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REPORT FROM THE COMMISSION TO THE COUNCIL

on tax-free allowances benefiting individuals

(Position at 1st October 1982)

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REPORT ON TAX-FREE ALLOWANCES BENEFITING INDIVIDUALS

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REPORT ON TAX-FREE ALLOWANCES BENEFITING INDIVIDUALS

INTRODUCTION

1. The Commission has always attached considerable importance to the Community's tax-free allowances which benefit private individuals. This concern is evidenced by its constant efforts in past years to establish common systems in this field. The Commission has also singled out progress in the intra-Community tax-free allowance field as a priority in its programme for 1982. The European Parliament also has displayed great interest in the development of the common tax-free allowances system and the Commission has undertaken to present to it this general report on the operation of the common system of tax-free allowances granted to individuals. In addition to presenting the report to the Parliament, the Commission also addresses it to the Council and to the Economic and Social Committee.

2. The aim of this report is :

a) to describe the system in current operation;

b) to highlight underdeveloped areas and those giving rise to difficulties ;

c) to examine possible improvement to be made in the system.

The Commission's earnest hope is that this report will provide a backdrop for a stimulating exchange of views on the issues involved between the Community Institutions, the Member States and other parties concerned, enabling further real development of the common tax-free allowances system to take place and thus further realization of its objectives.

3. The report covers travellers' tax-free allowances and tax-free allowances for small parcels both in the intra-Community and third country contexts. The bulk of the report is taken up by the travellers' allowances section. A summary of the main conclusions is included at the end of the report.

PART I - TRAVELLERS' TAX FREE ALLOWANCES

CHAPTER I - BACKGROUND

4. A common system of tax-free allowances for travellers is in force. The relevant Community instruments are the Council directives on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (1). A co-ordinated text of these directives has been published by the Commission as a booklet (2). These directives have been supplemented by the Council Directive 81/933/EEC increasing the third country allowances (3), and most recently, by Council Directive 82/443/EEC increasing the intra-Community allowance from 1 January 1983 (4).

5. The background against which the common system of allowances for travellers was orginally proposed and discussed in 1968/69 was one in which the customs union was considered virtually achieved, the elimination of tax borders was eagerly awaited and economic and monetary union was viewed as a real prospect on the horizon. Application of a common system of travellers' tax-free allowances was viewed as partial abolition of tax borders.

Its primary goal was political. Creation of a unified system of allowances had an important impact on the ordinary citizens of the Community by bringing its existence home to them in a tangible way every time they travelled. Vis-à-vis third countries the Community presented a uniform treatment for arriving travellers thus again emphasizing its own identity. The main aim of the common system was to be achieved through the creation for travellers of conditions similar to those obtaining on a domestic market, thus ensuring the elimination of cases of double taxation or non-taxation.

6. Development of the common tax-free allowances system has, in general, not been as rapid or complete as envisaged at the outset. This is partly a result of the general slow down in the progress towards economic and monetary union and the emergence of other priorities. It also stems partly from wide divergences in the rates of indirect tax applied in the Member States

(1) Directives n° 69/169/EEC (OJ n° L 133, 4.6.1969), 72/230/EEC (OJ n° L 139, 17.6.1972), 77/800/EEC (OJ L 336, 27.12.1977), 78/1032/EEC and 78/1033/EEC (JO n° L 366, 28.12.1978).

(2) Reliefs from taxes granted to imports made by private persons. 1979.

(3) OJ n° L 338, 25.11.81, p. 24

(4) O.J No L 206, 14.7.82 , p. 35

although it is not only differing rates of taxes which contribute to price differences between Member States : distribution cycles, profit margins, consumer tolerance are also major contributers. Lack of progress stems also from the reluctance of the Member States to tackle the general problem of non-taxation, i.e. the problem of goods which, through a combination of being sold tax-free in one Member State and being admitted tax-free into another, enter into home consumption in the Community completely free of tax.

CHAPTER II - CURRENT STATE OF DEVELOPMENT

7. What follows is a summary of the main aspects of the Community's travellers' tax-free allowances system as enacted at present, along with a commentary on its application in the Member States.

The monetary and quantitative limits currently applied in the system are best summarized in tabular form.

Table I - Allowances subject to maximum values (1)

(position at 1 January 1982)

General allowances for travellers	within the Community	180 ECU (2)
	from third countries	45 ECU
Optional Reduced allowances for travellers under 15 years old	within the Community	50 ECU (2)
	from third countries	23 ECU

(1) Up to 31 December 1981, Denmark was allowed to apply an exclusion from the relief where the unit value of goods being imported by a traveller exceeded 135 Ecu (1050 Dkr). Ireland is allowed to apply a similar exclusion up to 31 December 1983 in the case of goods exceeding 77 Ecu (52 Irl) in unit value.

(2) 210 Ecu from 1 January 1983 for all Member States other than Denmark which may continue to apply the 180 Ecu allowance up until 31 December 1983. The reduced allowance is to be increased to 60 Ecu.

8. Since the institution of the common travellers' allowances system, the general intra-Community allowance has evolved on the following pattern: from 75 UA (units of account) intra-Community in 1969 to 125 UA on 1 July 1972 and to 180 EUA (Ecu) on 1 January 1979. It will further increase to 210 Ecu on 1 January 1983. The general third country allowance, having remained at 25 UA from 1969, was increased to 40 EUA (Ecu) on 1 January 1979 and to 45 Ecu on 1 January 1982.

TABLE II - Value allowances applied by Member States

(position at 1 January 1982)

Member State	General allowance		Reduced allowance (where applied)	
	Community	Third country	Community	Third country
Belgium	BF 7,200	BF 1,800	BF 2,000	BF 900
Denmark	Dkr 1,400	Dkr 350	-	-
Germany	DM 460	DM 115	-	-
Greece	Dr 11,000	Dr 2,850	Dr 3,100	Dr 1,450
France	FF 1,030	FF 270	FF 290	FF 135
Ireland	Irl 120	Irl 31	Irl 34	Irl 16
Italy	(Lit 217,375)	(Lit 56,939)	(Lit 63,265)	(Lit 29,102)
Luxembourg	LF 7,200	LF 1,800	LF 2,000	LF 900
Netherlands	HFl 500	HFl 125	-	-
United Kingdom	UKL 120	UKL 28	-	-

( ) = unrounded, calculated by the Commission departments owing to the lack of officially fixed figures.

Remarks:

1. The Benelux countries operate a higher allowance of 10,000 FB/Fl or 700 HFl for persons travelling between their countries on the basis of the Treaty establishing the Benelux Union.

2. Ireland applies a unit value limit of 52 Irl. to goods being imported under the allowances system in accordance with a special derogation in the directives.

Table III - Basic quantitative allowances

(position at 1 January 1982)

Product	Travellers within the Community	Travellers from third countries
Tobacco products		
cigarettes or	300	200
cigarillos (cigars of a maximum weight of 3 g each) or	150	100
cigars or	75	50
smoking tobacco	400 g	250 g
Alcoholic beverages		
distilled beverages and spirits of an alcoholic strength exceeding 22° or	to a total of 1.5 litres	1 standard bottle (0.70 to 1 litre)
distilled beverages and spirits, and aperitifs with a wine or alcohol base of an alcoholic strength not exceeding 22°; sparkling wines, fortified wines and	to a total of 3 litres	to a total of 2 litres
still wines	to a total of 4 litres	to a total of 2 litres
Perfumes and	75 g	50 g
toilet waters	3/8 litre	1/4 litres
Coffee or	750 g	500 g
Coffee extracts and essences	300 g	200 g
Tea or	150 g	100 g
tea extracts and essences	60 g	40 g

REMARK: There are several qualifications which apply to the allowances set out in these tables e.g. the tobacco and alcohol allowances are not granted to persons under 17 years of age. Details are to be found in paragraphs 14 and 15 describing the current system of quantitative allowances in more detail.

Value allowances

9. The basic intra-Community allowance of 180 Ecu(1)applies to goods contained in the personal luggage of travellers coming from one Member State to another which :

a) fulfil the conditions laid down in Articles 9 and 10 of the Treaty (i.e. are in free circulation in the Community) ;
b) have been acquired subject to the general rules governing taxation on the domestic market of one of the Member States;
c) have no commercial character.

The taxes from which relief is granted are value added tax and excise duties on imports.

