

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

**AMENDING DIRECTIVE 77/388/EEC AND INTRODUCING
TRANSITIONAL MEASURES APPLICABLE IN THE CONTEXT
OF THE ENLARGEMENT OF THE EUROPEAN UNION
ON 1 JANUARY 1995**

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION

Article 2 of the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded¹ provides that "From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act." With the exception of the cases specifically provided for in Annex XV to the Act of Accession, therefore, the new Member States will, on accession, apply the common system of value added tax based on the Sixth VAT Directive.² As a result, the provisions of Title XVIa of that Directive laying down transitional arrangements for the taxation of trade between Member States will apply, from the moment of accession, to trade between the Community and the new Member States as well as to trade between the new Member States themselves.

In such trade, the accession of the new Member States will have the effect of abolishing all tax checks at frontiers. In other words, on accession, the transitional arrangements for taxing trade between Member States will replace the system of imposition of tax on importation and remission of tax on exportation.

This situation is similar to that which existed when the internal market was launched on 1 January 1993. Transitional measures were then adopted (Article 28n incorporated into the Sixth VAT Directive by Directive 92/111/EEC³) with a view to safeguarding the neutrality of the common system of value added tax and to preventing cases of double taxation or non-taxation. For the same reason, measures governing the transition to the enlarged Community, similar to those referred to above, are now required.

¹ OJ No C 241, 29.8.1994, p. 21.

² Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ No L 145, 13.6.1977, p. 1), as last amended by Directive 94/5/EC (OJ No L 60, 3.3.1994, p. 16).

³ OJ No L 384, 30.12.1992, p. 47.

The nature of the transitional measures to be taken depends principally on the customs status of the goods at the time of their removal, after the date of accession, from the customs regime under which they were placed prior to accession. In the customs field, the mechanisms are based on proof being furnished after that date of the goods being in free circulation in the current Community or in one of the new Member States. Thus, goods which, prior to the date of accession, were in free circulation in one of the new Member States and which had been placed, prior to that date, in a customs warehouse in the current Community will be regarded as being in free circulation in the enlarged Community when they leave that warehouse after accession. The same applies to goods in free circulation in the current Community which were placed, prior to the date of accession, in a customs warehouse in one of the applicant countries and which leave that warehouse after that date. The goods being in free circulation, their removal from those warehouses after accession cannot be subject to VAT under Article 7(1)(a) of the Sixth VAT Directive. In order to prevent non-taxation, therefore, it is necessary to treat that removal as an import within the meaning of Article 7(1) of the Sixth VAT Directive.

II. DESCRIPTION OF HYPOTHETICAL CASES NECESSITATING TRANSITIONAL MEASURES

The need for transitional measures has been assessed on the basis of the customs approach set out in the final paragraph in Section I. A distinction is made between the following situations:

- 1) goods that have been placed, prior to the date of accession, in the current Community or in one of the new Member States under a temporary admission regime with full exemption from import duties or under one of the suspensive customs regimes referred to in Article 16(1)(B)(a) to (d) of the Sixth VAT Directive (e.g. customs warehousing arrangements and inward processing arrangements). The goods leave those regimes after the date of accession;
- 2) goods that have been placed, prior to the date of accession, in one of the new Member States or in the current Community either under the common transit procedure or another customs transit procedure or under an export procedure. However, the goods leave that procedure after the date of accession or, where they are placed under an export procedure, were not imported prior to the date of accession into the current Community or into one of the new Member States.

