

II

(Preparatory Acts)

COMMISSION

Proposal for a Seventeenth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes — exemption from value added tax on the temporary importation of goods other than means of transport

COM(84) 412 final

(Submitted by the Commission to the Council on 17 August 1984)

(84/C 244/04)

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas it is important to reduce fiscal obstacles to the movement of goods within the Community in order to facilitate the supply of services and thus develop and strengthen the internal market;

Whereas the widest possible exemption from VAT for goods temporarily imported from one Member State to another will contribute towards the realization of this objective;

Whereas it is advisable to exclude from the scope of such an exemption a limited number of products which are intended for consumption when first used and which are subject to high excise duties in the Member States;

Whereas, pursuant to Article 14 (1) (c) of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment ⁽¹⁾, Member

States shall, without prejudice to other Community provisions and under conditions which they shall lay down for the purpose *inter alia* of preventing any possible evasion, avoidance or abuse, exempt importation of goods declared to be under temporary importation arrangements and which thereby qualify for exemption from customs duties or would so qualify if they were imported from a third country;

Whereas, in accordance with Article 14 (2) of the abovementioned Directive, the Commission is required to submit to the Council proposals designed to lay down Community tax rules clarifying the scope of the exemptions referred to in paragraph 1 of the said Article and detailed rules for their implementation;

Whereas, in accordance with Article 16 (1) (D) of the abovementioned Directive, Member States may take special measures designed to relieve from value added tax supplies of goods still subject to temporary importation arrangements;

Whereas, in accordance with Article 16 (3) of the abovementioned Directive, the Commission is required to submit to the Council proposals concerning common arrangements for applying value added tax to the transactions referred to in paragraph 1 of the said Article;

Whereas for imports from third countries it is desirable to achieve the greatest possible degree of uniformity between the system for customs duties and that for value added tax, particularly since many temporary importation exemptions stem from multilateral international conventions which apply to all duties and taxes payable on or in connection with importation;

Whereas it must be possible in certain circumstances for Member States to refuse or withdraw the benefit

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

of temporary importation exemptions or to require security in order to prevent avoidance or abuse;

Whereas temporary importation exemption should apply only in cases where goods are intended to be used for the purposes which qualify them for exemption and then to be re-exported; whereas it is therefore necessary to provide for the surveillance of the arrangements in order to ensure that VAT becomes chargeable in cases when goods cease to be eligible for exemption;

Whereas, as an exception to the basic rules on temporary importation arrangements, there would be an administrative simplification if certain goods which are imported with a view to sale were to be allowed the benefit of temporary importation exemption for a strictly limited period,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

GENERAL

Article 1

1. Member States shall exempt from value added tax temporary imports of the goods referred to in this Directive in accordance with the provisions set out below and under conditions fixed by them in order to ensure that such exemptions are correctly and simply applied and to prevent any evasion, avoidance or abuse both in respect of the temporary importation of the goods and any subsequent supply of services.

2. Means of transport including pallets and containers shall be excluded from the scope of this Directive.

3. This Directive shall, for goods other than means of transport, define the scope of the exemption from value added tax for imported goods declared to be under temporary importation arrangements referred to in Article 14 (1) (c) of Directive 77/388/EEC and the rules for its implementation referred to in Article 14 (2) of the same Directive.

4. For the purposes of this Directive:

- (a) 'territory of a Member State' means the territory defined in Article 3 of Directive 77/388/EEC;
- (b) 'temporary importation exemption' means the arrangements whereby goods which are intended to remain temporarily in the territory of a

Member State and to be re-exported may be imported with exemption from value added tax in accordance with the conditions laid down by this Directive;

- (c) 'competent authorities' means the competent authorities of the Member State in which application is made for goods to benefit from temporary importation exemption;
- (d) 'person' means a natural or legal person;
- (e) 'person established outside a Member State' means a natural person who has his normal residence, as defined in Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another ⁽¹⁾, outside that State or a legal person who has neither established his business nor has a fixed establishment within that State.

