



EUROPEAN
COMMISSION

Brussels, 3.12.2013
COM(2013) 849 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**in accordance with Article 16 of Council Directive 2007/74/EC on the exemption from
value added tax and excise duty of goods imported by persons travelling
from third countries**

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**in accordance with Article 16 of Council Directive 2007/74/EC on the exemption from
value added tax and excise duty of goods imported by persons travelling
from third countries**

TABLE OF CONTENTS

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL.....	2
1. Summary	4
2. Analysis of consultation results	4
2.1. Introduction.....	4
2.1.1. Legal base and main elements of the Directive	4
2.1.2. Methodology	4
2.2. Discussion of comments received.....	5
2.2.1. Articles 3, 7 and 13 - Definitions.....	5
2.2.2. Article 6 a - Interpretation of “occasional imports”	8
2.2.3. Article 8 - Treatment of other tobacco products (here: snus)	11
2.2.4. Article 8(2) – distinction between air travellers and other travellers.....	11
2.2.5. Articles 8, 9, 11 – Quantitative limits	12
2.2.6. Article 10 – Age of travellers.....	12
2.2.7. Article 11 – fuel in a portable container.....	13
2.2.8. Article 14 – Minimum tax amount.....	14
2.2.9. Relation between monetary thresholds and quantitative limits.....	14
2.2.10. Inland navigation and passenger transport on the river Danube	14
3. Overall evaluation and conclusion	14
4. Annex	15

1. SUMMARY

This report is based on Article 16 of Council Directive 2007/74/EC on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries ('the Directive') according to which the Commission shall provide a report to the Council concerning the implementation of this Directive, where appropriate accompanied by a proposal for amendment.

For preparing this report the Commission sent a questionnaire to Member States in June 2012 requesting them to comment on any part of the Directive (all Recitals and Articles) and raising specific questions on the use of exemptions provided for in the Directive. The Commission received replies from all the then 27 Member States¹. 15 Member States saw no need to amend the current rules. 5 Member States suggested editorial changes and 7 Member States reported problems with the application of certain provisions.

While identifying a number of relevant problems, notably as regards the definition and interpretation of technical terms such as 'occasional imports', the Commission sees no convincing case for legislative action at this stage and will rather endeavour to tackle these issues via relevant Committee procedures, exchange of best practice and practical administrative guidelines and tools.

2. ANALYSIS OF CONSULTATION RESULTS

2.1. Introduction

2.1.1. Legal base and main elements of the Directive

The legal base of this report is Article 16 of the Directive: *"Every four years and for the first time in 2012 the Commission shall forward a report on the implementation of this Directive to the Council, where appropriate accompanied by a proposal for amendment."*

The 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 a third country or from a territory where the Community provisions on VAT or excise duty, or both, do not apply. In other words it defines essentially the EU tax-free allowances in international travel. Article 41 of Regulation 1186/2009 is relevant as far as customs duties are concerned. This is not directly covered by the present report other than for purposes of consistent analysis or in an attempt to address synergies (see below).

The aim of the regular evaluation as requested via the reporting obligation is to verify whether the definitions, threshold values, quantitative limits and other provisions laid down in the Directive still reflect economic realities and serve their purpose.

2.1.2. Methodology

For establishing this report the Commission carried out a consultation of Member States in order to obtain feedback on the implementation, effectiveness and usefulness of the relevant provisions. In particular, specific questions were asked about the use of exemptions and quantitative limits provided for in the Directive². The data of the questionnaire provided the principal input for this report. The Commission services also evaluated the "Report on personal luggage provisions – Reporting on issues related to the implementation of Article 41

¹ Croatia joined the EU on 1 July 2013 only and is not included in the exercise.

² The questionnaire was presented in a meeting of the Committee on Excise Duty and open for comments from 26 June 2012 until 27 July 2012.

of Council Regulation (EC) No 1186/2009 which was introduced by Council Regulation (EC) No 274/2008” established by the Secretariat General on 22 November 2011 to the Council³.

While Regulation No 274/2008 addresses exemptions from customs duties and Council Directive 2007/74/EC addresses exemptions from value added tax and excise duties, both sets of rules basically deal with the same issues, namely imports of goods from third countries or territories where the Community rules do not apply, carried in the personal luggage of travellers. Moreover, both sets of rules are applied by the same authorities, the customs authorities on importation. Therefore the problems identified by Member States will be either identical or at least partly overlap. Against this background the dimension of problem areas reported by Member States in the questionnaire as well as possible solutions are better understood and addressed if both sets of rules are looked at in a consistent context.

This report hereafter only discusses the substantial issues thus identified. Requests for editorial and linguistic changes are not covered; these were however considered in the proceedings of the Committee on excise duties⁴.

2.2. Discussion of comments received

2.2.1. Articles 3, 7 and 13 - Definitions

Two Member States asked for a more precise definition of the following terms provided for in the Directive:

Art. 3(1) and (2) - ‘Third country’ and ‘Territory where the Community provisions on VAT or excise duty, or both do not apply’

For the purpose of the application of exemption from VAT and excise duty of goods imported by persons travelling from third countries, it was suggested to clarify the definitions for “third country” and “territories” in accordance with Council Directives 2006/112/EC and 2008/118/EC, in view of the conventions and treaties concluded with France, the United Kingdom and Cyprus respectively, that the Principality of Monaco, the Isle of Man and the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia shall not be regarded, for the purposes of the application of that Directive, as third countries.

