Proposal for a

COUNCIL DIRECTIVE

on the common system of value added tax

(Recast)

(presented by the Commission)
EXPLANATORY MEMORANDUM

1. **INTRODUCTION**

In the context of a people’s Europe, Community law must be clear and accessible to ordinary citizens, thus giving them new opportunities and the chance to make use of their specific rights.

That aim cannot be achieved if, after being amended several times – often substantially – a great number of legal rules remain scattered. In order to identify the rules currently in force, it is necessary not only to consult the original act, but also to search through the provisions which have later amended it, and this entails a great deal of work, tracking down and comparing many different acts.

The Commission attaches great importance to simplifying and clarifying Community law. The codification of frequently amended acts is essential to that endeavour.

The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed that approach. They stressed the importance of official codification as a means of ensuring legal certainty as to the law applicable to a given matter at a given time.

However, when the Commission decided to codify the Sixth VAT Directive\(^1\) it soon became clear that, in order to make such a highly specific text clear and comprehensible, a number of amendments would have to be introduced which, albeit not substantive, would go further than is acceptable for codification in the strict sense\(^2\).

At the same time, and always with a view to enhancing clarity, rationality, ease of comprehension and simplification, it is appropriate to seize this opportunity to bring the Directive as closely as possible into conformity with the principles endorsed by the European Parliament, the Council and the Commission for the production of high quality legislation\(^3\).

Accordingly, in order to enable those essentially cosmetic changes to be made, the Commission decided to present a proposal for a recast of the Sixth Directive. That approach is entirely in line with the recommendations made, particularly with regard to legal acts which have frequently been the subject of amendment, since the recasting technique offers a means by which a number of acts can be amended, codified and brought together within a single legislative text, in accordance with the 2001 Interinstitutional Agreement\(^4\).

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2. **BACKGROUND**

The Sixth Directive, which sets out the detailed rules for the common VAT system, was adopted on 17 May 1977 and the deadline for its implementation was fixed as 1 January 1978. It has since undergone a number of amendments, most of which were brought about by the establishment of the internal market and the corresponding abolition of fiscal frontiers between Member States. Transitional arrangements for the taxation of trade between Member States were introduced in 1991, but the basic rules remained in place. It was expected that the transitional arrangements would shortly be replaced by a definitive system under which the supply of goods or services would be taxed in the Member State of origin. It was therefore decided to place those arrangements in a separate Title, so that they could be easily abolished once the definitive system was introduced.

Thus some of the provisions laid down by way of transitional arrangements are implemented in the stead of provisions laid down in the basic rules although, strictly speaking, the latter remain in force. If the codification approach had been followed, that double set of provisions would have had to be maintained. Little would have been gained in the way of simplification or rationalisation of the existing legislation.

In order to provide a clear overview of the legislation in this field, it is essential to rid the text of provisions which do not currently apply, and to adapt the structure accordingly. To make such changes, while leaving intact the great majority of the provisions of the Sixth Directive, the Commission decided to use the recasting technique, which enables various acts to be amended and codified within the framework of a single legislative text.

The shedding of provisions which are not currently applicable, even though they remain in force, does not undermine the principle of a definitive system of taxation, in the Member State of origin, of transactions that give rise to consumption in the Community. The definitive system still remains a long–term Community objective. However, with the focus now on improving the operation of the internal market within the context of the current VAT arrangements, it is vital to devise an effective instrument which can facilitate much needed improvements to the existing system.

Although clarification and structural amendment of the Sixth Directive is necessary, it should not bring about material changes in the existing legislation. On the contrary, substantive amendment must be the subject of specific proposals. To avoid the inadvertent introduction of any such amendments, the recast text has been examined in detail by representatives of Member States. The text has also been open to public consultation, in the course of which all interested parties, including the business community and the legal profession, were invited to express their views.

3. **RECAST OF THE SIXTH DIRECTIVE**

The Commission proposes that the Sixth Directive be repealed and replaced with a new act modelled on the Directive in force. The new act proposed incorporates all the amendments made to the Sixth Directive by subsequent acts. It also contains any relevant provisions

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currently to be found in separate legal acts, and excludes provisions which properly belong in other acts.

In order to improve the drafting quality, the existing text has undergone numerous changes. Although the proposed changes will not affect its substantive content, they do alter the format, with the existing 53 Articles divided into 402 new Articles.

A great many of the changes are the result only of the correction of mistakes in grammar, spelling or punctuation, or of the restructuring of the text (reshuffling and renumbering of articles, paragraphs and so on, entailing adjustment of the internal references) or of the consistent application of purely technical rules of legislative drafting technique. Provisions which have been adjusted in that way are therefore regarded as unchanged.

On the other hand, the term adapted, which may appear in the right-hand margin of the recast, indicates that another non-substantive type of adjustment has been made.

The proposal also includes a table of contents providing an overview of the restructured text and a detailed correlation table designed to facilitate the changeover to a new act.

4. OUTLINE OF THE MOST IMPORTANT CHANGES

The most important changes to the text are outlined below. Although the changes made are not substantive, they still go further than would be acceptable in the context of pure codification. That is why the recasting technique is being used to codify this text.

4.1. Insertion of various provisions

Community VAT legislation primarily consists in provisions to be found in the Sixth Directive. However, some provisions appear in other acts. If the recast text is to give a complete picture of the existing VAT legislation, it is important for it to contain those provisions, but only if they are not implementing measures. Implementing measures are better left in separate acts governing the implementation of the Sixth Directive.

4.1.1. First VAT Directive

The common VAT system was established by the First Directive6, which lays down the principle underlying the system and the characteristics of VAT. The detailed rules for applying the common system are laid down in the Sixth Directive, which replaced the Second Directive7.

Those two acts are so closely linked that it is appropriate to include the extant provisions of the First Directive in the recast text. The creation of a single instrument gives a better overview of the existing VAT legislation.

Articles 1 and 2 of the First Directive have been included in Article 1 of the recast text.

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Articles 3, 4 and 6 of the First Directive are obsolete, and have not been included in the recast text.

4.1.2. Other VAT Directives

Other acts also form part of Community VAT legislation. However, these are Directives which mainly serve to implement various provisions of the Sixth Directive, and it is inappropriate to include them in the recast text.

Under Article 14(1)(d) of the Sixth Directive, Member States are to exempt the final importation of goods covered by an exemption from customs duties other than that provided for in the Common Customs Tariff. Article 14(1)(d) of the Sixth Directive can now be found in Article 140(b) of the recast text. The scope of the exemption is established by Directives 69/169/EEC, 78/1035/EEC and 83/181/EEC. Those Directives have not been included in the recast text.

Non-established taxable persons are entitled to a VAT refund pursuant to Article 17(4) of the Sixth Directive. In the recast text, that provision has been moved to Article 165. The detailed rules governing the refund are laid down in Directives 79/1072/EEC and 86/560/EEC which have not been included in the recast text.

4.1.3. Acts of Accession

When new Member States accede to the Community, they must comply with the entire Community acquis, including the Sixth Directive. However, in some cases, they have obtained derogations. Although some of those derogations already form part of the Sixth Directive, most can only be found in the respective Acts of Accession. For the sake of clarity and ease of comprehension, it is important that those derogations be included in the recast text.

Portugal may apply to transactions carried out in the Azores and Madeira rates which are lower than those applied on the mainland. Upon accession, that derogation was included in Article 12(6) of the Sixth Directive. It can now be found in Article 101 of the recast text.

Austria may, in the communes of Jungholz and Mittelberg, apply a second standard rate, provided that it is not less than 15%. That derogation is included in Article 100 of the recast text.

13 Act of Accession of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ L 73, 27.3.1972);
Act of Accession of Greece (OJ L 291, 19.11.1979);
Act of Accession of Spain and Portugal (OJ L 302, 15.11.1985);
Act of Accession of Austria, Finland and Sweden (OJ C 241, 29.8.1994);
Finland and Sweden may, in accordance with certain conditions, continue to apply certain exemptions with deductibility of the VAT paid at the preceding stage (zero rates). Those derogations appear in Article 107 of the recast text.

Austria is allowed to continue to apply a reduced rate to restaurant services. It may also apply a reduced rate to wine made on an agricultural holding, provided that the rate is not less than 12%. Those authorisations are included in Articles 113 and 115 of the recast text.

Sweden may allow VAT returns to be submitted three months after the end of the annual direct tax period. The legal basis for that simplification measure can now be found in Article 245 of the recast text.

Greece, Spain, Portugal, Austria, Finland and Sweden are all allowed to grant an exemption from VAT to small enterprises whose turnover threshold is higher than that specified in the Sixth Directive. The option open to those Member States now appears in Article 280 of the recast text.

Austria and Finland may continue to tax certain transactions which would normally be exempt under the Sixth Directive. Those derogations have been included in Articles 371(1) and 372(1) of the recast text.

Greece, Spain, Portugal, Austria, Finland and Sweden may continue to exempt certain transactions which would otherwise have to be taxed pursuant to the Sixth Directive. Those derogations now feature in Articles 368, 370, 371(2), 372(2) and 373 of the recast text.

The Czech Republic, Estonia, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia, which are to accede to the Union on 1 May 2004, have obtained similar derogations provided for in the 2003 Act of Accession. In so far as those derogations are not purely provisional, they must be included in the recast text. The text also takes into account the various amendments to the Sixth Directive introduced by way of technical adaptation.

In order to take into account the status, provided for in the Treaty concerning the Establishment of the Republic of Cyprus, of the United Kingdom Sovereign Base Areas in Cyprus, special provisions have been inserted regarding the tax treatment of the supply of goods or services, or the importation of goods, to the UK forces stationed in Cyprus. Those provisions can be found in Article 8, point (i) of Article 140 and point (e) of the first subparagraph of Article 147(1) of the recast text.

By way of a transitional measure, the Czech Republic, Estonia, Cyprus, Hungary, Poland, Slovenia and Slovakia may apply or continue to apply reduced rates to the supply of goods or services other than those listed in Annex H to the Sixth Directive. Those measures feature in Articles 119, 120, 121(2), 123, 125(2) and (5), 126 and 127 of the recast text.

By way of a transitional measure, Poland may apply lower reduced rates to certain supplies of goods or services listed in Annex H to the Sixth Directive. Those measures feature in Article 125(3) and (4) of the recast text.

Cyprus, Latvia, Malta and Poland may, in accordance with certain conditions, continue to apply certain exemptions with deductibility of the VAT paid at the preceding stage (zero rates). Those derogations appear in Articles 121(1), 122, 124 and 125(1) of the recast text.

The Czech Republic, Estonia, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia are allowed to grant an exemption from VAT to small enterprises whose turnover threshold is higher than that specified in the Sixth Directive. Upon accession, that option will be included in Article 24a of the Sixth Directive. It can be found in Article 280 of the recast text.

The Czech Republic, Estonia, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia may continue to exempt certain transactions which would otherwise have to be taxed...
pursuant to the Sixth Directive. Those derogations now feature in Articles 374 to 383 of the recast text.

Although Hungary and Slovakia may continue to apply a reduced rate to the supply of natural gas and electricity, that option is only by way of a transitional measure to allow them time to apply for an authorisation under Article 12(3)(b) of the Sixth Directive. That option is therefore due to expire a year after accession, and it would not be appropriate to include such derogations in the recast text.

By way of a transitional measure, Cyprus and Latvia may continue to apply existing simplified procedures for up to a year after the date of accession. That is to allow Cyprus and Latvia time to apply for a derogation under the procedure laid down in Article 27 of the Sixth Directive. To include such a measure in the recast text would not be appropriate.

4.2. Deletion of certain provisions

When legislative acts are codified, it is common practice to delete provisions which have become obsolete because they are no longer applied or because they have exhausted their effects. In view of the technique used in 1991 to introduce the transitional taxation arrangements, it is necessary in particular to delete provisions of the Sixth Directive which have been replaced even though they remain in force.

4.2.1. Obsolete provisions

Various provisions have exhausted their effects and are therefore obsolete.

Article 1 of the First Directive mainly contains provisions which concern the implementation of that Directive. Those provisions are no longer relevant.

Article 3 of the First Directive requires that the Council adopt, on a proposal from the Commission, the detailed rules for the common VAT system. That was done in the Second Directive, which has subsequently been replaced by the Sixth Directive. There is therefore no longer any need for that provision.

Article 4 of the First Directive concerns the measures to be taken to abolish imposition of tax on import and remission of tax on export. This resulted in the abolition of fiscal frontiers. It leaves this provision obsolete.

Article 6 of the First Directive is one of the final provisions and does not need to be taken over in the recast text.

Article 1 of the Sixth Directive requires Member States to implement that Directive. That obligation remains without it having to be included in the recast text.

Article 25(11) of the Sixth Directive concerns the common flat-rate scheme for farmers. It contains a review clause in accordance with which the Commission was to present, within five years, new proposals for adaptation of the scheme. Since there has been no need for changes, that provision is redundant.

Article 28(1) of the Sixth Directive provides for the transition from the Second Directive to the Sixth Directive. Since it is a transitional provision, it no longer serves any purpose.

