COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.11.1998
COM(1998) 693 final

98/0331 (CNS)

Proposal for a

COUNCIL DIRECTIVE

Amending, with regard to the level of the standard rate, Directive 77/388/EEC on the common system of value added tax

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The purpose of this proposal is to enable the Council to take a decision concerning the level of the minimum standard rate, as required by Community legislation in the field of value added tax (VAT).[1] This decision is necessary in order to consolidate the functioning of the internal market from a tax standpoint, both under the transitional arrangements currently in force and with a view to the definitive arrangements for the common system of VAT.

2. In the context of its work programme for the introduction of a new common system of VAT for the single market[2] and in its report on rates,[3] the Commission emphasised the importance of approximating VAT rates within a harmonised structure - which was necessary in any event - in order to enable a common VAT system to be introduced. The degree of harmonisation required must be assessed, both at present and in the future, in the light of what is deemed necessary to prevent distortions of competition which would be detrimental to the Community as a whole. One of the main characteristics of VAT is that it should be neutral with regard to the conditions of competition. Preserving the possibility of applying excessively divergent rates in different Member States might jeopardise this neutrality and influence the location of businesses; it would, therefore, be inconsistent with the very principles of the single market.

3. Consequently, this proposal is aimed at paving the way for the harmonisation of rates that is necessary in the context of the existing VAT system and, at the same time, preparing the next steps towards a gradual approximation of rates in order to permit the introduction of the common VAT system. It covers only the level of the standard rate.

4. At present, the transitional arrangements contained in Community VAT legislation provide for harmonisation of the number and level of VAT rates. That constitutes the degree of harmonisation which the Member States had already recognised as being essential to the functioning of the transitional arrangements. Under these transitional arrangements, Member States must set the standard rate of VAT at a minimum of 15%.

5. Article 12(3)(a) of the Sixth VAT Directive lays down that, on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, the Council will decide unanimously on the level of the standard rate to be applied after 31 December 1998.

---

[1] Sixth Council Directive 77/388/EEC of 17 May 1977, as last amended by Council Directive 98/80/EC of 12 October 1998.

[2] COM(96) 328 final, 22.7.1996.

[3] Report from the Commission to the Council and the European Parliament in accordance with Article 12(4) of the Sixth Council Directive, COM(97) 559 final, 13.11.1997.

6. This proposal follows the same line of reasoning as the 1995 Commission proposal on the same subject.[4] The situation has not fundamentally changed since then. In 1996, the Council had accepted the Commission's objective of preventing a further widening of the gap between the standard rates applied by the Member States. However, it confined itself to laying down a legally binding minimum rate of 15%, although it did annex to this decision a declaration containing a political commitment to avoid, during the period of application of the Directive, an increase in the span of 10 percentage points between the lowest and highest standard rates applied in the Community.

7. In practice, the level of the standard rate varies between 15% and 25%. A rate of 15% is applied in one Member State (L), while a rate of 25% is applied in two Member States (DK and S).

8. In its report to the Council and Parliament on the scope of reduced VAT rates,[3] the Commission concluded that, overall, the present structure of VAT rates does not constitute an obstacle, within the Community area, to the functioning of the transitional VAT arrangements. There is, however, evidence that they sometimes have an impact on consumer choices, thereby causing distortions. Countries such as Austria and Belgium are particularly exposed to this phenomenon on account of their geographical location. Retailers endeavour more and more to exploit the purchasing potential beyond their borders. However, except where some specific geographical areas or goods are concerned, there has been no significant distortion of competition on a macro-economic level within the Community or any deflection of trade caused by excessive disparities in VAT rates between Member States. These findings show that increasing disparities in Member States' normal rates can always, in principle, give rise to structural imbalances and distortions of competition in certain branches of economic activity. Moreover, the introduction of the single currency could accentuate existing problems. Prices charged in different Member States will be more transparent and it will be easier to gauge the level of the VAT rates applied. The resulting situation will also make it more necessary than ever to harmonise rates in the single market.

9. A proposal on the level of both the standard rate and reduced rates will, therefore, be required. However, for technical reasons, such a proposal cannot be presented before 1999.

---

[4] COM(95) 731 final, 20.12.1995.

10. In the light of both the findings of the above-mentioned Commission report and experience in the Community to date, it is important to ensure that, in the meantime, the degree of harmonisation already achieved is at least maintained, thereby ensuring that the transitional arrangements continue to function as satisfactorily as possible.

11. Where the standard rate is concerned, although the disparities in the rates currently in force allow the single market to function more or less satisfactorily under the present tax system, laying down rules on these existing rates will provide an even stronger guarantee in this respect by preventing major distortions. The logical conclusion to be drawn from these findings is that the risk of widening disparities in the levels of the standard rate applied by the Member States must be avoided by establishing a band which lays down a minimum and maximum level for the standard rate.

12. The Commission has, therefore, concluded that it is appropriate to propose another rate band, which is the only instrument reflecting the political agreement of the Council in 1996. Accordingly, the lower limit of the standard rate band is fixed at 15% and the upper limit at 25%.

Comments on the Articles

Article 1

In the first paragraph, it is proposed that the present level of the standard rate of value added tax in the Member States be fixed at between 15% and 25% as from 1 January 1999. This paragraph proposes that the existing range of standard VAT rates in the Member States should not be extended further.

The second paragraph suggests that the minimum and maximum levels proposed for the standard rate should not the regarded as definitive. They will be reviewed, on the basis of a proposal from the Commission, by 31 December 1999.

The third paragraph, on the reduced rate(s), does not alter the wording of Directive 77/388/EEC.

Articles 2 to 4

These Articles lay down implementing measures for the Directive.

Proposal for a
COUNCIL DIRECTIVE
Amending, with regard to the level of the standard rate, Directive 77/388/EEC on the common system of value added tax

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,[1]

Having regard to the opinion of the European Parliament,[2]

Having regard to the opinion of the Economic and Social Committee,[3]

Whereas Article 12(3)(a) of Council Directive 77/388/EEC[4] 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, as last amended by Directive 98/80/EC[5] lays down that the Council shall decide on the level of the standard rate to be applied after 31 December 1998; whereas the standard rate of value added tax is fixed by each Member State as a percentage of the taxable amount and is the same for the supply of goods and for the supply of services; whereas from 1 January 1993 until 31 December 1998, this percentage may not be less than 15%;

Whereas experience under the existing taxation system has shown that the standard rates of value added tax currently in force in the various Member States, combined with the safeguards built into that system, have ensured that the transitional system of value added tax has, on the whole, functioned satisfactorily; whereas widening disparities in the standard rates of value added tax in the various Member States could, on the other hand, 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 Member States considerable leeway in fixing the level of the standard rate; whereas, consequently, a more extensive adjustment to standard rates of value added tax would not be appropriate at present;

1
2
3
4 OJ L 145, 13.6.1977, p. 1
5 OJ L 281, 17.10.1998, p. 31

Whereas, however, the Commission report on rates highlighted the fact that distortions of competition exist and are likely to be accentuated by the introduction of the single currency; whereas the period of application of the standard rate should be limited to one year in order to enable the Council at a later stage to decide on the levels of both the standard rate and reduced rates,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 12(3)(a) of Directive 77/388/EEC is replaced by the following:

"a) 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 1999 until 31 December 1999, this percentage may be no lower than 15% and no 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 rate to be applied after 31 December 1999.

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 1999 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 seventh day following 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

ISSN 0254-1475

COM(98) 693 final

DOCUMENTS

EN **09 01 02 10**

Catalogue number : CB-CO-98-704-EN-C

Office for Official Publications of the European Communities

L-2985 Luxembourg

8