It is true that Art. 3(1) and 3(2) of Council Directive 2007/74/EC distinguish between a “third country” and a “territory other than a third country where Directives 2006/112/EC or 92/12/EEC, or both not apply”. That distinction is due to the situation that some territories are part of the customs territory of the EU but certain fiscal rules do not apply there and in other cases certain territories are outside the customs territory but due to association agreements certain Community fiscal rules apply there. In most cases the reasons for these - admittedly sometimes complex rules - are of historical nature and have often settled longstanding conflicts. It is for these historical reasons and for respecting obligations in which certain Member States have engaged that the distinctions in Article 3(1) and 3(2) exist and must continue to exist. Travellers entering the Community from the Isle of Man cannot benefit from traveller allowances in accordance with Articles 1 and 3(1) because the territory of the Isle of Man is not a third country and travellers from Monaco cannot benefit from traveller allowances in accordance with Articles 1 and 3(2) because in their territories Directives 2006/112/EC or 92/12/EEC, or both apply.

³ Document 16879/2011 – UD 335 – Annex

⁴ See Commission document on the “Outcome of the questionnaire on the implementation of Council Directive 2007/74/EC of 20 December 2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries” (CED 798).

For the same historical reasons the exemptions from these definitions exist and must continue to apply. The second sub-paragraph of Article 3(1) provides that in view of the Fiscal Agreement between France and the Principality of Monaco dated 18 May 1963 and the Agreement of friendship and neighbourly relations between Italy and the Republic of San Marino dated 31 March 1939, Monaco and San Marino shall not be regarded as third countries in respect of excise duty. The fact that Monaco and San Marino (only for excise purposes) are not considered as third countries (Article 3(1)) ensures, together with the definition in Article 3(2), that travellers entering the Community from Monaco can under no circumstances benefit from traveller allowances under Council Directive 2007/74/EC and travellers from San Marino cannot benefit from traveller allowances for excise purposes. In fact, Article 1 of that same Directive limits the benefits of allowances to travellers from third countries and territories other than a third country where Directives 2006/112/EC or 92/12/EEC, or both do not apply.

Similarly, the second sub-paragraph of Article 3(2) provides that in view of the Agreement between the Governments of the United Kingdom and the Isle of Man on Customs and Excise and associated matters dated 15 October 1979, the Isle of Man shall not be regarded as a territory other than a third country where Directives 2006/112/EC or 92/12/EEC, or both not apply. This exemption ensures again that travellers entering the Community from these territories cannot benefit from traveller allowances under Council Directive 2007/74/EC because Article 1 of that same Directive limits the allowances to travellers from a territory where the Community provisions on VAT or excise duty, or both do not apply and to travellers from third countries.

As these specific situations, which have evolved historically, continue to exist, the Commission continues to see a need for the specific rules in Art. 3 (1) and 3(2) of Council Directive 2007/74/EC.

Art. 3(3) - Air and sea travellers

This Article differentiates, on the one hand, between air and sea travellers and excludes, on the other hand, individuals travelling via private pleasure-flying or private pleasure-sea-navigation from traveller allowances. Sub-paragraph 1 of Article 7 of the Directive provides for a monetary threshold for air and sea travellers of 430€ while the threshold for other travellers is 300€.

One proposal made in the consultation was to amend Art. 3(3) for making the exclusion of individuals travelling via private pleasure-flying or private pleasure-sea-navigation optional for Member States, thus enabling them to apply a single monetary threshold of 430 EUR for all travellers instead of 430 EUR for air- and sea-travellers and 300 EUR for all other travellers. The underlying idea was to facilitate procedures in Member States without land border to third countries.

The distinction between different means of transport was introduced in order to reflect the situation in Member States sharing a land borders with Eastern European countries (e.g. Russia, Ukraine) with a significantly lower price and/ or tax/ excise duty level. The Commission is not aware of any significant approximation of these price gaps since the adoption of the Directive in 2007. On the contrary, relatively high inflation rates in most Member States at the EU Eastern border seem to have led to even larger gaps in purchasing power between these countries and third countries at the EU Eastern border.

Furthermore, the problems reported by Hungary and Estonia in the “Report on personal luggage provisions – Reporting on issues related to the implementation of Article 41 of Council Regulation (EC) No 1186/2009 which was introduced by Council Regulation (EC) No 274/2008” seem to confirm that conclusion.

Against this background the Commission sees no real room for making the exclusion of individuals travelling via private pleasure-flying or private pleasure-sea-navigation optional for Member States.

Another proposal put forward in the consultation was to align the definition of “traveller” to Article 236 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

Art. 236 Letter A of Commission Regulation (EEC) No 2454/93 states that “[...] ‘traveller’ means:

1. *any person temporarily entering the customs territory of the Community, not normally resident there, and*
2. *any person returning to the customs territory of the Community where he is normally resident, after having been temporarily in a third country.”*

Contrary to that, Article 1 of the Directive, however, lays down rules for “[...] persons travelling from a third country or from a territory where the Community provisions on VAT or excise duty, or both, as defined in Article 3, do not apply”. Article 3 further defines these territories by providing the reference to Directives 2006/112/EC and 2008/118/EC (repealing Directive 92/12/EEC). These Directives constitute a more differentiated concept for the reasons explained above on the proposed amendment of Article 3 of the Directive.