Article 28(1a) of the Sixth Directive allows the United Kingdom to apply, until 30 June 1999, special rules for determining the taxable amount in respect of imports of works of art, collectors’ items or antiques. Since that provision is no longer applicable, it has been left out of the recast text.
Article 28(2)(g) of the Sixth Directive requires the Commission to present, before 31 December 1994, a report on the reduced rates which Member States were allowed to apply during the transitional period. That report was duly presented by the Commission\textsuperscript{15}. That provision is therefore obsolete.

Article 28k of the Sixth Directive permits Member States to continue, until 30 June 1999, to allow duty–free sales to intra–Community travellers and Article 16(1), first subparagraph, point (B), first subparagraph, point (e), first indent, in the version set out in Article 28c(E), point (1), leaves Member States free to provide for tax warehousing arrangements in the case of goods to be supplied to intra–Community travellers. Since those provisions are no longer applicable, they have not been included in the recast text.

Article 28n of the Sixth Directive contains certain transitional measures introduced for the purposes of the internal market and Article 28p introduced similar measures for the Accession of Austria, Finland and Sweden. The 2003 Act of Accession extends those measures to the Czech Republic, Estonia, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia. Whereas Article 28n is already obsolete, Article 28p will be so by the adoption of this proposal.

Article 28o(4) of the Sixth Directive allows Germany to apply, until 30 June 1999, special arrangements in respect of the supply by taxable dealers of works of art, collectors’ items or antiques. Since that provision is no longer applicable, it has not been included in the recast text.

Article 31(1) of the Sixth Directive provides that the European unit of account is to be the currency used throughout the Directive. Following the introduction of the euro, there is no longer any need for that provision.

Annex G to the Sixth Directive specifies when Member States may grant taxable persons the right to opt for the taxation of transactions which are exempt by virtue of a derogation. Provision has already been made for such cases in the body of the Directive, notably in Article 28(3)(c) of the Sixth Directive. Annex G is therefore superfluous.

4.2.2. Double provisions

Some provisions must be regarded as obsolete even though they have not exhausted their effects. That is the position in the case of the general provisions of the Sixth Directive, which have been replaced, for the duration of the transitional arrangements, by provisions which take over and add to their content.

Even though those general provisions are not currently applied, they nevertheless remain in force. In other words, at the moment, certain provisions appear twice. This makes it even more difficult for the public and economic operators to use the Sixth Directive. In order to draw up a workable instrument providing a clear overview of current legislation, provisions which are in force but not applicable must be excised from the recast text.

The elimination of that double set of provisions has no impact on the VAT legislation in force, nor does it in any way hinder the definitive system of taxation. The arrangements for the taxation of trade between Member States remain transitional and must ultimately be replaced by a definitive system based on the principle that the supply of goods or services is taxed in the Member State of origin.

Article 16(1) of the Sixth Directive provides for exemption in relation to warehousing arrangements. That provision is covered by the version of Article 16(1) set out in Article 28c(E)(1).

\textsuperscript{15} Report from the Commission to the Council in accordance with Articles 12(4) and 28(2)(g) of the Sixth Council Directive of 17 May 1977 (as amended) on the harmonization of the laws of the Member States relating to turn–over taxes – Common system of value added tax: uniform basis of assessment (COM(94) 584 final, 23.11.1994).
Paragraphs 2, 3 and 4 of Article 17 of the Sixth Directive lay down the rules delimiting the origin and scope of entitlement to deduction. Those provisions are covered by the version of Article 17(2), (3) and (4) set out in point (1) of Article 28f.

Article 18(1) of the Sixth Directive governs the exercise of entitlement to deduction. That provision is covered by the version of Article 18(1) set out in point (2) of Article 28f.

Article 21 of the Sixth Directive lists the persons who are liable for payment of VAT to the tax authorities. That provision is covered by the version of Article 21 set out in Article 28g.

The obligations placed on persons subject to VAT are laid down in Article 22 of the Sixth Directive. That provision is covered by the version of Article 22 set out in Article 28h.

Paragraphs 5 and 6 of Article 25 of the Sixth Directive concern the common flat-rate scheme for farmers. Those provisions are covered by the version of Article 25(5) and (6) set out in point (2) of Article 28j.

4.2.3. Provisions not directly linked to VAT

The Sixth Directive contains certain provisions which, although linked to the common system of VAT, essentially concern the system of own resources. If the new act is to be clear and internally consistent, it is essential that only provisions directly concerning the common system of VAT be included in the recast text. Since the provisions relating to VAT own resources are, on the whole, covered by the Own Resources Regulation, those provisions have not been taken over in the text.

Article 25(12) of the Sixth Directive provides that Member States applying the common flat-rate scheme for farmers are to establish a uniform basis of assessment of VAT in order to apply the own resources arrangements, and Annex C thereto sets out the common method of calculation. Those provisions are covered by Article 5(2) of Council Regulation (EEC, Euratom) No 1553/89, which provides a legal basis for the flat-rate correction.

Article 28(2)(a), second subparagraph, of the Sixth Directive requires that Member States adopt the measures necessary to ensure the determination of own resources in respect of transactions which are exempt or to which reduced rates are applied. That provision is reproduced in Article 2(2) of Council Regulation (EEC, Euratom) No 1553/89.

4.3. Re-structuring

The current structure of the Sixth Directive is far from satisfactory. That is not just because of the provisions introduced for the duration of the transitional period, but also because the provisions of the Sixth Directive are very lengthy. Those are structural problems, and have been addressed as part of the recast exercise.

4.3.1. Transitional provisions

Placing the provisions relating to the transitional arrangements almost at the end of the Sixth Directive resulted in a fragmented structure. If legislative acts are to be readily understandable by the public and by economic operators, it is important to have a clear and consistent structure in which provisions on a common theme are grouped together.

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17 See, in particular, Guideline No 4 of the 1998 Agreement and point 4 of the JPG.
Although the basic structure of the Sixth Directive is sound, it has suffered as a result of the alterations necessitated by the transitional arrangements. If the general provisions not currently in use are deleted, the corresponding transitional provisions can hardly be left where they are at the moment. That would complicate the structure unnecessarily. Instead, they should be moved to the positions vacated by the provisions they replace.

Title IX of the recast text provides for various exemptions. The provisions of Article 16(1) in the version set out in point (1) of Article 28c(E) of the Sixth Directive, which replaces Article 16, are included. The exemption in respect of transactions relating to customs and tax warehousing and other similar arrangements can now be found in Articles 150 to 156 and Article 158.

Title X of the recast text concerns deductions. The origin and scope of entitlement to deduction is delimited in Article 17(2), (3) and (4) in the version set out in point (1) of Article 28f of the Sixth Directive, which replaces Article 17, (3) and (4). The provisions governing the exercise of that entitlement, laid down in Article 18(1) in the version set out in point (2) of Article 28f of the Sixth Directive, are also included. Those provisions replace those of Article 18(1). All of those provisions can now be found in Articles 163, 164, 165 and 172.

Title XI of the recast text fleshes out the various fiscal obligations. It includes the rules on who is liable for payment of VAT, which are laid down in Article 21 in the version set out in Article 28g of the Sixth Directive. Those rules replace Article 21. The other obligations which feature in Article 22 in the version set out in Article 28h of the Sixth Directive are also included. They replace the similar obligations laid down in Article 22. Those provisions are now to be found in Articles 186 to 190, 192, 193, 195 to 199, 201, 202, 204 to 240, 242 to 244, 246, 248 to 251, and 253 to 266.

Title XII of the recast text contains various special schemes, including the common flat-rate scheme for farmers. The part of that scheme which features in Article 25(5) and (6) of the Sixth Directive is replaced by Article 25(5) and (6) in the version set out in point (2) of Article 28j. Those provisions can be found in Articles 293 to 296.

It makes little sense, in terms of coherence, to keep what remains of the transitional provisions at the end of the recast text. Accordingly, they have all been incorporated in the basic structure.

Title I of the recast text delimits the objectives and the scope of VAT. It includes the provisions of Article 28a(1), (1a) and (2) and Article 28o(1)(g) of the Sixth Directive, which amended the scope of the tax. Those provisions have been included in Articles 3 and 4.

Title III of the recast text concerns taxable persons. The provisions of the first subparagraph of Article 28a(4) of the Sixth Directive, which add to the list of taxable persons, have been included in Article 10(2).

Title IV of the recast text lists the various taxable transactions. The provisions concerning the transfer of goods from one Member State to another, which were contained in Article 28a(5) of the Sixth Directive, have been incorporated. Those provisions can now be found in Article 18. The provisions concerning the intra–Community acquisition of goods, which were to be found in Article 28a(3), (6) and (7) of the Sixth Directive, have also been included. Those provisions now feature in Articles 21 to 24.

Title V of the recast text governs the place of taxable transactions. It takes over the provisions of Article 28b(B) and Article 28o(1)(h) of the Sixth Directive which amended the rules governing the place of supply of goods. Those provisions now feature in Articles 34 to 36. It also incorporates the provisions to be found in Article 28b(A) of the Sixth Directive, which define the place of the intra–Community acquisition of goods. Those provisions can now be found in Articles 41 to 43. Lastly, Title V takes over the provisions, contained in Article 28b(C) to (F) of the Sixth Directive, governing the place of supply of various services. Those provisions now appear in Articles 45, 48 to 51, 53 and 55.
Title VI of the recast text determines when the chargeable event occurs and when VAT becomes chargeable. The provisions concerning the supply of goods, which featured in Article 28d(4) of the Sixth Directive, have been included and can now be found in Article 67. Likewise, the provisions of Article 28d(1), (2) and (3) of the Sixth Directive have been included. Those provisions, which apply to the intra–Community acquisition of goods, now appear in Articles 68 and 69.

Title VII of the recast text concerns the taxable amount and takes over provisions, currently laid down in Article 28e(2) of the Sixth Directive, regarding the transfer of goods from one Member State to another. Those provisions can now be found in Article 75. It also incorporates the provisions determining the taxable amount in respect of the intra–Community acquisition of goods. Those provisions, which are currently in Article 28e(1) of the Sixth Directive, have been taken over in Articles 80 and 81.

Title VIII of the recast text contains rules on the application of rates, including the provisions of Article 28e(3) and (4) of the Sixth Directive covering aspects relating to the intra–Community acquisition of goods. Those provisions have been taken over in Articles 90 and 91.

Title IX of the recast text delimits various exemptions. It covers the exemptions provided for in Article 28c(A), (B), (C), (D) and (E)(3) and Article 28o(1)(h) of the Sixth Directive, such as the exemption of certain intra–Community transactions. Those provisions now feature in Articles 135 to 140. The exemptions in respect of transactions relating to customs and tax warehousing arrangements, to be found in Article 16(1a) and (2) as inserted by Article 28c(E)(1) and (2) of the Sixth Directive, have also been incorporated and now appear in Articles 157, 159 and 160.

Title X of the recast text concerns deductions. Article 166 includes the provisions laid down in the second and third subparagraphs of Article 28a(4) of the Sixth Directive, under which persons who are treated as taxable persons because they occasionally supply new means of transport are entitled, subject to certain limits, to deduct VAT on the means of transport.

Title XII of the recast text sets out various special schemes, including the arrangements for second-hand goods, works of art, collectors’ items and antiques. During the transitional period, Member States may, in accordance with Article 28o(1) and (2) of the Sixth Directive, apply a special scheme for second-hand means of transport. That special scheme has been incorporated in the second-hand scheme itself, and the relevant provisions can be found in Articles 318 to 324.

4.3.2. General provisions

So far as the general provisions are concerned, the structure is on the whole suitable. There are, however, some exceptions. Where the structure is not consistent, it has been revised in the recast text.

The special arrangements for second-hand goods, works of art, collectors’ items and antiques can be found in Article 26a of the Sixth Directive. However, some provisions by their nature do not form an integral part of those arrangements. They have therefore been included in the general provisions (see Articles 4, 36 and 136 of the recast text). This is in line with the approach adopted by the existing text in the case of similar provisions concerning the exemption for small enterprises and the common flat-rate scheme for farmers.

During the transitional period, Member States may continue to apply a special scheme for second-hand means of transport, provided that it complies with the conditions set out in Article 28o(1) of the Sixth Directive. As with the special arrangements for second-hand goods, works of art, collectors’ items and antiques, some provisions of that scheme have been included in the general provisions (see Articles 4, 36 and 136 of the recast text). The definition of ‘second-hand means of transport’, currently to be found in Article 28o(1)(a), has also been moved (see Article 3(3) of the recast text).

The importation of goods constitutes a taxable transaction in the Member State in which the goods enter the Community. Those transactions are governed by Article 7 of the Sixth Directive. In the recast text, that provision is grouped together with Articles 5 and 6 of the Sixth Directive, which determine the nature of taxable transactions. However, by converting Article 7 into several articles, it
is possible to incorporate the rules determining the place of importation into the title governing similar matters (see Articles 60 and 61 of Title V of the recast text).

Article 19 of the Sixth Directive governs the calculation of the deductible proportion. That provision is closely linked to Article 17(5), in accordance with which taxable persons carrying out both tax-deductible and non-tax deductible activities may deduct only a proportion of the VAT paid. It has therefore been placed next to that provision (see Articles 167 to 169 of the recast text).

4.3.3. Length and complexity of certain provisions

Many of the provisions of the Sixth Directive are far too long, since they each govern an entire branch of the harmonised system of VAT. This often results in complex provisions. That is contrary to the guidelines for drafting Community legislation, in accordance with which overly long and convoluted articles are to be avoided. It is neither necessary for interpretation, nor desirable in the interests of clarity, for a single article to cover an entire branch of the rules laid down in an act.