The unit value of goods being imported is indivisible for the purposes of applying the allowance. In other words where a single item exceeds 180 Ecu, no relief is granted but where several items, which in total exceed 180 Ecu, are imported, relief is granted to those items whose unit values added together do not exceed the allowance.

Where goods, such as spirits and tobacco, which are subject to quantitative restrictions are imported by a traveller, their value is not to be reckoned in calculation of the 180 Ecu general allowance.

A supplementary condition also attaches to the intra-Community allowance which requires a traveller who, on his journey from one Member State to another, has had access to a third country market or part of a Member State's territory (2) in which turnover tax or excise duty is not charged, to prove fulfilment of the acquisition condition at b) above and that the goods have not benefited from a refund of tax or duty. Where this condition is not fulfilled only the third country allowance is granted.

Member States may reduce the intra-Community allowance to 50 Ecu for travellers under 15 years old. Those Member States availing of this facility can be identified in Table II above.

10. In order to benefit from the third country allowance of 45 Ecu the only conditions are that the goods be contained in the personal luggage of a traveller coming from a third country and that they have no commercial character. The reduced allowance of 23 Ecu for young travellers is optional and the above comments regarding unit value apply to these allowances also.

11. It is specified in the Directives that the value of personal effects being temporarily imported or which had been temporarily exported are not to

(1) The allowance of 180 Ecu will be increased to 210Ecu with effect from 1.1.1983 under the Council directive of 29 June 1982.
(2) Heligoland or Greenland for example.

be taken into consideration in application of the tax-free allowances. This provision is included because of the fundamental difference between these goods and those coming within the scope of the directives ; the former are the usual goods temporarily imported or exported by traveller going on, for example, his holidays, whereas the latter are goods bought by the traveller in one country and permanently imported into another. The origin of the idea of personal effects being transported by a traveller is found in international conventions and, in particular, the New York Convention of 4 June 1954.

12. The directives contain some important definitions. First, importations are considered as being without commercial character if they take place occasionally and consist only of goods for personal or family use or for use as gifts. Secondly, "personal luggage" is defined as the whole of the luggage which a traveller submits, whether on his arrival or later. Portable fuel containers are by definition not considered as personal luggage although for each vehicle 10 litres of fuel stored in such a container may be imported duty-free subject to safety regulations.

13. The directives provide that Member States may reduce the tax-free allowances in the case of frontier zone residents, frontier zone workers or the crew of international means of transport. In the case of intra-Community travel, the minimum allowances are one tenth of those applied to ordinary travellers.

These restricted limits do not of course apply where the persons involved are not engaged in "frontier zone" travel as such unless they are importing the goods in the course of their work (the frontier zone is the zone extending 15 km from the frontier of a Member State). The usual allowances apply in the case of normal travel.

All Member States avail themselves to a greater or lesser extent of this possibility to reduce the allowance limit.

Quantitative allowances

14. Table III, page 5 of this report shows that under the directives, different quantitative allowances apply depending on whether the goods are being imported by a traveller coming from another Member State or from a third country. It should be noted, however, that these common limits do not prejudice the relevant national provisions concerning travellers whose residence is outside Europe (1), although a provision is included which stipulates that under no circumstances may the total quantity of goods exempted exceed the intra-Community levels.

15. The several restrictions mentioned in the footnote to Table III can be summarized as follows.

a) Restriction on travellers under 15 or 17 years of age

The tax-free allowance for tobacco products and alcoholic beverages is not granted to persons under 17 years of age. The allowance for coffee is not granted to travellers under 15 years of age.

b) Restriction on frontier workers and residents and international crew members

Member States may reduce the quantity of the goods which may be admitted duty-free, down to one-tenth of the quantities where the goods are imported from another Member State by persons resident in the frontier zone of the importing Member State or a neighbouring Member State or by frontier zone workers.

However, duty free entitlement in respect of the goods listed below may be as follows :

i) Tobacco products :

cigarettes or	40
cigarillos (cigars of a maximum weight of 3 g each) or	20
cigars or	10
smoking tobacco	50 g

ii) Alcoholic beverages :

- distilled beverages and spirits, of an alcoholic strength exceeding 22° or	0.25 litre
- distilled beverages and spirits, and aperitifs with a wine or alcohol base of an alcoholic strength not exceeding 22°; sparkling wines, fortified wines and	0.50 litre
- still wines	0.50 litre

(1) This provision is used by all Member States to grant a higher allowance for cigarettes to these travellers. The allowance granted is 400 cigarettes (or its equivalent) instead of 200.

Member States also may reduce similarly the allowance limits for Members of the crew of a means of transport used in international travel.

Where the goods are being imported from a third country by a frontier zone worker or resident or an international crew member, Member States are free to reduce their allowances as they wish.

c) Restriction on armed forces

Member States may set lower limits as to value and/or quantity of goods admitted under the tax-free allowances when they are imported from another Member State by members of the armed forces of a Member State, including civilian personnel and spouses and dependent children, stationed in another Member State. Belgium, Germany, France, Luxembourg, Netherlands and the United Kingdom avail themselves of this facility.

d) Restrictions on gold, tobacco and coffee

Member States may exclude raw or semi-finished gold (including gold plate and the like) from the benefit of the allowances. Only Germany applies a restriction under this provision.

Also, in the case of travellers coming from third countries, Member States have a general option to reduce the quantities of tobacco and coffee allowed in under the tax-free allowances. Germany avails itself of this facility to apply a 250 g allowance for coffee imported by such travellers.

e) Danish derogation on quantitative limits

Denmark had particular difficulties in adopting the Community's allowances system and is allowed to apply restrictions to the quantiative allowances granted to travellers making trips of short duration.

The current limits (1) which Denmark applies are summarized in the following table.

Product	Restricted allowances applied to Danish residents having stayed in another country less than 48 hours
cigarettes	60
or	
cigarillos	20
or	
cigars	20
or	
smoking tobacco (grams)	100
distilled beverages (litres)	none
beer (litres)	2

This derogation expires at the end of 1982. (2)

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(1) Directive 77/800/EEC - OJ n° L 336, 26.12.1977

(2) On the 29 November 1982, the Commission sent a proposal to the Council for a phasing out of the Danish derogation within five years. The Council adopted this proposal on 30 December 1982 (see paragraph 50 bis).

Remission of tax on exports

16. A significant feature of the common tax-free allowances system is the inclusion of a scheme for regulation of the remission of tax on exports.

One of the basic principles of the system is the avoidance of double taxation and non-taxation of goods being imported by travellers in intra-Community travel. To operate this, it is clear that where goods benefit from a tax-free allowance on importation they should not also benefit from tax remission on exportation in the country from which the traveller is coming. Vice-versa, where they are not entitled to benefit from a tax-free allowance on importation the goods should be able to benefit from remission of tax in the country of exportation.

This is the essence of the tax remission provisions of the common allowance system. Member States are required to take measures to avoid remission of tax on goods being supplied to intra-Community travellers who benefit from the common tax-free allowances. On the other hand, Member States are required to set up a system of remission of turnover tax on goods being exported as part of the personal luggage of a traveller. In the case of intra-Community travellers the remission is only to be granted where the unit value of the item exceeds the 180 Ecu limit*, in other words, where the item in question cannot benefit from the tax-free allowance on importation into another Member State. Member States are free to fix their own conditions regarding remission of tax for third country residents and also may exclude their own residents from the benefit of the scheme. Practically all Member States avail of the facility to exclude their own residents (as an anti-fraud measure), Luxembourg and the Netherlands being the exceptions.

17. The control condition attaching to remission is production of the invoice (or another document in lieu) which, for third country travellers, must be endorsed by the customs authorities certifying exportation, and, for intra-Community travellers, must be endorsed by the customs or other authorities certifying final importation into a Member State.

It should be noted that no remission may be granted in respect of excise duty.

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* 77 Ecu for goods going to Ireland.

18. The remission of tax scheme described above was adopted by Council in 1978. At that stage some Member States did not operate such a scheme and the introduction of one undoubtedly posed serious difficulties for them. All Member States now operate the common tax remission scheme apart from Ireland whose legislation on this matter is incompatible with Community requirements and will therefore have to be adjusted.

