

PARLEMENT EUROPÉEN

1999



2004

Document de séance

FINAL
A5-0233/2004

6 avril 2004

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RAPPORT

sur la proposition de directive du Conseil portant modification de la directive 77/388/CEE en ce qui concerne le lieu de prestation de services (COM(2003) 822 – C5-0026/2004 – 2003/0329(CNS))

Commission économique et monétaire

Rapporteur: Othmar Karas

Légende des signes utilisés

- * Procédure de consultation
majorité des suffrages exprimés
- **I Procédure de coopération (première lecture)
majorité des suffrages exprimés
- **II Procédure de coopération (deuxième lecture)
majorité des suffrages exprimés pour approuver la position commune
majorité des membres qui composent le Parlement pour rejeter ou amender la position commune
- *** Avis conforme
majorité des membres qui composent le Parlement sauf dans les cas visés aux art. 105, 107, 161 et 300 du traité CE et à l'art. 7 du traité UE
- ***I Procédure de codécision (première lecture)
majorité des suffrages exprimés
- ***II Procédure de codécision (deuxième lecture)
majorité des suffrages exprimés pour approuver la position commune
majorité des membres qui composent le Parlement pour rejeter ou amender la position commune
- ***III Procédure de codécision (troisième lecture)
majorité des suffrages exprimés pour approuver le projet commun

(La procédure indiquée est fondée sur la base juridique proposée par la Commission.)

Amendements à un texte législatif

Dans les amendements du Parlement, le marquage est indiqué en gras et italique. Le marquage en italique maigre est une indication à l'intention des services techniques qui concerne des éléments du texte législatif pour lesquels une correction est proposée en vue de l'élaboration du texte final (par exemple éléments manifestement erronés ou manquants dans une version linguistique). Ces suggestions de correction sont subordonnées à l'accord des services techniques concernés.

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PAGE RÉGLEMENTAIRE

Par lettre du 13 janvier 2004, le Conseil a consulté le Parlement, conformément à l'article 93 du traité CE, sur la proposition de directive du Conseil portant modification de la directive 77/388/CEE en ce qui concerne le lieu de prestation de services (COM(2003) 822 – 2003/0329(CNS)).

Au cours de la séance du 15 janvier 2004, le Président du Parlement a annoncé qu'il avait renvoyé la proposition à la commission économique et monétaire, compétente au fond, et pour avis, à la commission juridique et du marché intérieur (C5-0026/2004).

Au cours de sa réunion du 11 février 2004, la commission économique et monétaire a nommé Othmar Karas rapporteur.

Au cours de ses réunions des 16 mars et 6 avril 2004, la commission a examiné la proposition de la Commission et le projet de rapport.

Au cours de cette dernière réunion, elle a adopté le projet de résolution législative à l'unanimité.

Étaient présents au moment du vote Christa Randzio-Plath (présidente), Philippe A.R. Herzog (vice-président), John Purvis (vice-président), Othmar Karas (rapporteur), Hans Udo Bullmann, Robert Goebbels, Astrid Lulling, Hans-Peter Mayer, Fernando Pérez Royo, Mónica Ridruejo, Olle Schmidt, Mikko Pesälä (suppléant Carles-Alfred Gasòliba i Böhm).

La commission juridique et du marché intérieur a décidé le 22 janvier 2004 qu'elle n'émettrait pas d'avis.

Le rapport a été déposé le 6 avril 2004.

PROJET DE RÉSOLUTION LÉGISLATIVE DU PARLEMENT EUROPÉEN

**sur la proposition de directive du Conseil portant modification de la directive
77/388/CEE en ce qui concerne le lieu de prestation de services
(COM(2003) 822 – C5-0026/2004 – 2003/0329(CNS))**

(Procédure de consultation)

Le Parlement européen,

- vu la proposition de la Commission au Conseil (COM(2003) 822)¹,
 - vu l'article 93 du traité CE, conformément auquel il a été consulté par le Conseil (C5-0026/2004),
 - vu l'article 67 de son règlement,
 - vu le rapport de la commission économique et monétaire (A5-0233/2004),
1. approuve la proposition de la Commission;
 2. invite le Conseil, s'il entend s'écartier du texte approuvé par le Parlement, à en informer celui-ci;
 3. demande l'ouverture de la procédure de concertation prévue par la déclaration commune du 4 mars 1975, si le Conseil entend s'écartier du texte approuvé par le Parlement;
 4. demande au Conseil de le consulter à nouveau, s'il entend modifier de manière substantielle la proposition de la Commission;
 5. charge son Président de transmettre la position du Parlement au Conseil et à la Commission.

¹ Non encore publiée au JO.

EXPOSÉ DES MOTIFS

Introduction: Objective and scope

The Commission proposal is part of the Commission's new VAT strategy set out in July 2000. It aims at amending the Sixth VAT Directive with regard to the place of supply - and therefore of taxation - of services provided by one taxable legal person to another. Its application is thus strictly limited to business-to-business transactions ("B2B"), thereby forming the first part of the reform of the place of supply rules for services.