Therefore, the Commission sees no room for aligning the definition of traveller in Article 3 of the Directive to that in Article 236 of Regulation 2454/93.

Art. 7(4) - Personal luggage

This provision exempts the value of a traveller's personal luggage from the monetary threshold⁵. Following a wider interpretation of this provision, "a traveller's personal luggage" could also include duty free purchases made on the traveller's outward journey. This could create a loophole where a traveller can purchase goods on his way out without paying VAT and/or customs duty and reimport those goods in addition to the monetary threshold. The individual would be able to purchase an unlimited value of goods VAT free and yet still use them within the EU. It was therefore suggested to include a definition of 'personal luggage' in this Article to make it clear that duty free purchases on the outward journey do not qualify as personal luggage and are subject to the monetary threshold.

Under Articles 5 and 7(4) of the Directive and Articles 147(1) letter a) and 146(1) letter b) of Directive 2006/112/EC there might indeed be a theoretical possibility of misuse. In practice, however, third countries or territories outside the EU usually also apply monetary thresholds as well as quantitative limits for travellers entering their

⁵ “The value of the personal luggage of a traveller, which is imported temporarily or is re-imported following its temporary export, and the value of medicinal products required to meet the personal needs of a traveller shall not be taken into consideration for the purposes of applying the exemptions referred to in paragraphs 1 and 2.”

territory. The value or amount of goods admitted duty-free in such countries of destination is generally not unlimited but needs to fulfil national/territorial legal requirements on both legs of the journey at importation.

The Commission is not aware of abusive practices having an economic dimension which would require a legislative initiative nor have Member States reported such practices. The Commission services do therefore not intend to open discussion on this issue of including duty free purchases made on the traveller's outward journey in the provision on personal luggage/monetary thresholds.

Art. 13 - Crew of a means of transport

In the consultation it was also proposed to align the definition of "crew of a means of transport" in Article 13 of the Directive to Article 49(1) of Regulation (EEC) No 918/83 of the Council of 28 March 1983 on the Community system of reliefs from customs duty, replaced by Council Regulation (EU) No 1186/2009 of 16 November 2009.

According to Annex VI of Council Regulation (EU) No 1186/2009, Article 49 of Regulation (EEC) No 918/83 was abolished without any correlated (new) provision in the repealing Regulation. Instead, Article 41 of Council Regulation (EU) No 1186/2009 addresses reliefs from customs duties for goods contained in travellers' personal luggage by referring to the provisions of Council Directive 2007/74/EC:

"Goods contained in the personal luggage of travellers coming from a third country shall be admitted free of import duties, provided such imports are exempt from value added tax (VAT) under provisions of national law adopted in accordance with the provisions of Council Directive 2007/74/EC of 20 December 2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries".

The Commission therefore does not see a need or any value-added in aligning the definition of "crew of a means of transport" in Article 13 of the Directive to that of Article 49(1) of Regulation (EEC) No 918/83.

2.2.2. Article 6 a - Interpretation of "occasional imports"

Four Member States stressed that they see the need to better determine the allowed frequency of non-commercial imports by travellers (i.e. by determining the maximum number of journeys in a given period of time). It would appear that some Member States sharing land borders with third countries face particular difficulties with private individuals crossing the EU-third country border several times per week or – in extreme cases – per day, carrying excisable goods just according to or slightly below the maximum allowed quantitative limits and other goods just according to the monetary thresholds allowed.

The Commission services understand the concerns of these Member States especially since they are largely congruent with those described in the "Report on personal luggage provisions – Reporting on issues related to the implementation of Article 41 of Council Regulation (EC) No 1186/2009 which was introduced by Council Regulation (EC) No 274/2008". The Commission services also share the view that such imports should not be regarded as 'occasional imports'.

The Directive does not, however, provide for any benchmark defining an appropriate frequency of journeys.

According to Article 6 of the Directive, “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”.

When analysing the multitude of importation scenarios for travellers, the Commission services could not but conclude that a legislative initiative for amending the provisions of the Directive does not apply an appropriate solution for addressing the reported problems because the further break-down of the definition of occasional imports as “taking place infrequently/from time to time/not habitual would only increase the complexity of legal definitions without increasing legal certainty. There is simply no unambiguous definition of “occasional” in terms of any figure on the frequency; however, and in particular when excisable goods are concerned, the amounts carried by the traveller upon entry into the EU should be consumable taking into consideration normal consumer behaviour of that private individual.

Example 1: a traveller crosses the EU/third country border every second day, thereby carrying a carton of cigarettes (200 pieces) on each of his entries into the EU when coming back from the third country.

The amount of 100 cigarettes which would need to be consumed by this private individual per day clearly exceeds the normal consumer behaviour. Such imports cannot be regarded as being of a non-commercial character.

Example 2: a traveller crossing the EU/third country border once a week, thereby bringing five packs of cigarettes and one litre of vodka on each of his entries into the EU when coming back from the third country.

In case all other conditions are met, the amounts indicated in this example should not give rise to initiating the customs procedures.

