



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

on the exemption from valued added tax and excise duty of goods imported by persons travelling from third countries

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Council Directive 69/169/EEC of 28th May 1969 contains the harmonisation of provisions to exempt imports by travellers coming from third countries from turnover tax (VAT) and excise duty. Such a Community system of tax reductions on imports has proved necessary in respect of travel between third countries and the Community. However, it needs to be adapted to the enlargement and to the fact that the Community's external borders now include, inter alia, Russia, Ukraine and Belarus. The Commission, having received several requests by Member States for amendment of the Directive, proposes to modernise the provisions concerning tax exemptions in international travel mainly by:

- increasing the current limit thresholds in line with inflation and to introduce at the same time a distinction between air travellers and land travellers,
- introducing a quantitative limit for beer and increasing the quantitative limit for wine,
- introducing a Community system for reduced quantitative limits for tobacco products,
- abolishing the quantitative limits for perfume, coffee and tea since they no longer reflect the real pattern of taxation of excisable goods in the EU of 25 Member States.

For the citizen, this proposal will enable travellers to benefit from an increase in the thresholds and also avoid inconvenience in declaring goods of relatively limited value. Simultaneously, this proposal will provide more flexibility for Member States and will aim to reduce the administrative burdens, arising from routine controls, for Customs authorities.

Finally, this proposal aims to revise the provisions and the structure of the Directive in order to simplify and bring it into line with the current legal drafting requirements.

- **General context**

Originally, Directive 69/169/EEC was aimed at travellers within the Community. However, since its adoption in 1969, the Directive has been amended on seventeen occasions in order to take account of the evolution of the EU, revise and update values and to resolve specific problems faced by several Member States. In particular, since 1993 there are no longer any restrictions for intra EU travel and, following enlargement, the Community's external borders have changed and now include, inter alia, Russia, Ukraine and Belarus. In relation to the problems faced by some Member States, derogations were authorised but these have all since expired with the exception of one - Finland is allowed to restrict imports of beer by travellers coming from third countries to not less than 16 litres up to end of 2007, in order to avoid fiscal, economic, social, health and public order problems. However, Finland will continue to face these

problems beyond 2007, which demands a long term solution. Other Member States with neighbouring third countries with similar low price levels may face the same problems.

In addition, another Member State has requested that the current EUR 175 monetary threshold should be increased substantially, in order to minimise the administrative burdens on both travellers and Customs authorities and help Customs authorities to focus their efforts on combating large scale smuggling.

However, it is unlikely that the majority of Member States will be in favour of a dramatic increase, and account needs to be taken of the problems of those Member States having a land border with countries such as Russia, Ukraine and Belarus with different purchase power.

For these reasons the Commission has taken the opportunity to undertake a general revision and modernisation of the provisions concerning tax exemptions in international travel. As a consequence, the thresholds and quantities currently contained in Title XI of Council Regulation (EEC) No 918/83 concerning a Community system of reliefs from customs duty will need to be brought into line with the provisions contained in this proposal.

- **Existing provisions in the area of the proposal**

Council Directive 69/169/EEC provides for the harmonisation of provisions exempting imports by travellers coming from third countries from turnover tax (VAT) and excise duty.

Briefly, these provisions provide for:

- goods in the personal luggage of travellers to be exempt from VAT and excise duty providing they are not of a commercial character and do not exceed a value of EUR 175,
- quantitative limits for certain goods such as tobacco products and alcoholic beverages but also perfume, coffee and tea, but no limits on beer,
- additional provisions for special cases (underage persons, workers in border areas, etc.).

- **Consistency with the other policies and objectives of the Union**

This proposal is in line with the main policies and objectives of the Union and aims to bring consistency in the management of the external borders of the enlarged European Union.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

This provision is not applicable to this proposal. Apart from travellers, the main interested parties are the Member States who have expressed an interest in the modernisation of this Directive.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

The main purpose of the proposal is to update and modernise the existing arrangements. Because this proposal only deals with adjustments to the existing rules and does not create a new tax regime, an impact assessment is not appropriate. In addition, its budgetary impact is negligible/not measurable.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The Commission proposes:

- *to increase the current limit of EUR 175 and to introduce at the same time a distinction between air travellers (EUR 500) and other travellers (EUR 220).*

It is proposed to make a distinction and therefore to apply different thresholds depending on the means of transport – land and sea transport versus air transport. The cost and effort of travelling by air would suggest that such travel is likely to be less frequently undertaken by individuals compared to those choosing to travel by land or ferry. Additionally, air passengers are by their nature limited to what they can buy and transport, i.e. they would not be able to transport bulky items. Such a distinction could prevent potential problems which Member States with a land border with third countries with a significantly lower price level might have in increasing the EUR 175 threshold. On the other hand, other Member States whose third country travellers will be almost entirely air passengers, could benefit from the higher threshold.