Article 2

1. The competent authorities shall, using an authorization procedure, grant the benefit of temporary importation exemption to any person who, on his own responsibility, uses or causes to be used the goods for which exemption is requested.

2. The competent authorities shall take all measures which they consider necessary to ensure that the goods can be identified and that the use to which they are put can be verified.

3. The competent authorities may:

- (a) refuse to grant temporary importation exemption if it is considered impossible to identify the goods in question or to verify their use;
- (b) refuse to grant the benefit of exemption to persons who do not provide all the guarantees considered necessary, and in particular to persons who have previously made improper use of a temporary importation exemption or who have committed a serious infringement of customs or value added tax legislation.

Article 3

1. At the time when the benefit of temporary importation exemption is granted, the competent authorities may require security to be given to ensure payment of value added tax which may become due if the goods are put into home use or if there is a subsequent supply of services involving the temporarily imported goods.

⁽¹⁾ OJ No L 105, 25. 4. 1983, p. 59.

2. If security is required, the person to whom the benefit of temporary importation exemption has been granted may choose whether it shall be given by:

- (a) making a cash deposit in the currency of the Member State in which security is required;
- (b) a guarantor who has his normal residence or an establishment in the Member State in which security is required and who is approved by the competent authorities of that Member State; or
- (c) pledging securities which are negotiable in the Member State in which the security is required.

3. No security shall be required:

- (a) for goods falling within the scope of Council Regulation (EEC) No 3/84 of 19 December 1983 introducing arrangements for movement within the Community of goods sent from one Member State for temporary use in one or more other Member States ⁽¹⁾;
- (b) for goods imported either from another Member State or a third country in the cases determined in accordance with Articles 3 and 33 of Council Regulation (EEC) No 3599/82 of 21 December 1982 on temporary importation arrangements ⁽²⁾; and
- (c) for the goods covered by Article 27 (1) (c) of this Directive when imported from another Member State.

4. If a security is required it shall not exceed the amount of value added tax that would have been due on the value of the goods at the time of their importation if they had been declared for home use at that time.

Article 4

1. Persons to whom the benefit of temporary importation exemption has been granted shall be required to submit to surveillance and inspection measures prescribed by the competent authorities.

2. The competent authorities may revoke the benefits of temporary importation exemption if they find that a person benefiting from them has not complied with one or more of the conditions under which they were granted.

⁽¹⁾ OJ No L 2, 4. 1. 1984, p. 1.

⁽²⁾ OJ No L 376, 21. 12. 1982, p. 1.

Article 5

1. The competent authorities shall fix the period during which the goods may remain in the territory of a Member State under temporary importation exemption by reference to the authorized use. Without prejudice to the limits laid down in Articles 13, 14, 15, 17, 25 and 27, the maximum duration of this period shall be 24 months.

2. However, where exceptional circumstances so justify, the competent authorities may, at the request of the holder of the authorization, extend within reasonable limits and subject to the conditions laid down by this Directive the period referred to in paragraph 1 in order to permit the authorized use.

Article 6

1. Member States shall allow a supply, within the meaning of Article 5 of Directive 77/388/EEC, of goods benefiting from temporary importation exemption to be exempted from value added tax provided that the goods remain the property of a person established outside the territory of the Member State of importation and continue to remain eligible for temporary importation exemption.

2. The benefits of temporary importation exemption may be transferred to any other person, at that person's request, where he satisfies the conditions under which the exemption was initially granted and assumes the obligations incumbent on the holder of the original authorization, particularly those arising from the fixing of the period during which the goods remain under temporary importation exemption.

Article 7

1. A chargeable event shall occur and value added tax shall become chargeable:

- (a) when goods benefiting from temporary importation exemption are declared for home use; or
- (b) in cases falling under Article 4 (2), either at the moment at which one of the conditions under which exemption was granted ceases to be fulfilled or at the time at which exemption was granted if it is established that the condition in question has never been fulfilled. In such cases the goods shall be deemed to have been released for home use at the moment in question;

(c) when goods which are recoverable in the form of waste products resulting from duly authorized destruction are declared for home use.

