently in force, shall cease to apply on 1 January 1993.

indents unchanged

2. The following Directives shall cease to apply on 31 December 1992, in respect of intra-Community trade relations:

AMENDMENT No. 35

2. The following Directives, in the versions currently in force, shall cease to apply on 1 January 1993, in respect of intra-Community trade relations:

indents unchanged

Article 4

On a proposal from the Commission, the Council shall adopt the procedures which will make it possible to establish a clearing-house system with regard to VAT on intra-Community sales.

Article 5

Member States shall adopt the necessary provisions to comply with this Directive by 31 December 1992 at the latest. They shall notify the Commission immediately.

Article 4

AMENDMENT No. 36

1. On a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, the Council shall adopt the procedures which will make it possible to establish a multilateral clearing-house system for intra-Community sales.

2. These procedures shall be adopted by 30 June 1991 for implementation on a trial basis on 1 January 1992 and for full implementation on 1 January 1993.

3. 'Implementation on a trial basis' shall mean that, in accordance with a flexible arrangement to be determined, the system will be tested in administrative terms but will not have any financial implications.

Article 5

AMENDMENT No. 37

Member States shall adopt the necessary provisions to comply with this Directive by 30 June 1992 at the latest for implementation with effect from 1 January 1993. They shall notify the Commission immediately. The deadline of 30 June 1992 shall be replaced by 30 September 1991 for all transitional adjustments necessary for the implementation on a trial basis of the clearing-house system referred to in Article 4.

Second paragraph unchanged

Article 6 unchanged

Financial statement unchanged

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive supplementing the common system of value added tax and amending Directive 77/388/EEC - removal of fiscal frontiers -

The European Parliament,

- having regard to the proposal from the Commission to the Council (1),
 - having been consulted by the Council pursuant to Article 99 of the EEC Treaty (Doc. C 2-143/87),
 - considering the proposed legal basis to be appropriate,
 - having regard to the report of the Committee on Economic and Monetary Affairs and Industrial Policy and the opinion of the Committee on the Environment, Public Health and Consumer Protection (Doc. A 2-320/88),
 - having regard to the Commission's position on the amendments adopted by Parliament,
1. Approves the Commission's proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission's proposal;
 4. Instructs its President to forward this report to the Council and the Commission and, for information, to the parliaments of the Member States.

(1) OJ No. C 252, 22.9.1987

EXPLANATORY STATEMENT

1. The 6th Directive, 77/388/EEC (2) which is the corner-stone of the harmonization of laws on turnover taxes in the Member States, introduced a common system of value added tax (VAT) for the Community with a uniform basis of assessment.
2. Of the subsequent directives, some have been adopted by the Council and thus consolidate Community legislation while others have still not been adopted:
 - (a) 7th Directive:
not adopted; concerns the particular arrangements applicable to works of art and used goods; it was withdrawn by the Commission;
 - (b) 8th Directive (79/1072/EEC) (3):
concerns harmonization of laws as regards arrangements for the refund of VAT to taxable persons not established in the territory of the country; it will be repealed by the adoption of the current 'fiscal package';
 - (c) 9th Directive (78/583/EEC):
inconsequential since it simply extends the time limit for the 6th Directive;
 - (d) 10th Directive (84/386/EEC) (4):
concerns minor modifications applicable to the hiring out of movable tangible property;
 - (e) 11th Directive (80/368/EEC) (5):
concerns the special situation of the French overseas departments;
 - (f) 12th Directive:
not adopted; the last amended Commission proposal was submitted in 1984 (6); concerns arrangements for expenditure not eligible for deduction of VAT;
 - (g) 13th Directive (86/560/EEC) (7):
concerns the harmonization of laws relating to the arrangements for the refund of VAT to taxable persons not established in Community territory;
 - (h) 14th Directive:
not adopted; concerns deferral of payment of VAT payable on importation by taxable persons;
 - (i) 15th Directive:
grants Greece an extension of the deadline; it is no longer valid;

