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REPORT

on the proposal for a Council directive amending Directive 77/388/CEE concerning the common system of value added tax, as regards conferment of implementing powers and the procedure for adopting derogations (COM(2003) 335 – C5-0281/2003 – 2003/0120(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Hans Blokland

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 20 June 2003 the Council consulted Parliament, pursuant to Article 93 of the EC Treaty, on the proposal for a Council directive on amending Directive 77/388/CEE concerning the common system of value added tax, as regards conferment of implementing powers and the procedure for adopting derogations (COM(2003) 335 – 2003/0120(CNS)).

At the sitting of 30 June 2003 the President of Parliament announced that he had referred the proposal to the Committee on Economic and Monetary Affairs as the committee responsible (C5-0281/2003).

The Committee on Economic and Monetary Affairs appointed Hans Blokland rapporteur at its meeting of 2 July 2003.

The committee considered the Commission proposal and draft report at its meetings of 4 November 2003 and 24 November 2003.

At the latter meeting it adopted the draft legislative resolution by 30 votes, with 2 abstentions.

The following were present for the vote: Christa Randzio-Plath (chairwoman), José Manuel García-Margallo y Marfil (vice-chairwoman), Philippe A.R. Herzog (vice-chairwoman), John Purvis (vice-chairwoman), Hans Blokland (rapporteur), Richard A. Balfe (for Jonathan Evans), Renato Brunetta, Hans Udo Bullmann, Manuel António dos Santos (for Helena Torres Marques), Harald Ettl (for David W. Martin), Robert Goebbels, Lisbeth Grönfeldt Bergman, Marie-Thérèse Hermange (for Ingo Friedrich pursuant to Rule 153(2)), Mary Honeyball, Christopher Huhne, Giorgos Katiforis, Christoph Werner Konrad, Wilfried Kuckelkorn (for Fernando Pérez Royo), Werner Langen (for Hans-Peter Mayer), Klaus-Heiner Lehne (for Othmar Karas pursuant to Rule 153(2)), Alain Lipietz, Astrid Lulling, Erika Mann (for Bernhard Rapkay), Simon Francis Murphy (for Peter William Skinner), Elly Plooi-j-van Gorsel (for Carles-Alfred Gasòliba i Böhm), Alexander Radwan, Karin Riis-Jørgensen, Herman Schmid (for Armonia Bordes), Olle Schmidt, Bruno Trentin, Ieke van den Burg (for Pervenche Berès) and Theresa Villiers.

The report was tabled on 27 November 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council directive on amending Directive 77/388/CEE concerning the common system of value added tax, as regards conferment of implementing powers and the procedure for adopting derogations
(COM(2003) 335 – C5-0281/2003 – 2003/0120(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2003) 335)¹,
 - having regard to Article 93 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0281/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A5-0427/2003),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 RECITAL 2

(2) In the interests of transparency and legal certainty, it is preferable to ensure that every derogation authorised under Article 27 or Article 30 of Directive 77/388/EEC takes the form of an explicit decision adopted by the Council acting on a proposal from the Commission.

(2) In the interests of transparency and legal certainty, it is preferable to ensure that every derogation authorised under Article 27 or Article 30 of Directive 77/388/EEC takes the form of an explicit decision adopted by the Council acting on a proposal from the Commission ***after having informed the European***

¹ Not yet published in OJ.

Parliament.

Justification

It is important to improve the transparency of the process, not least vis-à-vis the European Parliament, but also in order to keep the business community, which will ultimately be affected by the rules fully informed at an early stage.

Amendment 2
RECITAL 13

(13) Given the restricted scope of the measures envisaged, measures implementing Directive 77/388/EEC should be adopted by the Council acting unanimously on a proposal from the Commission in accordance with a procedure similar to that laid down by the same Directive in respect of derogations.

(13) Given the restricted scope of the measures envisaged, measures implementing Directive 77/388/EEC should be adopted by the Council acting unanimously on a proposal from the Commission in accordance with a procedure similar to that laid down by the same Directive in respect of derogations.
However, in order to guarantee the transparency of the process, the European Parliament shall be kept fully informed throughout.