1. Termination of a temporary admission regime with full exemption from import duties or of one of the suspensive customs regimes referred to in Article 16(1)(B)(a) to (d) of the Sixth VAT Directive

(a) Termination of one of these regimes in the current Community

The goods in question were imported from the new Member States into the current Community prior to accession. After importation they were placed under a temporary admission regime with full exemption from import duties or under one of the suspensive customs regimes referred to in Article 16(1)(B)(a) to (d). The chargeable event on importation was therefore deferred until removal of the goods from one of those regimes. In order to prevent any hiatus in the conditions for taxing such transactions, it is proposed that the benefit of the provisions in force prior to accession be extended until the goods leave those regimes (**Article 1(2)**). At the same time, and in order to prevent cases of non-taxation, it is proposed to treat the removal of goods from those regimes after accession as an importation of goods within the meaning of Article 7(1)(a) where, at the time of their removal, it is clear that the goods in question, prior to entry into the current Community, were in free circulation in one of the new Member States (**Article 1(4)(a) and (b)**). This treatment as an importation is necessitated by the absence of taxation within the meaning of Article 7(1)(a) of the Sixth VAT Directive, as this provision applies only to goods which are not in free circulation.

These measures will ensure that transactions carried out under similar conditions actually receive equivalent treatment. All goods imported into the current Community from the new Member States prior to accession will be taxed in the same way, whether or not the chargeable event has been deferred.

By way of derogation from these taxation principles, special measures are proposed in order for tax not to be applied where the goods are re-exported from the enlarged Community (**Article 1(7)(a)**) or are redispached to the new Member State from which they were temporarily exported (**Article 1(7)(b)**). These measures will also apply to means of transport where these have been acquired or imported in accordance with the general tax conditions in force on the domestic market of a new Member State or where they were first put into service prior to 1 January 1987 or where the amount of tax due is insignificant (**Article 1(7)(c)**).

These special measures will considerably simplify the arrangements for taxing means of transport which, prior to accession, were placed in the current Community under a temporary admission regime with full exemption from import duties and which were not removed from that regime by the date of accession.

(b) Termination of one of these regimes in the new Member States

This involves, firstly, goods from the current Community which were imported into one of the new Member States prior to accession and, secondly, goods covered by such regimes in the context of trade between the new Member States. Following their importation into one of the new Member States, they were placed under a temporary admission regime with full exemption from import duties or under a suspensive customs regime similar to those referred to in Article 16(1)(B)(a) to (d).

For the reasons given at 1(a) above, parallel transitional measures must also apply after the date of accession to the removal of goods from those regimes in one of the new Member States where, at the time of removal, it is clear that the goods in question were, prior to their importation into one of the new Member States, in free circulation in the current Community or in one of those States (Article 1(2), (4)(a) and (b), and 7(a), (b) and (c)).

2. Termination of a common transit procedure or another customs transit procedure or of a procedure under which goods are exported from the new Member States to the current Community or vice versa

(a) Termination of a common transit procedure or another customs transit procedure or of an export procedure initiated in one of the new Member States

This involves goods from the new Member States which, prior to accession, were placed under the common transit procedure or another customs transit procedure (e.g. the procedure for the international transport of goods under cover of TIR carnets) in order to be transported to the Community or to one of the other new Member States. At the time of accession, this procedure has not yet been discharged by an importation. In order to prevent a hiatus in the conditions for taxing such transactions, it is proposed to extend the benefit of the provisions in force prior to accession until the moment the goods are removed from those procedures (Article 1(3)). In order to prevent cases of non-taxation, it is also proposed to treat the removal of goods from those procedures, following accession, as an importation of goods within the meaning of Article 7(1)(a) where, at the time of removal of the goods, it is clear that they were in free circulation in one of the new Member States and where the time of the supply predates accession (Article 1(4)(c) and (d)). This treatment as an importation is necessitated by the absence of taxation within the meaning of Article 7(1)(a) of the Sixth VAT Directive, as this provision applies only to goods which are not in free circulation. Furthermore, since the time of the supply predates accession, there is also no intra-Community acquisition subject to VAT in the Member State of arrival of the goods.

These measures will ensure that transactions carried out under similar conditions actually receive equivalent treatment. All goods imported into the current Community or into one of the new Member States from a new Member State will then be taxed in the same way, whether or not the chargeable event has been deferred.

By way of derogation from these taxation principles, special measures are proposed in order for tax not to be applied where the goods are re-exported from the enlarged Community **(Article 1(7)(a))**.

