



*European Economic and Social Committee*

**ECO/116**  
**VAT/derogations**

Brussels, 30 October 2003

## **OPINION**

of the European Economic and Social Committee

on the

**Proposal for a Council Directive amending Directive 77/388/EEC concerning the common system of value added tax, as regards conferment of implementing powers and the procedure for adopting derogations**

(COM(2003) 335 final - 2003/0120 (CNS))



On 20 June 2003 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*Proposal for a Council Directive amending Directive 77/388/EEC concerning the common system of value added tax, as regards conferment of implementing powers and the procedure for adopting derogations*  
(COM(2003) 335 final – 2003/0120 (CNS)).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 October 2003. The rapporteur was **Mr Pezzini**.

At its 403rd plenary session of 29 and 30 October 2003 (meeting of 30 October), the European Economic and Social Committee adopted the following opinion by 62 votes to none with two abstentions.

## 1. **Introduction**

1.1 The purpose of the proposal to amend Directive 77/388/EEC providing for the establishment of a common system of value added tax (Sixth VAT Directive) is to introduce measures making the procedures under Articles 27 and 30 of the directive more transparent, and to establish procedures allowing the Council to adopt VAT implementing rules at Community level.

## 2. **The system under Articles 27 and 30**

2.1 Under Articles 27 and 30, the Council may authorise a Member State to introduce special measures into its national legislation for derogation from the provisions of the sixth directive, in order either to simplify the procedure for VAT charging, or to prevent certain types of tax evasion or avoidance, and to facilitate agreements with non-member countries or international organisations.

2.2 The procedure stipulates in particular that a Member State wishing to introduce special derogation measures shall inform the Commission, providing it with all the information considered necessary for this purpose. It also lays down that the decision shall be adopted if, within two months of the date on which the other Member States were informed of the request, neither the Commission nor a Member State has asked for the case to be raised by the Council.

2.3 According to these dispositions, the Council may then tacitly adopt decisions on matters which have not been laid before it. In fact, although in the preliminary stages of the procedure the request for authorisation is submitted by the Member State to the Commission, which then informs the other Member States, the Commission is under no obligation to present a proposal to the Council, which may consequently incur responsibility for a decision without any procedural involvement.

2.4 Furthermore, because of its simplified nature, the procedure does not ensure transparency of Council decisions, which may jeopardise the proper working of the single market. As things stand, the tacit adoption of a decision by the Council denies taxable persons knowledge of the content of the authorisation and of the reasons for the Council's decision.

### **3. The Commission's proposals on the procedure under Articles 27 and 30 for adopting derogation measures**

3.1 The Commission believes that in the interests of all concerned, adoption of special derogation measures under Articles 27 and 30 of the sixth directive should take place within a procedure which can ensure that decisions are transparent and in compliance with Treaty provisions and the general principles of Community law.

3.2 The Commission considers that to this end, it is necessary to amend the provisions under which the Council can adopt tacit decisions, so that requests for derogation instead require a proposal from the Commission and a formal decision by the Council.

3.3 The Commission specifically proposes that the procedure should be triggered by a Member State lodging a request with the Commission supported by all the information deemed useful and necessary for appraisal. If the Commission considers that it has all the essential information and requires no clarification, it notifies the requesting Member State accordingly. If, on the other hand, it requires further information, it asks the appropriate Member State authorities to provide it.

3.4 Within three months of the conclusion of the investigation – i.e. from notification that no further details are required regarding the request – the Commission submits to the Council either a proposal for a decision or a communication setting out its objections to adopting the special derogation measures requested by the Member State.

### **4. Implementing measures**

4.1 Experience during the operation of the transitional arrangements for the taxation of transactions between the Member States has shown that national differences in the incidence of the tax or administrative procedures impair the neutrality of the VAT system, presenting obstacles to the internationalisation of businesses and the full and effective completion of the single market. Significant differences in interpretation and application of the common VAT rules laid down by the sixth directive persist between individual Member States.

4.2 Alignment of national laws and, regarding VAT in particular, measures ensuring uniform application of the tax across the Union, are of the utmost importance for completion of the internal market. Measures of this kind were not however decided when the sixth directive was adopted.

4.3 The VAT Committee was set up to facilitate uniform implementation of the provisions of the directive and to enable more efficient cooperation between the Member States and the Commission. As a consultative committee, its task is to agree guidelines on how the sixth directive is to be applied, especially problems arising from the distinction between goods and services or their classification, or the determination of the place and possible conditions of taxation.

4.4 The VAT Committee however does not have the legislative powers needed to help the Commission adopt binding decisions. Neither do the guidelines it adopts have legal status. The Member States are not therefore legally bound to comply with the guidelines. Neither can the guidelines be invoked in either national courts or the European Court of Justice.

4.5 The VAT Committee's purpose is therefore thwarted, with the result that the proper operation of the internal market and the desirable level of legal certainty are also put at risk.

4.6 In order to ensure uniform application of the common VAT system, the committee's guidelines should be given legal status.

## **5. The Commission's proposals on the implementing measures**

5.1 The Commission believes that the VAT Committee should be converted into a regulatory committee assisting it in implementing existing provisions. The Commission put forward the same argument in its 1997<sup>1</sup> proposal to amend the sixth directive.

5.2 The Commission however recognises that many Member States are convinced that all powers should remain exclusively with the Council in the field of VAT.

