



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a

COUNCIL DIRECTIVE

amending Directive 77/388/EEC as regards the special scheme for travel agents

(presented by the Commission pursuant to Article 250(2) of the EC Treaty)

Proposal for a

COUNCIL REGULATION

amending Regulation (EEC) No 218/92 on administrative co-operation in the field of indirect taxation (VAT) as regards additional measures regarding supplies of travel services

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. BACKGROUND

On 8 February 2002 the Commission published a proposal for a Council Directive amending Directive 77/388/EEC as regards the special scheme for travel services¹.

In the meantime the Council adopted Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services² and Council Regulation (EC) N° 792/2002 of 7 May 2002 amending temporarily Regulation (EEC) N° 218/92 on administrative co-operation in the field of indirect taxation (VAT) as regards additional measures regarding electronic commerce³.

The European Economic and Social Committee delivered its opinion on 17 and 18 July 2002⁴.

On 24 September 2002 the European Parliament adopted its report on this proposal for a Council Directive⁵ and it proposed two amendments, one of which the Commission could accept and in respect of which it undertook to modify its proposal.

Consequently, the Commission is submitting the present amended proposal.

2. EXPLANATION OF THE AMENDMENTS

2.1. Introducing the "one stop shop" principle

The objective of this amendment is to ensure that the proposed rules on the place of supply for travel services, when supplied by non-EU established travel agents to EU established customers can be easily applied in practice. While calling for third country suppliers to be taxable in the EU when supplying customers in the EU, the Commission did not propose any simplified measures to achieve that.

In the meantime a simplification scheme was adopted in Council Directive 2002/38/EC amending Directive 77/388/EEC as regards the value added tax arrangements applicable to certain electronically supplied services and radio and television broadcasting services, for cases where a supplier who is not established in the EU supplies these services to non taxable customers in the EU. This "one stop shop" scheme will be applicable for a trial period of 3 years from 1 July 2003.

The European Parliament has proposed to extend the scope of this special scheme provided for in the e-commerce Directive 2002/38/EC, as well as the bilateral clearing mechanism between tax authorities provided for under Title III.A of Council Regulation (EC) N°792/2002 of 7 May 2002 amending temporarily Regulation (EEC) N° 218/92 on

¹ Proposal COM(2002)64 final

² OJ L 128 of 15/05/2002, p.41

³ OJ L 128 of 15/05/2002, p.1

⁴ OJ C 241, 7.10.02, p. 83.

⁵ Report on the Proposal for a Council Directive amending Directive 77/388/EEC as regards the special scheme for travel agents (COM(2002) 64 - C5-0112/2002 - 2002/0041(CNS)), PE 307.532, A5-0274/2002.

administrative co-operation in the field of indirect taxation (VAT) as regards additional measures regarding electronic commerce, to the supplies by non-EU established suppliers of travel services to EU established clients.

The Commission accepted this amendment and promised to modify its proposal accordingly.

2.2. Introducing an exemption for supplies to third country established clients.

The Commission cannot accept this amendment as it is contrary to one of the basic principles of the Community VAT system whereby supplies of goods and services are taxed there where the consumption takes place. Therefore, the profit margin generated in the Community, should be taxable in the Community, where it is realised and it should not be exempted when the customer is established outside the EU.

3. PROPOSED CHANGES TO THE COMMISSION PROPOSAL COM(2002) 64 FINAL

3.1. Introduction of a new subparagraph under Article 26(2)

The first modification is to extend the scope of the special scheme for electronically supplied services to cover also travel services supplied by non-EU established travel agents to EU established customers, insofar as the travel service takes place in the EU. These supplies are covered by Article 26(2) of the Commission Proposal COM(2002) 64 final. A new subparagraph is inserted in this Article, which proposes to allow these third country suppliers, mentioned in Article 26(2)(b) (new) to apply a special scheme, similar to the one applicable for electronically supplied services in order to comply with their VAT obligations in the EU.

3.2. A new Article 26(3)

This new Article 26(3)(a) first introduces some definitions necessary for determining the scope and functioning of the special scheme.

The second paragraph of Article 26(3) then introduces the special scheme which will be applicable to the supplies of travel services by non EU established travel agents, when supplying travel services, that take place in the EU to EU established customers.

3.3. Modification of Article 3 of the Proposal COM(2002) 64 final

The special scheme for the supplies covered by Article 26(3) (new) is similar to the special scheme for electronically supplied services mentioned in Article 26c (B) of the 6th VAT Directive, which is applicable for a trial period of 3 years, starting on 1st July 2003. Therefore, it is advisable to update the original target date of 1 January 2003 to the same date of 1 July 2003.

