

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 68 final

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Recommendation for a COUNCIL DECISION

authorizing the Commission to open negotiations with Finland, Iceland, Norway and Sweden for the conclusion of conventions on the association of those States with the system of mutual assistance by the competent authorities of the Member States of the European Communities in the fields of direct taxation and value added tax

(submitted to the Council by the Commission)

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1. The directive concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, adopted by the Council on 19 December 1977 (1), aims to assist in combating the practices of international tax evasion and avoidance, and hence in the correct assessment of taxes through the strengthening of collaboration between the national tax administrations. Its scope was extended to value added tax by the directive adopted on 6 December 1979 (2).
2. Practices of international tax evasion and avoidance are a major preoccupation not only for governments but also for those honest taxpayers who conscientiously comply with their tax obligations. In the words of the first preamble to the above mentioned directive, such practices lead to budgetary losses, to violations of the principle of fair taxation and are liable to bring about distortions in capital movements and in conditions of competition : they therefore affect the operation of the common market.
3. The measures taken by an individual State are not effective beyond its national borders. For the fight against new forms of tax evasion and avoidance to be effective, it can no longer be conducted in a national context, bearing in mind the growing interdependence of economies and the growth of multinational companies ; it must be organised on as large an international scale as possible. In this respect the strengthening of mutual assistance by national tax administrations is generally considered to constitute the first indispensable step.

(1) OJ N° L 336, 27.12.1977

(2) OJ N° L 331? 17.12.1979

4. Tax evasion and avoidance are assuming more and more a world wide dimension ; they are not confined to the territory of the Community. This aspect of the problem has been clearly recognised right from the start by the Community institutions, which is why the Council, in its resolution of 10 February 1975, emphasised the need also to strengthen collaboration with third countries (1). The Commission for its part developed the same idea in the explanatory memorandum of its above mentioned proposal for a directive, laying particular stress on collaboration with those countries which are important in an industrial or financial sense (2).

This approach is equally shared by other international organisations, such as OECD and the Council of Europe, where there is concern to improve the effectiveness of counter measures against tax evasion and avoidance practices. In particular, the parliamentary Assembly of the Council of Europe has recommended closer collaboration between all the Member States of the Council of Europe (3).

5. On the instructions of their governments, the missions to the European Communities of Sweden, Norway, Finland and Iceland wrote to the Commission, in letters dated 22 February, 28 February, 9 May and 21 May 1979 respectively to request the opening of negotiations with a view to concluding conventions for associating these countries with the Community system of mutual assistance.

6. These four countries are important partners in terms of their commercial, industrial and financial relations with the Community.

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(1) Council Resolution of 10 February 1975 (OJ N° C 35, 14.2.1975) on the measures to be taken by the Community in order to combat international tax evasion and avoidance.

(2) Explanatory memorandum, paragraph 11.

(3) Recommendation 833 (1970).

In 1977, trade between these countries and the Community amounted to :

	<u>Finland</u>	<u>Iceland</u>	<u>Norway</u>	<u>Sweden</u> (1)
imports from the Community	2.748	150	3.773	8.024
exports to the Community	2.138	258	4.778	8.857

(values in mio EUA)

The overall trade between the Community and third countries for the same year totalled 171.230 mio EUA (imports) and 164.140 mio EUA (exports); it follows that the share of these four countries in the Community's total foreign trade represents about 9%. It is also a fact that, looked at from the other end, the Community is the most important trading partner for each of these States.

Although detailed statistics on the supply of services are not available, it is reasonable to assume that here also relations between the Community and these countries are very close, especially as regards sea transport.

In the industrial and financial sectors, considerable interpenetration has taken place in the form of subsidiary companies and permanent establishment of enterprises of these countries being set up in the Community and vice versa. One has only to mention the automobile, paper, ball-bearings, machine tool, electrotechnical products, chemical and food industries. As regards financial services, it is a fact that subsidiaries of the major banks and insurance companies of the Nordic countries carry on business in several Member States and vice versa.

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(1) Source : Statistical office of the European Communities.

7. The economic and financial inter-relations described above leave no doubt as to the importance of strengthening cooperation between the national tax administrations of these Nordic countries and those of the Community Member States.

It is true that, leaving aside Iceland, which has concluded double taxation agreements only with Germany and Denmark, the Nordic countries are linked to most Member States through such conventions which provide the means for exchanging information. However, this cooperation, which is derived in general from the corresponding provisions of the OECD model convention, is sometimes more restricted than that established by the above mentioned Directive. It should, moreover, be pointed out that the corresponding provisions can vary considerably from one convention to another and are sometimes not adapted to the new requirements of cooperation ; for example, the clause operating between Germany and Finland and the main clause with Sweden date from 1935.

The situation as regards relations between the Member States and the Nordic countries is therefore comparable with the situation which existed within the Community before the Directive was adopted.