19. As for the scheme as implemented in the eight (1) other Member States concerned serious shortcomings have been observed. The unit value limit above which tax remission should be claimable is the intra-Community allowance limit, 180 Ecu in the case of exports to Member States other than Ireland, for which a limit of 77 Ecu operates. Most Member States do not provide the lower limit required in the case of goods being exported by travellers going to Ireland. Also creating problems are the various methods of refund of tax. Some Member States authorize the traders involved to make refunds directly without reference to central administration while others require such a reference. Clearly such a centralized authorization system for individual payments can be cumbersome and can result in prolonged delays in effecting the refund of tax.

Annual adjustment of national currency equivalents

20. One of the main developments of the common system which took place in 1978 was the introduction of an annual fixing of national currency equivalents of the Ecu expressed allowances.

Each year Member States are to calculate their own currency equivalents of the Ecu allowances by reference to the exchange rate in force on first working day of October. This newly calculated allowance is then to apply for the following calendar year. However, for administrative ease, Member States have the option of maintaining the existing figure where the newly calculated one varies by less than 5 % from that calculated the previous year. In fixing their allowances in national currency Member States may round off within a limit of the equivalent of 2 Ecu.

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(1) Greece is not obliged to introduce the scheme until it introduces the common VAT system (i.e. 1 January 1984 at the latest) in accordance with Article 128 of and Annex VIII to its Treaty of Accession to the EEC.

CHAPTER III : EXPERIENCE, DIFFICULTIES AND SCOPE FOR IMPROVEMENT OF THE COMMON SYSTEM

21. One of the general reasons prompting the Commission to draw up this report is the prolonged discussion in Council on its proposals for directives in the travellers' allowances field. In these discussions the Council has shown itself particularly unwilling to make the effort to proceed with the necessary development of the common system.

The Commission's proposal for a Fifth Council Directive (1) on travellers allowances was the subject of many discussions at the various levels in the Council over a period of two and a half years and has only just been adopted in a much watered down form vis-à-vis the Commission's and Parliament's original intentions. Clearly, the reasons behind this reluctance on the part of the Council to continue with the logical and much needed development of the system need to be analysed.

22. Drawing on experience in the operation of the system to date, this chapter discusses areas of difficulty and underdevelopment, suggests means for improving the Community's travellers' allowances system and considers its possible evolution in the future.

Although there is a degree of interaction between the various aspects of the system and development of one area tends to have repercussions or to depend on other areas, this chapter is divided into five main sections to facilitate the analysis. These are :

A. The real value of allowances and derogation value limits.
B. National currency equivalents of allowances.
C. Quantitative allowances.
D. Remission of tax scheme.
E. Tax-free shops

(1) O.J. No. C 318, 19.12.1979, p. 5.

A. THE REAL VALUE OF ALLOWANCES

23. The current allowances (see Table I, p. 4) for intra-Community travel have been in force since 1 January 1979 and, in accordance with the Council decision of 29 June 1982 (1), will be next increased on 1 January 1983. Those for third countries came into operation on 1 January 1982.

The date of 1 January 1979 is taken as the base date in this report for purposes of comparison of real values. Previously, allowances were expressed in terms of the unit of account (UA) (which reflected exchange rate parities in operation at the date of inception of the common allowances system 1969). This makes comparison with the current situation difficult. The primary purpose of the development of the common system which took place in 1978, when the European unit of account (EUA) was introduced into the directives, was to eliminate the disparities caused by the use of the UA. One of the objectives at the time was to maintain the allowance limits in all Member States at least at their preceding levels in terms of national currencies.

24. However, no matter what the base date taken, it is clear that, in recent years, a significant erosion of the value allowances has taken place in real terms. Over the past three years the average annual Community increase in the consumer price index was more than 10 % : 10.2 % (1979), 14.1 % (1980) and 12.6 % (1981). The cumulative effect insofar as intra-Community limits are concerned is that at the end of 1981 the common values allowances had fallen in real terms to 58 % of those obtaining on 1 January 1979. The recent action taken by the Council to increase the allowance to 210 Ecu does tend to ease the situation. However, despite this a considerable erosion has taken place, particularly when the implementation date of 1 January 1983 is borne in mind. In fact, an intra-Community allowance of approximately 280 Ecu would be necessary on 1 January 1983 in order to restore the average purchasing power of the 180 Ecu allowance in operation on 1 January 1979.

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(1) Directive 82/443/EEC, O.J. L 206, 14.7.82, p. 35

This type of evolution was foreseen by the Commission when it made its proposal for a third Council Directive on travellers' tax-free allowances in 1977 (1). At that time the Commission proposed to adjust the allowances annually itself in the light of changes in the private consumption index for the Community and to notify the new levels to Member States for implementation the following year. However the Council failed to include any provision for automatic or semi-automatic future increases in the allowances in the directives adopted in 1978.

25. The Commission was given a mandate at the relevant Council meeting to carry out an annual examination of the operation of the intra-Community tax-free allowances system. Having done so for 1979, the Commission proposed an increase in the intra-Community allowance to 210 Ecu in its proposal for a 5th Council directive on travellers' tax-free allowances (2). The Commission made this proposal in order to maintain (on 1 January 1980) the real value of the allowance set in 1978 and to achieve a modest real increase.

The European Parliament, in its opinion on this proposal (3), called on the Commission to be more ambitious and to propose a programme of increases in the allowances over a number of years so that a real step forward could be made. The Commission proposed such a programme in its amendments to the original proposal. The idea was to achieve by 1982 an intra-Community value allowance of 300 Ecu.

In discussions the Council has so far rejected the idea of a programme. Discussion on the proposal for a 5th directive in Council simply centred on the possibility of increasing the limit from 180 to 210 Ecu, and, as mentioned above, the proposal has only now been adopted for implementation on 1 January 1983 viz. three years after the original date envisaged by the Commission.

26. Despite the efforts of the Commission, the Parliament, and the Economic and Social Committee, the lack of political will on the part of the Council is manifest and, indeed, discouraging. The Commission is well aware of the difficulties and problems experienced by Member States and addresses

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(1) O.J. n° C 31, 8.2.1977, p. 5
(2) O.J. n° C 318, 19.12.1979, p. 5
(3) O.J. n° C 117, 12.5.80, 83

itself to these subsequently in this report. However, it is seriously disturbed by the Council's neglect of the Community system of tax-free allowances system in this regard and expresses the wish that a renewal of political motivation be found and development of the system allowed to progress. At this stage it would be opportune to examine in some detail the actual reasons for the Council's reluctance to progress. What are the concerns of the Member States which lead them to refuse to allow the system develop as desired by the Commission and the Parliament ?

27. Some Member States put forward as their primary concern the loss of revenue through erosion of the tax base resulting from imports by travellers displacing normal domestic sales. Member States with high levels of indirect taxes fear the exploitation by travellers of the allowances system in order to buy goods, which are heavily taxed in their own country, in Member States with lower levels of indirect taxes. They also fear that high allowances lead to travellers undertaking their journey for the sole purpose of achieving a tax saving on the items bought abroad and to buy certain types of consumer goods not, in the normal way, carried by travellers (e.g. domestic appliances).

The Commission is sensitive to the Member States' concerns regarding erosion of revenue, particulary in current economic circumstances. But price differences do not result solely from differing tax rates. Differences in many other factors, such as profit margins, intensity of competition, distribution/manufacturing cycles can result in wide differences in price independent of tax rates. In regard to these elements, allowing a traveller to buy in the country with lower prices is economically advantageous as it exercises a downward pressure on price levels generally and thus combats inflation. Member States' problems must also be seen in the overall context of the development of the internal market, in which the allowances system plays a significant role. In such a global approach there is, as often as not, a swings and roundabouts situation with regard to purchases made by travellers. Particular Member States are attractive to travellers for purchases of particular goods but, in general, there is a two way flow and it is rare that a single Member State maintains an advantage in respect of all goods.

In addition it should be stressed that such problems as may arise, tend to be transitory. Changes in tax rates, in currency exchange rates and in the relative cost of living commonly lead to alteration of travellers' preferences for purchases so that a Member State or a particular area with a trade displacement problem can often find itself in the inverse situation with a net trade outflow shortly afterwards.

