



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.4.2005
COM(2005) 136 final

2005/0051 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 77/388/EEC on the common system of value added tax, with regard to the length of time during which the minimum standard rate is to be applied

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The second subparagraph of Article 12(3)(a) of Directive 77/388/EEC¹ stipulates that the Council, on a proposal from the Commission and after having consulted the European Parliament and the European Economic and Social Committee, must decide unanimously on the level of the standard rate of value added tax (VAT).
2. This provision is based on Article 93 of the EC Treaty, which requires the Council to adopt provisions for the harmonisation of legislation concerning turnover taxes to the extent that such harmonisation is necessary to ensure the establishment and functioning of the internal market. For this purpose it has always been considered essential to set the standard rate.
3. With a view to the establishment of the internal market in January 1993, the Commission presented proposals aimed at setting up a definitive system of tax harmonisation. As regards rates, the Commission initially proposed a harmonised tax structure with two rates of VAT and harmonisation, within a band, of the rates applied by the Member States.
4. However, when it became clear that it would be impossible to adopt the Commission's proposals before 1 January 1993, the Council decided to adopt a transitional system. With regard to rates, it adopted Directive 92/77/EEC², approximating rates.
5. That Directive, introducing a system of minimum rates, stipulated that from 1 January 1993 to 31 December 1996 the standard rate could not be set at less than 15%. This provision has been extended three times and applies to 31 December 2005.
6. To maintain the degree of harmonisation of rates already achieved, the Commission has twice presented proposals providing for a standard rate band with a minimum rate of 15% and a maximum rate of 25%.³ The band was derived from the rates applied in practice in the Member States, where the standard rates had always varied between 15% and 25%.
7. In both cases the proposals to approximate rates were amended by the Council⁴ which kept only the principle of the minimum rate, referring to a 15% minimum rate comparable to the system introduced by the 1992 Directive.
8. In 2000 the Commission, with a view to improving the working of the internal market in the short term, adopted a phased strategy⁵ geared to four main objectives: the simplification and modernisation of existing rules, more uniform application of

¹ OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

² Directive 92/77/EEC (OJ L 316, 31.10.1992, p. 1).

³ COM(95) 731 (OJ C 73, 13.3.1996, p. 22) and COM(1998) 693 (OJ C 409, 30.12.1998 p. 13).

⁴ Council Directive 96/95/EC of 20 December 1996 (OJ L 338, 28.12.1996, p. 89) and Council Directive 1999/49/EC of 25 May 1999 (OJ L 139, 2.6.1999, p. 27).

⁵ COM(2000) 348 final. Communication from the Commission to the Council and the European Parliament - A strategy to improve the operation of the VAT system within the context of the internal market.

current arrangements and a new system of administrative cooperation. The priorities of the VAT strategy were reviewed and updated in 2003.⁶

9. The strategy was adopted because the Member States' reservations meant there was little prospect in the near future of significant progress towards a common system of VAT based on taxation in the Member State of origin. Its main objective was to give new momentum in the Council towards concrete and essential improvements to the existing tax system in the near future, without, however, calling into question an ultimate shift to the principle of taxation in the Member State of origin as a long-term Community goal.
10. During this period, however, it was important to prevent growing divergence in the standard rates of VAT applied by the Member States from leading to structural imbalances in the EU and distortions of competition in certain sectors of activity. The Commission therefore adopted a proposal extending the application of a 15% minimum standard rate to 31 December 2005 without proposing a band. The Council adopted this proposal without amendment on 19 January 2001.
11. The accession of the ten new Member States on 1 May 2004 did not alter the situation regarding the standard rate. That rate continues to range from 15% to 25% in the 25 Member States. Two Member States (Cyprus and Luxembourg) apply a 15% rate and three a 25% rate (Denmark, Hungary and Sweden).
12. In these circumstances, it therefore appears appropriate to maintain temporarily the principle of a minimum standard rate of 15%, and to propose that the legislation in force be extended.
13. Since the application of this rate under Article 12(3)(a) of Directive 77/388/EEC, expires on 31 December 2005, the object of this proposal is to enable the Council to extend the period of application of the minimum standard rate. The minimum level for the standard rate is therefore set at 15% for the five years from 1 January 2006 to 31 December 2010.

⁶ COM(2003) 614 final. Communication from the Commission. Review and update of VAT strategy priorities.

Notes on the Articles

Article 1

The first paragraph proposes that the current minimum standard rate of VAT in the various Member States, set at 15%, be extended from 1 January 2006 to 31 December 2010.

Paragraph 2 sets 31 December 2010 as the expiry date for the minimum level proposed for the standard rate. This provision will be subject to revision, given that the Council, acting on a proposal to be submitted by the Commission not later than 31 December 2010, must decide what the standard rate is to be after that date.

Articles 2 to 4

These Articles provide for the entry into force of the Directive.

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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 Commission,⁷

Having regard to the opinion of the European Parliament,⁸

Having regard to the opinion of the European Economic and Social Committee,⁹

Whereas:

- (1) The second subparagraph of Article 12(3)(a) 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 assessment,¹⁰ lays down that the Council shall decide on the level of the standard rate to be applied after 31 December 2005.
- (2) While the standard rate of value added tax (VAT) currently in force in the various Member States, combined with the mechanism of the transitional system, has ensured that this system has functioned to an acceptable degree, it is nonetheless important to prevent a growing divergence in the standard rates of VAT applied by the Member States from leading to structural imbalances in the Community and distortions of competition in some sectors of activity.
- (3) It is therefore appropriate to maintain the current minimum standard rate at 15% for a further period long enough to cover the ongoing implementation of the strategy to simplify and modernise current Community legislation on VAT, as set out in the Commission communications of 7 June 2000¹¹ and 20 October 2003.¹²

⁷ OJ C [...], [...], p. [...].

⁸ OJ C [...], [...], p. [...].

⁹ OJ C [...], [...], p. [...].

¹⁰ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Council Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

¹¹ COM(2000) 348 final.

¹² COM(2003) 614 final.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

The first and second subparagraphs of Article 12(3)(a) of Directive 77/388/EEC are replaced by the following:

"The standard rate of value added tax shall be fixed by each Member State as a percentage of the taxable amount and shall be the same for the supply of goods and for the supply of services. From 1 January 2006 until 31 December 2010, the standard rate may not be less than 15%.

The Council shall decide, in accordance with Article 93 of the Treaty, on the level of the standard rate to be applied after 31 December 2010."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 January 2006. 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.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*