Example 3: a traveller crossing the EU/third country border on a daily basis, thereby entering the EU with a motor vehicle with a full standard tank of petrol/diesel plus additional 10 litres in a portable container.

It is very unlikely that a private individual uses such big amounts of fuel for non-commercial purposes.

Example 4: a traveller crossing the EU/third country border once a week, thereby carrying 3 packs of fine-cut tobacco (total of 90g), 4 litres of still wine, 1 litre of whiskey, 5 wristwatches, several bottles of perfume and 3 GPS devices on each of his entries into the EU.

Although the amount of excisable goods imported seems to be still in line with the Directive’s requirements, the import of other goods gives rise to control the traveller’s intentions, respectively the use for commercial purposes.

The Commission is aware that there are many different scenarios which cannot be discussed in detail and appropriately in the framework of this report. This multitude can only be addressed on a case-by-case basis, particularly when there is an indication of tax avoidance, thereby taking into account all conditions listed in particular in Articles 4 to 6 of the Directive. The Commission does not have principal

objections to the approach chosen by a number of Member States monitoring the amount of journeys of a single traveller in a certain period of time, in particular at land borders with third countries. Such monitoring should, however, not lead to a disproportionate curtailing of the freedom of travel for EU citizens nor restrict normal border crossings for persons not carrying any goods purchased abroad. As regards the ‘architecture’ of such monitoring activities, Member States are free to determine which measures they find most appropriate and least burdensome.

It should also not be overlooked that many of the provisions in Council Directive 2007/74/EC have their origin in international Conventions to which Member States and the EU are contracting parties. Therefore, the consistency of the Community provisions with the provisions of these Conventions must be preserved.

Against this background the Commission does not intend to launch a legislative initiative at this stage for resolving the described problems; however, the Commission is open to developing administrative tools and practices together with interested Member States for addressing the described problem scenarios appropriately and then share that knowledge with other Member States.

The situations described above are even more complex to handle in the case of persons resident in a frontier zone, frontier-zone workers or a crew of a means of transport (see Article 13 of the Directive). When evaluating such border crossings Member States need to take into account the geographical position of the traveller’s residence, the occupational situation and/or working environment in addition to the requirements imposed by Articles 4 to 6 of the Directive.

For facilitating the handling of such special cases, Article 3, paragraphs (5) and (6) of the Directive provide definitions of ‘frontier zone’ and ‘frontier zone worker’. According to these definitions and in correlation to Article 13(2) travellers going beyond a zone of 15 kilometres from the border (“as the crow flies”) do not face any other restrictions than the ones applicable to all other travellers. However, some private individuals misuse this provision by stopping within the frontier zone and by handing out the goods purchased abroad to persons residing less than 15 km away from the border. As such imports usually take place only at land borders the Directive provides for certain measures which Member States can apply in order to tackle/limit the misuse of exemptions granted.

First, travellers other than air and sea travellers can only bring in goods (other than tobacco, alcohol, fuel) up to a value of 300 Euro per person. For air and sea travellers, this limit amounts to 430 Euro.

Second, and for promoting a high level of public health protection, Member States can reduce the maximum allowed quantity applicable to tobacco products to 20 per cent of the regular quantities (i.e. 40 cigarettes instead of 200). Thereby, Member States are free to choose whether such lower limits apply for all travellers (Article 8(1)) or for sea and land travellers only (Article 8(2)).

Third, Member States can lower both, the monetary threshold as well as the quantitative limits for frontier zone residents, frontier zone workers and the crew of a means of transport used in international travel to a level which they determine on a national basis, see Article 13(1) in correlation with Article 13(2) 2nd subparagraph of the Directive. In some cases, Member States reduced the quantities/amounts even to a zero level.

The Commission fully acknowledges the difficult situation in a number of Member States which they face when implementing the special cases and exemptions granted for in the Directive. It considers, however, that the current legislation provides a balance between Member States' obligation to prevent double taxation for non-commercial imports and Member States' sovereign right to protect their domestic economy and national revenues.

Again the Commission is of the opinion that a legislative initiative for dealing with frontier zone cases is simply not a feasible approach to address the problems reported. The Commission is, however, open to developing administrative tools and best practices together with interested Member States for addressing the described problem scenarios appropriately and then share that knowledge with other Member States.

2.2.3. *Article 8 - Treatment of other tobacco products (here: snus)*

One Member State (Sweden) reports that the tax exemption provided for in this Directive is being abused for a tobacco product called "snus". Snus is a tobacco product liable to excise duty under Swedish law. It is banned in all other EU markets except Sweden. Since the tax exempted import of snus is limited only by the 430/300 Euro threshold in Article 7 (and not by the quantitative limits of Article 8), it seems possible to bring large quantities of non-taxed snus into Sweden claiming that it is for personal use. Customs control measures seem to confirm that snus is illegally brought into Sweden by travellers (couriers) via Baltic Sea ferries in an organized way and on large scale. The non-taxed snus is re-sold at the retail level in Sweden and seems to cause market distortions. Sweden suggests introducing a quantitative limit for snus as a derogation to Articles 7 and 8. Furthermore, Sweden also proposes that there should be quantitative limits for all taxed tobacco products, including smokeless tobacco products.

