

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(84) 77

Brussels, 17 January 1984.

FISCAL MEASURES  
AIMED AT THE ENCOURAGEMENT OF COOPERATION  
BETWEEN UNDERTAKINGS OF DIFFERENT MEMBER STATES

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Communication from Mr. TUGENDHAT to the Council  
(Economic and Social Questions)

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1. The Community will not be able to overcome the crisis without an improvement in the competitiveness of its business undertakings. This in turn cannot be fully achieved without increased cooperation between undertakings in different Member States. It is only in this way that the potentiality inherent in the enlargement of the European economic area can be fully exploited.

These are the factors which led the ad hoc group charged with the examination in the context of the preparation for the Athens European Council, of the possibilities of putting new policies into action, to propose that the European Council "ask the Council, the Commission and Member States to ensure the creation of accompanying conditions, favourable to cooperation", and to recommend that in fiscal matters, priority be given to the elimination of obstacles to cooperation between undertakings.

2. The Council has at present before it four proposals, for a regulation and directives, which have been drawn up in this context and which deal with:

- the establishment of a European Co-operation Grouping (1);
- a common system of taxation applicable to mergers, divisions and contributions of assets occurring between companies of different Member States (2);

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(1) O.J. N° C 14 of 15.2.1974, p. 30  
O.J. N° C 103 of 28.4.1978, p. 4

(2) O.J. N° C 39 of 22.3.1969, p. 1

- a common tax system applicable to parent companies and subsidiaries of different Member States, (1);
- the elimination of double taxation in the case of adjustment of profits between associated enterprises (arbitration procedure) (2).

The Commission considers that the adoption of these three latter proposals is essential if it is hoped to create fiscal conditions for increased cooperation between undertakings across borders within the Community.

3. The proposal for a Council Regulation regarding the establishment of a European Co-operation Grouping, contains a single fiscal clause providing that any profits will only be taxed at the level of the members of the Grouping. This provision, the examination of which has not yet been completed, should not give rise to major difficulties.
4. The proposal for a Council directive on a common tax system applicable to mergers, divisions and contributions of assets occurring between companies of different Member States has as a basic object the deferment of the taxation which would otherwise have to be paid when two companies from different Member States engage in a merger or a similar operation. The work done on this proposal by the Council between 1976 and 1978 has permitted practically all the technical problems to be solved. An agreement has however been prevented because of objections raised by two Member States; Germany, which believes that German companies would arrange absorption by foreign companies with the aim of evading the legal provisions governing worker participation (Mitbestimmungsgesetz) and the Netherlands, which is afraid that Dutch companies will be absorbed by companies of countries operating a company tax system based on partial or full relief from the economic double taxation of dividends (imputation system), more favourable than the Dutch classical system.

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(1) O.J. N° C 39 of 22.3.1969, p. 7

(2) O.J. N° C 301 of 21.12.1976, p. 4

In a communication dated 29 April 1980 (1) the Commission sought to overcome these objections by the introduction of a safeguard article permitting Member States to take appropriate measures departing from the terms of the proposal in cases where the application of community provisions would create serious economic or social problems. This proposal has not allowed the matter to proceed.

5. The Commission still considers that the German and Dutch fears, which must otherwise cancel each other out in the field of the bilateral relationships between the two countries, are not justified, apart from the fact that, in any event, international mergers, in the strict sense of the term, are not possible so long as the convention on the international mergers of companies in course of production, is not finalised(2).

With regard to Germany it is already possible to escape from the constraints imposed by worker participation by a merger or similar operating on the sole condition of financing the fiscal cost of the operation. As for the Netherlands its beliefs appear, at least, to be much exaggerated. If in effect, the maintenance in the Netherlands of a system of company taxation less favourable than that operating in the majority of other Member States were the decisive influence on the decisions of undertakings, as the Dutch Government asserts, it would be evidenced in the present situation by a tendency for companies to be incorporated in those countries operating an imputation system. However this tendency is not seen.

The question must then be asked if the objective of cooperation between undertakings, the realisation of which is vital for Community development, can be blocked by the above objections.

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(1) COM(80) 203 final

(2) EC-Bulletin Supplement N° 4-1975

6. With reference to the proposal for a directive regarding a common system of taxation applicable to parent companies and subsidiaries in different Member States, its examination by the Council has been suspended since 1974. The discussion showed the necessity of making certain adaptations to the proposed text so as to take account of the differences, according to Member States, in the systems of company taxation and the methods designed to avoid double taxation of profits distributed by a subsidiary to its parent company.

The Commission is convinced that appropriate compromise solutions can be found to these problems if the necessary political will is shown.

7. The last proposal tabled in the context of cooperation between undertakings refers to the elimination of double taxation in the case of an adjustment of profits between associated enterprises.

The Commission reaffirms that the continuance of double taxation constitutes an anomaly which should not be accepted within the framework of a common market to which it is a question of progressively introducing the characteristics of a true interior market. Moreover it affirms its position according to which the adoption of procedures for the elimination of the double taxation in question is particularly necessary following decisions, taken by the Council and applied by Member States in the field of mutual assistance between national administrations to combat international fiscal fraud and evasion, which carry the risk of causing an increase in cases of double taxation.

The examination of this proposal has not unfortunately produced a basis for agreement at the Council. For the Commission it is only the outcome which matters. It is for this reason and to facilitate a compromise that it is prepared to consider solutions, other than the arbitration procedure proposed. It could in particular consider the possibility of changing the arbitrage commissions, called to make decisions instead of administrations, into organs charged with giving them advice on the method of eliminating the double taxation, on condition that it be

guaranteed that the double taxation be effectively relieved, in one way or another, in a given period after receipt of advice from these Commissions.

8. In conclusion the Commission asks the Council to give a ruling on the provisional questions, which have been posed regarding the three propositions for directives concerning the common tax system for mergers, the common tax system for parents and subsidiaries and the elimination of double taxation in the case of the adjustment of profits between associated undertakings and which affect the solution of the technical problems which remain outstanding.

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