(2) OJ No. L 145, 13.6.1977, p. 1

(3) OJ No. L 331, 27.12.1979

(4) OJ No. L 208, 3.8.1984

(5) OJ No. L 90, 3.4.1980

(6) OJ No. C 56, 29.2.1984

(7) OJ No. L 326, 21.11.1986, p. 40

- (j) 16th Directive:
not adopted; concerns arrangements applicable to the importation of certain goods by private individuals;
- (k) 17th Directive (85/362/EEC) (8):
concerns exemption for the temporary importation of goods;
- (l) 18th Directive:
not adopted; the last amended Commission proposal was submitted in 1987 (9); concerns the abolition of certain derogations provided for in Article 28(3) of the 6th Directive; it should be regarded as a 'transitional' directive since the abovementioned article should in principle be repealed or superseded with the adoption of the current 'fiscal package';
- (m) 19th Directive:
not adopted; the last amended Commission proposal was submitted in 1987 (10); concerns certain amendments to the 6th Directive to improve uniform application of the VAT system; the objectives of this proposal are not superseded by the new proposals. Even if the text has to be revised to take account of the new approach, it should be adopted by the Council before or at the same time as the current 'fiscal package'. Reference should be made in this connection to the report adopted by the European Parliament in 1987 (11);
- (n) 20th Directive (85/361/EEC) (12):
allows temporary derogation (until the end of 1991) for the FRG in respect of special aid to farmers;
- (o) 21st Directive (86/247/EEC):
allows Greece an extension of the deadline; it is no longer valid;
- (p) Directive harmonizing VAT laws as regards the special scheme applicable to small and medium-sized businesses:
not adopted; the last amended Commission proposal was submitted in 1987 (13).

3. The proposal now under consideration concerns the amendments to be made to the body of Community law to take account of the removal of fiscal frontiers, in accordance with the White Paper on completing the internal market. The essential consequence of the removal of fiscal frontiers is that sales and purchases of goods and services within the Community will be treated in the same way as those taking place within a Member State. This means abolition of the current system which involves the remission of taxation on exports to another Member State and the charging of tax by that Member State at its own rates at the frontier, and is thus exactly the same as the system applicable to third countries. To this end, it is necessary to amend the 6th Directive and to repeal (in whole or in part) other directives which were required to regulate certain transfrontier operations because of the existence of fiscal frontiers.

(8) OJ No. L 192, 24.7.1985

(9) OJ No. C 183, 11.7.1987

(10) COM(87) 272/fin. of 17 June 1987

(11) Second report on the 18th and 19th VAT Directives (Doc. A 2-249/86)

(12) OJ No. L 192, 24.7.1985

(13) OJ No. C 310, 20.11.1987

4. It might be asked whether it would be possible to remove fiscal frontiers while at the same time maintaining the existing system of tax remission on exports and taxation of imports. The answer is definitely no. The removal of fiscal frontiers, like the removal of physical barriers, means that, as far as the movement of goods, services and persons is concerned, the Community territory can no longer be regarded as a grouping of a number of separate fiscal areas with operations between them being considered and treated as foreign trade. In view of the fact that the Member States wish to retain their budgetary sovereignty, however, this 'internal' treatment of intra-Community trade must be accompanied by a clearing-house system which will eliminate disparities in taxation resulting from both freedom of movement and the fact that differing rates may be applied.

5. Within the framework of the proposal under consideration, the measures to be implemented are primarily technical in nature. It is important to ensure that all the necessary adjustments are provided for, that they will achieve the desired goals, that amendments are compatible with each other and with the existing provisions and that the proposals are maintained.

6. As a political institution, however, the European Parliament must ask whether it should confine itself to a purely technical assessment of the proposal or consider it also in political terms. Your rapporteur is in favour of the second alternative. With this in view, some of the proposed amendments represent more than just technical changes and it would be appropriate to adopt them. The basic idea is to consolidate further the general harmonization of Community rules on VAT. For example, provisions could be introduced to exclude in certain cases the possibility of Member States taking individual decisions on exemption which could result in divergent national practices, or to make the rules on the submission of VAT returns by taxable persons more uniform throughout the Community so as to minimize to the required extent the financial consequences of the differences in the deadlines which the Member States may set at present.

7. Some comments should now be made on the amendments which your rapporteur wishes to lay before the committee.

Amendment 1 clarifies the date of entry into force; this should coincide with the beginning of the new year, i.e. 00.00 hrs on 1 January 1993 rather than 31 December 1992.