The increase of the EUR 175 threshold to EUR 220 is justified on the ground that it restores its real value at the time the threshold was last agreed (in 1994). The total EU-wide inflation rate for the period 1 January 1994 and 31 December 2004 is of the order of 25%. In addition, it is proposed to abolish the quantitative limits for perfume, coffee and tea (see further). Consequently, this increased monetary threshold will now also include purchases of perfume, coffee and tea, which, under the current arrangements, can be bought in addition to the monetary threshold since they are subject to specific quantitative limits.

In relation to tobacco products, to enable Member States to apply a distinction between air and other travellers and to introduce a uniform system for reduced limits.

Pursuant to Article 152 of the EC-Treaty a high level of human health protection should be ensured by all Community policies. In addition, the WHO framework convention on tobacco control, ratified by the European Union on 30 June 2005, recommends that the contracting parties prohibit or restrict, as appropriate, sales to and/or importations by international travellers of tax- and duty-free tobacco products. In order to ensure equal treatment of all citizens entering the European Union, the proposal includes a uniform system of reduced quantitative limits for tobacco products. It also allows Member States to make a distinction between air and other travellers as concerns the limits for tobacco products. The proposed reduced limits are equal to the former reduced limits for intra-EU trade for people in border zones or crew of means of transport.

- *to abolish the quantitative limits for perfume, coffee and tea since they no longer reflect the real pattern of taxation of excisable goods in the EU of 25 Member States.*

Taking into account that only a limited number of Member States levy an excise duty on these products (none on perfume, which is exempted under Community legislation, 1 on tea, 5 on coffee) the Commission takes the view that these limits, applying to travellers in 25 Member States, are no longer justified. In any event, these limits could be subsumed within the monetary threshold.

- *to introduce a quantitative limit for beer of 16 litres and increase the quantitative limit for wine from 2 to 4 litres.*

The Directive does not contain a limit for beer although this product is highly taxed in some Member States. On the other hand, the import of all other alcoholic beverages is subject to fixed allowances. In particular, wine is limited to two litres, yet several Member States have a zero excise rate on wine. The introduction of a quantitative restriction for beer would, therefore, be logical and could help solve the problems which some Member States with a border with third countries with a significantly lower price level are facing. In order to provide some consistency for all alcoholic beverages, a quantitative limit for beer of 16 litres and an increase in the quantitative limit for wine from 2 to 4 litres is proposed.

- *to increase the amount on which Member States are free not to levy taxes on the import of goods.*

The amount on which Member States are free not to levy taxes on the import of goods needs to be increased in order to take account of inflation and is therefore increased from EUR 5 to EUR 10.

- *to delete the option for the Member States to exclude goods falling within CN codes 7108 and 7109 from exemption.*

This provision is under the current scheme of VAT no more justified.

- *to revise the provisions and the structure in order to simplify and to improve the legibility of the Directive.*

A number of mainly textual refinements have been made to reflect current legal

drafting requirements and so remove any scope for ambiguity. In addition, the third territories which are essential for the application of this Directive have been defined.

- **Legal basis**

Article 93 of the Treaty.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

Under Council Directive 69/169/EEC the EU has already laid down harmonised provisions for imports by private travellers and has, therefore, made use of its competence. Any changes to these provisions require a Community act of legislation and cannot be subject to a Member State's decision.

For the reasons outlined above, Member States cannot act solely.

Community action will better achieve the objectives of the proposal and ensure equal treatment of citizens in the European Union.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

- The proposal contains several provisions which enable Member States to adjust the framework established by the proposal to meet their individual needs. (For example, possibilities for special provisions for residents or workers in frontier zones, underage persons, setting lower limits on tobacco products etc.)
- An increase generally in the EUR 175 threshold is justified simply on the ground that it restores its real value at the time that that threshold was last agreed (in 1994). According to Eurostat data on the annual rate of change of the HICP (Harmonised Index of Consumer Prices) between 1994 and 2004, the total EU-wide inflation rate for the period 1 January 1994 and 31 December 2004 is of the order of 25%.
- Making a distinction between the mode of travel carries with it a number of benefits for the Member States. It offers a degree of protection to those Member States with third country land borders from potentially significant increases in third country shopping by restricting the threshold for land travellers to the lower sum of EUR 220. On the other hand, for those Member

States where third country travel is almost entirely by air, a higher threshold of EUR 500 will mean that an amount of valuable resources can be diverted away from routine customs controls to tackling large scale smuggling and fraud.

