

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(91) 157 final

Brussels, 2 May 1991

Amendment to the proposal for a

COUNCIL DIRECTIVE

SUPPLEMENTING THE COMMON SYSTEM OF VALUE ADDED TAX (VAT)
AND AMENDING DIRECTIVE 77/388/EEC

ABOLITION OF TAX FRONTIERS AND TRANSITIONAL ARRANGEMENTS FOR TAXATION
WITH A VIEW TO ESTABLISHMENT OF THE INTERNAL MARKET

(presented by the Commission pursuant to Article 149(3)
of the EEC-Treaty)

EXPLANATORY MEMORANDUM

On 19 June 1990, the Commission presented to the Council the proposal for an amendment¹ to the proposal for a Council Directive supplementing the common system of value added tax (VAT) and amending Directive 77/388/EEC² which it had laid before the Council on 4 August 1987.³ The amended proposal for a Directive sets out the process by which tax frontiers are to be abolished: it provides for transitional taxation arrangements with a view to establishment of the internal market and defines the definitive arrangements.

The Economic and Social Committee delivered favourable opinions on this amended proposal on 19 September 1990⁴ and 7 July 1988.⁵

The European Parliament also delivered a favourable opinion on this amended proposal on 20 November 1990 and suggested a number of amendments.⁶

The Commission has taken up the following suggested amendments:

(a) Five new recitals have been added (point 1). They relate to:

- (i) the abolition of restrictions on travellers' purchases,
- (ii) the convergence of rates,
- (iii) the clearing-house system to be incorporated into the definitive arrangements,
- (iv) maintenance of the quality of the Community's statistical machinery;
- (v) ways to take account of the social and regional repercussions of the abolition of tax frontiers.

Generally speaking, these amendments have been incorporated in order to place the Commission's amended proposal in an overall framework and to clarify the conditions under which the transitional and definitive arrangements are to apply;

1 OJ No C 176, 17.7.1990, p. 8; COM(90)182.
2 OJ No L 145, 13.6.1977, p. 1.
3 OJ No C 252, 22.9.1987; COM(87)322.
4 OJ No C 332, 31.12.1990, p. 121.
5 OJ No C 237, 12.9.1988, p. 19; Doc. ESC 740/88.
6 OJ No C 324, 24.12.1990, p. 97.

(b) Amendments of a general nature have been made to the Commission proposal and will be applicable as from 1 January 1993 (point 2). They are intended:

(I) to clarify the scope of the provisions governing the VAT treatment of transactions carried out by institutional non-taxable persons;

(II) to reduce the dangers of misuse of the existing derogations permitting the exclusion of capital goods from the system of deductions for cyclical economic reasons;

(III) to limit the differing assessments which prevail as to the threshold below which payment of VAT due may be waived by setting that threshold at ECU 100;

(c) Other amendments are envisaged as a precaution and will come into effect on 1 January 1993. They concern:

(I) Retention of the current derogation provided for in Article 28(2), under which Member States applying reduced rates and exemptions with refund of the tax paid at the preceding stage and satisfying the conditions stated in the last indent of Article 17 of the Second Council Directive of 11 April 1967 are authorized to maintain those rates and exemptions. It should be clearly understood that this amendment is of a precautionary nature and has to be seen against the background of the decisions to be taken with regard to the approximation of VAT rates on the basis of the Commission's proposal in this field¹ and in the light of the commitment which the Commission, in adopting a more flexible stance, subsequently gave in its June 1989 communication and the precise wording of which was as follows:

1 OJ No C 250, 18.9.1987; COM(87)321 and COM(87)324.

"It would be necessary, in the framework of a final compromise, to authorize Member States who so wish, to maintain zero-rating for a very limited number of products currently subject to the reduced rate, provided this did not pose any risks of distortion of competition for the other Member States. Such a measure could only be envisaged by the Commission if the Council reached an agreement on the respective coverage of the standard rate and the reduced rate".²

- (ii) Retention of derogations from the normal arrangements of the common VAT system which are still applicable under Article 28(3) (following adoption of the Eighteenth VAT Directive), it being understood that these derogations will be the subject of specific proposals designed to settle their fate once and for all;

(d) Finally, the last amendments relate specifically to the transitional arrangements. The aim here is:

- (i) to render automatically applicable all existing or future harmonization provisions on the movement of goods which will affect the practical application of the conditions under which intra-Community supplies will be exempt during the transitional period;
- (ii) to use the transitional period to draw up a report on the conditions under which financial transactions are taxed or exempted in order to examine the possibility of implementing, within the framework of the definitive arrangements, a general scheme for taxing such transactions. The Commission undertakes to report on this matter by 1996.

