As the Honourable Member points out, exemptions exist for gifts coming from third countries\(^1\). Similar exemptions existed for consignments within the EU, before the establishment of the internal market and the abolition of fiscal controls at intra-EU borders on 1.1.1993. They were laid down in Council Directive 74/651/EEC on the tax reliefs to be allowed on the importation of goods in small consignments of a non-commercial character within the Community\(^2\). As far as excise duty is concerned, this Directive was repealed with the adoption of Directive 92/12/EEC\(^3\), as the provisions on exemptions and allowances on imports ceased to apply in respect of relations between Member States as a result of the abolition on 1 January 1993 of the principle of taxes on imports in these relations\(^4\). The Commission was therefore of the opinion that excise goods sent as a gift by a private individual in one Member State to a private individual in another Member State should not be subject to excise duty in the Member State of destination. In its view this would be consistent with the principles of the internal market.

However, based upon a strict interpretation of Article 8 of Directive 92/12/EEC, a number of Member States had difficulties to accept the principle that gifts sent by a private individual to another private individual in another Member State should not be subject to excise duty again in the Member State of destination. The issue has then been discussed in the Committee on Excise Duties, leading to the adoption of a guideline\(^5\), in 2000, by most of the delegations stating that, in the absence of the taxable event as mentioned in Article 9(1) of Directive 92/12/EEC, the gifts sent by a private individual established in a Member State to a private individual located in another Member State, are not subject to payment of the excise duty in the Member State of destination and that, in order to determine that it is a gift, the Member States take into account at least the following elements: the gifts must be intended for the personal needs of the private person, it must not be subject of payment of any kind, direct or indirect, by the recipient and it must be of an occasional nature.

Not all Member States subscribed to the guideline, emphasising the fact that it is difficult to verify the non-commercial nature of such consignments. Therefore, the Commission, in its proposal of 2 April 2004\(^6\), suggested adding the following third subparagraph to Article 8 of Directive 92/12/EEC: "Taxation in the Member State of acquisition also applies to products dispatched by one private individual to another without any payment, direct or indirect."

This proposal was later on integrated in the Proposal for a Council Directive concerning the general arrangements for excise duty\(^7\), which has been the basis for the adoption of Directive 2008/118/EC\(^8\), entering into application on 1 April 2010. However this addition (to what ultimately became Article 32 of Directive 2008/118/EC) has not been adopted by the Council, nor has the Council made any alternative provision privileging small consignments between private individuals. In order to mark its disagreement, the Commission has entered a statement in the Minutes of the session of the Council at which the Directive was adopted, by reference to the criteria set out in the guideline of the Committee on Excise Duties referred to above.

\(^2\) OJ L 354, 30.12.1974
\(^4\) See recital 19 of Directive 92/12/EEC
\(^5\) Guideline adopted by the Committee on Excise Duties at its meeting of 30 November 2000.
\(^7\) COM(2008)78 final
In spite of all the actions undertaken by the Commission described above, to clarify the treatment of gifts, it remains that the European Union legal provisions, including Directive 2008/118/EC replacing Directive 92/12/EEC as of 1 April 2010, still do not foresee specific provisions in the matter. Account should also be taken of the Judgment of the Court of Justice of 23 November 2006 in Case C-5/05 (Joustra) according to which the requirement contained in Article 8 of Directive 92/12/EEC concerning acquisitions of excise products by private individuals for their own use, whereby the goods shall be transported by the acquirer, is mandatory in nature. The Court also took the view that it is up to the legislator to fill any resulting lacuna, if necessary, including as regards small postal consignments sent by private individuals. The Commission therefore intends to take up this issue again in the context of the report it has to submit to the Parliament and the Council in accordance with Article 45(2) of Directive 2008/118/EC on the implementation of this Directive.