28. Another argument advanced by certain Member States against increases in the value allowances concerns the supposed adequacy of the existing allowances. It is suggested that the intra-Community limit of 180 Ecu is already sufficiently high to cover the needs of most, if not all travellers. The Commission doubts the adequacy of the existing intra-Community allowances in the context of a common market and would point out that it is very quickly reached in the case of a traveller importing, for example, a suit of clothes and a pair of shoes bought while abroad in another Member State. On the general point of the adequacy of the limit level, it has been pointed out earlier in this chapter (see paragraph 24) that a serious erosion of the real value of the allowance has been allowed to take place.

Clearly, such an erosion should not have been permitted. Nor should the Community be content with simple maintenance of real values of allowances. Rather, the aims already enshrined in Community legislation that travel between Member States should be facilitated by increases in allowances and that exemption benefiting individuals should be progressively extended (1) are those which should be pursued in this context.

29. Member States also invoke as a reason for not increasing the general intra-Community value allowance the continued existence of tax-free shops: they explain their reluctance to increase the allowance on the grounds that the goods being imported tax-free by travellers may have been acquired totally tax-free in one of these shops.

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(1) cf. Council Directive 78/1032/EEC, O.J. L 366, 28.12.1978 and Council Resolution of 22 March 1971 on economic and monetary union, O.J. C 28 of 27.3.1971.

The Commission cannot accept this as an argument for not increasing allowances, particularly as the bulk of tax-free sales is accounted for by sales of alcoholic drinks and tobacco. The major interest of both operator and traveller is in them. The Commission, recognizing this interest and the generally wide divergence in the tax treatment of these goods throughout the Community, has not in fact proposed any increase in the quantitative allowances for these goods since the establishment of the common system in 1969. Consequently it would contend that the tax-free shop aspect does not represent a real obstacle to a general increase in value allowances.

30. The Commission recognizes that, at the current stage of development, automatic adjustment of value allowances is not acceptable to the Member States. But it cannot accept the situation that has arisen following the Council's tardiness in adopting the fifth Council Directive on travellers' allowances and the inadequacy of the provisions therein. It is in favour of a regular increase in the allowance levels and to this end proposes that the Council plans the development of the intra-Community allowances some years in advance. Increases should be determined on two bases : the need to maintain purchasing power and the need to continue with the development of the system. This approach is the same as the pluriannual programme favoured by the Parliament in its opinion on the proposal for a fifth directive on travellers' allowances (see paragraph 25) and subsequently adopted by the Commission.

31. The Commission services have also considered the problem of the maintenance of real values from the viewpoint of purchasing power parities (PPP). There is a Community measure of these : the purchasing power standard. This measure is used to make comparisons in real terms between purchasing powers in the Member States. The Commission's Statistical Office calculates and publishes these data on an annual basis. Therefore a suitable vehicle exists for translating a given allowance into national currency levels that reflect the varying average price levels in the Member States. What advantage would this have ? Basically, it would result in allowances which would, in terms of a national currency, be pitched at levels which realistically reflected the price levels obtaining on the domestic market of the relevant Member State. It would also have the advantage of automatically reflecting price changes at national level on an annual basis.

However, the disadvantages would be manifold. First, reflection of national price levels in an allowance applied at importation is not logical. The purchases involved have necessarily been made abroad and so it seems more appropriate that price levels in the other Member States be reflected in the allowance applied by a given Member State. Also, application of a PPP factor would effectively destroy the unity of the common allowances

which are currently directly comparable from one national currency to another. Such a system would cause confusion among the travelling public. Finally, there would be untold administrative difficulty in relation to the tax remission scheme, as each Member State would have to apply a different tax remission limit depending on the destination of the traveller, giving a minimum of nine possible remission levels.

Consequently, the examination has led the Commission to the conclusion that application of a PPP based factor to the value allowance would not be a viable solution to the problem of maintenance of real values and would result in complicating a system specifically designed to be simple in order to minimise border controls.

Derogation from value allowance

32. Ireland's unit value derogation (see footnote to Table I, page 4) was agreed because of that Member State's particularly serious problems in adopting the common allowance fixed in 1978. This derogation expires at the end of 1983. A similar derogation permitted Denmark not to grant the tax-free allowance to goods exceeding 135 Ecu. However, this expired on 31 December 1981 and Denmark now applies the normal allowance of 180 Ecu without restriction(1) .

It is clear that any measure taken to ease particular problems being experienced by a Member State automatically reduces the need for a special derogation. Also, the evolution of the general economic situation has generally lessened, and in relation to some goods, totally eliminated the need for a special derogation for Ireland.

On a practical level, the existence of a special limit creates confusion among travellers and administrative difficulties particularly in respect of the common scheme for remission of tax on exports.

33. For these reasons, the Commission looks forward to the expiry of the derogation on 1 January 1984 when a uniform allowance can once again apply throughout the Community.

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(1) It should be noted that, by derogation from the recently adopted 210 Ecu intra-Community allowance, Denmark may continue to apply the 180 Ecu allowance during 1983 (see footnote (2), p. 3).

Third country allowances

34. The above comments are essentially confined to the intra-Community allowance. The question of increases in the third country allowances is obviously closely linked with action on the Community's customs duty-free allowances and with international obligations. Also, a particular problem arises for countries bordering the Community.

35. Recent increases in the value of the US dollar mean that the Community's third country allowance no longer respects its obligations within Customs Co-operation Council (CCC) to grant an allowance of $ 50 to travellers from contracting countries. Many other countries are presumably in the same position and it seems that a solution would best be found within the CCC framework, rather than through unilateral action on the part of Community.

36. In view of the particular geographic and socio-economic ties which exist between the Community and several neighbouring countries, it would perhaps be advisable to consider special treatment under the allowances system for these countries. The Commission favours opening discussions with the neighbouring countries concerned on means to improve the situation relating to cross border control of travellers between it and these countries. Such a move was requested by the Parliament in its previously mentioned opinion on the Commission's proposal for a fifth Council Directive on travellers' allowances. These negotiations would have to be joint customs/tax ones and, of course, the Commission would require a mandate from the Council to embark upon them.

37. In relation to third country allowances in general, the Council, acting on a proposal from the Commission, has recently adopted a directive increasing these allowances by a small amount with effect from 1 January 1982 (1). The aim of these increases was not to achieve real increases but simply to avoid reductions in national currencies because of currency fluctuations. A full discussion on this problem is found in the following section of the report.

B. NATIONAL CURRENCY EQUIVALENTS OF ALLOWANCES

38. The system of adjustment of national currency equivalents of Community allowances described in paragraph 20, is common to all directives

(1) Directive 81/933/EEC, O.J. L 338, 25.11.81, p. 24.

containing values allowances expressed in Ecu. Consequently the comments in this section are applicable in all cases, and in particular to the tax-free allowances for travellers as well as those for small consignments.

39. The objective of the system is to maintain strict equivalence between the allowances expressed in national currencies, in order to avoid cases of double taxation or non-taxation such as existed in the intra-Community system with the previous unit of account (UA) based system.

Prior to 1978, the UA allowances expressed in terms of Member States' currencies were calculated on the old fixed gold parities declared to the International Monetary Fund in 1971. Thus, while a common level of allowance existed in UA terms, the concordance was destroyed when the allowances were translated into national currencies. The introduction of the European Unit of Account (subsequently replaced by the Ecu or European currency unit), based on a basket of European currencies and the expression of allowance limits in terms of it enabled realistic parities to be re-introduced into the tax-free allowances system.

Ideally, allowances expressed in terms of national currency should be allowed to float on a daily basis to ensure their strict equivalence. This is clearly impractical from an administrative viewpoint and the solution adopted - annual adjustment - much more satisfactory. To further facilitate administration, Member States may round the limits in national currency terms and need not adjust if the fluctuation from one year to the next is less than 5 %.

40. As mentioned above the main concern of this system of adjustment is to avoid cases of double taxation or non-taxation. Consider the case of a Member State ("A") whose currency during the course of a year appreciates strongly vis-à-vis the currency of another Member State ("B"). At the beginning of the year, a traveller can buy goods in Member State A to a value of, say, A 100 (being taken as the equivalent of 180 Ecu) and import them tax-free into Member State B where a limit of, say, B 1,000 applies. If he bought goods valued at more than A 100 he could obtain tax remission on export and would be charged tax on entry into B as the goods would be valued at more than B 1,000.