It is better to have a large number of easily comprehensible articles, divided into titles, chapters, sections and subsections, than a few articles running to great length, which are correspondingly confused and difficult to use. In the recast text, approximately 50 lengthy articles have been converted into a little over 400 articles which are considerably shorter and much easier to read and understand.

Article 26a of the Sixth Directive lays down the special arrangements for second-hand goods, works of art, collectors’ items and antiques. The transitional provisions laid down in Article 28o extend those arrangements. Those two provisions, both of which are quite lengthy, have been divided into 29 separate articles (see Articles 304 to 333 of the recast text).

Harmonised rules on invoicing were introduced by Directive 2001/115/EC, which replaced Article 22(3) in the version set out in Article 28h of the Sixth Directive. Currently, that provision is subdivided into points, but it was not possible, within the existing structure, to number the various subparagraphs. With up to ten unnumbered subparagraphs in Article 22(3)(a), it is difficult to identify the various component parts of the provision. The new structure, on the other hand, solves that problem by subdividing those component parts into different articles (see Articles 209 to 230 and 236 to 240 of the recast text).

Where articles currently appear in separate titles, they are now presented in titles, chapters, sections and subsections. In that way it is possible to group together rules with a homogeneous content and make them easier to understand.

Article 22 in the version set out in Article 28h of the Sixth Directive lays down the various obligations incumbent upon persons liable for payment of VAT. Those include obligations relating to identification, invoicing, accounting, returns and statements. In the recast text, that article has been converted into over 60 articles (see Articles 198, 199, 201 and 202 and Articles 204 to 266 of the recast text). Those articles are arranged in chapters and sections. That structure should make it easier to navigate around the various rules.

The text of individual articles has been split into easily understandable paragraphs and subparagraphs, which are set out in a coherent sequence. In order to arrive at that structure, a number of provisions must be duplicated.

18 See point 4 of the JPG.
Article 22(7) in the version set out in Article 28h of the Sixth Directive requires Member States to take the necessary measures to ensure that persons deemed liable for payment of VAT in the stead of a non-established supplier comply with the obligations relating to declaration and payment. That provision now appears three times, under payment arrangements, returns and statements, and recapitulative statements (see Articles 199, 248 and 260 of the recast text).

4.3.4. Adaptation of the text

Adjusting the structure of the Sixth Directive may entail changes to the existing text.

The recast text includes certain provisions derived from amending acts. The integration of such provisions in the text requires a number of drafting adjustments.

The rules introduced for electronically supplied services are to apply, pursuant to Article 4 of Directive 2002/38/EC, for a period of three years starting from 1 July 2003. The temporary nature of those rules must be made quite clear, which means that for the inclusion of Article 4 in the text its wording must be adjusted (see Articles 56(3), 57(2), 59(2), 350 and 396 of the recast text).

If the provisions laying down the transitional arrangements were simply reproduced verbatim in the basic structure, the substance could well be affected. In order to prevent that, the wording may have to be amended.

Special rules have been introduced with respect to the supply of new means of transport between Member States. Article 28a(2) of the Sixth Directive defines a ‘means of transport’ and specifies the circumstances in which it must be regarded as “new”. That amounts to a definition of ‘new means of transport’. However, even though that definition now appears among the general provisions, it applies only to the provisions that form part of the transitional arrangements for the taxation of trade between Member States. In order to make that clear, the provisions of Article 28a(2) have been converted into a definition of new means of transport (see Article 3(2) of the recast text).

When existing provisions are converted into shorter articles, the wording often needs to be adapted accordingly, but in such a way that the substantive content remains intact.

Article 4 of the Sixth Directive determines who is to be regarded as a taxable person. That notion covers any person who independently carries out, in any place, any economic activity. Member States may also regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to economic activities. When those provisions are placed in separate articles, the wording must be adapted so that each Article can stand alone (see Articles 10 and 11 of the recast text).

Article 21 in the version set out in Article 28g of the Sixth Directive determines who is to be regarded as liable for payment of VAT. That provision covers a range of situations, each of which is now the subject of a separate Article (see Articles 186 to 190 and Articles 192, 193, 195, 196 and 197 of the recast text). In most of those articles, the wording is supplemented by elements taken from the introduction of Article 21(1).

Some articles include elements which have been taken from other provisions. When a number of different provisions are grouped together, consequential changes must be made to the wording of one or more of those provisions.

The special arrangements for second-hand goods, works of art, collectors’ items and antiques can be found in Article 26a of the Sixth Directive. When VAT has already been applied to goods in accordance with those arrangements, it means that, pursuant to Article 26a(D)(b), the intra-Community acquisition is not then subject to VAT. Instead of leaving that rule in the midst of the special arrangements proper, it has been moved to the relevant provision (see Article 4 of the recast text). The wording of that rule has been amended so that it could be smoothly inserted into that provision.
4.4. Compliance with the Community rules on legislative drafting

In order to ensure the quality of drafting, Community legislative acts must, by common agreement between the institutions, be drafted clearly, simply and precisely. The text must be easy to understand, concise and leave no uncertainty in the mind of the reader. Those guidelines have been adhered to in the preparation of the recast text.

4.4.1. Clarity

The existing text is not always sufficiently clear. In order for the recast text to be easily understandable and unambiguous, it is crucial that certain aspects of the text be clarified.

4.4.1.1. Re-structuring

The structure, both of individual articles and of the act as a whole, should contribute to clarity. It must also take account of the multicultural and multilingual nature of Community legislation. It has been necessary to adapt the existing provisions of the Sixth Directive in the light of those requirements20.

Any provision which consists in introductory words followed by a list must be worded in such a way that the relationship between the introduction and the elements listed is quite clear and that sentences are not broken up in a way that is awkward and unnatural21.

Article 18(1) in the version set out in point (1) of Article 28f of the Sixth Directive lays down the preconditions to be met by a taxable person in order to exercise entitlement to deduction. The introduction has been amended so as to make it clear that, in each case, the taxable person must meet certain specific conditions in order to be able to deduct the VAT incurred (see Article 172 of the recast text).

If part of the provision is to apply to every element listed, but is positioned at the end, there may be some uncertainty as to whether the closing words do indeed apply to all the items or situations on the list. In order to avoid such ambiguity and to prevent difficulties arising for certain languages, the phrases integral to the preface should be kept together in the introduction.

Under Article 9(2)(c) of the Sixth Directive, certain services are regarded as having been supplied at the place where they are physically carried out. In order to ensure that this meaning is conveyed, the closing words have been included as part of the introduction (see Article 52 of the recast text).

A taxable person may, pursuant to Article 26b(D)(1) of the Sixth Directive, deduct the VAT due or paid in respect of investment gold purchased or acquired, or in respect of certain services relating to the gold. He is, however, entitled to deduct the VAT only if his subsequent supply of that gold is exempt under the gold scheme. That condition applies to all three cases listed. Its inclusion in the introductory part of the provision serves to clarify that point (see Article 347 of the recast text).

When a provision contains a list of elements, the list should not include autonomous provisions in the form of sentences or subparagraphs. Otherwise it is difficult to cite correctly the provision in question or to preserve the logical sequence of the main provision (list of elements, linked to an introduction, followed by details or specifications concerning one or more of the elements listed)22.

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20 See Guidelines Nos 5 and 7 of the 1998 Agreement and points 5 and 7 of the JPG.
21 See point 15.3 of the JPG.
22 See point 15.3. of the JPG.
Under Article 11(A)(2) of the Sixth Directive, taxes, duties, levies and charges, as well as incidental expenses, must be included in the taxable amount in respect of a supply of goods or services. Member States may regard expenses covered by a separate agreement as incidental expenses. That sentence, which forms an autonomous provision, has been moved down, so that it now features as a separate paragraph (see the second subparagraph of Article 77 of the recast text).

Point (o) of Article 13(A)(1) of the Sixth Directive provides for the exemption of various activities in the public interest, including the supply of goods or services by organisations whose activities in connection with fund–raising events are exempt. Member States may, for example, restrict the number of events or the amount of receipts giving entitlement to exemption. That sentence, which forms an autonomous provision, should not be included as part of an item on the list of exemptions. Instead, it has been placed in a separate paragraph (see Article 129(2) of the recast text).

Since indents are not instantly identifiable, they cause particular problems. The use of indents should therefore be avoided, and when elements are listed, they should be identified by a number or a letter.

The transfer of goods to another Member State must, pursuant to Article 28a(5) of the Sixth Directive, be treated as a supply of goods. That does not apply to all transfers of goods: certain situations are expressly excluded from the notion of a supply of goods. Those situations, which were previously listed as indents, are now identified by letters (see Article 18(2) of the recast text).

For VAT purposes, an invoice must show certain details. Those details are listed in the first subparagraph of Article 22(3)(b) in the version set out in Article 28h of the Sixth Directive. Those details are no longer listed as indents, but under numbers (see Article 217 of the recast text).

It is good practice to place technical rules or data in an annex. By contrast, in the interests of clarity, provisions which are not purely technical should be included in the enacting terms.

Member States may, pursuant to the third subparagraph of Article 12(3)(a) of the Sixth Directive, apply one or two reduced rates. In Annex H, it is provided that the Combined Nomenclature may be used to establish the precise coverage of categories of goods subject to such a rate. It is not appropriate for that provision to feature in an annex. It has therefore been incorporated in the enacting terms (see Article 95(3) of the recast text).

4.4.1.2. Limiting the use of references

References to other articles or to other acts should be kept to a minimum. Efforts have therefore been made to reduce the number of such references. In some cases, references have been removed. Where that has not been possible, either the provision referred to has been reproduced and appears instead of the reference or the reference has been retained but clarified through the addition of further details.

Although references to other legal acts are sometimes necessary (their removal would make acts even more lengthy and complex, and expose them to the risks attendant upon the reproduction of provisions from other acts), they must be restricted to a minimum, especially where reference is made to an act which has been repealed.

Member States may, pursuant to Article 28(2)(a) of the Sixth Directive, continue to apply exemptions, with deductibility of the VAT paid at the preceding stage. Those exemptions may be maintained only if they are in accordance with Community law and satisfy the conditions laid down in the last indent of Article 17 of the Second Directive. It was decided not to refer to an act which has long since been repealed but rather to incorporate the relevant conditions, namely that those exemptions must have

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23 See Guideline No 15 of the 1998 Agreement.
24 See Guideline No 22 of the 1998 Agreement and point 22 of the JPG.
25 See Guideline No 16 of the 1998 Agreement and point 16 of the JPG.
been adopted for clearly defined social reasons and for the benefit of the final consumer, in the text (see Article 106 of the recast text).

Article 15(2) of the Sixth Directive exempts the supply of goods dispatched or transported to a destination outside the Community by the customer or on his behalf. If such goods are carried in the personal luggage of travellers, the exemption applies only in accordance with certain conditions. One of those conditions is that the value of the supply must exceed a certain amount. That amount is fixed in accordance with Article 7(2) of Directive 69/169/EEC. Instead of that reference, the mechanism referred to is incorporated in the text (see Article 143 of the recast text).

The removal of references to other legislative acts is not always practicable or desirable. Where reference is made to a specific situation linked to another act, it may have to be maintained.

Under the first subparagraph of Article 24(2)(a) of the Sixth Directive, Member States may continue to exercise the options available under Article 14 of the Second Directive of introducing exemptions or graduated tax relief for small businesses. That reference serves to identify the Member States which, at the material time, made use of that specific provision. It cannot therefore be removed (see Article 277 of the recast text).

Definitions must be adhered to throughout the act. Defined terms must be used in a uniform manner and their content must remain consistent with the definitions given. Consequently, once a term has been defined, it is unnecessary continually to refer back to the provision laying down the definition. Such references have been removed from the recast text.

Under the first subparagraph of Article 6(1) of the Sixth Directive, a supply of services means any transaction which does not constitute a supply of goods within the meaning of Article 5. Since the concept of a supply of goods has already been defined, the reference to Article 5 is superfluous. It has therefore been removed from that provision (see Article 25(1) of the recast text).

Likewise, the reference to paragraph 5 or to Article 5 which appears in Article 28a(7) of the Sixth Directive has been removed. That provision thus refers to a supply of goods without making any reference (see Article 24 of the recast text).

The position is different in the case of definitions which are not of general application but apply only in the context of a special scheme. In such cases, it is necessary to include a reference whenever that term is used elsewhere in the text.

If Member States choose to apply reduced rates, they may, pursuant to the first subparagraph of Article 12(3)(c) of the Sixth Directive, apply a reduced rate to the importation of works of art, collectors’ items and antiques. That provision is one of those governing VAT rates (see Article 99 of the recast text), in the context of which the definitions pertaining to the special arrangements for second-hand goods, works of art, collectors’ items and antiques are not as such applicable. In order to make those definitions apply in that context, it is necessary to include a specific reference to them (see Article 304 of the recast text).

Where it has not been possible to eliminate references, an attempt has been made to replace them with text.