According to Article 8 of the Directive, quantitative limits are provided for certain tobacco products that Member States shall exempt from VAT and excise duty. Other goods, such as tobacco products that are not listed in Article 8, need to respect the 300/430 Euro threshold only (Article 7). It would appear that the Swedish administrative practice of applying over years relief thresholds of 4,300 SEK and 3000 SEK for travellers arriving by boat or ship from third countries which corresponds to **507,49 Euro** (air and sea) resp. **354,06 Euro** (other travellers), has aggravated that situation considerably.

Against this background national measures seem to be a priority; such national measures could align the Swedish relief thresholds to the Euro amounts provided for in Article 7 of the Directive but also aim at restricting the imports of snus. Examples can be found for drugs, medicines, weapons, explosive materials, pornographic materials, where Member States examine their sovereign right to prohibit or restrict the import and/or distribution of such products.

Currently the Commission does not intend proposing an amendment of the Directive as regards the treatment of 'snus'.

2.2.4. *Article 8(2) – distinction between air travellers and other travellers*

One Member State proposes to abolish the distinction between air travellers and other travellers (applying lower quantitative limits for tobacco products only to travellers other than air travellers).

According to Article 8(2) “Member States may choose to distinguish between air travellers and other travellers by applying the lower quantitative limits specified in paragraph 1 only to travellers other than air travellers.” Abolishing this distinction would lead to Member States being obliged to apply the lower quantitative limits for tobacco products (i.e. 40 instead of 200 cigarettes) to either all travellers or none.

The current provision of Article 8(2) enables Member States to decide autonomously whether they would like to distinguish between different kinds of travelling or not. Maintaining this provision is necessary for taking account of the situation in certain Member States which share land or sea borders with third countries with considerably lower price levels. Member States are however free to decide to apply the same limit to all travellers.

Therefore the Commission does not see room for abolishing the option in Article 8(2).

2.2.5. *Articles 8, 9, 11 – Quantitative limits*

One Member State suggested aligning the quantitative limits to the (considerably higher) indicative limits applicable to intra-EU travellers (Art. 32(3) of Council Directive 2008/118/EC), thereby preventing a different treatment for travellers coming from third countries.

According to Articles 8, 9 and 11 of the Directive, Member State shall exempt from VAT and excise duty certain quantities of tobacco and alcohol products as well as fuel in a standard tank and a portable container.

As a basic principle of the EU Internal Market, there are no limits on what private persons can buy and take with them when they travel between EU countries, as long as the products are for personal use and not for resale, with the exception of new means of transport. Taxes (VAT and excise) are included in the price of the products in the Member State of purchase and no further payment of taxes is due in any other Member State. However, in order to determine whether goods subject to excise duty are intended for the own use of the private individual, Member States lay down guide levels, solely as a form of evidence. These guide levels are several times higher than the quantitative limits for tax exempt imports under the Directive.

Therefore it would not make much sense increasing the quantitative limits for tax exempt imports with the indicative guide levels for taxed goods in the EU; on the contrary it would create a negative discrimination of Community citizens and at the same time increase the risk of competitive distortions. The quantitative limits of Articles 8, 9 and 11 of the Directive help protecting the Member States socio-economic, budget and public health policies by setting clear benchmarks which are enforceable by national authorities at any time.

The Commission does not support an increase of quantitative limits in Article 8, 9 and 11 of the Directive to the guide levels stipulated in Article 32(3-4) of Council Directive 2008/118/EC.

2.2.6. *Article 10 – Age of travellers*

One Member State suggests replacing the age indication of "17" with "18", with respect to public health measures for minors in the various Member States.

According to Article 10 of the Directive, exemptions on tobacco and alcoholic products shall not apply to adolescents under 17 years of age. The legal drinking age limit across the EU Member States follows national/regional public health as well as

socio-economic policies. While some Member States allow purchasing and consuming of any alcohol/alcoholic beverages only to persons of the minimum age of 18 or even 20, other Member States apply a lower age limit of 16 which is either applicable to beer only or to any alcohol/alcoholic beverages, including spirits. As regards the age limits for the purchase and consumption of tobacco products, the situation in the Member States is similar to the one for alcohol. However, a majority of Member States apply the higher age limit of 18 for the buying of tobacco products, while a smaller number of Member States allow it for adolescents of the age of 16. Furthermore, some Member States implemented legislation on youth protection which falls under regional competence. This leads to the fact that provisions on smoking and drinking vary widely even within one single country.

Before the adoption of the current Article 10 of the Directive these aspects have been discussed in detail and the age limit of 17 contained in Article 10 of the Directive reflects a fair compromise between the different jurisdictions and national/regional public health and socio-economic policies in the Member States. There are no new elements which would merit discussion with the perspective of a different result.

Therefore the Commission does not intend to amend this provision concerning the age of travellers at this stage.

2.2.7. *Article 11 – fuel in a portable container*

One Member State expressed the view that there is no need to provide the exemption for fuel in a portable container, mainly for practical reasons. Furthermore, this Member State suggests aligning Article 11 of the Directive to the provisions established in Articles 84 and 87 of Council Directive 2009/132/EC determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from VAT on the final importation of certain goods for VAT purposes, and in Articles 107 and 110 of Council Regulation (EC) No 1186/2009 setting up a Community system of reliefs from customs duty in order to ensure a clearer and more coherent application of tax exemptions for fuel contained in the standard tank. Under Article 11 of the Directive, fuel contained in the standard tank and an additional quantity of 10 litres contained in a portable container may be exempted from VAT and excise duty. These provisions have their origin in several International Conventions such as the Kyoto Convention and the Istanbul Convention on temporary importation to which Member States and/ or the European Union are contracting parties. This consistency between the Community rules and the international obligation must be maintained. In addition to that, road safety aspects should not be ignored by adopting a pure fiscal view.