- For the citizen, travellers will benefit generally from an increase in the threshold and will also avoid inconvenience in declaring goods of relatively limited value.

- **Choice of instruments**

Proposed instruments: Directive.

Other means would not be adequate for the following reason(s).

Only a Directive will enable Member States sufficiently to adjust the framework established according to their individual needs. Therefore the form of a Directive should be chosen again.

4) BUDGETARY IMPLICATION

Theoretically, the proposal might result in a certain loss of revenue of VAT and excise duties but, simultaneously, it might also create an extra revenue because of the introduction of a limit for beer.

On the other hand, given that the proposal aims to reduce the administrative burdens it will free up value resources which will enable Customs authorities to focus their efforts on combating large scale smuggling, which, in turn, will off-set potentially greater losses.

Consequently, although this proposal could have a minor budgetary impact, it is considered negligible /not measurable.

5) ADDITIONAL INFORMATION

- **Repeal of existing legislation**

The adoption of the proposal will repeal the existing legislation.

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

Proposal for a

COUNCIL DIRECTIVE

on the exemption from valued added tax and excise duty of goods imported by persons travelling from third countries

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 Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Whereas:

- (1) Council Directive 69/169/EEC of 28 May 1969 on the harmonisation of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel⁴ established a Community system of tax exemptions. While it remains necessary to maintain that system in order to prevent double taxation, as well as in cases where, in view of the conditions under which the goods are imported, the usual need to protect the economy is absent, it should apply only to non-commercial imports of goods in the personal luggage of travellers from third countries.
- (2) However, given the number of amendments required, as well as the need to adapt the Directive to enlargement and to the new external borders of the Community, and to restructure and simplify certain provisions for the sake of clarity, the complete revision and the replacement of Directive 69/169/EEC is justified.
- (3) The quantitative limits and monetary thresholds to which the exemptions are subject should meet the current needs of Member States.
- (4) The monetary thresholds should take account of the difficulties faced by Member States which share their borders with third countries with significantly lower prices and where, consequently, the ease and attraction of shopping abroad could cause

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ L 133, 4.6.1969, p. 6. Directive as last amended by Directive 2005/93/EC (OJ L 346, 29.12.2005, p. 16).

problems. It is justifiable, therefore, to set a lower monetary threshold for forms of travel other than air travel.

- (5) In the experience of the Commission, the quantities for tobacco products and alcoholic beverages have, in general, been shown to be appropriate and should therefore be maintained.
- (6) The quantitative limits for the exemption of excise goods should reflect the current scheme of taxation of such goods in the Member States. Accordingly, it is appropriate to introduce a limit for beer whereas the limits for perfume, coffee and tea should be discontinued.
- (7) It is appropriate to allow Member States to set lower limits with regard to the monetary threshold for children and to exclude under-aged persons from the exemptions for tobacco products and alcoholic beverages, in order to ensure a high level of health protection.
- (8) Given the need to promote a high level of human health protection for Community citizens, it is appropriate to allow Member States to apply reduced quantitative limits for the exemption of tobacco products.
- (9) In order to take account of the special situation of certain people with regard to their location or working environment, it should also be possible for Member States to apply narrower exemptions in the case of frontier workers, persons residing near Community frontiers and the crew of the means of transport used in international travel.
- (10) For Member States which have not introduced the euro, a mechanism should be set up to enable amounts expressed in national currencies to be converted into euro and thus ensure equal treatment in the Member States.
- (11) The amount on which Member States are free not to levy taxes on the import of goods should be increased in order to reflect current monetary values.
- (12) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS DIRECTIVE:

Chapter I

SUBJECT-MATTER AND DEFINITIONS

Article 1

This Directive lays down rules relating to the exemption from value added tax (VAT) and excise duty of goods imported in the personal luggage of persons travelling from countries or territories where the harmonised rules on VAT and excise duty, respectively, do not apply.