Amendment 37 provides that the Member States must adopt all the provisions necessary for implementation on 1 January 1993 at least 6 months in advance. In the interests of clarity and the smooth operation of the system, that individuals, undertakings, the Commission and the other Member States should be allowed a certain period of time within which to assess the nature of the changes, particularly their administrative aspects.

Amendment 36 (and 37) concerns the idea of a 'transitional period' for the clearing-house system and is justified in the draft report on this subject (PE 126.062).

Amendments 34 and 35 seek to take account of the problem of legislative consolidation. The directives concerned have in fact been supplemented and amended by others and it is the current versions rather than the original versions which will cease to apply.

The purpose of Amendments 2, 3 and 4 is to bring the Sixth Directive into line with the new concept of an internal market without frontier checks: the expression 'the territory of the country' must be replaced by 'throughout the territory of the Member States'. The same applies to Amendments 7, 10 and 20.

Amendments 5 and 7 are a consequence of the view expressed in paragraph 6 of the explanatory statement. Expressions which are subjective in scope should be eliminated as far as possible; any freedom of interpretation left to the national administrations may lead to distortions detrimental to the internal market.

Amendment 9 is necessary because of the current wording of Article 8(1)(a) of the Directive which advocates that the necessary steps be taken 'to avoid double taxation in that State'. With the concept of the 'internal market' the necessary measures must be harmonized so that there is no longer any possibility of double taxation.

The purpose of Amendment 10 is to establish equal conditions of competition for 'internal' and 'external' transport operations as regards the VAT component of the final cost of services.

Amendment 12 seeks to qualify the text proposed by the Commission. The taxable amount will in future be determined by Regulation EEC No. 1224/80 but three 'clarifying' paragraphs are to be retained in the Directive. Either these three paragraphs are a repetition of the above-mentioned Regulation, in which case they should be withdrawn, or they clarify the application of the Regulation and the proposed addition thus clarifies the provisions.

Amendments 13, 14, 19, 21 and 26 are designed to bring about greater harmonization of national legislation by avoiding the possibility of conflicting decisions being taken by different national administrations.

Amendment 15 imposes the (new) requirement that the Commission and the other Member States must be notified in advance whenever a Member State decides to adjust its rates within the margins allowed by the future brackets.

Amendment 17 seeks to exclude the possibility of further exemptions other than those provided for so as to avoid differences between the Member States.

Amendment 18 provides that the Member States shall be obliged to grant a right of taxation to exempted transactions at the request of the taxpayers concerned; at present the Member States can choose whether or not to grant this right. The proposed solution ensures greater fairness, firstly because the provisions will be the same everywhere (contrary to the present situation) and secondly because it will be left to the individual taxpayer to decide whether to take advantage of the provision. Your rapporteur is proposing two alternative versions of this amendment, of which he would prefer the first:

- right of option for all exemptions;
- right of option for those exemptions where the possibility exists at present.

Amendment 20 is intended to mean that the Commission's proposals referred to in Article 14(2) should be submitted as soon as possible so that they can be adopted at the same time as this amendment to the Sixth Directive, with the result that there will be no question of the Member States needing to maintain differing provisions.

Amendment 23 is to be interpreted in the same way: 'the implementation of Community tax rules in this field' should take place immediately rather than after 1993.

Amendment 24 concerns Article 15 which relates to 'exemption of exports and like transactions and international transport', whereas Article 13 relates to 'exemptions within the territory of the country'. There therefore seems no reason for the latter article to constitute an exception to the former, given that there is no possible overlap.

Amendment 27 proposes that the term 'average exchange rate' be defined in a Council regulation so as to ensure its uniformity; it also provides that the rate shall relate to the periods corresponding to the purchase dates and not to the declaration period of the taxable purchaser, as proposed by the Commission. While this amendment undoubtedly makes the calculation slightly more complicated, it prevents operators from juggling with dates and possible exchange rate fluctuations.

Amendment 28 provides for a further stage of harmonization of the deadlines for submitting returns. At present each Member State sets its own deadlines, with the result that taxable persons established in one Member State do not enjoy equal treatment with those established in another. This harmonization would also help to normalize the flow of funds within the future clearing-house system.