Pursuant to the second subparagraph of Article 4(4) of the Sixth Directive, Member States may choose to regard persons established in the territory of the country as a single taxable person. That option is subject to the consultations provided for in Article 29 of the Sixth Directive, which is the provision under which the VAT Committee is established. Accordingly, the option applies only after consultation of the VAT Committee. Since that wording is sufficiently clear, there is no reason to maintain the existing reference (see Article 11(2) of the recast text). This change has been carried through to other provisions in the recast text.

For goods to be regarded as transferred to another Member State, it is necessary, pursuant to Article 28a(5)(b) of the Sixth Directive, for them to be transported or dispatched to a destination
outside the territory as defined in Article 3 but within the Community. The territory referred to is that of a Member State. Since that territory has already been defined, the reference has been removed (see Article 18 of the recast text). On the other hand, it is specified that the goods are transported to a destination outside the Member State in which they are located but within the Community.

Whilst it is not always possible to eliminate references, those remaining must be worded in such a way that the main thrust of the provision to which reference is made can be understood without consulting that provision. To achieve this, some of the existing references have to be made clearer.

The intra-Community acquisition of goods by taxable persons acting as such, or by non-taxable legal persons, is subject to VAT pursuant to the first subparagraph of Article 28a(1)(a) of the Sixth Directive. Those persons may, however, qualify for the derogation provided for in the second subparagraph of Article 28a(1)(a), in which case, pursuant to Article 28a(1)(b) and (c), only the acquisition of new means of transport or of excise products is subject to VAT. There, the key element is that in those situations the other acquisitions made by that taxable person or non-taxable legal person are not subject to VAT, and that is now expressly stated (see, for example, Article 3(2)(b)(ii) and (iii) of the recast text).

Article 11(A)(1) of the Sixth Directive determines the taxable amount in respect of certain transactions. Other transactions are covered by Article 28e(2). In neither case is the nature of those transactions specified. In order to make it possible to distinguish between those different situations, the key elements have been integrated. This helps to make the text easier to understand (see Articles 72 to 76 of the recast text).

One way of clarifying references is to include elements from the provision referred to. To make the wording clearer, it is sufficient to include the key element of the provision concerned. The scope of the reference is not affected by leaving out some details, provided that the key element is properly included.

Article 10(2) of the Sixth Directive determines when the chargeable event occurs and when VAT becomes chargeable. It includes a specific provision concerning the supply of goods giving rise to successive statements of account or payments. That provision does not apply to the supplies referred to in Article 5(4)(b), which concern the hire of goods for a certain period or the sale of goods on deferred terms. The fact that not all details of the provision referred to (see Article 15(2)(b) of the recast text) are included does not limit the scope of the reference.

4.4.1.3. Clearer and more consistent wording

Clarity of wording and consistency in the use of terminology are vital if a legislative act is to be easily understood and correctly interpreted. Consistency is achieved through the use of the same terms to express identical concepts26.

The existing text is not always entirely consistent. To improve consistency, it is necessary in some cases to adapt the wording.

In the existing text, references to the supply of goods and the supply of services is not entirely consistent. Whilst the English version is consistent, the wording in the French version varies. For the sake of consistency, it has been decided to follow the approach adopted in the English version. In the French version (and other language versions), reference is now made to “livraison de biens” and “prestation de services” (see, for example, Articles 15 and 25 of the recast text). This mirrors the use of “supply of goods” and “supply of services” in the English version.

Special rules for determining the place of supply of various services provided by intermediaries are to be found in Article 28b(C), (D), (E) and (F) of the Sixth Directive. Although those rules are

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26 See Guideline No 6 of the 1998 Agreement and point 6 of the JPG.
essentially the same, the wording is not identical. The inconsistencies have now been eliminated (see Articles 48, 50, 54 and 55 of the recast text).

Inconsistency may arise as a result of changes introduced to the existing text. Some of the amendments made affected only part of the Sixth Directive and were viewed in isolation. That lack of a global overview sometimes led to inconsistency in the terminology used.

As part of the special scheme for investment gold, Member States may, pursuant to Article 26b(G)(1) of the Sixth Directive, decide not to apply the exemption for specific transactions in investment gold. That option is not open in the case of intra–Community supplies. However, that term is not defined, nor is it commonly used. To be consistent with the wording used elsewhere, it is more appropriate to refer to the supply of goods carried out in accordance with the conditions laid down in Article 28c(A) (see Article 344 of the recast text).

4.4.1.4. Alignment of the various language versions

It is essential that there be no discrepancies as between the eleven language versions, as any discrepancy between the various versions, all of which are authentic, can engender uncertainty.

Under Article 9(2)(e) of the Sixth Directive, the place of supply of certain services supplied to a taxable person established in another Member State is the place where the customer is established. That applies to the services of intermediaries taking part in the supply of services covered by that same provision. In that context, the English version refers to “agents who act in the name and for the account of another, when they procure for their principal the services”. That does not correspond to the wording used elsewhere. The other language versions are consistent. To ensure overall consistency, reference is now made to “intermediaries who act in the name and on behalf of other persons where they take part in the supply of services” (see Article 56(1)(l) of the recast text).

Article 13(A)(1)(a) of the Sixth Directive provides for the exemption of the supply, by public postal services, of services other than passenger transport and telecommunications services. In that context, the German version refers to “Fernmeldewesen”, whereas elsewhere it refers to such services as “Telekommunikationsdienstleistungen”. To be in line with other language versions, the same term should be used in both instances, the more appropriate being the latter (see Article 129(1)(a) of the recast text).

When aligning the various versions, account must be taken of the characteristics of each language. The approach adopted in one language version is not necessarily suitable for another language version.

In the French version, a distinction is made between “livraison de biens” and “prestation de services”. The French version also refers to the supplier of goods as the “fournisseur” and the supplier of services as the “prestataire”. The customer is referred to as the “acheteur” if the supply concerns goods and as the “preneur” if it concerns services. The English version does not make the same distinctions, nor are they necessary. It is entirely appropriate to refer to the “supply of goods” and the “supply of services”. The person who carries out the transaction is referred to as the “supplier” and the client is called the “customer”, rather than, respectively, the “purchaser” and the “customer” as was previously the practice (see, for example, Article 72 of the recast text).

4.4.2. Simplification of the wording

The text should not include unnecessary or repetitive elements. An effort has been made to simplify the drafting of the provisions, but bearing in mind that this must not result in substantive changes.
4.4.2.1. Structural improvements

The structure of the existing provisions is not always appropriate. That is all the more evident when those provisions are converted into shorter articles. It has been necessary, therefore, to adjust the structure of certain provisions.

Very complex provisions must be structured in such a way that they are easy to follow and the meaning is easy to grasp.

Member States may, pursuant to Article 16(2) of the Sixth Directive, exempt certain transactions made with a view to the export of goods. Since that provision comprises many different elements, it may be difficult to understand. Adjustment of the structure so that those transactions are listed separately contributes to a better understanding of what is meant (see Article 159 of the recast text).

One of the features of simple provisions is that they are not repetitive. The structure of some provisions has therefore been amended so as to avoid repetition.

Under Article 12(1) of the Sixth Directive, the rate applicable to taxable transactions is that in force at the time of the chargeable event. In some situations, the rate to be used is, however, that in force when the tax becomes chargeable. In order to simplify the structure, all the common features have been grouped together in the introduction, rather than repeated in each case listed (see the second paragraph of Article 90 of the recast text).

The exemptions provided for in Articles 13, 14 and 15 of the Sixth Directive all apply without prejudice to other provisions of Community law, and in accordance with conditions laid down by Member States with a view to ensuring the correct and straightforward application of such exemptions and to prevent any possible evasion, avoidance or abuse. That also applies in the case of exemptions under Article 28c(A) to (D). To avoid repetition, that introduction now features as a general provision (see Article 128 of the recast text).

4.4.2.2. Concise content

To be concise, unnecessary elements should be excised from provisions.

Under Article 11(B)(1) of the Sixth Directive, the taxable amount in respect of the importation of goods is their value for customs purposes. However, importation does not consist only in the entry into the Community of goods which are not in free circulation. It also consists in the entry of goods which are in free circulation if those goods come from third territories forming part of the customs territory. The definition of importation of goods covers both situations. It is not necessary, therefore, to refer separately to the importation of goods in free circulation (see Article 82 of the recast text).

Whenever a provision derogates from another, that fact is expressly stated. In many cases, the inclusion of such reference is not required. One example is Article 11(B)(6) of the Sixth Directive. Those Member States which, at 1 January 1993, did not apply a reduced rate may provide that, in respect of the importation of works of art, collectors’ items or antiques, the taxable amount is equal to a fraction of the taxable amount established in accordance with the normal rules. Since it is clear that this provision governs a particular situation, it is not necessary to state that the rule applies by way of derogation (see Article 86 of the recast text).

4.4.2.3. More straightforward language

In order not to create uncertainty in the mind of the reader, the text needs to be specific and detailed, which inevitably means that the text is often complicated. Nevertheless, the fact remains that the main objective must be a text that is not too difficult to understand.
As regards simplicity, it is possible, in certain cases, to improve the existing text while maintaining the requisite degree of precision. Sometimes, all the language versions can be simplified, but sometimes only particular language versions are amenable to simplification.

When the existing text refers to the various Member States, it uses their full names. As a general rule, the short form of Member States’ names should be used. The full official names should be used only when acts concern individual Member States, such as when derogations are granted under Article 27 of the Sixth Directive.

Throughout the existing text, reference is made to value added tax. It is simpler, and entirely consistent with the approach taken in recent years, to refer to VAT. In some language versions, however, such as the German version, reference should continue to be made to value added tax.

When an option is granted, the French version frequently refers to the fact that Member States “ont la faculté”. It is much simpler to say “peuvent”.

4.4.3. Greater precision

The existing text sometimes lacks precision. Where this is the case, the text has been adapted so as to leave no uncertainty in the mind of the reader.

4.4.3.1. Accuracy of references

The recast procedure often necessitates the renumbering of articles. That is so if new articles have been inserted by subsequent amending acts. Renumbering has an impact on the internal references, which must be amended accordingly.

In the course of restructuring the text, paragraphs or subparagraphs of existing articles have been converted into separate articles. All internal references have had to be replaced.

The existing references are not always accurate, and sometimes they may be inappropriate. In order to ensure that each new reference is sufficiently precise, some adjustment may be necessary.

In order to make certain references as precise as possible, they have been limited to cover only the relevant parts of the provision referred to.

In the case of bodies governed by public law which are exempt under Article 13 or 28 of the Sixth Directive, Member States may regard their activities as activities in which such bodies engage as public authorities. To be exact, those are the exempt activities covered by Article 13(A) and (B) and Article 28(3)(b). That is why the reference has been limited to Articles 129, 132, 133 and 364 and Article 367 to 383 (see Article 14 of the recast text).

Circular references (reference to an article which itself refers back to the initial provision) and serial references (reference to a provision which itself refers to another provision) should be avoided.

Article 11(A)(4) of the Sixth Directive allows Member States which, at 1 January 1993, did not apply reduced rates to opt for a reduction of the taxable amount in respect of the supply of works of art. That provision derogates from Article 11(A)(1), (2) and (3), while providing that the taxable amount is to be equal to a fraction of the amount determined in accordance with those same provisions. Since there is no doubt that the provision derogates from Article 11(A)(1), (2) and (3), it is not necessary to continue to refer to that fact (see Article 79 of the recast text).

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27 See Guideline No 16 of the 1998 Agreement.
Simplification measures have been introduced for triangular transactions. That has implications for the place of intra-Community acquisition of goods. This follows from the third subparagraph of Article 28b(A)(2) of the Sixth Directive. However, those measures apply only if the person to whom the goods are subsequently supplied is designated in accordance with Article 28c(E)(3) as liable for payment of VAT. Article 28c(E)(3) refers in turn to Article 21(1)(e), which is the provision which actually lays down the specific rules for payment of the tax by the recipient. Accordingly, the latter provision is the one now referred to, in order to avoid a serial reference (see Article 43 of the recast).

4.4.3.2. Precise terminology

Not all terms used in the Sixth Directive are sufficiently precise. They have been replaced by more accurate terms.

Pursuant to the first subparagraph of Article 28(1)(a) of the Sixth Directive, Member States which, at 1 January 1993, applied exemptions with refund of the tax paid at the preceding stage may maintain those exemptions. Those are exemptions with entitlement to deduction. To be accurate, the recast text now refers to exemptions with deductibility of the VAT paid at the preceding stage (see Article 106 of the recast text).

Under Article 3(2) of the Sixth Directive, the territory of the country is the area of application of the EC Treaty as defined in respect of each Member State in Article 227. When reference is made to the territory of the country, it is not always clear what that term covers. It mostly refers to a particular Member State. However, where several Member States are involved, that term is not sufficiently precise. The rules laid down in Article 21, in the version set out in Article 28g, regarding the person liable for payment of the tax, illustrates that point. For the sake of accuracy, that term has been replaced with more descriptive terms such as the Member State in which dispatch or transport of the goods ends (see Article 18(2)(e) of the recast text); the Member State in which the supply of [the service] is taxable (see Article 76 of the recast text); their territory (see Article 85 of the recast text); the Member State (see Article 91 of the recast text); the Member State in which the VAT is due (see Article 187 of the recast text); the Member State in which the return must be submitted (see Article 243(b)); and the Member State in which the customer is established (see Article 296(2)(b)).