5.3 Although the Commission stands by the view that reforming the VAT Committee would, in absolute terms, be the best solution, it is nevertheless aware that this is not at present feasible. In the short term, the Commission believes that a temporary procedure should be introduced allowing the Council to adopt VAT implementing measures.

5.4 The Commission is of the opinion that at present, certain powers should be reserved for the Council. The Commission realises that raising taxes, particularly VAT, is a key part of the economic and budgetary strategy of the Member States.

5.5 The Commission therefore proposes that the measures necessary to implement existing provisions should be adopted by the Council acting unanimously on a proposal from the Commission, according to the procedure under Articles 27 and 30 of the directive.

5.6 The Commission identifies those areas where action is required, in the light of the questions raised by Member States, or by the Commission itself, on the VAT Committee. Regarding

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<sup>1</sup> COM(97) 325 final – 97/0186 (CNS).

matters on which the committee has unanimously adopted guidelines, the Commission examines whether or not these guidelines should be converted into binding legal instruments. The VAT Committee itself is involved in this examination, and it should in any event be consulted before the Commission presents any proposal to the Council.

5.7 Where the VAT Committee concludes that legally binding implementing rules should be drawn up in order to ensure harmonised interpretation of the common VAT system, the Commission presents a proposal for a decision to the Council.

## 6. Conclusion

### 6.1 The system under Articles 27 and 30

6.1.1 The EESC agrees that the smooth functioning of the Value Added Tax system is one of the preconditions for the proper operation of the single market.

6.1.2 The EESC therefore considers that the procedures to introduce into national legislation special measures for derogation from the provisions of the sixth directive must involve formal decisions by the Council, and must also be fully transparent, so that taxable persons can be aware of the content and reasons for authorisations.

6.1.3 The EESC shares the Commission's view that the procedures under Articles 27 and 30 of the directive do not meet these transparency requirements. It regrets in particular that the Council may tacitly adopt decisions on matters which have not been formally laid before it, and that such tacit adoption of decisions prevents the parties concerned (taxable persons, Member States, etc.) from knowing the content of the derogation or the reasons for the Council's decision.

6.1.4 The EESC therefore supports the Commission's proposal to amend the provisions allowing the Council to take tacit decisions, by establishing instead that requests for derogation require a proposal from the Commission and a formal decision by the Council.

6.1.5 The EESC notes that to date, many special derogation measures have been approved<sup>2</sup>: it is very likely that the forthcoming enlargement of the Union will herald further requests for derogations.

6.1.6 It also hopes that the Commission will be able to rationalise the numerous derogation arrangements currently in existence<sup>3</sup>, and that in future prevention of tax evasion and simplification

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<sup>2</sup> To date, 147 special derogation measures have been authorised: two for Austria, 15 for Belgium, eight for Denmark, two for Finland, 17 for France, 20 for Germany, one for Greece, 12 for Ireland, 11 for Italy, 13 for Luxembourg, 18 for the Netherlands, three for Portugal, 20 for the United Kingdom, three for Spain and two for Sweden (source: Commission services).

<sup>3</sup> In this regard, see COM(2000) 348 final.

can also be pursued by means of closer administrative cooperation<sup>4</sup>, as set out in the draft Commission directive COM(2003) 446 final/2 of 31 July 2003 on tackling tax evasion and avoidance.

## 6.2 **Implementing measures**

6.2.1 The EESC agrees with the view that existing differences between the Member States' administrative and regulatory procedures put the neutrality of taxation at risk, and constitute a serious obstacle to the completion of the single market. In this regard, uniform application of the rules represents a key factor in improving the temporary system.

6.2.2 In the EESC's view, therefore, the adoption of measures ensuring the uniform application at Community level of the common VAT system is of key importance.

6.2.3 The EESC is convinced that, in line with the procedure followed in other areas of Community legislation, the VAT Committee should be converted into a regulatory committee assisting the Commission in adopting implementing measures for existing provisions. The EESC previously put forward this argument in its opinion on the Proposal for a Council Directive amending Directive 77/388/EEC on the common system of Value Added Tax (the Value Added Tax Committee)<sup>5</sup>.

6.2.4 The EESC is aware of the view of many Member States that where VAT is concerned, all powers should remain exclusively with the Council, and consequently supports the Commission's prudent approach in proposing that at present, the adoption of VAT implementing measures be reserved for the Council.

6.2.5 However, the EESC hopes that in the medium term, the Commission will be able to press forward with the guidelines laid down in the Communication to the Council and the European Parliament on a strategy to improve the operation of the VAT system within the context of the internal market, and that it may consequently be able to re-submit the 1997 proposal to amend the sixth directive<sup>6</sup>.

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<sup>4</sup> OJ C 116 of 20.4.2001, p. 59.

<sup>5</sup> OJ C 19 of 21.1.1998, p. 56.

<sup>6</sup> COM(97) 325 final – 97/0186 (CNS).

6.2.6 In any event, the EESC hopes that as a result of the institutional changes emerging from the European Convention, the Commission will be given powers to implement European legislation and, by the same token, that unanimous voting will be abandoned in favour of qualified majority voting in the field of indirect taxation (VAT) (except where the fixing of VAT rates is involved, until a proper compensation system is introduced).

Brussels, 30 October 2003.

The President  
of the  
European Economic and Social Committee

The Secretary-General  
of the  
European Economic and Social Committee

**Roger Briesch**

**Patrick Venturini**

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