4. AIM AND CONTENTS OF THE PROPOSAL AMENDING REGULATION (EEC) NO 218/92

The proposed modifications to the special scheme for travel agents, set out in Article 26 of the 6th VAT Directive aim to ensure that VAT is allocated to the Member State where the actual consumption takes place.

Under the proposed new scheme it is the Member State of consumption that, in the first place, is responsible for ensuring that the suppliers fulfil their tax obligations and account for the

VAT due on their supplies. For the supplies of travel services by operators that are not established, nor identified for VAT purposes in the Community, to customers established in the Community, it is necessary for the Member State of consumption and the Member State of establishment of the supplier to exchange all information necessary to operate the special scheme provided for under Article 26 (3) (new) of the 6th VAT Directive. Similarly it is necessary for the Member State of consumption that the amount of VAT due on the supplies for which the place of taxation is located on its territory, actually is transferred to its State budget.

A similar system has already been introduced for electronically supplied services⁶ and the proposed amendments to Regulation (EEC) No 218/92 are intended to extend the system to the supplies made by travel agents under the special scheme introduced under Article 26(3) of the 6th VAT Directive.

⁶ Council Regulation (European Commission) No 792/2002 of 7 May 2002

Amended proposal for a

COUNCIL DIRECTIVE

amending Directive 77/388/EEC as regards the special scheme for travel agents

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission⁷,

Having regard to the opinion of the European Parliament⁸,

Having regard to the opinion of the European Economic and Social Committee⁹,

Whereas:

- (1) According to the Commission's Communication to the Council and the European Parliament "A Strategy to improve the functioning of the Internal Market"¹⁰, a more uniform application of community legislation by Member States is one of the four objectives to be achieved in order to improve the functioning of the internal market in the short term.
- (2) Member States currently apply different interpretations of the special scheme for travel agents, as set out in Article 26 of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment¹¹, resulting in differences in the application of that scheme as between the various Member States and leading to distortion of competition for certain operators.
- (3) Extending the scope of Directive 77/388/EEC so that all supplies of travel packages are subject to the conditions laid down in Article 26 thereof would eliminate those differences and ensure that the original objective of taxation in the Member State of consumption is better met.
- (4) The simplified scheme, introduced by Council Directive 2002/38/EC for the taxation of electronically supplied services, should be extended to cover supplies of travel services by travel agents not established in the Community to customers established in the Community.

⁷ OJ C , , p. .

⁸ OJ C , , p. .

⁹ OJ C , , p. .

¹⁰ COM(2000)348 final of 7.6.2000

¹¹ OJ L 145 of 13/6/1977, p.1

- (5) To facilitate compliance with fiscal obligations by those operators, who are neither established nor required to be identified for tax purposes within the Community, a special scheme should be established when they supply travel services that take place in the Community to customers established in the Community. In applying this scheme any operator supplying such travel services to customers within the Community, may, if he is not otherwise identified for tax purposes within the Community, opt for identification in a single Member State.
- (6) The non-established operator wishing to benefit from the special scheme should comply with the requirements laid down therein, and with any relevant existing provision in the Member State where the services are consumed.
- (7) The Member State of identification must, under certain conditions be able to exclude a non-established operator from the special scheme.
- (8) Where the non-established operator opts for the special scheme, any input value added tax that he has incurred in respect to goods and services used by him for the purpose of his taxed activities falling under the special scheme, should be refunded by the Member State where the input value added tax was incurred, in accordance with Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of laws of the Member States relating to turnover taxes - arrangements for the refund of value added tax to taxable persons not established in Community territory¹². The optional restrictions for refund in Article 2(2), 2(3) and Article 4(2) of that Directive should not be applied.
- (9) A similar scheme whereby the profit margin is taxed is set out in Article 26a of Directive 77/388/EEC for second-hand goods, works of art, collectors' items and antiques. That Article contains detailed definitions, which could be used to clarify the definitions in Article 26 and simplify the application of the special scheme for travel agents.
- (10) Due to the special nature of the services supplied by travel agents, which purchase different services from third parties, combine them into a travel package and then sell these packages, it is often very difficult for travel agents to determine their profit margin for each separate supply. A system allowing them to calculate a global profit margin over a certain period of time would simplify the system and could solve many of their problems in this field.
- (11) For similar reasons travel agents should be allowed to opt for the normal VAT arrangements in order to ensure the principle of neutrality of the VAT.
- (12) Existing derogations under Article 28(3) of Directive 77/388/EEC and Annexes E and F thereto should be abolished in order to ensure a more uniform application of the special scheme for travel agents. Similarly Article 28(3)(g) and Article 15(14) of that Directive should be deleted as they, too, allow Member States to apply divergent rules for taxing the services of travel agents.