2. Value added tax shall not become chargeable if goods benefiting from temporary importation are:

(a) placed with a view to their subsequent exportation:

- under warehouse arrangements,
- in a free zone, or
- under Community transit arrangements, or one of the sets of international transport arrangements referred to in Article 7 (1) of Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit ⁽¹⁾, provided that Community law allows the use of such arrangements; or

(b) destroyed under customs control or are proved, to the satisfaction of the competent authorities, to have been totally destroyed or irretrievably lost as the result of the nature of the goods or of unforeseeable circumstances or *force majeure*.

Article 8

1. Temporary importation exemption shall not be granted for goods temporarily imported from third countries with partial relief from import duties under the provisions of Title III of Regulation (EEC) No 3599/82.

2. In such cases a chargeable event shall occur at the time when the goods enter the territory of the Member State. However, value added tax shall not become chargeable until the import duties due under partial relief are levied.

TITLE II

SCOPE OF THE TEMPORARY IMPORTATION EXEMPTION FOR GOODS IMPORTED INTO ONE MEMBER STATE FROM ANOTHER

Article 9

Temporary importation exemption shall be granted for goods, other than those listed in the Annex, temporarily imported into one Member State from another provided that such goods:

(a) are intended to be re-exported without alteration to another Member State;

(b) satisfy the conditions laid down in Articles 9 and 10 of the Treaty establishing the European Economic Community or, in the case of goods falling under the Treaty establishing the European Coal and Steel Community, are in free circulation;

(c) have been acquired subject to the rules governing the application of value added tax in the Member State of departure, and have not benefited, by virtue of their temporary exportation, from any exemption from value added tax; and

(d) remain the property of a person established outside the territory of the Member State of importation.

Article 10

Any goods imported into one Member State from another which do not qualify for exemption under Article 9 shall qualify for temporary importation exemption if, had they been imported from a third country, they would qualify for such exemption under Title III.

TITLE III

SCOPE OF THE TEMPORARY IMPORTATION EXEMPTION FOR GOODS IMPORTED FROM A THIRD COUNTRY

CHAPTER 1

Professional equipment

Article 11

1. Temporary importation exemption shall be granted for professional equipment.

2. 'Professional equipment' means the equipment and accessories needed for the exercise of his trade or profession by a person established outside the territory of the Community who is in a Member State to perform a particular job of work inasmuch as such equipment falls within the scope of Article 7 of Regulation (EEC) No 3599/82.

3. The exemption referred to in paragraph 1 shall be granted, provided that the professional equipment is:

(a) owned by a person established outside the territory of the Community;

(b) imported by a person established outside the said territory; and

(c) to be used exclusively by the person entering the said territory, or under his supervision.

⁽¹⁾ OJ No L 38, 9. 2. 1977, p. 1.

However, the condition referred to in (c) shall not apply to cinematographic equipment imported for the purpose of producing films under a co-production contract concluded with a person established in the territory of the Member State of importation.

In the case of joint radio or television programme productions, professional equipment may be the subject of a hire or similar contract to which a person established in the territory of the Member State of importation is party.

4. Exemption shall be granted, in the same way as for the equipment itself, for any spare parts subsequently imported for the repair of the equipment referred to in paragraph 1.

CHAPTER 2

Goods for display or use at an exhibition, fair, symposium or similar event

Article 12

1. Temporary importation exemption shall be granted for:

- (a) goods intended for display or to be the subject of a demonstration at an event;
- (b) goods intended for use at an event for the purpose of presenting imported products, such as:
 - goods necessary for demonstration of imported machinery or apparatus on exhibition,
 - equipment, including electrical fittings, used for constructing and decorating the temporary stands of a person established outside the territory of the Community,
 - advertising material and demonstration and other equipment intended for use in publicizing imported goods on exhibition, such as sound recordings, films and transparencies, together with the apparatus required in connection with their use;
- (c) equipment, including interpretation apparatus, sound recording apparatus and educational, scientific or cultural films, intended for use at international meetings, conferences and symposia;
- (d) live animals intended for exhibition at, or participation in, an event;
- (e) products obtained during an event from goods, machinery, apparatus or animals imported temporarily.