However, problems may arise where during the course of the year the situation evolves so that A 80 = 180 Ecu = B 1,000, but A's allowance level remains at A 100. A traveller buys goods of unit value A 90 which,

being below the allowance limit in A do not qualify for tax remission on exportation. However on entry into B the goods which, at the current exchange rate are valued at B 1,125, are above B's limit of B 1,000 and do not qualify for tax-free importation. The result, double taxation. Similarly non-taxation could in theory occur, although the condition relating to acquisition subject to general rules governing taxation and the requirement to have the relevant document endorsed by customs of the Member State of importation (see description of tax remission scheme - paragraph 17) should combine to avoid this in practice.

41. Before continuing with an analysis of the operation of this currency adjustment mechanism to date it should be recalled that the entry in the Council minutes already referred to in paragraph 25, which requires the Commission to carry out an annual examination of the operation of the tax-free allowances system, also calls on the Commission to submit proposals to ensure, in particular, that the intra-Community exemptions do not diminish in terms of national currency. The idea was that no Community citizens, whatever their country, should see allowances being reduced in terms of their own currency as a result of the operation of a Community mechanism as this would engender negative feelings against the Community.

42. What has experience of the operation of the adjustment mechanism shown ? Most Member States have made use of the possibility of rounding the sums in their national currencies. The Italian situation is not clear as the allowance limits do not appear to have been converted officially into the national currency. Also, in the three adjustments to date, Member States which were not obliged to adjust, being within the 5 % tolerance, did not do so. No adjustment was obligatory when the calculations for 1980 were made. When the 1981 allowances were set two Member States (Italy and Denmark) were obliged to increase their allowances and the United Kingdom was obliged to reduce its allowances. No new adjustments were dictated by the 1982 exercise.

43. In fixing the 1981 levels, the question of non-reduction of the allowances in national currency terms came into play. The United Kingdom did not wish to reduce its allowance and the Commission shared the view that this would be politically undesirable. In relation to the intra-Community allowance there was a proposal already on the table to increase the allowance in Ecu terms by an amount sufficient to offset the required reduction in the U.K. As far as the other allowances were concerned, the Commission

promptly proposed increases sufficient to offset the reduction which were subsequently adopted by Council (see paragraph 4).

44. The Commission has long held the view that from a political and psychological angle, reductions in terms of national currencies should not be countenanced. Until now it has felt support for this view by the Member States in Council. Indeed, the Council manifested this support in the minutes of its meeting when it adopted the third Council directive on travellers' allowances in 1978, when it undertook to act promptly on proposals from the Commission aimed at avoiding reductions of allowances in national terms. The Commission considers that, in order to avoid lengthy and often unfruitful discussions, that a simplified decision making procedure should be established to enact common allowances sufficient to offset reductions (1). Such a procedure would eliminate one of the major drawbacks of the current situation which is the time factor. The date for establishing exchange rates for the fixing of national currency equivalents of the allowances is the first working day of October of the year preceding that in which the allowance is to apply. So there is a three-month lag between the establishment of the national currency equivalents and their application. If a reduction of the allowance in a national currency is noted, an amending directive is necessary which, with consultation of the Parliament and the Economic and Social Committee, would require an absolute minimum of 6 months from date of inception to application by the Member States and a more normal time scale of 9 months. This leaves a 3 to 6 months period during which the allowance should legally be reduced in national currency terms by the Member State concerned only to be increased shortly afterwards or during which the Member State does not reduce in infraction of the directive, giving rise to the potential double or non-taxation described above.

45. In order to eliminate this undesirable feature the Commission envisages a semi-automatic system of adjustment. It is proposed that the Council empower the Commission to operate a system on the following lines for intra-Community allowances:

(1) See point 34 of the Commission's programme for the simplification of value added tax procedures and formalities in intra-Community trade. O.J. C 244, 24.9.81, p. 4.

The Commission would calculate, on the basis of the exchange rates in force on 1st October, whether or not any Member States would be required to reduce its allowances in national currency terms. The Commission would then notify Member States as to whether an adjustment was necessary or not and proceed by decision to adopt a new allowance at a level high enough to avoid the foreseen reduction or reductions. This decision would be taken before 1st November, published officially, and notified to the Member States, the Council and Parliament. Member States would have one month in which to request if necessary, that the matter be discussed in Council. Where a discussion was requested, this would have to be held as soon as possible and the Council would be enabled to overturn the Commission's decision. In the event of such an overturn the Council would be required to give the Commission guidelines on the on the measures which it considered necessary to cater for the then current situation.

46. A further problem in relation to the fixing of national currency equivalents of Ecu limits arises when there is a re-adjustment of parities within the European Monetary System (EMS) after the annual fixing of the allowances .

On the question of principle, the Commission's attitude is the same as for the annual adjustment exercise; it considers that reductions of allowances in national terms should not be countenanced and the comments made above in this respect apply mutatis mutandis. From the procedural angle the problem is, of course, different. If significant changes in parities were to occur overnight with a re-adjustment in the EMS, there would be a need to respond quickly and the Commission would propose the application, immediately after any such re-adjustment, of a semi-automatic system of increases in Ecu allowance levels, if necessary, on the lines described in paragraph 45 above.

C. QUANTITATIVE ALLOWANCES

47. The travellers' allowances system provides for quantitative limits to be applied to tobacco products, alcoholic drinks, perfumes and toilet waters, coffee and tea to take account, in particular, of the significant difference in the excise duty rates applied to these goods in the various Member States. Development of the duties in question depends on the economic and budgetary policy of the Member States concerned, which often results in increasing tax divergences and widening price differences.

48. On the harmonization front, the Community will at some time establish, as provided in the Commission's 1972 proposal (1), the same excises in all Member States. In addition, if neutrality of competition is to be ensured the structures of these excises need to be harmonized. Finally, some convergence of excise rates is also considered essential in the context of the general longer term development of the Community. Clearly, once excise rates were firmly set on a convergent trend, significant increases in quantitative allowances could be implemented without the risk of disruption and this remains the Commission's long term objective. In the shorter term, in view of the revenue importance of the tobacco and drink excises the Commission considers, that the quantitiative allowances for the main excise goods cannot be increased across the board so long as present divergences in excise rates persist. However, it is considered that progress should be made on the wine allowance (see paragraph 53 below) and the allowances for coffee and tea (paragraph 51), independently of harmonization of excise rates.

Danish derogation

49. Annex VII, Part V (Taxation) of the Act of Accession to the European Communities of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland authorised Denmark, until 31 December 1975, to exclude from the tax allowances relating to turnover taxes and excises applicable in international passenger travel, the following goods:

(1) On 7 March 1972, the Commission sent to Council a proposal for a directive on excise duties and indirect taxes, other than value added tax, which are levied directly or indirectly on the consumption of products (OJ no C 43, 29.4.72). This proposal remains before the Council.

- tobacco products;
- distilled beverages and spirits, of an alcoholic strength exceeding 22 % vol ;
- beer, only for quantitites exceeding 2 litres.

The need for this derogation arose from considerable differences in the excise rates applied to these goods in Denmark and Germany.

On the expiration of this period, in accordance with paragraph 1 (c) of part V of the Annex concerned, the Council prolonged the authorisation on two occasions (1), first until 31 December 1976 and then 31 December 1977.

The Danish Government subsequently requested a further period in order fully to adapt to the Community system of allowances. In contrast to the two previous derogations, which were limited to one year, the Council, on 19 December 1977, adopted a Directive granting a further derogation to Denmark until 31 December 1982 (2). This derogation, which allows Denmark to apply the restrictions summarized in paragraph 15 (e) above to travellers making trips of short duration, provides for a progressive alignment of the Danish system with the Community rules. In accordance with these provisions the restictions applicable to non-residents of Denmark were abolished from 1 January 1980 and the quantity of cigarettes admitted for Danish residents was increased from 40 to 60 on 1 January 1982. Also the minimum period for the application of the restriction, expressed in terms of the length of stay of the traveller abroad, was reduced in Denmark under the terms of the derogation from 72 to 48 hours on 1 January 1981.