On the other hand the Commission shares the concerns of these Member States about a misuse of these exemptions, especially since they are confirmed and described in detail in the “Report on personal luggage provisions – Reporting on issues related to the implementation of Article 41 of Council Regulation (EC) No 1186/2009 which was introduced by Council Regulation (EC) No 274/2008”. But again a legislative initiative does not seem the instrument of choice for addressing these misuse scenarios. It would appear more appropriate to develop administrative practices and instruments for combatting that misuse. The provisions in Articles 84 and 87 of Council Directive 2009/132/EC and in Articles 107 and 110 of Council Regulation (EC) No 1186/2009 could serve as a basis for developing such instruments and practices.

Therefore, the exemption for fuel contained in standard tanks of vehicles as well as the exemption for fuel contained in a portable container of not exceeding 10 litres shall be maintained. The Commission is, however, open to developing administrative tools and best practices together with interested Member States for addressing the described problem scenarios appropriately and then share that knowledge with other Member States.

2.2.8. *Article 14 – Minimum tax amount*

One Member States asked whether the amount mentioned in Article 14 (10 Euro) applies to both VAT and excise duty (a total of 10 Euro) or to each separate tax (10 + 10 Euro).

According to Article 14, “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”.

The Commission would like to clarify that this minimum tax amount refers to the total calculated tax (both VAT and excise duty).

2.2.9. *Relation between monetary thresholds and quantitative limits*

In the “Report on personal luggage provisions – Reporting on issues related to the implementation of Article 41 of Council Regulation (EC) No 1186/2009 which was introduced by Council Regulation (EC) No 274/2008” Member States had criticised that the possibilities to choose between monetary thresholds and quantitative limits might be too liberal and would trigger competitive distortions between Member States. For excise duties Member States have not reported any such competitive distortions or provided economic data supporting a corresponding assumption.

At this stage the Commission does therefore not intend to re-open discussions on this topic of the relation between monetary thresholds and quantitative limits.

2.2.10. *Inland navigation and passenger transport on the river Danube*

An economic operator had asked the question why travellers entering the EU via the river Danube on a non-sea-going vessel cannot benefit from traveller allowances. The Commission services had no immediate answer to that question and will discuss that question with Member States because there seem to be questions of equal fiscal treatment involved.

The Commission will discuss the topic of inland navigation and passenger transport on the river Danube with Member States in the Committee on excise duties.

3. **OVERALL EVALUATION AND CONCLUSION**

The Member States’ consultation provided up-to-date insights on the current application of Community law in national legislation. The vast majority of Member States is content with the provisions and do not see any need to revise the current Directive. A considerable number of comments received refer to linguistic/editorial changes only. For these reasons, the Commission proposes not to launch any legislative initiative aiming to amend the Directive on traveller allowances at the current stage. The Commission is, however open to developing administrative tools and best practices together with interested Member States for addressing practical problem scenarios appropriately and then share that knowledge with other Member States.

All substantial comments received are reflected in the framework of this report. Member States will find guidance on particular questions, mainly referring to the definition and interpretation of technical terms used for the application of this Directive. Some of the comments touch on broader issues dealt with by other excise legislation (in particular general arrangements on excise duty provided for in Council Directive 2008/118/EC). These comments will be taken into consideration when proposing the revision of such legislation.

4. ANNEX

Overview of Member States' application of exemptions and higher/lower quantitative limits according to Articles 7, 8, 13, 14 and 15 of Council Directive 2007/74/EC

According to Articles 7, 8, 13, 14 and 15 of Council Directive 2007/74/EC, Member States can make use of exemptions and higher/lower quantitative limits when implementing the provisions of this Directive. These provisions are applied nationally. The tables below provide an overview of Member States' application of such exemptions.

Implementation of reduced quantities/monetary threshold according to Art. 7(2) and Art. 8(1-2)

MS	Reduced monetary threshold according to <u>Art. 7 (2)</u> in Euro	Reduced quantities for all travellers according to <u>Art. 8 (1)</u>	Reduced quantities for travellers other than air travellers, <u>Art. 8 (2)</u>
1	2	3	4
AT*	150	no	no
BE	175	no	no
BG	no	Partly yes	yes
CY	175	no	no
CZ	200	no	no
DE	175	no	no
DK	no	no	no
EE	no	only for Art. 8(1) a & d	n/a
EL	150	no	yes
ES	150	no	no
FI	no	no	no
FR	150	no	no
HU	150	no	yes
IE	215	no	no
IT	150	no	no
LT	147,70	no	yes
LU	175	no	no
LV	282,01	no	yes
MT	no	no	no
NL	no	no	no
PL	no	VAT: no. Excises: both.	yes
PT	150	no	no
RO	no	only for Art. 8(1) a	no
SE	no	no	yes (only to some extent)
SI	150	no	no
SK	no	Partly yes	yes
UK	no	no	no