Article 2

1. Where, in the case of goods brought in from another Member State in the personal luggage of a traveller, the journey involves transit through the territory of a third country, or begins in one of the territories listed in paragraph 2, this Directive shall apply if the traveller is unable to establish that the goods transported in his luggage have been acquired subject to the general conditions governing taxation on the domestic market of a Member State and do not qualify for any refunding of VAT or excise duty.

Overflying without landing shall not be regarded as transit.

2. The territories referred to in paragraph 1 are the following:
 - (a) Mount Athos;
 - (b) the Canary Islands;
 - (c) the French overseas departments;
 - (d) the Åland Islands;
 - (e) the Channel Islands;
 - (f) the Island of Heligoland;
 - (g) the territory of Buesingen;
 - (h) Ceuta;
 - (i) Melilla;
 - (j) Livigno;
 - (k) Campione d'Italia;
 - (l) the Italian waters of Lake Lugano;

- (m) Gibraltar;
- (n) San Marino, only as regards the application of VAT.

Article 3

For the purposes of this Directive, the following definitions shall apply:

- (1) “air travellers” means any passengers travelling by means of air navigation other than in private pleasure-flying;
- (2) “private pleasure-flying” means the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities;
- (3) “frontier zone” means a zone which, as the crow flies, does not extend more than 15 kilometres from the frontier of a Member State and which includes the local administrative districts part of the territory of which lies within the zone;
- (4) “frontier zone worker» means any person whose normal activities require that he should go to the other side of the frontier on working days.

Chapter II EXEMPTIONS

SECTION 1 COMMON PROVISIONS

Article 4

Member States shall, on the basis of either monetary thresholds or quantitative limits, exempt from VAT and excise duty goods imported in the personal luggage of travellers, provided that the imports are of a non-commercial character.

Article 5

For the purposes of the application of the exemptions, personal luggage shall be regarded as the whole of the luggage which a traveller is able to present to the customs authorities upon arrival, as well as luggage which he presents later to the same authorities, subject to proof that such luggage was registered as accompanied luggage, at the time of his departure, with the company which has been responsible for conveying him.

Article 6

For the purposes of the application of the exemptions, imports shall be regarded as being of a non-commercial character if they meet the following conditions:

- (a) they take place occasionally;
- (b) they consist exclusively of goods for the personal or family use of the travellers, or of goods intended as presents.

The nature or quantity of the goods must not be such as to indicate that they are being imported for commercial reasons.

Article 7

The value of personal effects which are imported temporarily or are re-imported following their temporary export shall not be taken into consideration for the purposes of applying the exemptions.

SECTION 2 MONETARY THRESHOLDS

Article 8

1. Member States shall exempt from VAT and excise duty imports of goods, other than those referred to in Section 3, the total value of which does not exceed EUR 220 per person.

In the case of air travellers, the monetary threshold specified in the first subparagraph shall be EUR 500.

2. Member States may lower the monetary threshold for travellers under fifteen years old, whatever their means of transport. However, the monetary threshold may not be lower than EUR 110.
3. For the purposes of applying the monetary thresholds, the value of an individual item may not be split up.

SECTION 3 QUANTITATIVE LIMITS

Article 9

1. Member States shall exempt from VAT and excise duty imports of the following types of tobacco product, subject either to the maximum or to the minimum quantitative limits specified:

- (a) 200 cigarettes or 40 cigars;
- (b) 100 cigarillos or 20 cigars;
- (c) 50 cigars or 10 cigars;
- (d) 250 g smoking tobacco or 50 g smoking tobacco.

Each amount specified in points (a) to (d) shall represent, for the purposes of paragraph 3, 100% of the total allowance for tobacco products.

Cigarillos are cigars of a maximum weight of 3 grams each.

- 2. Member States may choose to distinguish between air travellers and other travellers by applying the minimum quantitative limits specified in paragraph 1 only to travellers other than air travellers.
- 3. In the case of any one traveller, the exemption may be applied to any combination of tobacco products, provided that the aggregate of the percentages used up from the individual allowances does not exceed 100%.

Article 10

- 1. Member States shall exempt from VAT and excise duty the following types of alcohol and alcoholic beverage, subject to the quantitative limits specified:
 - (a) a total of 1 litre of distilled beverages and spirits of an alcoholic strength exceeding 22% vol, or undenatured ethyl alcohol of 80 % vol and over;
 - (b) a total of 2 litres of intermediate products and sparkling wines.