2. An 'event' means:

- (a) a trade, industrial, agricultural or craft exhibition, fair, or similar show or display;
- (b) an exhibition or meeting which is primarily organized for a charitable purpose;
- (c) an exhibition or meeting which is primarily organized to promote any branch of learning, art, craft, sport or scientific, technical, educational, cultural, trade union or tourist activity, or to promote friendship between peoples or to promote religious knowledge or worship;
- (d) a meeting of representatives of international organizations or international groups of organizations;
- (e) a representative meeting of an official or commemorative character;

except exhibitions organized for private purposes in shops or business premises with a view to sale of the goods imported.

CHAPTER 3

Teaching aids and scientific equipment

Article 13

1. Temporary importation exemption shall be granted for:

- (a) teaching aids;
- (b) spare parts and accessories for such aids;
- (c) tools especially designed for the maintenance, checking, calibration or repair of such aids.

2. 'Teaching aid' means any aid intended for the exclusive purpose of teaching or vocational training, and in particular models, instruments, apparatus, machines and accessories therefore, inasmuch as such aids fall within the scope of Article 10 of Regulation (EEC) No 3599/82.

3. The exemption referred to in paragraph 1 shall be granted provided that the teaching aids, spare parts, accessories or tools:

- (a) are imported by educational or vocational training establishments which are essentially non-profit-making and have been approved by the competent authorities for the purposes of this exemption and are used under the supervision and responsibility of such establishments;
- (b) are used for non-commercial purposes;
- (c) are imported in reasonable quantities, having regard to their intended purpose; and

(d) remain throughout their stay in the territory of the Member State of importation the property of a person who is established outside the Community.

4. The period during which such teaching aids may be granted exemption shall not exceed six months.

Article 14

1. Temporary importation exemption shall be granted for:

- (a) scientific equipment and accessories;
- (b) spare parts for such equipment;
- (c) tools specially designed for the maintenance, checking, calibration or repair of scientific equipment used in the territory of the Member State of importation exclusively for purposes of scientific research or teaching.

2. 'Scientific equipment' means instruments, apparatus, machines and accessories thereof used solely for the purpose of scientific research or education.

3. The exemption referred to in paragraph 1 shall be granted provided that the scientific equipment, accessories, spare parts and tools:

- (a) are imported by scientific or educational establishments which are essentially non-profit-making and have been approved by the competent authorities for the purposes of this exemption and are used under the supervision and responsibility of such establishments;
- (b) are used for non-commercial purposes;
- (c) are imported in reasonable numbers having regard to their intended purpose; and
- (d) remain throughout their stay in the territory of the Member State of importation the property of a person who is established outside the Community.

4. The period during which such scientific equipment may be granted exemption shall not exceed six months.

CHAPTER 4

Medical, surgical and laboratory equipment

Article 15

1. Temporary importation exemption shall be granted for medical, surgical and laboratory equipment intended for hospitals and other medical institutions provided that the said equipment:

- (a) has been dispatched on an occasional basis, on loan and free of charge, and
- (b) is intended for diagnostic and therapeutic purposes.

2. The period during which medical, surgical and laboratory equipment may be granted exemption shall not exceed six months.

CHAPTER 5

Materials for use in countering the effects of disasters

Article 16

1. Temporary importation exemption shall be granted for materials for use in connection with measures taken to counter the effects of disasters affecting the territory of the Member State of importation, provided that such materials:

- (a) have been imported on loan and free of charge; and
- (b) are intended for State bodies or bodies approved by the competent authorities.

CHAPTER 6

Packings

Article 17

1. Temporary importation exemption shall be granted for packings.

2. 'Packings' means:

- (a) holders used, or to be used, as external or internal coverings for goods;
- (b) holders on which goods are, or are to be, rolled, wound or attached;

but excluding packing materials such as straw, paper, glass wool and shavings when imported in bulk.