Amendment 30 seeks to serve a similar purpose by providing an objective definition of an 'insignificant' amount.

Amendments 29 and 31 concern the arrangements applicable to SMUs. The current revision should also include a revision of this scheme and your rapporteur has simply included in the text the amendment adopted by Parliament on 18 June 1987 (Friedrich report).

As far as the taxation of passenger transport is concerned, the transitional arrangements are still in force although the Commission has announced its intention to submit a proposal in the near future.

Amendment 32 constitutes a commitment on the part of the European institutions to adopt definitive arrangements in good time, i.e. before the completion of the internal market.

Annex D to the directive contains a list (not exhaustive) of the activities engaged in by public authorities in respect of which they are considered taxable persons. In view of the development of the concept of 'public service' in recent years, your rapporteur takes the view that the annex should be supplemented and the list made exhaustive. This is the purpose of Amendment 32.

O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on the Environment, Public Health and Consumer Protection

Draftsman: Ms Carole TONGUE

On 21st October 1987, the Committee on the Environment, Public Health and Consumer Protection appointed Ms Carole Tongue draftsman of the opinion.

The Committee considered the draft opinion at its meetings of 26-28 January 1988 and 24-26 February 1988. It unanimously adopted the draft opinion on 25 February 1988.

The following took part in the vote: Mrs Weber, chairman; Mr V. Pereira, vice-chairman; Ms Tongue, rapporteur; Mr Avgerinos (deputizing for Mr Cano Pinto); Mr Bombard; Mr Collins; Mrs Diez de Rivera Icaza; Mrs Hammerich; Mr Lambrias (deputizing for Mr Alber); Mr van der Lek (deputizing for Mrs Bloch von Blottnitz); Mrs Lentz-Cornette; Mrs Llorca Vilaplana; Mrs Maij-Weggen (deputizing for Mrs Banotti); Mrs S. Martin; Mr Nordmann (deputizing for Mr Figueiredo Lopes); Dr Sherlock; Mrs Squarcialupi and Mr Vernier.

The Commission's Proposals

1. The Commission has proposed a common policy for indirect taxation as part of the movement towards the removal of frontier formalities between Member States and the completion of the internal market by 31 December 1992. Regrettably these proposals have been drafted on the basis of fiscal considerations only, yet they raise a large number of issues concerning public health and consumer protection.

2. The aim of the proposals, the Commission claims, is to align tax rates sufficiently so that frontier controls can be removed without undue distortions to trade. The Commission is concerned to ensure comparable costs and selling prices between Member States and is particularly worried about cross-border shopping by individual consumers where tax rates are very different, for example between Northern Ireland and the Irish Republic, between Denmark and Germany, and between Luxembourg and surrounding states. Its model is the USA where it claims that cross-border shopping is minimal when the variation in tax between adjacent states is 2.5%; hence the 5-6% range in the proposals.

3. There are two elements to the proposals - the approximation of rates of Value Added Tax and the harmonisation of excise duties.

The approximation of Value Added Tax

4. The proposal is that there should be two tax bands - 4-9% for "social goods" and 14-20% for the rest. The Commission has defined "Social goods" as food (but not alcohol), energy for heating and lighting, water, pharmaceutical products, publications and passenger transport. The two bands were chosen by the Commission because they took in many of the VAT rates currently in force in Member States and would therefore, they felt, cause minimum disruption; the Commission however ignored the existence of the zero rate in a number of states, notably Ireland and the United Kingdom. Member States would be able to choose their own rates within these bands. Derogations might be allowable but only until the end of 1992.

The harmonisation of excise duties

5. The Commission claims that excise duties would have to be harmonised, not approximated, because VAT is charged on top of the duty; flexibility in both VAT and excise duty would take the goods out of the 5-6% band. Excise duties on alcohol, mineral oils and tobacco would be fixed by the Community and set in ECUs. The proposed duties on spirits, tobacco and petrol are based on the arithmetic average of the duties current in the Community, those for other mineral oils would be based on an average weighted by consumption, and beers and wines would be taxed equally per litre. The tax on unleaded petrol would be set below that for leaded.