The second part, covering the taxation of services supplied to non-taxable persons, i.e. consumers ("B2C"), is to be addressed later, in a subsequent proposal. It raises far more fundamental issues both of administrative practicalities (establishing a clearing house mechanism for cross-border supplies of services) and of fiscal policy (likely shift in at least some Member States' revenue patterns).

Problems with the current legislation

VAT being a consumption tax, there is general agreement that it should be levied at the place of consumption. That was also the basic concept for the EU's VAT system from the outset. However, in drafting the Sixth VAT Directive it appeared that a rigid application of this principle to services would give rise to a series of practical problems, which could be circumvented by defining the place of supply as the place of taxation. Taxation at the place of supply (i.e. levied by the supplier) therefore became the rule, with a finite list of exceptions for which taxation at the place of consumption (usually through self-assessment of the client) would apply.

Under the realities of 1977, the potential distortion resulting from this departure from the basic concept could be considered minimal, services being generally consumed in the country where they were supplied. With the completion of the Internal Market, simultaneous advances in technology and a considerable growth in the service industry combined, the picture has changed dramatically: Services of various types can be and are increasingly supplied over greater distances and across Member States' borders. The exceptions are therefore liable to overtake the rule - but the limited list of exceptions defined in 1977, though modified later, does not lend itself well to amending and updating.

One particular difficulty, resulting from the nature of the service, lies in determining the place of supply of means of transport (vehicle hire and lease). The only viable solution under the existing rules, taxation at the seat of the supplier, has led to involuntary tax incentives for cross-border leasing of company vehicles, due to different rules on the deduction of VAT for vehicles in the various Member States.

It appears from the above that the rules on the place of supply urgently need, not only to be updated so as to reflect the realities of current business-to-business transactions, but to be put on a new, forward-looking basis and rephrased so as to accommodate future service innovations in our fast-changing economies and societies.

Proposed new principle

Rather than tinkering with the existing rules, the Commission's draft proposes to remedy this unsatisfactory situation by turning the main principle around and defining the place of supply for services between taxable persons as the place where the *customer* is established. (Article 9(1) of the amended Directive).

With taxation through self-assessment by the client company thus becoming the rule, the problem of the finite list disappears, as will a number of difficulties resulting from the current exception regime. The result should be a major simplification of the administrative aspects of cross-border service transactions for both the supplier (who need no longer contemplate multiple registration) and the client (no longer subject to cumbersome refunding procedures).

As for services providing means of transport, long-term hire or lease (for more than 30 days, cf. Article 9(d) of the amended directive) will fall under the general rule, with local VAT rates and deduction regimes applying, thus removing the potential tax incentive for hiring abroad. Short-term hire or lease remains taxable at the place of supply, reflecting the likely place/country of use of the vehicle as well as the practical difficulty of distinguishing between company and private users for those contracts.

By reverting to the original VAT concept of taxation at the place of consumption, the Commission proposal both restores the structural balance of a general rule and limited, specific exceptions, and introduces a system basic and flexible enough to integrate future innovations.

Exceptions

A few exceptions will indeed remain under the new system, mostly due to the nature of the respective type of service:

- services connected with immovable property would reasonably continue to be taxed where that property is located (Article 9a of the amended directive, merely transcribing the current rules);
- passenger transportation services, being especially difficult to separate according to taxable or non-taxable persons, are exempt from this proposal (Article 9b) and will be addressed in the context of the forthcoming proposal on B2C services;
- cultural, sporting and entertainment activities, with any ancillary services, are to be taxable where they actually take place, as per the existing rules, although the relevant Article 9(c) of the amended directive will no longer cover scientific and educational services, which would therefore benefit from a self-assessment regime rather than the current refunding procedure;
- finally, specific tangible services for immediate consumption, such as restaurant meals, will be taxed at the place of supply under certain rules, essentially freeing the supplier from having to distinguish between corporate and non-corporate customers. Implementation of this last provision is to be closely monitored by the Commission, and reviewed in conjunction with the forthcoming B2C proposal

Other Issues

Also included in the present proposal is a clarification concerning the supply of services

between different branches of a company, which are explicitly exempt from VAT provided that supplier and client are part of the same legal entity (Art. 6(6) of the amended directive).

With regard to the implementation of the directive it would appear logical to expand the VAT Information Exchange System (VIES). Originally established to cover goods, it is appropriate to extend the VIES also to services. However, in view of a mixed feedback on this issue from the consultation process, the Commission proposes that reporting obligations under the VIES should only include services from 2008 onwards (Article 22(6) of the amended directive), and intends to review possible improvements to the system in the meantime.

Conclusion

The Commission proposal provides for an urgently required updating of the rules on the place of supply of services. It also ensures much-needed flexibility, enabling the relevant legislation to deal with future innovation in the service sector.

The rapporteur strongly recommends approving the proposal without any amendments.