Each of the amounts specified in points (a) and (b) represent, for the purposes of paragraph 2, 100% of the total allowance for alcohol and alcoholic beverages.

- 2. In the case of any one traveller, the exemption may be applied to any combination of the types of alcohol and alcoholic beverage referred to in paragraph 1, provided that the aggregate of the percentages used up from the individual allowances does not exceed 100%.
- 3. In addition to the exemption provided for in paragraph 1, Member States shall exempt from VAT and excise duty a total of 4 litres of still wine and 16 litres of beer.

Article 11

Exemptions under Articles 9 or 10 shall not apply in the case of travellers under 17 years of age.

Article 12

Member States shall exempt from VAT and excise duty, in the case of any one means of motor transport, the fuel contained in the tank and a quantity of fuel not exceeding 10 litres contained in a portable container, without prejudice to national provisions governing the possession and transport of fuel.

Article 13

Where a traveller carries goods referred to in Articles 9, 10 or 12, the value of those goods shall not be taken into consideration for the purposes of applying the exemption provided for in Article 8(1).

Chapter III SPECIAL CASES

Article 14

1. Member States may lower the monetary thresholds or the quantitative limits, or both, in the case of travellers in the following categories:
 - (a) persons resident in the frontier zone;
 - (b) frontier zone workers;
 - (c) the crew of a means of transport used to travel from a third country.
2. Paragraph 1 shall not apply where a traveller in one of the categories listed therein produces evidence to show that he is going beyond the frontier zone of the Member State or that he is not returning from the frontier zone of the neighbouring third country.

However, it shall apply where frontier zone workers or the crew of the means of transport used in international travel import goods when travelling in the course of their work.

Chapter IV GENERAL AND FINAL PROVISIONS

Article 15

Member States may choose not to levy VAT or excise duty on the import of goods by a traveller when the amount of the tax which should be levied is equal to, or less than, EUR 10.

Article 16

1. The euro equivalent in national currency which shall apply for the implementation of this Directive shall be fixed once a year. The rates applicable shall be those obtaining on the first working day of October with effect from 1 January of the following year.
2. Member States may round off the amounts in national currency resulting from the conversion of the amounts in euro provided for in Article 8, provided such rounding-off does not exceed EUR 2.
3. Member States may maintain the monetary thresholds in force at the time of the annual adjustment provided for in paragraph 1 if, prior to the rounding-off provided for in paragraph 2, conversion of the corresponding amounts expressed in euro would result in a change of less than 5% in the exemption expressed in national currency or in a lowering of this exemption.

Article 17

Directive 69/169/EEC is repealed.

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

Article 18

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2006 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 19

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

Article 20

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*

ANNEX

CORRELATION TABLE

Directive 69/169/EEC	This Directive
Article 1(1)	Article 8(1)
Article 1(2)	Article 8(2)
Article 1(3)	Article 8(3)
Article 2	—
Article 3, point one	Article 7
Article 3, point two	Article 6
Article 3, point three, first subparagraph	Article 5
Article 3, point three, second subparagraph	Article 12
Article 4(1), introductory phrase	Article 9(1) introductory phrase, Article 10(1) introductory phrase
Article 4(1), second column	—
Article 4(1)(a), first column	Article 9(1)
Article 4(1)(b), first column	Article 10(1)
Article 4(1)(c), (d) and (e), first column	—
Article 4(2) first subparagraph	Article 11
Article 4(2) second subparagraph	—
Article 4(3)	Article 13
Article 4(4)	Article 2(1) and (2)
Article 4(5)	—
Article 5(1)	—
Article 5(2)	Article 14(1)
Article 5(3)	—
Article 5(4)	Article 14(2)
Article 5(5)	—

Article 5(6), introductory phrase, first indent	Article 3(3)
Article 5(6), introductory phrase, second indent	Article 3(4)
Article 5(7)	—
Article 5(8)	—
Article 5(9)	—
Article 7(1)	—
Article 7(2)	Article 16(1)
Article 7 (3)	Article 16(2)
Article 7(4)	Article 16(3)
Article 7(5)	—
Article 7a(1)	—
Article 7a(2)	Article 15
Article 7b	—
Article 7c	—
Article 7d	—
Article 8(1)	Article 18(1) first subparagraph
Article 8(2), first subparagraph	Article 18(1), first subparagraph
Article 8(2), second subparagraph	—
Article 9	Article 20