4.4.4. Updating the text

The recast exercise means that the Sixth Directive will be replaced by a new instrument. Moreover, in some cases adaptation is necessary to avoid substantive changes.

4.4.4.1. Updating of provisions

Provisions may have been overtaken by events and the text should reflect the current legal situation. Such provisions must therefore be brought up to date.

Article 7(1)(a) defines importation of goods as the entry into the Community of goods which do not fulfil the conditions laid down in Articles 9 and 10 of the EEC Treaty or, if covered by the ECSC Treaty, that are not in free circulation. The reference to the ECSC Treaty has been deleted since it no longer exists (see Article 31 of the recast text).

4.4.4.2. Maintenance of the status quo

Leaving the text unchanged is not necessarily an option. Some changes are indispensable if the status quo is to be maintained and substantive changes avoided.

Pursuant to Article 17(6) of the Sixth Directive, common rules are to be agreed providing for restrictions on entitlement to deduction. No such rules have yet been adopted. Pending their adoption, Member States may retain all the exclusions that were provided for under their national laws when the Sixth Directive came into force, that is to say, on 1 January 1978. In order to make sure that that option is not widened, the existing reference must be replaced with the exact date of the entry into force. Since, for most Member States, the cut-off date was postponed by one year, the most rational solution has been to refer to 1 January 1979. Since that provision applies also to Member States
acceding to the Community after that date, it is specified that, in those cases, the cut-off date is the day of their accession (see Article 170 of the recast text).

In order to facilitate the changeover to the Sixth Directive, Article 28(3) allows the then Member States, as a transitional measure, to continue to avail themselves of certain derogations. The derogations listed in Annexes E and F are not open to Member States which acceded to the Community later. Those Member States need to have obtained similar derogations at the time of accession. Any such derogations are integrated in the recast text alongside the derogations allowed under the Sixth Directive. At the same time, the necessary distinction is made between options open only to Member States which belonged to the Community on 1 January 1978 (see Articles 363 to 367 of the recast text) and other provisions (see Articles 368 to 383 of the recast text).

4.4.5. Revision of the various language versions

In order to prevent substantive changes, it is necessary to exercise caution when revising the text.

In the case of certain language versions drafted for the accession of new Member States, the quality is not always satisfactory. The recast exercise offers an opportunity to perform a thorough check of the terminology used and to make any rectification necessary.

This mainly affects the Swedish and Finnish versions in which the terminology has been revised. Changes have also been made to the Portuguese and Spanish versions. Those changes serve to bring the quality of those versions into line with the other language versions, without affecting the meaning of the text.

Clearly, with a text dating back to 1977, the use of language may have changed in various ways. The recast text must take account of any such changes.

Recent reforms have introduced changes in the spelling of German. Those changes are reflected in the German version of the recast text.

Some of the terms used in the Danish version are out of date. In an attempt to modernise the text, more contemporary terms are used. This has meant, for example, that “goder” has been replaced by “varer” and “tjenesteydelser” by “ydelser”. Those are not changes which in any way affect the content of the text.

5. Changes affecting the substance

The majority of changes made to the text are not substantive. However, a handful of changes inherent to the recasting exercise slightly affect the substantive content of the text.

Article 33(2) of the Sixth Directive defines products subject to excise duty. That definition covers mineral oils, alcohol and alcoholic beverages, and manufactured tobacco. In order to make the definition dynamic, the wording has been changed so that it covers products subject to harmonised excise duties (see Article 2(1) of the recast text). Those are excise products which are subject to excise duty but governed by Community legislation, which means that any future amendment introduced in the field of excise duties will be reflected in the VAT legislation. That is important if the parallelism between the VAT rules and rules governing excise duty is to be maintained.

The invoicing rules cover various aspects concerning the transmission and storage of invoices by electronic means. In the first subparagraph of Article 22(3)(e) in the version set out in Article 28h of the Sixth Directive, a definition is given of what is meant by electronic means. That definition is based on those laid down in Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, which amended Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations. The positioning of that definition at the beginning of the new text, in view of the fact that it is a definition of general application which is going to apply throughout the Directive, is consistent with the way in which Community legislation ought to be
structured (see point (2) of Article 2 of the recast text). As a consequence, the definition applies also in the context of other provisions of the Directive, notably those concerning services supplied by electronic means. Even though this may be regarded as a substantive change, it is difficult to imagine that the term in question could be held to have a meaning other than that ascribed by Community legislation.

When the supply of goods is carried out on board a means of transport, the place of supply is, under Article 8(1)(c) of the Sixth Directive, the place of departure of the transport. There are no common rules on the place of taxation of goods supplied for consumption on board. The Commission was to present a report by 30 June 1993, but no such report has been made. Meanwhile, Member States may exempt or continue to exempt such supplies, but only until a certain date. Even though it is linked to the forthcoming adoption of common rules, that provision cannot, at the moment, be extended beyond the date given. In the absence of a Commission proposal, however, that provision is still being applied by Member States. In order to remedy that situation, it is proposed to leave that option open until the adoption of the new legislation (see Article 38(3) of the recast text).

In respect of the supply, by a taxable person established outside the Community, of telecommunications services to a non-taxable person established within the Community, Member States are to apply, pursuant to Article 9(4) of the Sixth Directive, the criterion of actual use or enjoyment. That provision has been temporarily replaced by a version covering both telecommunications services and radio and television broadcasting services. As a result of the new version, the notions of non-established supplier and established non-taxable person have been fleshed out in greater detail. A return to the original provision would see that degree of precision lost, even if, according to Member States, that is not the intention. To rectify the situation, the provision has been adapted accordingly (see Article 59 of the recast text).

Under Article 13(B)(e) of the Sixth Directive, Member States are to exempt the supply at face value of postage stamps valid for postage within the territory of the country. To be in line with Community law, stamps valid for postage in another Member State should also be exempt. Accordingly, no specification is made as to the Member State in which the stamps are valid for postage (see Article 132(1)(h) of the recast text). While that is indeed a change, it would only entail substantive changes once stamps are sold across borders.

The final importation of goods qualifying for exemption from customs duties, other than as provided for in the Common Customs Tariff, is exempt pursuant to the first subparagraph of Article 14(1)(d) of the Sixth Directive. It is also laid down that Member States may decide not to grant that exemption if it is likely to have a serious effect on conditions of competition. However, implementing acts, such as Directive 83/181/EEC, have subsequently been adopted which delimit the scope of the exemption and in consequence that option may no longer be invoked by Member States. It has therefore been removed (see Article 140(b) of the recast text).

When converting the amounts of the transitional arrangements into national currency, Member States are to use, pursuant to Article 28m of the Sixth Directive, the rate of exchange as at 16 December 1991. That provision is relevant only for Member States outside the euro zone. In order to place all Member States on the same footing, the date of conversion has been adapted to reflect the date of changeover to the euro. That date does not apply in the case of the new Member States. For practical purposes, the date fixed by the Act of Accession should continue to apply (see Article 392 of the recast text).

Pursuant to Article 34 of the Sixth Directive, the Commission, after consulting the Member States, is to send a report to the Council every two years on the application of the common VAT system. That report is to be transmitted by the Council to the European Parliament. However, that obligation proved untenable because of the arduous timetable set. In the recast text, reports are to be made every four years, on the basis of information gathered from the Member States. Similar provisions are to be found in other Community acts (see Article 398 of the recast text).
Proposal for a
COUNCIL DIRECTIVE
of [...] 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 93 thereof,

Having regard to the proposal from the Commission\textsuperscript{28},

Having regard to the opinion of the European Parliament\textsuperscript{29},

Having regard to the opinion of the European Economic and Social Committee\textsuperscript{30},

Having regard to the opinion of the Committee of the Regions\textsuperscript{31},

Whereas:

(1) Council Directive 77/388/EEC 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\textsuperscript{32} has undergone substantial amendment on several occasions. In the interests of clarity and rationality, that Directive should be recast, with the introduction only of the substantive amendments essential for that purpose.


\textsuperscript{28} OJ C [...], [...], p. [...].
\textsuperscript{29} OJ C [...], [...], p. [...].
\textsuperscript{30} OJ C [...], [...], p. [...].
\textsuperscript{31} OJ C [...], [...], p. [...].
Whereas the main objective of the Treaty is to establish, within the framework of an economic union, a common market within which there is healthy competition and whose characteristics are similar to those of a domestic market;

(3) Whereas the attainment of this objective of establishing a common market whose characteristics are similar to those of a domestic market presupposes the prior application of legislation concerning turnover taxes such as will not distort conditions of competition or hinder the free movement of goods and services within the common market;

(4) Whereas the legislation at present in force does not meet these requirements; whereas it is therefore in the interests of the common market to achieve such harmonisation of legislation concerning turnover taxes by means of a system of value added tax (VAT), such as will eliminate, as far as possible, factors which may distort conditions of competition, whether at national or Community level, and make it possible subsequently to achieve the aim of abolishing the imposition of tax on importation and the remission of tax on exportation in trade between Member States;

Whereas, in the light of the studies made, it has become clear that such harmonisation must result in the abolition of cumulative multi-stage taxes and in the adoption by all Member States of a common system of value added tax;

(5) Whereas a VAT system of value added tax achieves the highest degree of simplicity and of neutrality when the tax is levied in as general a manner as possible and when its scope covers all stages of production and distribution and, as well as the provision of services; whereas it is therefore in the interests of the common market and of Member States to adopt a common system which shall also apply to the retail trade;

Whereas, however, the application of that tax to retail trade might in some Member States meet with practical and political difficulties; whereas, therefore, Member States should be permitted, subject to prior consultation, to apply the common system only up to and including the wholesale trade stage, and to apply, as appropriate, a separate complementary tax at the retail trade stage, or at the preceding stage;

(6) Whereas it is necessary to proceed by stages, since the harmonisation of turnover taxes will lead in Member States to substantial alterations in tax structure and will have appreciable consequences in the budgetary, economic and social fields;
Whereas the replacement of the cumulative multistage tax systems in force in the majority of Member States by the common system of value added tax VAT is bound, even if the rates and exemptions are not fully harmonised at the same time, to result in neutrality in competition, in that within each country similar goods and services bear the same tax burden, whatever the length of the production and distribution chain, and that in international trade the amount of the tax burden borne by goods is known so that an exact equalisation of that amount may be ensured; whereas therefore, provision should be made, in the first stage, for adoption by all Member States of the common system of value added tax, without an accompanying harmonisation of rates and exemptions;

Whereas it is not possible to foresee at present how and within what period the harmonisation of turnover taxes can achieve the aim of abolishing the imposition of tax on importation and the remission of tax on exportation in trade between Member States; whereas it is therefore preferable that the second stage and the measures to be taken in respect of that stage should be determined later on the basis of proposals made by the Commission to the Council;

Whereas all Member States have adopted a system of value added tax in accordance with the first and second Council Directives of 11 April 1967 on the harmonization of the laws of the Member States relating to turnover taxes;


Whereas Directive 77/388/EEC lays down common provisions for all fields covered by value added tax; whereas, in many cases, it is incumbent upon the Member States to determine the conditions under which these provisions shall apply; whereas, since the scope of Directive 77/388/EEC is so wide as to encompass a very large number of national regulations, several Member States have been unable to carry out the necessary adaptations in time to comply with Directive 77/388/EEC; whereas these Member States have thus been unable to complete the legislative procedure necessary to adapt their legislation on value added tax within the time limit laid down;
Whereas the Member States concerned have requested an extension of the time limit for the entry into force of Directive 77/388/EEC; whereas in this context an extension for a maximum of 12 months should be sufficient.

(8) Whereas the [Pursuant to Council Decision 2000/597/EC, Euratom, of 21 April 1970 – 29 September 2000 on the replacement of financial contributions from Member States by the system of the Communities’ own resources provides that], the budget of the [European Communities shall is to be financed], irrespective of other revenue, be financed entirely from the Communities’ own resources; whereas these [Those resources are to include those accruing from value added tax VAT and obtained by applying through the application of a common rate of tax on to a basis of assessment determined in a uniform manner according to and in accordance with Community rules];

Whereas the Member States concerned have requested an extension of the time limit for the entry into force of Directive 77/388/EEC; whereas in this context an extension for a maximum of 12 months should be sufficient.