Justification

See justification to amendment 1.

Amendment 3
ARTICLE 1, POINT 1
Article 27, paragraph 4 (Directive 77/388/EEC)

4. Within three months of giving the notification referred to in paragraph 3 the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.”

4. Within three months of giving the notification referred to in paragraph 3 the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.
The proposal or communication shall be forwarded for information to the European Parliament at the same time as it is sent to the Council.”

Justification

See justification to amendment 1.

Amendment 4
ARTICLE 1, POINT 2
Article 29 a (Directive 77/388/EEC)

The Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement this Directive.”

The Council, acting unanimously on a proposal from the Commission, shall ***after having informed the European Parliament*** adopt the measures necessary to implement this Directive.”

Justification

See justification to amendment 1.

Amendment 5
ARTICLE 1, POINT 3
Article 30, Paragraph 1 (Directive 77/388/EEC)

1. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to conclude with a third country or an international organisation an agreement which may contain derogations from this Directive.

1. The Council, acting unanimously on a proposal from the Commission ***after having informed the European Parliament***, may authorise any Member State to conclude with a third country or an international organisation an agreement which may contain derogations from this Directive.

Justification

See justification to amendment 1.

Amendment 6
ARTICLE 1, POINT 3
Article 30, Paragraph 3 (Directive 77/388/EEC)

3. Within three months of giving the notification referred to in paragraph 2 the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.”

3. Within three months of giving the notification referred to in paragraph 2 the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.
The proposal or communication shall be forwarded for information to the European Parliament at the same time as it is sent to the Council.”

Justification

See justification to amendment 1.

EXPLANATORY STATEMENT

The proposal seeks to amend the 6th VAT Directive (77/388/EEC) in two technical but important areas.

Unlike other areas of Community legislation, European VAT legislation does not contain any scope for **implementing measures** to be adopted by comitology. The prime reason for this is that this is an area that is so sensitive that Member States have refused to delegate implementing powers to the Commission.

In its proposal, the Commission recognises that although this is an especially sensitive area, it is nonetheless desirable to foresee a procedure for adopting implementing measures in order to ensure a more uniform application of the complex VAT legislation.

It is therefore proposing the use of a rarely invoked procedure whereby the Commission's role is confined to making a proposal, but where the measures must be adopted unanimously by the Council itself, rather than by the Commission after having had the opinion of a committee, as is usually the case.

Articles 27 and 30 of the 6th VAT Directive does however allow Council to adopt **derogations** for Member States from the Directive, either for efficiency/anti-fraud reasons [Article 27] or for implementing international agreements [Article 30].

The current procedure is however somewhat unusual as Member States simply need to request a derogation, and these are deemed to be automatically adopted after two months if nobody objects.

The Commission is now proposing to do away with this "*tacit approval*", and ensure that derogations always are the subject of a formal Commission proposal which shall be put to the Council for a decision.

Critical Appraisal

Your rapporteur would like to stress out that the proposal appears to be a reasonable one as it moves in a direction supported in the past by the European Parliament as regards the need for a degree of implementing measures.

In 1997, the Commission submitted a considerably more far-reaching proposal (COM(97)325) seeking to change the purely consultative VAT Committee into a regulatory comitology committee. The Parliament, and its rapporteur Werner LANGEN welcomed that proposal as a significant step towards the creation of a legally binding VAT framework. The Parliament adopted two amendments to the proposal, calling on the Commission to submit to Parliament an annual report on the work of the VAT Committee. This proposal has been blocked in Council for several years which is why the Commission has as a last resort presented this new proposal in order to make some progress in this important area.

Conclusion

Against this background, your rapporteur recommends that the Commission proposal should

be supported. At the same time, in the spirit of Parliament's traditional position in the area of comitology, he is proposing a small number of amendments seeking to improve the transparency of the process, in particular vis-à-vis the European Parliament.