6. The completion of the internal market should be welcomed if it makes goods and services freely available throughout the Community to all consumers and at reasonable prices. It is surprising therefore that in these proposals the Commission is overly concerned about cross-border shopping by individuals as if this were an unwelcome, indeed an illegal, activity. In any case cross-border shopping can occur only in a small part of the Community, most citizens living far from any land frontier. The Commission has, as yet, produced no statistics as to the actual extent of this shopping. It is surely reasonable to expect that, in basing its proposals upon the idea of the trade/competition distortions due to cross-border shopping, the Commission would have produced detailed statistics to back up their case.

7. The Commission is anxious about the wide variations in the price of the same goods in different Member States and blames differing VAT rates. In fact the price differentials are due less to tax rates and more to manufacturers' pricing policies and distribution systems which persist in treating the Community as a collection of wholly separate markets. Other factors are business taxes and subsidies. Cultural factors also play a crucial role here, another issue totally ignored by the Commission. Surveys by the Bureau Européenne des Unions de Consommateurs (BEUC) in 1986 found that, for example, the price of films was about the same in Spain and Belgium although VAT in Belgium was twice that in Spain. Video recorders were 63% more expensive in Denmark than in the Netherlands although VAT was only 4% higher. Drug prices varied by as much as 500% between Member States, and spare parts for well-known makes of car by up to 52%. The approximation of VAT rates will solve

only part of the problem. Indeed one way of reducing the price spread and forcing manufacturers to review their pricing policies might in fact be to encourage cross-border shopping.

Criticism of the Proposals

8. The proposals are at present quite unacceptable to consumers. Indeed the United Kingdom's Institute of Fiscal Studies (IFS) has argued that trade distortions are relatively minor as a result of VAT because it is levied on the destination principle; taxable business purchasers have therefore no incentive to choose one source of supply rather than another. Where distortions do occur it is because of exemptions rather than zero-rating, since if producers cannot claim back VAT already paid they will seek out the lowest taxed imports. The IFS's view is that it is politically ill-judged of the Commission to link a popular policy - the removal of tax frontiers - with an unpopular one - tax approximation/harmonisation.

9. Taxation is traditionally the concern of national governments and is used for social and political aims as well as the purely fiscal ones. The proposals are maximalist one and would mean a profound, and irrevocable, change in the balance between direct and indirect taxation for all Member States. VAT, like other indirect taxes, is a regressive tax; only in the UK and in Ireland where a substantial percentage of goods and services are zero-rated is it mildly progressive. The ability of national governments to use taxation to produce social outcomes would in future be very much more limited.

Social implications

10. No statistics are yet available to support the Commission's proposals and there is apparently no model of the expected trade flows. In addition it would appear that the Commission has made no study of the social impact of the VAT and excise proposals on consumers in the Community. The changes would have important consequences for low-income groups, for public health, for the environment and for publishing.

Low-income Groups

11. Low-income groups spend a high proportion of their income on essentials and are very vulnerable to increases in indirect taxation especially where it is imposed on such items as food, fuel and clothes. The proposals, as presently formulated, bear heavily on such consumers especially where essentials have previously been zero-rated or taxed at a very low level and prices would therefore rise substantially. In the UK, for example, low-income groups spend about a third of their income on food and a fifth on fuel; such consumers would be disproportionately affected by such a price rise yet they have little slack in their incomes with which to absorb the increase and no opportunity to change to alternative goods. The Commission's only concession to this problem is to suggest that States should use the proceeds of the new taxes to increase benefits; it cannot be acceptable for the Commission to manoeuvre Member States into social policies in this way. These are matters for national governments, not for the Commission.

Public Health

12. The proposals are not acceptable either as far as they relate to aspects of public health. Lung cancer and alcoholism are major problems throughout the Community and while these proposals would raise the tax rates on tobacco and alcoholic drinks in some Member States they would reduce them in others, often by a substantial amount. The proposals do not take into account the health implications and indeed they do not carry out the Community's own programme, "Europe against Cancer". Furthermore, although bodies concerned with the fight against alcoholism in Europe will welcome the price rises on alcoholic drinks in some states as a deterrent to consumption they cannot be happy with the reduction in price in other states. The health issues must be fully considered since again these proposals on excise duty would end Member States' ability to use taxation, and therefore price, as a disincentive to consumption of alcohol and tobacco. In the UK and the Republic of Ireland there is no VAT on children's shoes. A causal connection between badly fitting shoes and permanent foot defects and the price of children's shoes has long been established. If the VAT approximation proposals go through unamended children's shoes would carry a rate of 14-20% VAT, which would undoubtedly be damaging to foot health. Children's footwear should be classed as a "social good" and attract no VAT.