Third recital (78/583/EEC) Obsolete

Second recital (77/388/EEC)

Whereas further progress should be made in the effective removal of restrictions on the movement of persons, goods, services and capital and the integration of national economies;

Third recital (77/388/EEC) Obsolete

Whereas account should be taken of the objective of abolishing the imposition of tax on the importation and the remission of tax on exportation in trade between Member States; whereas it should be ensured that the common system of turnover taxes is non-discriminatory as regards the origin of goods and services, so that a common market permitting fair competition and resembling a real internal market may ultimately be achieved;

Fourth recital (77/388/EEC) Obsolete

Whereas Article 8a of the Treaty defines the internal market as an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

First recital (91/680/EEC) Obsolete

Whereas the completion of the internal market requires the elimination of fiscal frontiers between Member States and that to that end the imposition of tax on imports and the remission of tax on exports in trade between Member States be definitively abolished;

Second recital (91/680/EEC) Obsolete

Whereas fiscal controls at internal frontiers will be definitively abolished as from 1 January 1993 for all transactions between Member States;

Third recital (91/680/EEC) Obsolete

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Whereas the imposition of tax on imports and the remission of tax on exports must therefore apply only to transactions with territories excluded from the scope of the common system of value added tax;

Fourth recital (91/680/EEC)
Obsolete

Tenth recital (91/680/EEC)
Adapted

Eleventh recital (91/680/EEC)
Adapted

First recital (80/368/EEC)
Obsolete

Second recital (80/368/EEC)
Obsolete

Third recital (80/368/EEC)
Adapted

Fourth recital (80/368/EEC)
Obsolete
Whereas, however, in view of the conventions and treaties applicable to them, transactions originating in or intended for the Principality of Monaco and the Isle of Man must be treated as transactions originating in or intended for the French Republic and the United Kingdom of Great Britain and Northern Ireland respectively;

Whereas Article 3 of Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of valued added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers sets 1 January 1993 as the date for the entry into force of these provisions in all the Member States;

Whereas in order to facilitate the application of these provisions and to introduce the simplifications needed, it is necessary to supplement the common system of value added tax, as applicable on 1 January 1993, so as to clarify how the tax shall apply to certain operations carried out with third territories and certain operations carried out inside the Community, as well to define the transitional measures between the provisions in force on 31 December 1992 and those which will enter into force as from 1 January 1993;

Whereas in order to guarantee the neutrality of the common system of turnover tax in respect of the origin of goods, the concept of a third territory and the definition of an import must be supplemented;

(12) Whereas, In order to enhance the non–discriminatory nature of the tax, the term ‘taxable person’ must be clarified to enable defined in such a way that the Member States are able to extend use it to cover persons who occasionally carry out certain transactions;

 Whereas the qualification of certain works on movable property as work carried out under a contract to make up work is a source of difficulty and should be eliminated;

(13) Whereas the term ‘taxable transaction’ has led may lead to difficulties, in particular as regards transactions treated as taxable transactions whereas those Those concepts must therefore be clarified;

 Whereas the abolition as from 1 January 1993 of tax on imports and tax relief on exports for trade between the Member States makes it necessary to have transitional measures in order to ensure the neutrality of the common system of valued added tax and to avoid situations of double–taxation or non–taxation;
Whereas it is therefore necessary to lay down special provisions for cases where a Community procedure started before 1 January 1993 for the purposes of a supply effected before that date by a taxable person acting as such in respect of goods dispatched or transported to another Member State, is not completed until after 31 December 1992;

Whereas such provisions should also apply to taxable operations carried out before 1 January 1993 to which particular exemptions were applied which as a result delayed the taxable event;

Whereas it is also necessary to lay down special measures for means of transport which, not having been acquired or imported subject to the general domestic tax conditions of a Member State, have benefited by the application of national measures, from an exemption from tax because of their temporary import from another Member State;

Whereas the application of these transitional measures, both in relation to trade between the Member States and to operations with third territories, presupposes supplementing the definition of the operations to be made subject to taxation as from 1 January 1993 and the clarification for such cases of the concepts of the place of taxation, the taxable event and the chargeability of the tax;

Whereas, subject to the special provisions set out in Chapter IX of Annex XV to the Act of Accession, the common system of value added tax is to apply to the new Member States as from the date on which the Accession Treaty enters into force;

Whereas, as a result of the abolition on that date of the imposition of tax on importation and remission of tax on exportation in trade between the Community as constituted at present and the new Member States, and between the new Member States themselves, transitional measures are necessary to safeguard the neutrality of the common system of value added tax and prevent situations of double taxation or non-taxation;

Whereas such measures must, in this respect, meet concerns akin to those that led to the measures adopted on completion of the internal market on 1 January 1993, and in particular the provisions of Article 28n of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes—Common system of value added tax: uniform basis of assessment.
Whereas, in the customs sphere, goods will be deemed to be in free circulation in the enlarged Community where it is shown that they were in free circulation in the current Community or in one of the new Member States at the time of accession; whereas conclusions should be drawn from this, particularly for Article 7(1) and (3) and Article 10(3) of Directive 77/388/EEC.

Where it is necessary in particular to cover situations in which goods have been placed, prior to accession, under one of the arrangements referred to in Article 16(1)(a) to (d), under a temporary admission procedure with full exemption from import duties or under a similar procedure in the new Member States.

Whereas it is also necessary to lay down specific arrangements for cases where a special procedure (export or transit), initiated prior to the entry into force of the Accession Treaty in the framework of trade between the current Community and the new Member States for the purpose of a supply effected prior to that date by a taxable person acting as such and not terminated until after the date of accession.

Whereas, with a view to facilitating intra-Community trade in the field of work on tangible movable property, it is appropriate to establish the tax arrangements applicable for such transactions when they are carried out for a person identified for VAT purposes in a Member State other than that of their physical execution in which the transaction is physically carried out.

Whereas, by treating a transport operation within a Member State as an intra-Community goods transportation operation, it is directly linked to a transport operation outside Member States, it is possible in order to simplify not only the principles and arrangements for taxing domestic transport services but also the rules applicable to ancillary services and to services supplied by intermediaries who are part of the supply of these various services.
Whereas the determination of the place where taxable transactions are effected has been the subject of conflicts concerning jurisdiction as between Member States, in particular as regards supplies of goods for assembly or the supply of services, whereas although the place where a supply of services is effected should in principle be defined as the place where the person supplying the services has his principal place of business, that place should be defined as being in the country of the person to whom the services are supplied, in particular in the case of certain services supplied between taxable persons where the cost of the services is included in the price of the goods.

Seventh recital (77/388/EEC) Adapted

Whereas it is necessary to clarify the definition of the place of taxation of certain operations carried out on board ships, aircraft or trains transporting passengers inside the Community.

Sixth recital (92/111/EEC) Adapted

Increasing liberalisation of the gas and electricity sector, aimed at completing the internal market for electricity and natural gas, has revealed a need to review the current VAT rules governing the place of supply of those goods, set out in the Sixth Council Directive 77/388/EEC 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, in order to modernise and simplify the operation of the VAT system within the context of the internal market, a strategy to which the Commission is committed.

First recital (2003/92/EC) Adapted

Electricity and gas are treated as goods for VAT purposes, and, accordingly, the place of their supply with respect to cross-border transactions must be determined in accordance with Article 8 of this Directive 77/388/EEC. However, since electricity and gas are difficult to track physically, it is particularly difficult to determine the place of supply under the current rules.

Second recital (2003/92/EC) Adapted

In order to attain a real genuine internal market for electricity and gas without VAT obstacles, the place of supply in respect of the supply of gas through the natural gas distribution system and or of electricity, before the goods reach the final stage of consumption, should be determined to be the place where the customer has established his business.

Third recital (2003/92/EC) Adapted
The supply of electricity and gas, at the final stage, is to say, from traders and distributors to the final consumer, should be taxed at the place where the customer has effective use and consumption of actually uses and consumes the goods, in order to ensure that taxation takes place in the country where Member State of actual consumption takes place. This is normally the place where the meter of the customer is located.

Whereas, pursuant to Article 4(2) of the aforementioned Directive, the hiring out of movable tangible property may constitute an economic activity subject to value added tax;

Whereas application of Article 9(1) of the aforementioned Directive to the hiring out of tangible movable property, application of the general rule that supplies of services are taxed in the Member State in which the supplier is established may lead to substantial distortions of competition if the lessor and the lessee are established in different Member States and the rates of taxation in those States differ. It is therefore necessary to establish that the place of supply of a service is the place where the customer has established his business or has a fixed establishment for which the service has been supplied or, in the absence thereof, the place where he has his permanent address or usually resides;

Whereas it is therefore necessary to establish that the place where a service is supplied is the place where the customer has established his business or has a fixed establishment for which the service has been supplied or, in the absence thereof, the place where he has his permanent address or usually resides;

Whereas, however, as regards the hiring out of forms of transport, Article 9(1) should, for reasons of control, be strictly applied, the general rule, and thus to regard the place where the supplier has established his business being treated as the place of supply of such services.

Article 14 of the Treaty defines the internal market as comprising an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;
Electricity and gas are supplied through distribution networks, to which network operators provide access. In order to avoid double taxation or non–taxation, it is necessary to harmonise the rules governing the place of supply in respect of the transmission and transportation services. Access to and use of the distribution systems and the provision of other services directly linked to these services should therefore be added to the list of specific instances set out in Article 9, paragraph 2(e) of Directive 77/388/EEC exceptions in this Directive.

The rules currently applicable to VAT on telecommunications services under Article 9 of the Sixth Council Directive (77/388/EEC) 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 are inadequate for taxing all such telecommunications services consumed within the Community and for preventing distortions that field.

In the interests of the proper functioning of the internal market, such distortions should be eliminated and new harmonised rules introduced for this type of activity;

action should be taken to ensure, in particular, that telecommunications services used by customers established in the Community are taxed in the Community;

To this end, telecommunications services supplied to taxable persons established in the Community or to recipients established in third countries should, in principle, be taxed at the place of establishment of the recipient for the services is established;

In order to ensure uniform taxation of telecommunications services which are supplied by taxable persons established in third territories or third countries to non–taxable persons established in the Community and which are effectively used or enjoyed in the Community, Member States should make use of the provisions of Article 9(3)(b) of Directive 77/388/EEC on changing the place of supply; whereas, however, Article 9(3) of that Directive may remain applicable within the Community except where corresponding telecommunications services are supplied to other recipients in the Community;
for the purpose of establishing a special rule for determining the place of supply of telecommunications services, it is necessary to define those services need to be defined, such definition should draw on definitions already adopted at international level, which include and covering international telephone call routing and termination services and access to global information networks.

The rules currently applicable to VAT on radio and television broadcasting services and on electronically supplied services, under Article 9 of the sixth Council Directive 77/388/EEC 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, are inadequate for taxing such services consumed within the Community and for preventing distortions of competition in this area.

In the interests of the proper functioning of the internal market, such distortions should be eliminated and new harmonised rules introduced for this type of activity. Action should be taken to ensure, in particular, that such radio and television broadcasting services and electronically supplied services where effected for consideration and consumed by customers established in the Community, are taxed in the Community and are not taxed if consumed outside the Community.

To this end, radio and television broadcasting services and electronically supplied services provided from third territories or third countries to persons established in the Community, or from the Community to recipients established in third territories or third countries, should be taxed at the place of establishment of the recipient of the services.

To define electronically supplied services, examples of such services should be included in an annex to the Directive.

Whereas the concepts of chargeable event and of the chargeability of VAT must be harmonized if the introduction and any subsequent alterations of the Community rate common system of VAT and of any subsequent amendments thereto are to become operative at the same time in all Member States.

Article 10 of Directive 77/388/EEC should also be clarified in order to prevent certain cases of tax avoidance in the case of continuous supplies.
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<tr>
<th>Number</th>
<th>Text</th>
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<tr>
<td>(33)</td>
<td>Whereas the taxable base amount must be harmonised so that the application of the Community rate VAT to taxable transactions leads to comparable results in all the Member States.</td>
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<td>(34)</td>
<td>Whereas it is appropriate to include in the taxable amount on importation all ancillary costs arising from the transport of goods to any place of destination in the Community since that place is known at the time the importation is carried out; whereas, as a result, the supplies of services in question enjoy the exemptions provided for in Article 14(1)(i) of Directive 77/388/EEC.</td>
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<td>(35)</td>
<td>Whereas if distortions are to be avoided, such the abolition implies in the case of value added tax of fiscal controls at frontiers entails, not only a uniform tax base basis of assessment, but also sufficient alignment as between Member States of a number of rates and rate levels which are sufficiently close as between Member States; whereas it is therefore necessary to amend Directive 77/388/EEC.</td>
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<td>(36)</td>
<td>Whereas Article 12(3)(a) of sixth Council Directive 77/388/EEC 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, 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 VAT is fixed by each Member State within the limits set at Community level, 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%.</td>
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Whereas experience has shown that the standard rate of value added tax currently in force in the various Member States, combined with the mechanism of the transitional system, have ensured that this transitional system has functioned satisfactorily; whereas it seems therefore appropriate, with regard to the standard rate, to maintain the current level of the minimum rate for a further period of time;

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 two years in order to enable the Council at a later stage to decide on the levels of both the standard rate and reduced rate or rates,

(37) Whereas the rates applied by Member States must be such as to allow the normal deduction of the tax applied at the preceding stage.

(38) Whereas, during the transitional period, certain derogations concerning the number and level of rates should be possible.

Whereas Article 122(3)(a) of Directive 77/388/EEC, lays down that, on the basis of the report on the operation of the transitional arrangements and proposals of the definitive arrangements to be submitted by the Commission pursuant to Article 28 thereof, the Council shall decide unanimously before 31 December 1995 on the level of the minimum rate of value added tax to be applied after 31 December 1996 with regard to the standard rate; whereas the standard rate 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 the supply of services; whereas from 1 January 1993 to 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 at present in force in the various Member States, in combination with the safeguards built into that system, have ensured that the transitional system of value added tax has functioned satisfactorily; whereas it seems therefore appropriate with regard to the standard rate, to maintain the current level of the minimum rate for a further period of two years;
Whereas the transitional arrangements of the common system of value added tax should not jeopardize subsequent new arrangements; whereas the introduction of such new arrangements, which, according to Article 28(1) of Directive 77/388/EEC, are to be based in principle on the taxation in the Member State of origin, might require a certain level of approximation of the standard rates of value added tax in the Community; whereas, consequently, the level of the standard rate to be applied after the two-year period should be decided upon unanimously by the Council, on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee,


While the standard rate of value added tax currently in force in the various Member States, combined with the mechanism of the transitional system, has ensured that this system has functioned to an acceptable degree, it is nonetheless important to prevent a growing divergence in the standard rates of VAT applied by the Member States from leading to structural imbalances in the Community and distortions of competition in some sectors of activity, at least in the period in which a new VAT strategy is being implemented to simplify and modernise current Community legislation on VAT, as set out in the Commission Communication of 7 June 2000.