50. When the directive granting the derogation was adopted, the Commission undertook to draw up each year, starting in 1978, a report on evolution of the prices of alcoholic drinks and tobacco products in Denmark and Germany, on the evolution of fares for travellers in Denmark, and on the fiscal policy of the Danish Government. Five such reports have been prepared to date. While the first four reports showed little or no reduction in price differentials between Denmark and Germany during the first four years of the derogation, the fifth report, covering the period from September 1981 to June 1982, notes substantial reductions in retail price gaps between the countries. Tax level differences have also been reduced during this latter period, although projected increases in Danish excise duties will offset this movement to some extent. Also particularly for expensive alcoholic drinks, the mixed specific/ad valorem excise on alcohol continues to have a negative influence.

(1) Directive 76/134/EEC of 20.1.1976 (OJ no L 21 of 29.1.1976);
Directive 77/72/EEC of 18.1.1977 (OJ no L 23 of 27.1.1977)
(2) Directive 77/800/EEC of 19.12.1977 (OJ no L 336 of 27.12.1977)

50 bis. On 29 November 1982 the Commission, on a request from the Danish Government, sent a proposal to the Council for a phasing out of the Danish derogation within five years. The proposal offered the Danes a period of two years with only very modest alignments on products for which the Danish and German retail prices are very much the same. After three years all these products should be in line with the Community rules. For the more sensitive products, such as cigarettes and spirits, a phasing out is proposed to take place in the last three years of the five years derogation period. Due to the difficult economic situation in Denmark it was further proposed that after one and a half years - in the light of the prospects of the Danish economy at that time - the time-table can be re-examined if need be. On 30 December 1982 the Council adopted this proposal with some minor modifications. (1)

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(1) Directive 83/2/EEC of 30.12.1982 (O.J. L 12 of 14.1.1983, p. 48)

Coffee and Tea

51. The amended proposal for a fifth Council Directive on travellers' allowances, referred to in paragraph 25, provided for increases in, and eventual abolition (from 1 January 1982) of, the quantitative limits on tea and coffee. The excise duties on these goods are, in general, minor in terms of revenue and are only applied by certain of the Member States.

Unfortunately, it must be recorded yet again that the Council failed to adopt this aspect of the proposal, thus making a eventual decision on these matters more difficult as Belgium has recently been added to those Member States which levy a duty on coffee.

52. However, this does not reduce the argument that, besides the fact that the excise duties on coffee and tea are levied only by five and three Member States respectively, the budgetary consequences of the abolition of the travellers' quantitative allowance for these goods could only be of minimal significance. Furthermore since these are products coming from developing countries, the maintenance of these restrictions runs counter to the resolution of 18 September 1970 of the United Nations Council on Trade and Development (UNCTAD) since the existing allowances can hardly encourage the consumption of these goods.

Wine

53. The initial traveller's allowance directive of 28 May 1969 fixed the tax-free allowance for still wine at 2 litres for intra-Community travellers. This limit has since been increased on 2 occasions : first in 1972 to 3 litres and subsequently in 1978 to 4 litres (although Denmark was allowed to retain the 3 litre limit until 31 December 1983).

Besides general considerations in favour of increasing tax-free allowances, the Commission favoured in particular an increase in the wine limit in order to encourage consumption of wine in the Community and to respond to the wishes of the Parliament, expressed in its opinion on the Commission's proposal for a fifth Council Directive on traveller's allowances. Accordingly, in its amendments to this proposal it proposed a 5 litre intra-Community allowance (4 litres for Denmark). This aspect of the proposal was also not adopted.

In this regard, the difficulties caused by the level of wine taxes in Denmark are not without relevance and contribute to a major extent to its reluctance to increase the wine limit. Once again the excise rate relative to that in Germany is the determining factor as the latter country applies no excise duties at all to still wines.

Tobacco

54. It was mentioned earlier (paragraph 14) that the Community quantitative limits applied without prejudice to the relevant national provisions concerning travellers whose residence was outside Europe. This provision was included to take account of the Community's customs legislation on duty-free allowances which provides for a higher tobacco limit for travellers whose residence is outside Europe (400 as opposed to 200 cigarettes (1). However, as pointed out previously, a clause was included, stipulating that no more favourable allowances than those applied in intra-Community travel should be grated in any case. Currently the intra-Community allowance is 300 cigarettes.

Historically, this higher cigarette allowance was granted by some Member States on the basis of an OECD Council decision of 20 July 1965 concerning administrative facilities in favour of international tourism, and was incorporated into the Community customs scheme for duty-free allowances for travellers. The situation has, of course, now changed somewhat and the Commission has difficulty in finding a continued justification for this measure. Also, it is of the opinion that the notion of Community preference requires Member States not to accord a higher allowances to third country residents than to their own citizens.

D. REMISSION OF TAX SCHEME

55. As described earlier, the remission of tax scheme requires control to be effected by endorsement of the invoice or other document in lieu thereof. Some Member States are content to control simply by the invoice while others require special forms which must be obtained in addition to the invoice when the goods are bought, thus complicating the operation of the scheme. The scheme as applied in the Member States has also been criticized because of its general administrative complexity and the long delay in actually obtaining repayment of the tax involved. Some Member

(1) Regulation 1544/69 - OJ L 191 of 5.8.1969

States allow the trader to refund the tax whereas others process the applications centrally.

Clearly, therefore more uniformity could be introduced and improvements made to the system.

56. With a view to reducing the administrative complexity of the scheme and shortening the repayment delays mentioned above the trader himself could be allowed, at the minimum to process applications for refunds from travellers without reference to the authorities and make the repayment in all cases where a relatively small sum of tax is involved. This sum should be fixed at a common level by the directives. Furthermore a maximum time delay for refund of the tax should be incorporated in Community legislation. This could be set at, for example, 3 months, to be exceeded only in a case where documentation is incomplete or force majeure intervenes. Such a provision would eliminate the sometimes embarrassingly long time delays which have come to the notice of the Commission.

57. Also there is a problem of marginality in the operation of the remission scheme and the tax-free allowances system. Double taxation could occur where a traveller is refused tax remission in the case of an item which is marginally under the tax-free allowance limit in the Member State of exportation. This occurs where on importation into another Member State the item does not qualify for tax exemption as it marginally exceeds the allowance level as laid down in the latter Member State's currency. This could happen because of the rounding facility granted to Member States when fixing the allowances (and hence tax remission limits) in national currencies. **Given the impracticability of arranging matters in the country of exportation after the traveller has left the country, the most satisfactory solution would appear to be for the authorities of the Member State of importation to have a flexible attitude and to allow the item in question to be imported tax-free when it is established that it has borne tax in the country of origin.**

E. TAX-FREE SHOPS

58. Tax-free (or duty-free as they are sometimes known) shops are a widespread phenomenon throughout the Community. They are for the most part situated at ports and airports or on board international means of transport. In the case of shops at ports and airports their status is essentially that of a customs/tax warehouse. Sales made in these tax-free shops are confined

to persons leaving the country concerned.

Clearly tax-free outlets are economically important as is evidenced by the reliance laid on them by port and airport authorities and international transport companies. Their attractiveness for the traveller stems from the operation of the country of destination principle for taxes along with the tax-free allowances system. Taxation in the country of destination ensures that goods may be bought by travellers in a tax-free outlet and exported free of tax whereas the tax-free allowances scheme ensures that these goods, within limits, may be imported tax-free into the country of destination. The goods in question can thus enter into home use in the Community completely free of tax.

Community law and tax-free shops

59. The only legal provision in Community law governing travellers' tax-free allowances in which a particular reference to tax-free shops is made is Article 6(2) of Directive 69/169/EEC. This provision obliges the Member States to take the necessary steps to permit remission of tax for travellers leaving their territory under certain specified conditions and is proceeded by a clause drafted as follows "without prejudice to rules relating to sales made at airport shops under customs and on board aircraft".

This clause, which was inserted into the directive when it was amended for the first time, in 1972, to introduce on an optional basis, a remission of tax-scheme, has been invoked by Member States' authorities as authorizing the existence of tax-free shops in intra-Community travel. It is noteworthy that a reservation with respect to tax-free shops is not included in the basic rule, namely Article 6(1) of the Directive, obliging the Member States to take appropriate measures to avoid remission of tax being granted for deliveries to Community residents who benefit from the common tax-free allowances.

60. The only other provision of the directive which can be considered to have a bearing on tax-free shops or rather goods bought therein is that condition (mentioned in paragraphs 9 and 29) requiring goods benefiting from the intra-Community allowance to have been acquired subject to normal tax conditions on the domestic market of one of the Member States. As previously

remarked, this condition does not exist in relation to the third country allowance.