¹² OJ L 326 of 21/11/1986, p.40

(13) The Council Decision, in response to a request from the Kingdom of Belgium of 13 September 1978, granting the Kingdom of Belgium a derogation under Article 27(1) of Directive 77/388/EEC should be repealed in order to ensure a more harmonised application of the special scheme of travel agents.

(14) Directive 77/388/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/388/EEC is amended as follows:

(1) Article 26 is replaced by the following:

"Article 26

Special scheme for travel agents

1. **Member States shall apply, in accordance with the provisions of this Article, a special value added tax scheme to the operations of travel agents, who deal with customers in their own name and use the supplies of goods and services of other taxable persons in the provision of travel facilities.**

That scheme shall not apply to travel agents, who are acting only as intermediaries and accounting for tax in accordance with Article 11 A (3) (c).

2. **(a)** All transactions performed by the travel agent in respect of a journey under the conditions set out in paragraph 1 shall be treated as a single service supplied by the travel agent. That single service shall be taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which **he** has provided the service-

(b) When the travel agent is not established in the Community or has a fixed establishment outside the Community from **which** the service is supplied and he supplies a travel service the effective use and enjoyment of which takes place within the Community, the single service shall be taxable at the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides.

(c) Member States shall permit a non-established travel agent, who supplies travel services referred to in point (b), to use the special scheme in accordance with the provisions of paragraph 3. The special scheme shall apply to all those supplies taxable within the Community.

3. (a) Definitions:

For the purposes of this Article, the following definitions shall apply without prejudice to other Community provisions:

- (1) 'non-established travel agent' means a travel agent who has neither established his business nor has a fixed establishment within the territory of the Community and who is not otherwise required to be identified for tax purposes under Article 22;**
- (2) 'travel services' means services supplied by tour operators or by any other taxable person in the same way;**
- (3) 'Member State of identification' means the Member State, which the non-established travel agent chooses to contact in order to state when his activity as a taxable person within the Community commences in accordance with the provisions of this Article;**
- (4) 'Member State of consumption' means the Member State in which the supply of the travel service is deemed to take place in accordance with paragraph 2(b);**
- (5) 'value added tax return' means the statement containing the information necessary to establish the amount of tax that has become chargeable in each Member State.**

(b) Special scheme for the supplies of travel services taxable in the Community in accordance with paragraph 2(b).

- (1) The non-established travel agent shall state to the Member State of identification when his activity as a taxable person commences, ceases or changes to the extent that he no longer qualifies for the special scheme. Such a statement may be made electronically.**

The information from the non-established travel agent to the Member State of identification when his taxable activities commence shall contain the following details for the identification: name, postal address, national tax number, if any, and a statement that the person is not identified for value-added tax purposes within the Community. The non-established travel agent shall notify the Member State of identification of any changes in the submitted information.

- (2) The Member State of identification shall identify the non-established travel agent by means of an individual number. Based on the information used for this identification, Member States of consumption may keep their own identification systems.**

The Member State of identification shall notify the non-established travel agent of the identification number allocated to him.

(3) The Member State of identification shall exclude the non-established travel agent from the identification register if:

(i) he notifies that he no longer supplies these travel services, or

(ii) it otherwise can be assumed that his taxable activities have ended, or

(iii) he no longer fulfils the requirements necessary to be allowed to use the special scheme, or

(iv) he persistently fails to comply with the rules concerning the special scheme.

(4) The non-established taxable person shall submit to the Member State of identification a value-added tax return for each calendar quarter whether or not travel services have been supplied. The return shall be submitted within 20 days following the end of the reporting period to which the return refers.

The value-added tax return shall set out the identification number and, for each Member State of consumption where tax has become due, the total profit margin, less value added tax, of supplies of travel services for the reporting period and total amount of the corresponding tax. The applicable tax rates and the total tax due shall also be indicated.

(5) The value-added tax return shall be made in euro. Member States, which have not adopted the euro, may require the tax return to be made in their national currencies. If the supplies have been made in other currencies, the exchange rate valid for the last date of the reporting period shall be used when completing the value added tax return. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.

(6) The non-established travel agent shall pay the value-added tax when submitting the return. Payment shall be made to a bank account denominated in euro, designated by the Member State of identification. Member States, which have not adopted the euro may require the payment to be made to a bank account denominated in their own currency.