In order to prevent cases of non-taxation where the transport or consignment of goods is not carried out under the common transit procedure or another customs transit procedure, it is also proposed to treat as an importation the use within a Member State by a taxable person or non-taxable person of goods supplied to him prior to the date of accession in one of the new Member States provided certain conditions are met **(Article 1(5))**.

(b) Termination of an export procedure initiated in the current Community

The goods in question are those from the current Community which, prior to accession, were placed under the procedure for exporting goods to one of the new Member States. At the time of accession, those goods had not been imported into one of the new Member States because they had not arrived there prior to that date or because, at the time of their arrival on the territory concerned, they were situated or were placed under the common transit procedure or another customs transit procedure.

For the reasons given at 2(a) above, parallel transitional measures must also apply in one of the new Member States in this hypothetical case where, at the time of departure, it is clear that the goods in question were, prior to their importation into one of the new Member States, in free circulation in the current Community or in one of those States **(Article 1(3), (4)(c), (d), (5) and (7)(a))**.

The description of the situations in which transitional measures are necessary in the context of the enlargement of the European Union reflects their essentially technical nature, which is closely linked to the practical arrangements for trade between the current Community and the new Member States and between the new Member States themselves. The measures contained in this proposal are thus strictly limited, both in nature and over time.

That is why this proposal is based on Article 169 of the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded. That Article is designed to permit, prior to accession, adaptation of acts of the Community institutions necessitated by accession and not provided for in the Act on accession and its annexes.

**PROPOSAL FOR A COUNCIL DIRECTIVE
AMENDING DIRECTIVE 77/388/EEC AND
INTRODUCING TRANSITIONAL MEASURES
APPLICABLE IN THE CONTEXT OF THE
ENLARGEMENT OF THE EUROPEAN UNION
ON 1 JANUARY 1995**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union¹, and in particular Articles 2 and 3 thereof, as well as the Act concerning the conditions of accession which is added thereto, and in particular Article 169 thereof,

Having regard to the Commission proposal²,

Whereas, subject to the special provisions set out in Chapter IX of Annex XV to that Act, the common system of value added tax is to apply to the new Member States as from the date of accession;

Whereas, as a result of the abolition on that date of the imposition of tax on importation and remission of tax on exportation in trade between the Community in its current composition and the new Member States and between the new Member States themselves, transitional measures are necessary to safeguard the neutrality of the system of value added tax and to prevent situations of double taxation or non-taxation;

¹ OJ No C 241, 29.8.1994, p. 9.

²

Whereas such measures must, in this respect, meet concerns akin to those that led to the measures adopted on completion of the internal market on 1 January 1993, and in particular Article 28n of Directive 77/388/EEC³, as last amended by Directive 94/5/EC⁴;

Whereas, in the customs sphere, goods will be deemed to be in free circulation in the enlarged Community where it is shown that they were in free circulation in the current Community or in one of the new Member States at the time of accession; whereas conclusions should be drawn from this, particularly for Article 7(1) and (3) and Article 10(3) of Council Directive 77/388/EEC of 17 May 1977;

Whereas it is necessary in particular to cover situations in which goods have been placed, prior to accession, under one of the arrangements referred to in Article 16(1)(B)(a) to (d), under a temporary admission procedure with full exemption from import duties or under a similar procedure in the new Member States;

Whereas it is also necessary to lay down specific arrangements for cases where a special procedure (export or transit), initiated prior to the entry into force of the Accession Treaty in the framework of trade between the current Community and the new Member States and between those Member States for the purposes of a supply effected prior to that date by a taxable person acting as such, is not terminated until after the date of accession;

HAS ADOPTED THIS DIRECTIVE:

³ OJ No L 145, 13.6.1977, p.1.

⁴ OJ No L 60, 3.3.1994, p.16.