61. In case No. 158/80, the European Court of Justice had, for the first time, to deal with the Directive 69/169/EEC.

This case concerned cruises operating from Germany, mainly on the Baltic Sea, on board of which were offered for sale goods normally subject to high duties and taxes, for example, alcoholic drinks, tobacco products, butter, meat, cheese. The agricultural goods involved also benefited from export restitutions under the common agricultural policy. A wholesale trader and a retailer together instituted proceedings before the Hamburg Finance Court claiming that the butterbuying cruises were in breach of Cummunity law. The Finance Court referred the matter to the European Court for preliminary ruling which was delivered in the latter Court's judgment of 7 July 1981. The Court's conclusion was that the practice of allowing these butter-ships to continue to operate was illegal. Insofar as Directive 69/169/EEC is concerned it ruled as follows :

"In the case of travel between non-member countries and the Community, the exemption provided for in Council Directive No 69/169 of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel may be granted only to travellers who arrive in the customs territory of the Community from a non-member country and in this case the circumstances in which the goods have been acquired are irrelevant to the grant of the exemptions.

In the case of travel within the Community, where the journey from one Member State to another involves transit through the territory of a non-member country or begins in a part of the territory of the other Member State in which the taxes to which the directive refers are not chargeable on goods which are consumed within that territory, the traveller must be able to establish that the goods transported in his luggage were aquired subject to the general conditions governing taxation on the domestic market of a Member State and do not qualify for any refund of turnover tax and/or excise duty. If the traveller is unable to provide the aforementioned proof he may enjoy only the more restricted exemption provided for in the case of travel between non-member countries and the Community.

In adopting Directive No. 69/169, and the Second and Third Directives of 12 June 1972 and of 10 December 1978 respectively which supplement it, the Council intended gradually to establish a complete system of exemptions from turnover tax and excise duty for goods contained in travellers' personal luggage. Consequently in this field the Member States are left with only the restricted power given to them by the directives to grant exemptions other than those specified in the directives."

Commission's attitude to tax-free shops

62. The Commission has always recognized and continues to recognize the political sensitivity of the tax-free shops issue. In making its proposal for gradual suppression of tax-free sales within the Community in 1972 (1) and in subsequently withdrawing this proposal in the face of the impossibility that Council would agree it was conscious of this. It was equally conscious of the political angle when in 1979 it took a decision not to press for the abolition of tax-free shops but to continue its efforts to bring order into the system.

63. Following the Court's judgement in the case described above the Commission has naturally reconsidered the situation and, in February 1982, came to the broad conclusion that the Court's judgement implied that the practice of allowing sale of goods free of customs duties and agricultural levies to travellers in intra-Community trade was not compatible with Community law. It notified the Member States accordingly.

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(1) OJ No C 113, 28.10.1972, p. 15.

PART II

SMALL PARCELS OF A NON COMMERCIAL NATURE

Background

64. The Community has instituted a common system of tax-free allowances for small parcels (called small "consignments" in the directives) of a non-commercial nature sent from one Member State to another or from a third country to a Member State. The intra-Community scheme dates from 1974 whereas that for third countries was first adopted in 1978.

The primary motivation behind this system of allowances is similar to that behind the travellers' allowances system : removal of obstacles to the development of the internal market for the intra-Community allowance and adoption of a unique Community approach for the third country allowance. The intra-Community allowance also aims at facilitating personal and family contacts between private persons in different Member States. This facilitation of family contacts is of particular importance in certain cases such as that of migrant workers where exchange of parcels can be of great personal and sometimes economic importance.

Current state of development

65. The following table gives details of the current tax-free allowances applicable to small parcels.

These were adopted by the Council on 17 November 1981 and apply in the Member States since 1 January 1982.

Table: Allowances for small parcels of a non-commercial character applied by the Member States

Member State	Intra-Community allowances (70 Ecu)	Third Country allowance (35 Ecu)
Belgium	BF 2900	BF 1400
Denmark	Dkr 550	Dkr 275
Germany	DM 175	DM 90
Greece	Dr 4300	Dr 2150
France	FF 420	FF 210
Ireland	Irl 48	Irl 24
Italy	Lit (88571)	Lit (44286)
Luxembourg	LF 2800	LF 1400
Netherlands	HFl 200	HFl 100
United Kingdom	UKL 40	UKL 20

( ) = unrounded national currency equivalents calculated by the Commission departments owing to the lack of officially fixed figures.

66. The following table shows the quantitative allowances which apply to certain goods if they are sent in a small parcel from a third country.

Table - Quantitative allowances

Goods	Allowances
Tobacco products	50 cigarettes or 25 cigarillos or 10 cigars or 50 grams of smoking tobacco
Alcoholic beverages	1 bottle of spirits (not exceeding one litre) or 2 bottles of still wine
Perfumes	50 grams of perfume or 0.25 litres of toilet water
Coffee	500 grams or 200 grams of coffee extracts or essences
Tea	100 grams or 40 grams of tea extracts or essences

67. It is important to note that Member States may reduce these quantities or, indeed, altogether exclude the goods mentioned from the benefit of the allowance. Denmark excludes tobacco products, alcoholic beverages and perfumes from the allowances. Ireland excludes tobacco products and alcoholic beverages and the United Kingdom reduces the allowance for spirits to 0.25 litre.

In relation to small parcels from another Member State, it is also open to Member States to restrict the quantities of the goods mentioned in the Table III (see page 5) for the intra-Community allowance and to exclude these goods if they so wish. However a provision is included in the directives obliging Member States to apply an intra-Community régime at least as favourable as that applied by them to third countries. All Member States, apart from Italy and Luxembourg, apply differing quantitative

allowances to these goods and those mentioned above as applying special restrictions or exclusions (Denmark, Ireland and the United Kingdom) also apply these in the intra-Community context.

68. The most important conditions attaching to the small parcels scheme are :

a) the small consignment must be of a non-commercial character, and
b) it must be sent from one private person to another.

69. The criteria determining non-commercial character differ slightly in the intra-Community scheme and the third countries scheme. Both schemes require that no payment on the part of the recipient be involved. Both also require that the goods be for personal or family use and not for commercial use, the nature and quantity of the goods being used as the yardstick. The difference occurs in regard to occasionality. Parcels from third countries must be of an occasional nature while there is no such requirement in respect of intra-Community parcels. However for intra-Community parcels to qualify for the tax-free allowance the goods involved must have borne normal taxes and duties on the domestic market of one of the Member States.

70. One further provision in the third country small parcels directive stipulates that where goods, such as tobacco and spirits, which are subject to quantitative allowances, are contained in a parcel in quantities exceeding the relevant allowances then no relief at all is given for the parcel in question.

71. Community law also provides for the suppression of customs clearance fees for intra-Community parcels which qualify for exemption from taxes and duties.

72. Finally there is an annual fixing of the national currency equivalents of the common allowances, the governing provisions of which are the same as those for travellers' allowances (see paragraph 20).

Development of the system

73. In general the small parcels tax-free allowances system works smoothly and has not encountered many problems. The allowances have been recently increased and appear adequate for the time being. However, as in the case of travellers allowances, the Commission is conscious of the

the potential for erosion of the real value of these allowances and will propose increases at appropriate times. As to the translation of the common levels into national currencies, the problems here are common to both the small parcels and other tax-free allowances directives. Therefore the discussion contained and the improvements proposed in paragraphs 38 to 46 are also broadly applicable here.

74. On the quantitative allowances it is apparent that there is a need for definite common limits to be established, particularly in the intra-Community content. The current situation is effectively completely disharmonised and the Commission favours and will propose common minimum limits between Member States.

75. The Commission has long considered that an area in which the common allowances for small parcels could be developed is that of sales to individuals of books, reviews or newspapers involving dispatch from one Member State to another. These transactions are in principle subject to general VAT rules as regards both importation and exportation.

Application of these rules to transactions which more often than not involve only small amounts is regarded as being particularly onerous both by buyers in the case of imports and sellers in the case of exports. Information available to the Commission shows that firms sometimes consider it expedient either not to remit tax on goods, thereby exposing the buyer to double taxation, or to disregard orders placed with them, and this amounts to a legally dubious refusal to sell.