(7) Notwithstanding Article 1(1) of Directive 86/560/EEC, the non-established travel agent making use of this special scheme shall, instead of making deductions under Article 17(2) of this Directive, be granted a refund according to Directive 86/560/EEC. Article 2(3) of Directive 86/560/EEC shall not apply to the refund related to the supply of travel services covered by this special scheme.

(8) The non-established travel agent shall keep records of the transactions covered by this special scheme in sufficient detail to enable the tax administration of the Member State of consumption to determine that the value added tax return referred to in (4) is correct. These records shall be

made available on request to the Member State of identification and to the Member State of consumption. These records shall be maintained for a period of ten years from the end of the year when the transaction was carried out.

(9) Article 21(2)(b) shall not apply to a non-established travel agent who has opted for this special scheme.”

4. The taxable amount of the single service supplied by the travel agent shall be the profit margin made by the travel agent, less the amount of value added tax included in the profit margin. That profit margin shall be equal to the difference between the selling price charged by the travel agent for a travel package and the actual cost to the travel agent of **that** travel package. For the purposes of this paragraph, the following definitions shall apply:

(a) **the "selling price"** means everything which constitutes the consideration, **obtained or to be** obtained by the travel agent from his customer or a third party, including subsidies directly linked to that transaction, taxes, duties, levies and charges and incidental expenses such as commission and insurance costs charged by the travel agent to the customer but excluding the amounts referred to in Article 11(A)(3);

(b) **the "actual cost"** of the travel package means everything which constitutes the **consideration referred to in the point (a)**, including VAT, obtained or to be obtained from the travel agent by his taxable suppliers, for the supplies and services provided to him, where **those** transactions are for the direct benefit of the customer excluding overhead costs used to compose the travel package.

5. In order to simplify the procedure for charging the tax and subject to the consultation of the VAT Committee, Member States may provide that the taxable amount of supplies of all travel services subject to the special arrangements for taxing the margin shall be determined globally for each tax period during which the travel agent must submit the return referred to in Article 22(4), as replaced by Article 28(h).

In that event, the taxable amount for the supplies of travel services shall be the total margin made by the travel agent less the amount of value added tax included in that margin.

The total margin shall be equal to the difference between:

a) the total amount of supplies of travel services subject to the special arrangements for taxing the margin effected by the travel agent during the **period**, that amount **being** equal to the total selling prices determined in accordance with **paragraph 4, and**

b) the total amount of purchases of goods and services as referred to in paragraph 1, effected during that period, by the travel agent, that amount **being** equal to the total actual costs determined in accordance with **paragraph 4.**

6. If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the travel agent's service shall be treated as an intermediary activity **exempted** under Article 15(14).

Where those transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community may be exempted.

7. Tax charged to the travel agent by another taxable person on the transactions described in paragraph 2, which are for the direct benefit of the travel agent's customer, shall not be eligible for deduction or refund in any Member State.
8. The travel agent may apply the normal **value-added** tax arrangements to any supply covered by the special arrangements for taxing the margin.
9. Where the travel agent applies the normal **value-added** tax arrangements to the supply of a travel service, he shall be entitled to deduct from his tax liability the **value-added** tax due or paid for the services supplied to him by his suppliers, where these transactions are for the direct benefit of his customer.

The right to deduct shall arise at the time when the tax due for the supply in respect of which the travel agent opts for application of the normal value added tax arrangements become chargeable.

10. Where the travel agent is led to apply both the normal arrangements for value added tax and the special arrangements for taxing the margin, the travel agent must follow separately in his accounts the transactions falling under each of these arrangements, **in accordance with** rules laid down by the Member States"

(2) In Article 15(14) the second subparagraph is deleted;

(3) In Article 28(3) point (g) is deleted;

(4) In Annex E point 15 is deleted;

(5) In Annex F point 27 is deleted.

Article 2

The Council Decision, in response to a request from the Kingdom of Belgium of 13 September 1978, granting to the Kingdom of Belgium a derogation under Article 27(1) of Directive 77/388/EEC is repealed.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 **July** 2003 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 4

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the Council
The President
[...]