3. The exemption referred to in paragraph 1 shall be granted provided that:

- (a) if the packings are imported filled, they are declared as being for re-exportation empty or filled; or
- (b) if the packings are imported empty, they are declared as being for re-exportation filled.

4. Packings admitted under temporary importation exemption cannot be used, even as an exception, between two points located within the territory of the Member State of importation except with a view to the export of goods outside that territory. In the case of packings imported filled, this ban shall apply only from the time that their contents are emptied.

5. The period during which such packings may be granted exemption shall not exceed six months where they are imported filled or three months where they are imported empty.

CHAPTER 7

Travellers' personal effects

Article 18

1. Temporary importation exemption shall be granted in respect of the personal effects which travellers are carrying on their person or in their personal luggage for the duration of their stay in the territory of the Member State of importation.

2. 'Personal effects' means any clothing and other new or used articles intended for the personal use of the traveller.

'Personal luggage' shall have the meaning ascribed to it in Council Directive 69/169/EEC 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 ⁽¹⁾.

CHAPTER 8

Commercial samples, advertising material and goods for testing

Article 19

Temporary importation exemption shall be granted in respect of:

- (a) samples which are representative of a particular category of goods and which are intended to be used exclusively for demonstration purposes with a view to obtaining orders for similar goods;
- (b) films demonstrating the nature or the operation of equipment or products owned or produced by a person established outside the territory of the Community, provided that they are not intended for public showing for charge;
- (c) tourist publicity material falling within the scope of Article 20 (d) of Regulation (EEC) No 3599/82;
- (d) goods of any kind which are to be subjected to tests, experiments or demonstrations, including the tests and experiments required for type-approval procedures, but excluding any tests, experiments or demonstrations constituting a gainful activity;
- (e) goods of any kind to be used to carry out tests, experiments or demonstrations, but excluding any

tests, experiments or demonstrations constituting a gainful activity.

CHAPTER 9

Welfare material for seafarers

Article 20

1. Temporary importation exemption shall be granted for welfare material for seafarers.

2. The following definitions shall apply:

— 'welfare material' means material intended for cultural, educational, recreational, religious or sporting activities by seafarers, inasmuch as such material falls within the scope of Article 21 of Regulation (EEC) No 3599/82,

— 'seafarers' means all persons transported on board a vessel and responsible for tasks relating to the operation or servicing of the vessel at sea.

3. The exemption referred to in paragraph 1 shall be granted provided that the material is:

- (a) disembarked from a vessel for temporary use on land by the crew for a period not exceeding that of the vessel's stay in port;
- (b) imported for temporary use in cultural or social establishments for a period not exceeding six months. 'Cultural or social establishments' means hostels, clubs and recreational premises for seafarers, managed by either official bodies or religious or other non-profit-making organizations, and also places of worship where regular services are held for seafarers.

CHAPTER 10

Goods for use by public authorities in border zones

Article 21

Temporary importation exemption shall be granted for the various equipment used, under the supervision and responsibility of a public authority, for the building, repair or maintenance of infrastructure of general importance in border zones.

CHAPTER 11

Animals

Article 22

Temporary importation exemption shall be granted for:

⁽¹⁾ OJ No L 133, 4. 6. 1969, p. 6.

- (a) live animals of any species imported for dressage, training or breeding purposes or in order to be given veterinary treatment;
- (b) live animals of any species imported for transhumance or grazing purposes;
- (c) draught animals and equipment belonging to persons established outside the territory of the Community but in close proximity to the territory of the Member State of importation provided that they are imported by such persons for working land located inside that territory, involving the performance of agricultural work or the unloading or transport of timber.

CHAPTER 12

Films, tapes and other carrier material for recorded sound

Article 23

Temporary importation exemption shall be granted for:

- (a) positive cinematograph films, printed and developed, intended for projection prior to commercial use;
- (b) films, magnetic tapes and wires which are intended to be provided with a sound track, dubbed or copied and then re-exported;
- (c) carrier material for recorded sound and data-processing, including punched cards, made available free of charge to the importer.