Some tax relief applicable to these transactions should soon be enshrined in Community legislation when the Commission's proposal for a directive covering general exemptions from VAT on the permanent importation of certain goods (1), currently under discussion at Council, is adopted. This proposal will provide for, inter alia, an exemption for imports of small consignments of minimal importance whether or not they be commercial. The provisions are framed on the one hand, in terms of value and, on the other (for intra-Community traffic), in terms of tax due. The levels proposed are 10 Ecu in value and 3 Ecu, with an option to increase to 6 Ecu, in tax. It is reckoned that a large proportion of imports of books etc. will be able to benefit from exemption under these provisions.

(1) O.J. C 171, 11.7.80

76. However the Commission feels that the situation could be further improved by introducing tax relief in respect of the importation of books, reviews or newspapers addressed by a taxable person established in a Member State to an individual in another Member State provided that tax has been paid on the goods in the country of consignment and - possibly - the value of the goods does not exceed an amount fixed at such a level (higher than the 10 Ecu mentioned above) so as to avert any serious risk of distortions of competition arising out of differnces in VAT rates between Member States. This risk would seem to be small however, since the goods in question are normally subject to a low rate of tax in Member States, since postage offsets the differences in tax rates and the goods sent are not always available from taxable persons in the country of importation.

77. A question which also arises in the common system of allowances for parcels is that of marginal relief for parcels exceeding the normal allowance limits in value terms or in terms of the quantities of tobacco products or alcoholic drinks contained therein. As mentioned in para. 70, such parcels would not benefit from any relief at all under current provisions.

Undoubtedly, it could appear anomalous in the eyes of an individual receiving a parcel valued at, say, 80 Ecu or containing 60 cigarettes that the parcel should be taxed on its total value whereas a parcel of a value of 70 Ecu or containing only 50 cigarettes is completely free of tax. The argument for maintaining such an arrangement is essentially administrative as the procedures necessary to exempt the first 70 Ecu value of a parcel or the first 50 cigarettes would be cumbersome and costly. For example, which goods would be allowed in under the 70 Ecu limit ? In a parcel containing cigars and cigarettes, which would be allowed in free of duty ? However these problems should not be over-estimated and in the context of an accelerated clearance procedure (discussed below) could well be overcome.

78. Another possible solution to the problem and one which appears administratively more acceptable would be to give marginal relief in terms of tax due on a given consignment. For example, it may be worth while considering a provision which provides that, in the case of an intra-Community parcel exceeding the 70 Ecu limit marginally but fulfilling all the other criteria for exemption from taxes, no tax is payable by the consignee where the total tax due is less than 5 Ecu and where it exceeds 5 Ecu the total amount due is reduced by 5 Ecu. Similarly, in the case of a parcel containing goods in excess of the relevant quantitative limit, it is considered that tax-free admission could be envisaged up to the common limits to be laid down (see paragraph 74).

PART III

CLEARANCE PROCEDURES APPLIED TO INDIVIDUALS

79. The Commission has long been concerned about the way in which individuals experience the reality of the common market. In this context one of the most striking experiences (negative or positive as the case may be) an individual can have is the clearance procedure applied to him when he crosses an intra-Community border or when he goes to collect a parcel sent to him from another Community country. Unfortunately all too often the manifold controls still applied in intra-Community traffic of this nature lead to severe frustration of the individual and disillusion him as to the real impact of the Community at his level.

80. For travellers, the controls vary widely as between the various Member States and the method of transport used. Certainly, these controls orginate from reasons other than taxation and as such fall outside the ambit of this report. However, even looking to the tax-related controls only, these represent an area worthy of critical analysis which could be ripe for some action at the Community level. It should be noted that this aspect for clearance procedures has to some extent been noted in the travellers' allowances directives where it is provided that Member States are required to enable travellers to confirm tacitly or by simple oral declaration that they are within the limits and fulfil the relevant conditions. This requirement was added to the system in 1972 and aimed at encouraging some real simplification of cross-border controls for the normal travelling public. The idea was to generalize the use of the "red/green" or "dual-channel" or analogous systems of passenger control which enable the traveller to choose for himself whether he is within the allowance limits and, if so, to pass through the border control subject only to spot check as opposed to systematic control.

81. However, whether or not the traveller has felt a genuine simplification is open to question. In the case of car travel, considerable differences still exist in the cross-border controls applied between the Member States. Some apply systems where the actual controls applied are

minimal whereas others control almost on a systematic basis with consequential long delays at border posts. As far back as 1968, the Commission recommended to the Member States that border control of normal private cars should be carried out only in exceptional circumstances and to remove the actual physical barriers at customs posts(1). Clearly there is a need to review the impact of this recommendation and perhaps incorporate a re-iteration of its objectives in Community law.

82. Also, hours of opening of cross border control points can be a source of much frustration to a traveller requiring specific customs or tax controls e.g. in the case of payment of tax on goods for which tax remission is being claimed in the country of departure. Many cross border points operate what are effectively office hours which are hardly relevant to the normal traveller who may find himself crossing the border late at night.

83. Some Member States for which car traffic is essentially maritime (i. e. arriving by ferry) apply a red/green system of control to this traffic which appears to work satisfactorily. Of course the numbers of cars involved are considerably smaller than in the case of normal traffic crossing a land border. Consequentially generalization of the system to such traffic would need careful examination as to practicability on the ground. However, the Commission is of the opinion that it is necessary to ease cross border controls applied to car traffic in the direction indicated by the directive viz. tacit declaration by the travellers and occasional checks only.

84. **As to air passengers,** the controls applied are usually more formalized and generally are modelled on the tacit declaration idea in the directives. It may be that further relaxation of the general tax-related controls is merited and this requires further study on practical level. It is considered that the general comment on particular administrative facilities for travellers also applies here albeit to a lesser extent.

85. In the case of small parcels, sometimes the clearance procedures involved can be particularly burdensome and time consuming for the individual involved. Obviously this comment applies where the allowance is exceeded or the conditions not fulfilled. In some Member States it is

(1) Commission Recommendation No. 68/289/EEC of 21 June 1968, OJ No L 167, 17.7.68, p. 16.

necessary to go to a clearance depot to obtain the parcel, comply with various administrative procedures and pay, in addition to the relevant taxes and duties chargeable, a customs clearance fee. In others, a more simplified system applies whereby the postman brings the parcel to the consignee's home and collects the relevant charges, which have already been assessed.

86. In general, the Commission considers that the clearance procedures applied in intra-Community trade to goods belonging to or sent to individuals where taxes or duties are payable could be simplified and streamlined. It envisages a clearance procedure which would enable the person involved to make his declaration and pay the necessary duty and/or tax with the minimum fuss. The authorities' requirements and the persons's obligations would be laid down in Community legislation which would incorporate, inter alia, guidelines on the procedures to be used, the calculation of taxes due and the method of payment, the general aim being to facilitate the individual involved.

PART IV

SUMMARY OF MAIN CONCLUSIONS

87. This part of the report outlines the main conclusions which the Commission has drawn from its examination of the Community's system of tax-free allowances benefiting individuals. Following publication of the report and in the light of the ensuing discussions among the various interested parties, the Commission intends to present to Council a proposal for a directive on tax-free allowances which will incorporate provisions based on this report.

88. The Report's main conclusions are as follows :

a) the current intra-Community travellers' allowance is not adequate and increases in real value must be made ;

b) the Council should approve a pluriannual programme for development of the system ;

c) discussions on third country travellers allowances should be opened with neighbouring countries ;

d) allowances should not be reduced in national currency terms and a semi-automatic increase procedure should be established to prevent this happening ;

e) realignment of national currency parities should be reflected in the allowances on the basis of d) above ;

f) across the board increases in quantitative allowances for tobacco and alcoholic drinks are a long term objective dependent on convergence in excise rates being achieved;

g) the wine allowance should be increased and the allowances for tea and coffee abolished independently of harmonization of excise rates;

h) the granting of a higher tobacco allowance to non-Community residents than to Community residents is inconsistent with the concept of Community preference and should be discontinued;

i) common procedural methods for the tax-remission scheme should be established in order to simplify its operation ;

j) the small parcels allowance scheme broadly operates satisfactorily but could be developed :

- to facilitate traffic in books etc. and
- to provide some marginal relief for parcels almost within the normal allowances ;

k) the clearance procedures applied to individuals should be simplified.

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