Proposal for a

COUNCIL REGULATION

amending Regulation (EEC) No 218/92 on administrative co-operation in the field of indirect taxation (VAT) as regards additional measures regarding supplies of travel services

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission¹³;

Having regard to the opinion of the European Parliament¹⁴;

Having regard to the opinion of the European Economic and Social Committee¹⁵;

Whereas:

- (1) Council Directive 2003/xxx/EC of [..... 2003] amending Directive 77/388/EEC as regards the special scheme for travel agents¹⁶ provides a framework for taxing supplies of travel services in the Community effected by taxable persons who are neither established nor required to be identified for tax purposes within the Community.
- (2) Since the Member State of consumption has primary responsibility for ensuring that non-established suppliers comply with their obligations, the information necessary to operate the special scheme for travel services supplied by operators not established in the Community, as provided for in Article 26(3) of Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment¹⁷ should be transmitted to those Member States.
- (3) It is necessary to provide that the value-added tax due in respect of such supplies is to be transferred to the accounts designated by the Member States of consumption,
- (4) Regulation (EEC) No 218/92 should therefore be amended accordingly,

¹³ OJ C [...], [...], p. [...]

¹⁴ OJ C [...], [...], p. [...]

¹⁵ OJ C [...], [...], p. [...]

¹⁶ OJ L ...

¹⁷ OJ L 145 of 13/6/1977, p. 1 as last modified by Council Directive 2002/92/EC of 3 December 2002 OJ L 331 of 7/12/2002, p 27

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 218/92 is amended as follows:

(1) The following Title III B is inserted:

"Title III B

Provisions concerning the special scheme provided for in Article 26(3) of Directive 77/388/EEC

Article 9g

The following provisions shall apply to the special scheme provided for in Article 26(3) in Directive 77/388/EEC. The definitions set out in Article 26(3) shall also apply for the purposes of this Title.

Article 9h

1. The information from the non-established taxable person to the Member State of identification when his activities commence set out in the first subparagraph of Article 26(3)(b)(1) of Directive 77/388/EEC is to be submitted in an electronic manner. The technical details, including a common electronic message, shall be determined in accordance with the procedure provided for in Article 10.
2. The Member State of identification shall transmit the information referred to in paragraph 1 by electronic means to the competent authorities of the other Member States within ten days from the end of the month during which the information was received from the non-established taxable person. In the same manner the competent authorities of the other Member States shall be informed of the allocated identification number.

The technical details, including a common electronic message, by which the information is to be transmitted shall be determined in accordance with the procedure provided for in Article 10.

3. The Member State of identification shall without delay inform by electronic means the competent authorities of the other Member States if a non-established taxable person is excluded from the identification register.

Article 9i

1. The return with the details set out in the second subparagraph of Article 26(3)(b)(4) of Directive 77/388/EEC shall be submitted in an electronic manner.

The technical details, including a common electronic message shall be determined in accordance with the procedure provided for in Article 10.

2. The Member State of identification shall transmit the information referred to in paragraph 1 by electronic means to the competent authority of the Member State concerned at the latest ten days after the end of the month in which the return was received. Member States, which have required the tax return to be made in a currency other than euro, shall convert the amounts into euro using the exchange rate valid for the last date of the reporting period.

The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.

The technical details, by which this information is to be transmitted shall be determined in accordance with the procedure provided for in Article 10.

3. The Member State of identification shall transmit by electronic means to the Member State of consumption the information needed to link each payment with a relevant quarterly tax return.

Article 9j

The provisions in Article 4(1) shall also apply to information collected by the Member State of identification in accordance with Article 26(3)(b)(1) and (4) of Directive 77/388/EEC.

Article 9k

1. The Member State of identification shall ensure that the amount the non-established taxable person has paid is transferred to the bank account denominated in euro, which has been designated by the Member State of consumption to which the payment is due.

Member States, which have required the payments in a currency other than euro shall convert the amounts into euro using the exchange rate valid for the last date of the reporting period. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication. The transfer shall take place at the latest ten days after the end of the month in which the payment was received.

2. If the non-established taxable person does not pay the total tax due, the Member State of identification shall ensure that the payment is transferred to the Member States of consumption in proportion to the tax due in each Member State. The Member State of identification shall inform by electronic means the competent authorities of the Member States of consumption thereof.

Article 9l

1. Member States shall notify by electronic means the competent authorities of the other Member States of the relevant bank account numbers for receiving payments in accordance with Article 9k.

2. Member States shall without delay notify by electronic means the competent authorities of the other Member States and the Commission of changes in the standard tax rate.";

(2) In Article 13(1), the first sentence shall be replaced by the following:

" The Commission and the Member States shall ensure that such existing or new communication and information exchange systems as are necessary to provide for the exchanges of information described in Article 9b and 9c and in Articles 9h and 9i are operational by the dates specified in Article 3(1) of Directive 2002/38/EC and in Article 3 of Directive 2003/xx/EC, respectively."

Article 2

This Regulation shall enter into force on the seventh day following its publication in the Official Journal of the European Communities.

It shall apply from 1 July 2003.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

For the Council
The President
[...]