* Austria applies Art. 8(3) for travellers arriving from Samnauntal

Implementation of reduced quantities/monetary threshold according to Art. 13 (1) a

MS	Tobacco (a) cigarettes (b) cigarillos (c) cigars (d) smoking tobacco	Alcohol and alcoholic beverages (a) more than 22%vol or undenatured ethyl alcohol of 80%vol and over (b) 22%vol or less (c) still wine (d) beer	Fuel (a) standard tank (b) portable container	Monetary threshold (maximum amount in Euro)
AT	a) 25 b) 10 c) 5 d) 25g	a) 0,25 litre b) 0,75 litre c) 1 litre d) 2 litres	n/a	20 Euro incl. 4 Euro for food and non-alcoholic drinks
BE	no	no	no	no
BG	no	no	no	no
CY	no	no	no	no
CZ	no	no	no	no
DE	a) 40 b) 20 c) 10 d) 50g	a) 0 litre b) 0 litre c) 0 litre d) 0 litre	n/a	90 Euro
DK	no	no	no	no
EE	no	no	no	no
EL	a) 40 b) 20 c) 10 d) 50g	(a): 1 litre (b): 2 litre (c): 4 litres (d): 16 litres	a) fuel in standard tank b) 10 l fuel in portable container	175 Euro
ES	a) 200 per month	no	no	no
FI	no	no	no	no
FR	a) 40 b) 20 c) 10 d) 50g	(a): 0,25 litre (b): 0,50 litre (c): 0,50 litres (d): 4 litres	a) fuel in standard tank: 200 litres b) 10 l fuel in portable container	Max.: 175 Euro (voyageurs 15 ans et plus). Pour moins de 15 ans: 40 Euro.
HU	no	no	no	no
IE	no	no	no	no
IT	a) 20 b) 10 c) 5 d) 25g	a) 0,125 litre b) 0,250 litre c) 1 litre d) 2 litres	only standard tank	50 Euro
LT	a) 40 b) 20 c) 10 d) 50g	a) 0,5 litre b) 0,75 litre c) 0,75 litre d) 4 litres	a) fuel in standard tank b) no exemption for portable container	147,70 Euro
LU	no	no	no	no
LV	no	no	no	no
MT	no	no	no	no
NL	no	no	no	no
PL	no	a) 0,5 litre (for VAT only) b) 0,5 litre (for VAT only) c) 0,5 litre (for VAT only) d) 2 litres (for VAT only)	no	no
PT	no	no	no	no
RO	no	no	no	no
SE	no	no	no	no
SI	a) 25 b) 10 c) 5 d) 250g	a) 0,25 litre c) 1 litre	n/a	40 Euro
SK	no	no	no	no
UK	no	no	no	no

Implementation of reduced quantities/monetary threshold according to Art. 13 (1) b

MS	Tobacco products (a) cigarettes (b) cigarillos (c) cigars (d) smoking tobacco	Alcohol and alcoholic beverages (a) more than 22%vol or undenatured ethyl alcohol of 80%vol and over (b) 22%vol or less (c) still wine (d) beer	Fuel (a) standard tank (b) portable container	Monetary threshold (maximum amount in Euro)
AT	a) 25 b) 10 c) 5 d) 25g	a) 0,25 litre b) 0,75 litre c) 1 litre d) 2 litres	n/a	20 Euro incl. 4 Euro for food and non-alcoholic drinks
BE	no	no	no	no
BG	no	no	no	no
CY	no	no	no	no
CZ	no	no	no	no
DE	a) 40 b) 20 c) 10 d) 50g	a) 0 litre b) 0 litre c) 0 litre d) 0 litre	n/a	90 Euro
DK	no	no	no	no
EE	no	no	no	no
EL	a) 40 b) 20 c) 10 d) 50g	(a): 1 litre (b): 2 litre (c): 4 litres (d): 16 litres	a) fuel in standard tank b) 10 l fuel in portable container	175 Euro
ES	a) 200 per month	no	no	no
FI	no	no	no	no
FR	a) 40 b) 20 c) 10 d) 50g	(a): 0,25 litre (b): 0,50 litre (c): 0,50 litres (d): 4 litres	a) fuel in standard tank: 200 litres b) 10 l fuel in portable container	Max.: 175 Euro (voyageurs 15 ans et plus). Pour moins de 15 ans: 40 Euro.
HU	no	no	no	no
IE	no	no	no	no
IT	a) 20 b) 10 c) 5 d) 25g	a) 0,125 litre b) 0,250 litre c) 1 litre d) 2 litres	only standard tank	50 Euro
LT	a) 40 b) 20 c) 10 d) 50g	a) 0,5 litre b) 0,75 litre c) 0,75 litre d) 4 litres	a) fuel in standard tank b) no exemption for portable container	147,70 Euro
LU	no	no	no	no
LV	no	no	no	no
MT	no	no	no	no
NL	no	no	no	no
PL	no	a) 0,5 litre (for VAT only) b) 0,5 litre (for VAT only) c) 0,5 litre (for VAT only) d) 2 litres (for VAT only)	no	no
PT	no	no	no	no
RO	no	no	no	no
SE	no	no	no	no
SI	a) 25 b) 10 c) 5 d) 250g	a) 0,25 litre c) 1 litre	n/a	40 Euro
SK	no	no	no	no
UK	no	no	no	no