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2 COM(89)260 (not published in the Official Journal of the European Communities).

Amendments to the

proposal for a Council Directive
supplementing the common system of value added tax (VAT)
and amending Directive 77/388/EEC.

Abolition of tax frontiers and transitional arrangements for taxation
with a view to establishment of the internal market

THE COMMISSION HEREBY AMENDS ITS [AMENDED] PROPOSAL AS FOLLOWS:

1. The following recitals are inserted between the fourth and fifth recitals:

New fifth recital

(a) The following fifth recital is added:

"Whereas the Member States have undertaken to abolish all restrictions
on travellers' purchases by 1 January 1993;"

New sixth recital

(b) The following sixth recital is added:

"Whereas the Member States have already undertaken to bring about a
convergence of VAT rates applicable from 1 January 1993."

New seventh recital

(c) The following seventh recital is added:

"Whereas an equitable clearing-house system must also be set up when
definitive arrangements are introduced;"

New eighth recital

(d) The following eighth recital is added:

"Whereas, while attempts must be made to ease the administrative and statistical formalities that have to be completed by firms, efforts are also needed for both economic and tax reasons to maintain the quality of the Community's statistical machinery;"

New ninth recital

(e) The following ninth recital is added:

"Whereas the transitional period must be used to take measures to offset the social repercussions in the occupations concerned and to prevent regional problems arising, notably in [trans]-frontier regions, from the abolition of tax frontiers;"

Tenth recital

(f) The fifth recital reading : "Whereas consequently Council Directive 77/388/EEC (3), last amended by the Act of Accession of Spain and Portugal, should be amended, and the Directives dealing with exemption at importation should be modified;" becomes the tenth recital.

2. Article 1 is amended as follows:

(a) A new point 2 is added after point 1:

"2. At the end of the second subparagraph of Article 4(5), the word "significant" is deleted from the expression "where treatment as non-taxable persons would lead to significant distortions of competition"."

Point 2 becomes point 3.

Point 3 becomes point 4.

Point 4 becomes point 5.

Point 5 becomes point 6.
Point 6 becomes point 7.
Point 7 becomes point 8.
Point 8 becomes point 9.
Point 9 becomes point 10.
Point 10 becomes point 11.
Point 11 becomes point 12.
Point 12 becomes point 13.
Point 13 becomes point 14.
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Point 21 becomes point 22.
Point 22 becomes point 23.
Point 23 becomes point 24.
Point 24 becomes point 25.
Point 25 becomes point 26.
Point 26 becomes point 27.
Point 27 becomes point 28.

(b) A new point 29 is added:

"29. In Article 17(7), the words "for a limited period and" are added after the words "Subject to the consultation provided for in Article 29, each Member State may, ...".";

(c) Point 28 becomes point 30.

Point 29 becomes point 31;

(d) A new point 32 is added:

"32. The third indent of Article 22(9) is replaced by the following:
- "from payment of the tax due where the amount is less than 100 ECU at the rate of exchange in national currency of the day on which this Directive is adopted"."

3. Article 2 is amended as follows:

(a) The introductory part of Article 2 which reads : "Article 28 of Directive 77/388/EEC is hereby replaced by the following:" is replaced by the following:

"Article 28 of Directive 77/388/EEC, with the exception of paragraph 2, which will continue to apply until the Council unanimously adopts, on a proposal from the Commission, provisions relating to the approximation of VAT rates, and with the exception of paragraph 3 as amended by Directive 89/465/EEC,¹ which will continue to apply until the Council unanimously adopts, on a proposal from the Commission, definitive arrangements for the derogations concerned here, subject, however, to deletion of the words "During the transitional period referred to in paragraph 4" at the beginning of said paragraph 3, is hereby replaced by the following:";

(b) In point (b) of Article 2, the words "Without prejudice to other Community provisions and" are inserted before the words "Under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for below ...";

(c) In point (g) of Article 2, the following subparagraph is added:

"The Commission shall, before the end of the transitional period, submit a report on the conditions of taxation or exemption of these transactions."

1 OJ No L 226, 3.8.1989 (Eighteenth Council VAT Directive of 18 July 1989).

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