Article 1

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

The following Title XVIc and Article 28p are inserted:

"Title XVIc

**TRANSITIONAL MEASURES APPLICABLE IN THE CONTEXT OF THE
ACCESSION TO THE EUROPEAN UNION OF
THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE
KINGDOM OF SWEDEN**

Article 28p

1. For the purposes of applying this Article:

- "the Community" means the territory of the Community as defined before accession in Article 3 of this Directive;
- "the new Member States" means the territory of the Member States acceding to the European Union by the Treaty signed on 24 June 1994, as defined for each of those Member States in Article 3 of this Directive;
- "the enlarged Community" means the territory of the Community as defined, after accession, in Article 3 of this Directive.

2. When goods:

- entered the territory of the Community or of one of the new Member States before the date of accession,
- and
- were placed, on entry into the territory of the Community or of one of the new Member States, under a temporary admission procedure with full exemption from import duties, under one of the regimes referred to in Article 16(1)(B)(a) to (d) or under a similar regime in one of the new Member States,
- and
- have not left that regime before the date of accession,

the provisions in force at the moment the goods were placed under that regime shall continue to apply until the goods leave this regime, after the date of accession.

3. When goods:

- were placed, before the date of accession, under the common transit procedure or under another customs transit procedure,

and

- have not left that procedure before the date of accession,

the provisions in force at the moment the goods were placed under that procedure shall continue to apply until the goods leave this procedure, after the date of accession.

For the purposes of the first indent, "common transit procedure" means the measures for the transport of goods in transit between the Community and the countries of the European Free Trade Association (EFTA) and between the EFTA countries themselves, as provided for in the Convention of 20 May 1987 on a common transit procedure⁵.

4. The following shall be deemed to be an importation of goods within the meaning of Article 7(1) where it is shown that the goods were in free circulation in one of the new Member States or in the Community:

- (a) the removal, including irregular removal, of goods from a temporary admission procedure under which they were placed before the date of accession under the conditions set out in paragraph 2;
- (b) the removal, including irregular removal, of goods either from one of the regimes referred to in Article 16(1)(B)(a) to (d) or from a similar regime under which they were placed before the date of accession under the conditions set out in paragraph 2;
- (c) the termination of one of the procedures referred to in paragraph 3 which was started before the date of accession in one of the new Member States for the purposes of a supply of goods for consideration effected before that date in that Member State by a taxable person acting as such;
- (d) any irregularity or offence committed during one of the procedures referred to in paragraph 3 under the conditions set out at (c).

⁵ OJ No L226, 13.8.1987, p.2.

5. The use after the date of accession within a Member State, by a taxable or non-taxable person, of goods supplied to him before the date of accession within the Community or one of the new Member States shall also be deemed to be an importation of goods within the meaning of Article 7(1) where the following conditions are met:
 - the supply of those goods has been exempted, or was likely to be exempted, either under Article 15(1) and (2) or under a similar provision in the new Member States;
 - the goods were not imported into one of the new Member States or into the Community before the date of accession.
 6. In the cases referred to in paragraph 4, the place of import within the meaning of Article 7(3) shall be the Member State within whose territory the goods cease to be covered by the regime under which they were placed before the date of accession.
 7. By way of derogation from Article 10(3), the importation of goods within the meaning of paragraphs 4 and 5 of this Article shall terminate without the occurrence of a chargeable event when:
 - (a) the imported goods are dispatched or transported outside the enlarged Community,
or
 - (b) the imported goods within the meaning of paragraph 4(a) are other than means of transport and are redispached or transported to the Member State from which they were exported and to the person who exported them,
or
 - (c) the imported goods within the meaning of paragraph 4(a) are means of transport which were acquired or imported before the date of accession in accordance with the general conditions of taxation in force on the domestic market of one of the new Member States or of one of the Member States of the Community and/or have not been subject by reason of their exportation to any exemption from or refund of value added tax.
- This condition shall be deemed to be fulfilled when the date of the first use of the means of transport was before 1 January 1987 or when the amount of tax due by reason of the importation is insignificant."

Article 2

1. Subject to the entry into force of the Treaty of Accession to the European Union of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest by the date of entry into force of the said Treaty of Accession. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

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

Article 3

This Directive is addressed to the Member States.

Done at Brussels, December 1994

For the Council
The President

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