CHAPTER 13

Goods for use in production for export

Article 24

Temporary importation exemption shall be granted for:

- (a) moulds, dies, blocks, drawings, sketches and other similar articles intended for a person established in the territory of the Member State of importation, where at least 75 % of the production resulting from their use is exported from that territory;
- (b) measuring, checking and testing instruments and other similar articles intended for a person established in the territory of the Member State of importation for use in a manufacturing process, where at least 75 % of the production resulting from their use is exported from that territory;
- (c) special tools and instruments made available free of charge to a person established in the territory of the Member State of importation for use in the

manufacture of goods which are to be exported in their entirety, on condition that such special tools and instruments remain the property of the consignee of the said goods.

CHAPTER 14

Replacement means of production

Article 25

1. Temporary importation exemption shall be granted for replacement means of production made temporarily available free of charge to the importer on the initiative of the supplier of similar means of production to be subsequently imported for release for home use or for means of production re-installed after repair.

2. The period during which these replacement means of production may remain under temporary importation exemption may not exceed six months.

CHAPTER 15

Imported goods which have no economic effect

Article 26

Temporary importation exemption shall be granted for goods temporarily imported into the territory of the Member State of importation in particular circumstances which have no economic effect.

TITLE IV

GOODS IMPORTED FOR POSSIBLE SALE

Article 27

1. By way of derogation from Article 1 (4) (b), temporary importation exemption shall be granted for:

- (a) second-hand goods imported with a view to their sale by auction;
- (b) goods imported under a contract of sale, which are to be subjected to satisfactory acceptance tests;
- (c) works of art imported for the purposes of exhibition, with a view to possible sale;
- (d) consignments on approval of made-up articles of fur, precious stones, carpets and articles of jewellery, provided that their particular characteristics prevent their being imported as samples.

2. 'Works of art' means:

- (a) paintings, drawings and pastels including copies, executed entirely by hand, excluding hand-

decorated manufactured wares and industrial drawings;

- (b) lithographs, prints and engravings, signed and numbered by the artist, obtained from lithographic stones, plates or other engraved surfaces, executed entirely by hand;
- (c) original sculptures and statuary, excluding mass-produced reproductions and handicrafts of a commercial nature;
- (d) photographs excluding posters and industrially-made reproductions;
- (e) tapestries made by hand from original designs provided by artists, provided that there is not more than one example of each;
- (f) original ceramics and mosaics on wood.

3. The exemption referred to in paragraph 1 shall apply to goods imported both from other Member States and from third countries.

4. The period during which exemption may be granted for the goods referred to in paragraph 1 may

not exceed six months in the case of paragraph 1 (a), (b) and (c) and four weeks in that of paragraph 1 (d).

5. If the goods referred to in paragraph 1 are not re-exported within the relevant time period laid down in paragraph 3, or are sold within that time period, they shall be deemed to have been released for home use at the moment at which exemption was granted, and value added tax shall become chargeable accordingly.

TITLE V

FINAL PROVISIONS

Article 28

Member States shall bring into force the measures necessary to comply with this Directive not later than 1 July 1985. They shall forthwith inform the Commission thereof.

Article 29

This Directive is addressed to the Member States.

ANNEX

List of goods excluded from the exemption granted by Article 9

<i>CCT heading No</i>	<i>Description</i>
09.01 A I	Coffee, not roasted
09.01 A II	Coffee, roasted
ex 21.02 A	Coffee extracts, essences and concentrates
09.02	Tea
ex 21.02 B	Tea extracts, essences and concentrates
22.03	Beer
22.05 A	Sparkling wine
22.05 B and C	Still wine
22.06	Vermouths etc.
ex 22.08	Ethyl alcohol
ex 22.09	Spirits, liqueurs, etc.
24.02 A	Cigarettes
ex 24.02 B	Cigars
24.02 C	Smoking tobacco
ex 27.10	Petroleum oils
ex 33.06	Perfumes and toilet water