If collaboration is to make a really effective contribution towards combating international tax evasion and avoidance in a given geographical area, three conditions must be fulfilled, namely :

- a) all the Member States must apply the same rules concerning mutual assistance ;
- b) these rules should have the widest possible scope ;
- c) mutual assistance should not only be bilateral, but should be organized on a multilateral basis like relations between the largest of the enterprises over which control is to be exercised.

8. The considerations which have prompted the establishment of mutual assistance within the Community are therefore no less valid as reasons for extending it to these four countries. Their inclusion will, for instance, make it possible for a subsidiary or permanent establishment of an enterprise in Finland, Iceland, Norway, or Sweden, active in a Member State, to be brought under the same strict tax control, with the help of information and other forms of assistance provided by the tax administrations of these countries, as the Community mutual assistance system makes possible in the case of a subsidiary or permanent establishment of an enterprise in another Member State. The equality which can thus be achieved as regards means of tax control will tend to improve neutrality in conditions of competition in the Common Market.

Furthermore, the information to be provided by the Nordic countries concerning subsidiaries of Community companies established in their territory will make it easier to determine the profits of the parent companies.

The extension of the mutual assistance system is also likely to be particularly advantageous in the case of "triangular" transactions, i.e. transactions affecting not only two, but several countries (which may include "tax havens"). It is clear that the chances of clarifying such situations, which are too extensive to be handled by one or even several tax administrations, will be that much greater the more countries are associated in a system of cooperation.

Finally, we should also bear in mind the advantages which the proposed extension will have as regards the application of Article 10 of the Directive, i.e. the pooling of experience concerning the artificial transfer of profits within groups of enterprises.

Summing up in general terms, the participation of the above mentioned four countries in the Community mutual assistance scheme will lead to greater efficiency in combating international tax evasion and avoidance and will assist in the correct assessment of tax.

These are the considerations which have prompted these four Nordic countries, which have already been collaborating closely since 1972 under a multilateral convention which also embraces Denmark, to request that they be associated with the mutual assistance system. These same considerations should lead the Community to conclude conventions with these countries, since it is only through multilateral collaboration, and not through simple bilateral relations (however close they may be), that the objectives described above can be attained.

9. In accordance with the opinions expressed in the letters from the missions of the four applicant States to the Community, the aim of the negotiations should be to re-enact in the conventions to be concluded between the Community and each of these States the same provisions concerning mutual assistance within the Community as are to be found in the directive.

These provisions are primarily concerned with :

- the extent and form of collaboration ;
- safeguarding tax secrecy ; the conventions must in this respect guarantee to the taxpayers of the Member States at least the same degree of secrecy as the directive guarantees for information exchanges between the competent authorities of the Member States ;
- limits to the exchange of information.

10. Finally, the Commission proposes that the Council should authorise it to open negotiations, as requested by Finland, Iceland, Norway and Sweden, and to conduct these negotiations in consultation with a committee designated by the Council, within the framework of the mandate figuring in the annex to the attached draft decision.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the recommendation from the Commission,

Whereas the purpose of the system of mutual assistance by the competent authorities of the Member States in the field of direct taxation and value added tax, established within the Community by Council Directive 77/799/EEC⁽¹⁾, as amended by Directive 79/1070/EEC⁽²⁾, is to lend support to combatting practices of international tax evasion and avoidance and thereby to assessing taxes correctly;

Whereas the Council has stressed, in its resolution of 10 February 1975 on measures to be taken by the Community in order to combat international tax evasion and avoidance⁽³⁾, the need also to strengthen collaboration with the tax administrations of non-member countries;

(1) OJ No L 336, 27.12.1977, p. 15

(2) OJ No L 331, 27.12.1979, p. 8

(3) OJ No C 35, 14. 2.1975, p. 1

Whereas Finland, Iceland, Norway and Sweden have requested the opening of negotiations with the Community for the conclusion of conventions associating those States with the system of mutual assistance established by the above Directives;

Whereas, by virtue of the important relations between those States and the Member States of the Community in the commercial, industrial and financial fields, a strengthening of cooperation between the national tax administrations of all the States concerned will contribute towards effectively combatting international tax evasion and avoidance and, thereby, towards bringing about a greater measure of neutrality in the conditions of competition in the common market,

DECIDED AS FOLLOWS:

Sole Article

The Commission is hereby authorized to open negotiations with Finland, Iceland, Norway and Sweden for the purpose of concluding a convention with each of those States associating them with the system of mutual assistance by the competent authorities of the Member States in the field of direct taxation and value added tax, established by Council Directives 77/799/EEC and 79/1070/EEC.

The Commission shall conduct such negotiations in consultation with a committee designated by the Council to assist in this task and in the framework of the directives contained in the Annex or which may subsequently be addressed to it by the Council.

ANNEX

The purpose of the negotiations is to formulate draft conventions between the Community and each of the applicant non-member States so as to associate those States with the system of mutual assistance by the competent authorities of the Member States in the field of direct taxation and value added tax, established by Council Directives 77/799/EEC (OJ No L 336, 27.12.1977), and 79/1070/EEC (OJ No L 331, 27.12.1979).