It is therefore appropriate to maintain the current minimum standard rate at 15% for a further period long enough to allow the strategy for

Article 12(3)(a) of Council Directive 77/388/EEC 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 provides that the Member States may apply either one or two reduced rates only to supplies of goods and services of the categories specified in Annex II to Directive 77/388/EEC;

however, In order to tackle the problem of unemployment, it is so serious that those Member States wishing to do so should be allowed to experiment with the operation and impact, in terms of job creation, of a reduction in the VAT rate on labour-intensive services which are not currently listed in Annex II.
this reduced VAT rate. That reduction is likely to reduce the incentive for the businesses concerned to join or remain in the black economy.

However, the introduction of a targeted reduction in the VAT rate could have a negative impact on the smooth functioning of the internal market and on tax neutrality. Provision should therefore be made for an authorisation procedure to be introduced for a full and clearly defined three-year fixed period and for the scope of such a measure to be made subject to strict conditions closely defined so that it remains verifiable and limited.

In view of the experimental nature of such a measure, a detailed assessment of its impact in terms of job creation and efficiency should be carried out by the Member States which implement it and by the Commission.

the measure should be strictly limited in time and should end by 31 December 2002 at the latest;

implementation of this Directive does not involve any amendment of the laws of the Member States;


Council Decision 2000/185/EC of 28 February 2000 authorising Member States to apply a reduced rate of VAT to certain labour-intensive services in accordance with the procedure provided for in Article 28(6) of Directive 77/388/EEC authorised certain Member States to apply, up to 31 December 2002, a reduced rate of VAT to those labour-intensive services for which they had submitted an application.
Based on the reports to be drawn up by 1 October 2002 by the Member States that have applied such reduced rates, the Commission is required to submit a global evaluation report to the Council and the European Parliament by 31 December 2002, accompanied if necessary by a proposal for a final decision on the rate to be applied to labour-intensive services.

In view of the time needed to produce a thorough global evaluation of such reports to extend the maximum period of application set for this measure in Directive 77/388/EEC.

Directive 77/388/EEC should therefore be amended accordingly.

Article 28(6) of Council Directive 77/388/EC 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 allows the reduced rates provided for in the third subparagraph of Article 12(3)(a) also to be applied to the labour-intensive services listed in the categories set out in Annex K to that Directive for a maximum period of four years from 1 January 2000 to 31 December 2003.

Council Decision 2000/185/EC of 28 February 2000 authorising Member States to apply a reduced rate of VAT to certain labour-intensive services in accordance with the procedure provided for in Article 28(6) of Directive 77/388/EEC, authorised certain Member States to apply a reduced rate of VAT to those labour-intensive services for which they had submitted an application up to 31 December 2003.

On the basis of the assessment reports submitted by the Member States that have applied the reduced rate, the Commission submitted its global evaluation report on 2 June 2003.

In line with its strategy to improve the operation of the VAT system within the context of the internal market, the Commission adopted a proposal for a general review of the reduced rates of VAT to simplify and rationalise them.

Since the Council has not reached an agreement on the content of the proposal, it should be given the necessary time to do so; in order to avoid legal uncertainty from 1 January 2004 the maximum period of application set for this measure in Directive 77/388/EEC should therefore be extended.
In order to ensure the continuous application of Article 28(6) of Directive 77/388/EEC, provision should be made for this Directive to apply retroactively.

Implementation of this Directive in no way implies change in the legislative provisions of Member States.

Decision 77/388/EC should be amended accordingly.

Point 2(e) of Part IX ‘Taxation’ of Annex XV to the 1994 Act of Accession authorised the Republic of Austria to derogate from Article 28(2) of sixth Council Directive 77/388/EEC 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, (hereinafter referred to as the ‘sixth VAT Directive’) and to apply a reduced rate to the letting of immovable property for residential use until 31 December 1998, provided that the rate was not lower than 10%.

Under Article 13(B)(b) of the sixth VAT Directive, the letting of immovable property for residential use in Austria has been exempt from VAT since 1 January 1999 without the right to deduct input tax. However, under Article 13(C)(a) of that Directive, Austria may allow taxpayers the right to opt for taxation. In that case, the normal VAT rate and the normal rules for the right to deduction apply.

The Republic of Austria considers that the measure is still essential, mainly because the transitional VAT regime is still in force and the situation has not really changed since the negotiation of the 1994 Act of Accession.

The Republic of Austria also considers that dispensing with the reduced rate of 10% would inevitably lead to an increase in the price of immovable property rental for the final consumer.

The Portuguese Republic applied a reduced rate of 8% to restaurant services as at 1 January 1991. Under Article 28(2)(d) of the sixth VAT Directive, Portugal was permitted to continue applying that rate. However, after a comprehensive amendment of the rates and for political and budgetary reasons, restaurant services were made subject to the normal rate from 1992.
The Portuguese Republic wishes to reintroduce a reduced rate on these services on the basis that maintaining the normal rate had adverse consequences, in particular job losses and an increase in undeclared employment, and that application of the normal rate increased the price of restaurant services for the final consumer.

As the derogations in question concern supplies of services within a single Member State, the risk of distortion of competition can be considered non-existent.

In these circumstances, return to the previous situation may be considered for both the Republic of Austria and the Portuguese Republic, provided that application of the derogations is limited to the transitional period referred to in Article 281 of the sixth VAT Directive. However, the Republic of Austria must take the necessary steps to ensure that the reduced rate has no adverse effects on the European Communities' own resources accruing from VAT, the basis of assessment for which must be reconstituted in accordance with Regulation (EEC, Euratom) No 1553/89.

Whereas Member States should be enabled to maintain the rate applicable to goods after making up work which they carried out under a contract to make up work on 1 January 1993;

Whereas Article 12(3)(d) of Directive 77/388/EEC lays down that the rules concerning the taxation of agricultural outputs other than those falling within category 1 of Annex H are to be decided unanimously by the Council before 31 December 1994 on a proposal from the Commission; whereas, until that date, those Member States which had already been applying a reduced rate might continue to do so while those applying a standard rate could not apply a reduced rate; whereas that allowed a two-year postponement in the application of the standard rate;

Whereas experience has shown that the structural imbalance in the VAT rates applicable by Member States to agricultural outputs of products in the floricultural and horticultural sectors has led to reported cases of fraudulent activities; whereas that structural imbalance is a direct result of the application of Article 12(3)(d) and should be redressed accordingly; it is therefore appropriate to extend to all Member States, on a transitional basis, the option of applying a reduced rate to the supply of agricultural products in the floricultural and horticultural sectors and of wood used as firewood.

(43) Whereas experience has shown that the structural imbalance in the VAT rates applicable by Member States to agricultural outputs of products in the floricultural and horticultural sectors has led to reported cases of fraudulent activities; whereas that structural imbalance is a direct result of the application of Article 12(3)(d) and should be redressed accordingly; it is therefore appropriate to extend to all Member States, on a transitional basis, the option of applying a reduced rate to the supply of agricultural products in the floricultural and horticultural sectors and of wood used as firewood.
Whereas the most appropriate solution would be to extend to all Member States, on a transitional basis, the option of applying a reduced rate to supplies of agricultural outputs of the floricultural and horticultural sectors and of wood used as firewood,

(44) Whereas a common list of exemptions should be drawn up so that the Communities’ own resources may be collected in a uniform manner in all the Member States;

Whereas the abolition of the principle of the imposition of tax on imports in relations between Member States will make provisions on tax exemptions and duty free allowances superfluous in relations between Member States; whereas, therefore, those provisions should be repealed and the relevant Directives adapted accordingly;

Whereas the rules governing territorial application and the tax arrangements applicable in the field of intra-Community goods transport services function in a simple and satisfactory manner for both traders and the authorities in the Member States;

(45) Whereas Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products lays down particular procedures and obligations in relation to declarations concerning a duty to declare in the case of shipments of such products to another Member State; whereas as a result the methods of applying tax to certain supplies and intra-Community acquisitions of products liable to excise duties can be simplified to the benefit both of the persons liable to pay tax and the competent administrations administrative authorities;

Whereas it is necessary to define the scope of the exemptions referred to in Article 28c of Directive 77/388/EEC; whereas it is also necessary to supplement the provisions concerning the chargeability of the tax and the methods of determining the taxable amount of certain intra-Community operations;

Whereas Article 15(2) of that Directive provides that the Commission shall submit to the Council proposals to establish Community tax rules specifying the scope of, and practical arrangements for implementing, the export exemptions applicable to supplies of goods carried in the personal luggage of travellers;

Whereas it is necessary to state exactly how the exemptions relating to certain export operations or equivalent operations will be implemented; whereas it is necessary to adapt the other Directives concerned accordingly;

The importation of gas through the natural gas distribution system, or of electricity, should be exempted from VAT in order to avoid double taxation.

Whereas Article 1(1) of Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel provides for allowances in respect of goods contained in the personal luggage of travellers coming from third countries on condition that such imports have no commercial character;

Whereas the total value of the goods eligible for this exemption may not exceed ECU 45 per person; whereas, in accordance with Article 1(2) of Directive 69/169/EEC, Member States may reduce the allowance to ECU 23 for travellers under 15 years of age;

Whereas account must be taken of measures in favour of travellers recommended by specialized international organizations, in particular the measures contained in Annex F.3 to the International Convention on the Simplification and Harmonization of Customs Procedures;

Whereas these objectives could be attained by increasing the allowances;

Whereas it is necessary to provide, for a limited period, a derogation for Germany, taking into account the economic difficulties likely to be caused by the amount of the allowances, particularly as regards travellers entering the territory of that Member State by land frontiers linking Germany to countries other than Member States and the EFTA members or by means of coastal navigation coming from the said countries;

Whereas there are special links between continental Spain and the Canary Islands, Ceuta and Melilla;
Whereas it is necessary to ensure, during the period when these sales are authorized pursuant to the provisions of Article 28k of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes—Common system of value added tax: uniform basis of assessment, that the real value of goods likely to be sold in tax-free shops to travellers on intra-Community flights or sea crossings is maintained,

Seventh recital (94/4/EC) Obsolete

Tenth recital (92/111/EEC) Adapted

Second recital (95/7/EC) Adapted

Eleventh and twelfth recitals (95/7/EC) Adapted

(48) Whereas for In respect of taxable operations in the domestic market linked to intra-Community trade in goods which are carried out during the transitional period laid down in Article 28l of Directive 77/388/EEC—by taxable persons not established in the Member State referred to in Article 28b(A)(1) of the said Directive, in which the intra-Community acquisition of goods takes place, it is necessary to take provide for simplification measures ensuring equivalent treatment in all the Member States; whereas to achieve this To that end, the provisions concerning the taxation system and the person liable to tax for payment of the VAT due in respect of such operations must be harmonized.

(49) Whereas Article 3 of Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax provides for the adoption of Member States should be allowed to adopt special rules for the taxation of chain transactions between taxable persons; whereas such rules must ensure not only in compliance both with the principle of neutrality of that the common system of value added tax VAT is non-discriminatory as regards the origin of goods and services but also compliance as regards the services related thereto and with the choices made as to the principles governing value added tax VAT and its monitoring arrangements during the transitional period the way in which its application is monitored:

(50) Whereas Article 16(1)(B) to (E) of the said Directive, taken together in particular with Article 22(9) concerning release from obligations, makes it possible In order to overcome the difficulties encountered by traders participating in transaction chains involving goods placed and kept under warehousing arrangements, it is necessary to ensure that the tax treatment applied to the supply of goods or of services relating to certain of the goods which may be placed under customs warehousing arrangements can also be applied to the same transactions when they involve goods placed under warehousing arrangements other than customs warehousing:
Whereas it is necessary in this connection to ensure that the tax treatment applied to supplies of goods and the provision of services relating to certain of the goods which may be placed under customs warehousing arrangements can also be applied to the same transactions involving goods placed under warehousing arrangements other than customs warehousing:

(51) Whereas the transactions concern principally raw materials and other goods negotiated on international forward markets; whereas a list of such goods covered by these provisions should therefore be drawn up;

(52) Whereas the transactions concern principally raw materials and other goods negotiated on international forward markets; whereas it is nevertheless necessary to exclude in principle from such arrangements goods that are intended to be supplied at the retail stage;

Whereas it is necessary to clarify some of the rules for applying tax when goods cease to be covered by the arrangements provided for in Article 16(1)(D) to (E) of the said Directive, particularly as regards the person liable for payment of the tax due;

(53) Whereas the rules governing deductions should be harmonized to the extent that they affect the actual amounts collected; whereas the deductible proportion should be calculated in a similar manner in all the Member States;

Whereas it is necessary to clarify the scope of those provisions of Article 17(2)(a) of the said Directive that are applicable during the transitional period referred to in Article 28;

Whereas it is accordingly necessary to amend Directive 77/388/EEC.