The environment

13. The Commission is to be congratulated on the proposed preferential excise rate on unleaded petrol. It is calling on Member States to encourage the use of unleaded petrol, but it has become clear that unless there is a price incentive as well as increased availability, motorists will not switch from leaded petrol.

Publishing

14. It is a widely recognised principle that reading and knowledge should not be taxed, and one entrenched in international law in the Florence Convention. Books, newspapers and magazines perform important functions in societies. A tax on publishing is a tax on knowledge and as such has an impact on the cultural and educational sectors. It also taxes the information which lies at the heart of the effective choices and decisions made by the citizen and the consumer. The demand for books is highly sensitive to price: in the UK a 5% increase in price leads to a 5% decrease in sales; in Spain a tax of 6% led to a 25% drop in sales. In the UK 75% of all books sold are of demonstrable educational or cultural value. Furthermore, book buying is not a solely middle class habit: in the UK, surveys have shown that 75% of those buying books were from socio-economic groups C, D and B. It is not reasonable to spend large sums of money on education and then to tax the publications which are the means, and the ends, of such education. Zero-rating, not taxing reading, is the answer. For the same reasons there should be no indirect taxation of musical publications/instruments which are essential to musical culture.

Conclusions

15. Taxation is traditionally a matter for individual governments and is normally based on principles of progressivity, equity and social utility. Consumers throughout the European Community are already overburdened by indirect taxation. Given the regressive nature of such taxation it necessarily falls disproportionately on those with the lowest incomes. Any proposals from the Commission should seek to reduce these burdens rather than to add to them.

16. While there is clearly a problem in the Community over the proliferation of rates of VAT these are not the sole, or even the main reason, for price differences and for distortions of trade. The Commission should prepare for the removal of fiscal frontiers on 1 January 1993 by examining the hidden distortions of trade such as subsidies, transfer pricing and the prices charged by manufacturers and should propose appropriate measures to deal with them.

17. Many goods and services, for example housing, public transport or funerals, are simply not portable so that there is no reason for the Commission to involve themselves here. Such goods and services are the responsibility of national governments.

18. The definition of essential or 'social' goods should be left to national governments. Such goods and services are in many Member States taxed at low rates; where they are not taxed at all this practice should be allowed to continue, a zero rate being a substantive rate.

19. In the case of alcohol and tobacco, given the link between consumption and public health, there should be no requirement on Member States to modify and/or reduce their taxes on these products. In the absence of a Community health policy Member States should be able to use taxation to raise the prices of alcohol and tobacco in the interests of the health and welfare of their populations.

20. The Commission has failed entirely to provide the justification for these far-reaching and disruptive proposals, and they have not assessed the full effects. There has been no examination of the changes in consumption patterns that would result from the proposed changes in VAT and excise duties, nor of the true public health, social and economic impact. The Commission must provide a full justification for its proposals before they can be discussed any further. When this has been done it might be possible to consider setting two VAT bands at 0-7% and 14-22%.

ORGANISATIONS CONSULTED

National Consumer Council
Scottish Consumer Council
Welsh Consumer Council
General Consumer Council for Northern Ireland
Consumers in the European Community Group
Consumers' Association
BEUC

Retail Consortium
CECD
Cooperative Union Limited
London Food Commission

Low Pay Unit
Age Concern
Child Poverty Action Group

British Medical Association
Socialist Health Association

ICAA
Alcohol Concern
Scottish Council on Alcoholism
Brewers' Society
Scotch Whisky Association
Gin Rectifiers and Distillers Association
King's Fund Institute

Action on Smoking and Health
Tobacco Workers' Union

European Committee against taxing books
Booksellers' Association
Library Association
Newspaper Publishers' Association
Publishers' Association
Newspaper Society

Periodical Publishers' Association
CAEJ
TUC
UKREP

Children's Foot Health Register

