



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.12.1995  
COM(95) 731 final

95/ 0362(CNS)

Proposal for a  
**COUNCIL DIRECTIVE**  
amending Directive 77/388/EEC  
on the common system of Value Added Tax  
(level of the standard rate)

(presented by the Commission)



## EXPLANATORY MEMORANDUM

The purpose of this proposal is to enable the Council to take a decision on the level of the minimum rate of the standard rate as it is required under Community VAT legislation<sup>1</sup>. The decision is necessary to consolidate the functioning of the single market from a fiscal standpoint both under the transitional arrangements currently in force and in the light of the preparation of the definitive arrangements for the common system of value added tax.

At present the transitional arrangements of Community VAT legislation provide for a harmonisation regarding the number and the level of VAT rates. This is no more than the very minimum degree of approximation which has been considered by Member States as essential for the single market to function. In the framework of these transitional arrangements Member States had to fix a standard VAT rate of at least 15 %. In practice, standard rates vary from 15 % to 25 %. The rates of 15 % and of 25 % are applied in respectively two Member States. Article 12(3)(a) of the Sixth VAT Directive lays down that on the basis of the report on the operation of the transitional arrangements and proposals on the definitive arrangements to be submitted by the Commission, the Council shall decide unanimously before 31 December 1995 on the level of the minimum rate to be applied after 31 December 1996 with regard to the standard rate.

In its report to the Council on the functioning of the VAT rate system following the abolition of fiscal frontiers on 1 January 1993<sup>2</sup>, the Commission concluded that with regard to the application of various types of reduced VAT rates (super-reduced rates, zero-rates, "parking" rates etc.) no major distortions of competition had been ascertained under the transitional arrangements for taxation of intra-Community trade that could be attributed to the application of various types of reduced VAT rates (super-reduced rates, zero-rates, "parking" rates etc.). At the same time, however, practical experience has shown that widening discrepancies between the standard rates of various Member States can, in principle, always give rise to structural imbalance and distortions of competition in certain sectors of economic activity. Furthermore, various Member States have recently undertaken to increase their standard VAT rate.

In view of the findings of the Commission report and of practical experience so far in the Community, it is important to ensure that at least the level of harmonisation achieved to date is maintained thereby ensuring that the transitional arrangements continue to function properly. As far as the standard rate is concerned, the logical conclusion from this is, therefore, that further divergence in the existing levels of standard rates in Member States must be avoided by creating a rate band comprising minimum and maximum levels for the standard rate. Since the standard rates which are at present in force apparently guarantee the overall functioning of the single market under the existing taxation system, there is no urgent need to set these rates as levels other than the levels of the lowest standard rate and the highest standard rate which are currently in force community-wide, that is 15 % and 25 %.

It goes without saying that any change in the transitional arrangements must also serve for the preparation of the subsequent definitive system of taxation of trade between Member States. Moreover, it is evident that this definitive system will in any case require a fairly rigorous approximation of VAT rates. Such an approximation of VAT rates follows conclusively from the country of origin principle and is, therefore, an intrinsic requirement

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<sup>1</sup> The Sixth Council VAT Directive 77/388/EEC as last amended by Directive 95/7/EC.

<sup>2</sup> Report from the Commission to the Council in accordance with Articles 12(4) and 28(2)(g) of the Sixth Council VAT Directive; COM(94) 584.

of any taxation system as envisaged for the definitive regime in Article 28 l of the Sixth VAT Directive, whatever the details of this regime may be. Thus, the system of taxation shall not conduct taxable persons to choose the location of any commercial activity in first place with regard to the applicable VAT rate.

It follows from the foregoing that it would not be appropriate to allow for a further widening of the range of standard VAT rates in Member States; major discrepancies in VAT rates could be an obstacle to further harmonisation and, consequently, to the introduction of the definitive regime. However, given that a fundamental change of the number and of the level of VAT rates applicable today will only be feasible and politically acceptable in the context of the introduction of the definitive system, it is not advisable at this stage to anticipate these decision by changing the rates currently applied. A standard VAT rate band between 15 % and 25 % will, thus, ensure that the introduction of the definitive regime is not made more difficult.