Implementation of reduced quantities/monetary threshold according to Art. 13 (1) c

MS	Tobacco products (a) cigarettes (b) cigarillos (c) cigars (d) smoking tobacco	Alcohol and alcoholic beverages (a) more than 22%vol or undenatured ethyl alcohol of 80%vol and over (b) 22%vol or less (c) still wine (d) beer	Fuel (a) standard tank (b) portable container	Monetary threshold (maximum amount in Euro)
AT	a) 25 b) 10 c) 5 d) 25g	a) 0,25 litre b) 0,75 litre c) 1 litre d) 2 litres	n/a	20 Euro incl. 4 Euro for food and non-alcoholic drinks
BE	a) 40 b) 20 c) 10 d) 50g	a) 0,25 litre b) 0,50 litre c) 2 litre d) 8 litres	a) standard tank: none. b) portable container: none	Max. amount: 175 €
BG	a) 40 b) 20 c) 10 d) 50g	(a): 1 litre (b): 1 litre (c): 2 litres (d): 4 litres	a) fuel in standard tank b) 10 l fuel in portable container	150 Euro
CY	a) 40 b) 20 c) 10 d) 50g	a) 0,25 litre b) 0,50 litre c) 1 litre d) 3 litres	n/a	35 Euro
CZ	n/a	n/a	n/a	300 EUR
DE	a) 40 b) 20 c) 10 d) 50g	a) 0 litre b) 0 litre c) 0 litre d) 0 litre	n/a	90 Euro
DK	no	no	no	no
EE	no	no	no	no
EL	a) 40 b) 20 c) 10 d) 50g	(a): 1 litre (b): 2 litre (c): 4 litres (d): 16 litres	a) fuel in standard tank. b) 10 l fuel in portable container	175 Euro
ES	no	no	no	30 or 43 Euro
FI	<i>Per month:</i> a) 200 b) 100 c) 50 d) 250g	<i>Per month:</i> a) 1 litre b) 2 litres c) 4 litres d) 16 litres	<i>Per month:</i> a) fuel in standard tank. b) 10 l fuel in portable container	430 € per month (air and sea travel). Land traffic: monetary threshold of goods imported in one time max. 300 €.
FR	a) 40 b) 20 c) 10 d) 50g	(a): 0,25 litre (b): 0,50 litre (c): 0,50 litres (d): 4 litres	a) fuel in standard tank: 200 litres b) 10 l fuel in portable container	Max.: 175 Euro (voyageurs 15 ans et plus). Pour moins de 15 ans: 40 Euro.
HU	no	no	no	no
IE	(a) 40 (b) 20 (c) 10 (d) 50g	(a) 0,35 litre (b) 0,50 litre (c) 0,75 litre (d) 4 litres	a) fuel in standard tank. b) 10 l fuel in portable container	430 Euro
IT	a) 20 b) 10 c) 5 d) 25g	a) 0,125 litre b) 0,250 litre c) 1 litre d) 2 litres	only standard tank	50 Euro
LT	a) 40 b) 20 c) 10 d) 50g	a) 0,5 litre b) 0,75 litre c) 0,75 litre d) 4 litres	a) fuel in standard tank b) no exemption for portable container	147,70 Euro
LU	a) 40 b) 20 c) 10 d) 50g	a) 0,25 litre b) 0,5 litre c) 2 litres d) 8 litres	n/a	175 Euro

LV	no	no	no	no
MT	no	no	no	no
NL	a) 40 b) 20 c) 10 d) 50g	(a): 1 litre (b): 1 litre (c): 2 litres (d): 8 litres	No lower quantity	No lower threshold
PL	no	a) 0,5 litre (for VAT only) b) 0,5 litre (for VAT only) c) 0,5 litre (for VAT only) d) 2,0 litres (for VAT only)	no	no
PT	a) 80 b) 20 c) 10 d) 50g	n/a	n/a	200 Euro
RO	no	no	no	no
SE	a) 100 b) 20 c) 20 d) 100g	a) 0 litre b) 0 litre c) 0 litre d) 0 litre	n/a	0 Euro
SI	a) 25 b) 10 c) 5 d) 250g	a) 0,25 litre c) 1 litre	n/a	40 Euro
SK	no	no	no	no
UK	no	no	no	no

Implementation of the exceptions according to Art. 14 and Art. 15

MS	Exceptions of Art. 14 (no VAT or excise duty if tax is equal to or less than 10 Euro)	Exceptions of Art. 15 (adjustment/rounding off of the national currency to the Euro)*
AT	yes	no
BE	no	no
BG	no	no
CY	yes	no
CZ	yes	Yes (only for Art. 15(2))
DE	no	no
DK	no	no
EE	no	no
EL	no	no
ES	no	no
FI	no	no
FR	no	no
HU	no	yes (only for Art. 15(2))
IE	no	no
IT	yes	no
LT	no	yes (only for Art. 15(2))
LU	yes	no
LV	no	yes (only for Art. 15(2))
MT	yes	no
NL	no	no
PL	yes	no
PT	yes	no
RO	yes	no
SE	yes	yes
SI	no	no
SK	no	no
UK	no	yes