Furthermore, given the transitional character of the present taxation system it is evident that for the time being there is no sense in taking a final decision at present on the level of the standard VAT rate. The Commission therefore proposes the creation of a standard VAT rate band on a transitional basis only. The levels of the minimum rate and of the maximum rate are subject to revision after a two years-period and will anyway be examined in the context of the introduction of the definitive system. Thus, it will be possible to monitor the further development of the single market under this VAT rate band and to adjust it when appropriate. Given this possibility of revision of the proposed rates and given that under the proposed levels for the minimum rate and for the maximum rate no Member State will have to adjust its currently applied standard rate, the proposal interferes as little as possible in the fiscal sovereignty of Member States and ensures, at the same time, that the introduction of the definitive VAT regime is not jeopardised.

## Commentary on the Articles

### Article 1

Paragraph 1 proposes that the present range of standard rates of value added tax in the various Member States is not widened (with the effect that the existing divergence between standard rates will not be enlarged).

Paragraph 2 suggests that the proposed minimum level and the maximum level of the standard rate are not intended to be definitive but that they are - on Commission initiative - subject to revision after a two years-period.

Paragraph 3 regarding the reduced rate(s) does not change the wording of the Directive 77/388/EEC.

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THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas Article 12(3)(a) of the Directive 77/388/EEC<sup>3</sup>, as last amended by Directive 95/7/EC<sup>4</sup>, lays down that on the basis of the report on the operation of the transitional arrangements and proposals on the definitive arrangements to be submitted by the Commission pursuant to Article 28I, the Council shall decide unanimously before 31 December 1995 on the level of the minimum rate to be applied after 31 December 1996 with regard to the standard rate; whereas the standard rate of value added tax shall be fixed by each Member State as a percentage of the taxable amount and shall be same for the supply of goods and the supply of services; whereas from 1 January 1993 until 31 December 1996, this percentage may not be less than 15%;

Whereas experience has shown that under the current taxation system, the standard rates of value added tax presently in force in the various Member States in combination with the safeguards built in in that tax system, have ensured that the transitional system of value added tax has functioned satisfactorily; whereas widening discrepancies between the standard rates of value added tax in the various Member States would create a structural imbalance in various business sectors; whereas the existing range of standard rates of value added tax applied in the various Member States leaves a wide margin for Member States to fix the level of the standard rate; whereas, consequently, a further adjustment to the range of the possible standard rates of value added tax at a later stage could be economically desirable;

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<sup>3</sup> OJ No L 145, 13.6.1977, p. 1.

<sup>4</sup> OJ No L 102, 5.5.1995, p. 18.

Whereas the transitional arrangements of the common system of value added tax shall not jeopardise the subsequent definitive arrangements; whereas any change to the transitional arrangements has, therefore, to serve for the preparation of the definitive system; whereas the introduction of the definitive system which is to be based on the principle of taxation in the country of origin will in any event require approximation of the standard rates of value added tax in the various Member States,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

Directive 77/388/EEC is hereby amended as follows:

Article 12(3)(a) is 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 1997 until 31 December 1998, this percentage may not be less than 15 % and not be higher than 25 %.

On the basis of a proposal by the Commission and after consultation of the European Parliament the Council shall decide unanimously on the level of the standard rates to be applied after 31 December 1998.

Member States may also apply either one or two reduced rates. These rates shall be fixed as a percentage of the taxable amount which may not be less than 5 % and shall apply only to supplies of the categories of goods and services specified in Annex H."

#### Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1997 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council  
The President

## **Financial statement**

The proposed Directive, when adopted, will have no consequences for the collection of Community own resources.





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