(54) Whereas in order to take account of the provisions relating to the person liable to pay tax in the domestic market for payment of VAT and to avoid certain forms of tax evasion or avoidance, it is necessary to clarify the Community provisions concerning the repayment of VAT to taxable persons not established in the country of the value added tax referred to in Article 17(3) of Directive 77/388/EEC as amended by Article 28f of the said Directive Member State in which the VAT is due.
Whereas, on account of the current economic situation, the Kingdom of Spain and the Italian Republic have requested that, as a transitional measure, provisions derogating from the principle of immediate deduction laid down in the first subparagraph of Article 18(2) of Directive 77/388/EEC be applied; whereas this request should be granted for a period of two years which may not be extended;

Seventeenth recital (92/111/EEC) Obsolete

Whereas it is appropriate that Member States should be able to extend by up to 20 years the period serving as a basis for calculating the adjustment provided for by Article 20(2) of the said Directive should be extended up to 20 years by Member States for adjustment of deductions in respect of immovable property acquired as capital goods, bearing in mind given the duration of their the economic life of such goods.

Fifth recital (95/7/EC) Adapted

Whereas it should be specified which persons are liable to pay tax, in particular as regards for payment of VAT, particularly in the case of services supplied by a person who is not established in another country the Member State in which the VAT is due.

Thirteenth recital (77/388/EEC) Adapted

Those The changes in the rules governing the place of supply of gas through the natural gas distribution system, or of electricity, should be combined with a compulsory reverse charge when the customer is a person identified for VAT purposes.

Director 77/388/EEC should therefore be amended accordingly,

The present rules laid down by Article 21 of sixth Council Directive 77/388/EEC 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 regards the determination of the person liable for payment of the tax, create serious problems for business and, in particular, for the smallest businesses.


First recital (2000/65/EC) Obsolete

Seventh recital (2003/92/EC) Adapted

Eighth recital (2003/92/EC) Obsolete

Thirteenth recital (77/388/EEC) Adapted

Fifth recital (95/7/EC) Adapted

Seventeenth recital (92/111/EEC) Obsolete
The Commission report on the second phase of the SLIM (simpler legislation for the internal market) project recommends a study of the possibilities and different ways of reforming the tax representation system laid down by Article 21 of Directive 77/388/EEC.

The only change which can in fact substantially simplify the common system of VAT in general and the determination of the person liable for payment of the tax in particular is no longer to allow Member States the option of requiring the appointment of a tax representative.

(58) Therefore, in view of the mutual assistance between Member States as regards the correct establishment of VAT and its recovery as provided for by Community law, the appointment of a tax representative should in future only be an option for non-established taxable persons is not necessary for taxable persons established in a Member State other than that in which the VAT is due. However, those taxable persons must have the option of appointing such a representative.

Under Article 22 of Directive 77/388/EEC, Member States may impose directly on non-established taxable persons the same obligations as those which apply to established taxable persons, including those which may be laid down under Article 22(8).

(59) Where non-established taxable persons are nationals of countries with which no legal instrument exists which organises mutual assistance similar in scope to that laid down within the Community, it will be possible for the Member States to continue to require such non-established taxable persons to designate a tax representative to be as the person liable for payment of the VAT in their stead or to designate an agent.

(60) Member States will continue to be entirely free to designate the person liable for payment of the VAT on importation.

(61) Member States may continue to provide that someone other than the person liable for payment of the VAT is to be held jointly and severally liable for its payment of the tax.

Directive 77/388/EEC should therefore be amended accordingly.
Whereas the obligations of taxpayers must be harmonized as far as possible so as to ensure the necessary safeguards for the collection of taxes in a uniform manner in all the Member States, whereas taxpayers should, in particular, make a periodic aggregate return of their transactions, relating to both inputs and outputs, where this appears necessary for establishing and monitoring the basis of assessment of own resources;

Taxation at the place of the recipient of the services also means that taxable persons will not have to have recourse to the procedures under Directives 79/1072/EEC and 86/560/EEC; the new rules for determining the place of supply should not entail that foreign taxable persons not established in the Community have to be identified for tax purposes in another Member State, this will be achieved by making it compulsory for the recipient to be held liable for the tax payment of VAT, provided that he is a taxable person;

Directive 77/388/EEC should be amended accordingly,

The current conditions laid down for invoicing and listed under Article 22(3), in the version given in Article 28h of the Sixth Council Directive 77/388/EEC 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, are relatively few in number, thus leaving it to the Member States to define the most important such conditions. At the same time, the conditions are no longer appropriate given the development of new invoicing technologies and methods.

The Commission report on the second phase of the SLIM exercise (Simpler Legislation for the Single Market) recommended that a study be carried out to determine what details should be required for VAT purposes when drawing up an invoice and what the legal and technical requirements are as regards electronic invoicing.

The conclusions of the Ecofin Council of June 1998 underlined the fact that the development of electronic commerce has made it necessary to establish a legal framework for the use of electronic invoicing to enable tax administrations authorities are able to continue to perform their controls carry out their monitoring activities.

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It is therefore necessary, in order to ensure that the internal market functions properly, to draw up a list, harmonised at Community level, of the particulars that must appear on invoices for the purposes of value added tax and to establish a number of common arrangements governing the use of electronic invoicing and the electronic storage of invoices, as well as for self-billing and the outsourcing of invoicing operations.

Lastly, the storage of invoices should comply with the conditions laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Since the introduction of the transitional VAT arrangements in 1993, Greece has adopted continues to use the prefix EL rather than the prefix GR laid down in the ISO International Standard No 3166 – alpha 2 referred to in Article 22(1)(d). Given the consequences of amending the prefix in all the Member States, it is important to lay down an exception for Greece providing that the ISO Standard does not apply in Greece.

Subject to conditions which they lay down, Member States should allow certain statements and returns to be made by electronic means, and may also require that electronic means are be used.

Whereas the necessary pursuit of a reduction of administrative and statistical formalities for undertakings to be completed by businesses, particularly small and medium-sized undertakings enterprises, must be reconciled with the implementation of effective control measures and the need, on both economic and tax grounds, to maintain the quality of Community statistical instruments.
Whereas certain certain territories forming part of the Community customs territory are regarded as third territories for the purposes of applying the common system of value added tax; whereas value added tax—VAT. VAT is therefore applied to trade between the Member States and those territories according to the same principles as apply to any operation—transaction between the Community and third countries; whereas it is necessary to ensure that such trade is subject to fiscal provisions equivalent to those which would be applied to operations—transactions carried out under the same conditions, with territories which are not part of the Community customs territory; whereas as a result of these provisions the Seventeenth Council Directive 85/362/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes—Exemption from value added tax on the temporary importation of goods other than means of transport, becomes null and void;

Fourth recital

Fifteenth recital

Fifteenth recital

First and fifth recitals
Whereas the present situation, in the absence of Community legislation, continues to be marked by the application of very different systems which cause distortion of competition and deflection of trade both internally and between Member States; whereas these differences also include a lack of harmonization in the levying of the own resources of the Community; whereas consequently it is necessary to bring this situation to an end as soon as possible;

Whereas the Court of Justice has, in a number of judgments, noted the need to attain a degree of harmonization which allows double taxation in intra-Community trade to be avoided;

Whereas it is essential to provide, in specific areas, for transitional measures enabling legislation to be gradually adapted;

Whereas, within the internal market, the satisfactory operation of the value added tax mechanisms means that Community rules with the purpose of avoiding double taxation and distortion of competition between taxable persons must be adopted;

Whereas it is accordingly necessary to amend Directive 77/388/EEC;

Whereas, under the sixth Council Directive 77/388/EEC 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 transactions concerning gold are in principle taxable although, on the basis of the transitional derogation provided for in Article 28(3) in conjunction with point 26 of Annex F to the said Directive, Member States may continue to exempt transactions concerning gold other than gold for industrial use; whereas the application by some Member States of that transitional derogation is the cause of a certain distortion of competition;

Whereas gold does not only serve as an input for production but is also acquired for investment purposes; whereas the application of the normal tax-VAT rules to gold constitutes a major obstacle to its use for financial investment purposes and therefore justifies the application of a specific tax scheme for investment gold; whereas such a scheme should also enhance, with a view also to enhancing the international competitiveness of the Community gold market,
Whereas supplies of gold for investments purposes are inherently similar in nature to other financial investments often exempted which are exempt from tax under the current rules of the sixth Directive, and therefore exemption from tax appears to be the most appropriate tax treatment for supplies of investment gold;

Whereas the definition of investment gold should only comprise forms and weights of gold of very high purity as traded in the bullion markets and the definition of investment gold should cover gold coins the value of which primarily reflects its price, whereas, in the case of gold coins, for contained. For reasons of transparency and legal certainty, a yearly list of qualifying coins covered by the investment gold scheme should be drawn up, providing security for the operators trading in such coins; whereas the legal security of traders demands that coins included in this list be deemed to fulfil the criteria for exemption of this Directive for the whole year for which the list is valid; whereas such list will be without prejudice to the exemption on a case-by-case basis, of coins, including newly minted coins which are not included in the list but which meet the criteria laid down in this Directive;

Whereas since a tax exemption does, in principle, not allow for the deduction of input tax while it is appropriate, in view of the fact that tax on the value of the gold may be charged on previous operations, the deduction of such input tax should be allowed in order to guarantee the advantages of the special scheme and to avoid distortions of competition with regard to imported investment gold;

Whereas the possibility of using gold may be used for both industrial and investment purposes requires the possibility for operators to opt for normal taxation where their activity consists either in the producing of investment gold or transformation of any gold into investment gold, or in the wholesale of such gold when they supply in their normal trade gold for industrial purposes.
Whereas the dual use of gold may offer new opportunities for In order to prevent tax fraud and tax evasion that will require effective control measures to be taken by Member States; whereas a common standard – it is desirable to lay down rules concerning the minimum obligations incumbent upon operators as regards accounting and documentation to be held by the operators is therefore desirable although, where this information does already exist pursuant to other Community legislation, a Member State may consider these requirements to be met the records to be kept.

Whereas experience has shown that, with regard to most supplies of gold of more than a certain purity the application of a reverse charge mechanism can help to In order to prevent tax fraud and evasion while at the same time alleviating the financing charge for the operation; whereas supply of gold of a degree of purity above a certain level, it is justified to allow Member States to use such mechanism; whereas for importation of gold Article 23 of the Sixth Directive allows, in a similar way, that tax is not paid at the moment of importation provided it is mentioned in the declaration pursuant to Article 22(4) of that Directive designate the customer as the person liable for payment of VAT.

Whereas transactions carried out on a bullion market regulated by a Member State require further simplifications in their tax treatment because In view of the huge number and the speed of such operations; whereas transactions carried out on a regulated bullion market and the speed with which they are effected. Member States must be allowed to disapply the special scheme, to suspend tax collection of VAT and to dispense with recording relieve operators of certain accounting requirements.

Whereas since the new tax scheme will replace existing provisions under Article 12(3)(e) and point 26 of Annex F of the Sixth Directive, these provisions should be deleted.

To In order to facilitate compliance with fiscal obligations by operators providing electronically supplied services, who are neither established nor required to be identified for tax VAT purposes within the Community, a special scheme should be established. In applying this Under that scheme it should be possible for any operator supplying such services by electronic means to non–taxable persons within the Community, may, if he is not otherwise identified for tax–VAT purposes within the Community, to opt for identification in a single Member State.
The If a non–established operator wishing to benefit from wishes to be covered by the special scheme—should he must—comply with the requirements laid down therein, and with any relevant existing provision in force in the Member State where the services are consumed.

Sixth recital (2002/38/EC) Adapted

The It should be possible, in certain circumstances, for the Member State of identification must under certain conditions be able to exclude a non–established operator from the special scheme.

Seventh recital (2002/38/EC) Adapted

Where the non–established operator opts for the special scheme, any input value added tax—VAT—that he has paid with respect to goods and/or services used by him for the purpose—purposes—of his taxed activities falling under the special scheme, should must be refunded by the Member State where—in which—the input value added tax—VAT—was paid, in accordance with the arrangements of the thirteenth—laid down in Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes—arrangements for the refund of value added tax to taxable persons not established in Community territory. The optional restrictions for—on refund in Article 2(2) and (3) and Article 4(2) of the same—provided for in that—Directive should must not be applied.

Eighth recital (2002/38/EC) Adapted

Those—Save in the case of provisions pertaining to the introduction lodging of electronic tax returns and statements, should be adopted on a permanent basis. It is desirable to adopt all other temporary provisions for a temporary period—period—of—three years—which may be extended for practical reasons but—concerning radio and television broadcasting and certain electronically supplied services. Those temporary provisions should, in any event, based on—be reviewed in the light of experience, be reviewed within three years from—of 1 July 2003.

Tenth recital (2002/38/EC) Adapted

Directive 77/388/EEC should therefore be amended accordingly.

Eleventh recital (2002/38/EC) Obsolete

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Whereas Article 28(3) of the Sixth Council Directive, 77/388/EEC, of 17 May 1977 on the harmonization 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 the Act of Accession of Spain and Portugal, allows Member States to apply measures derogating from the normal rules of the common system of value added tax during a transitional period; whereas that period was originally fixed at five years; whereas the Council undertook to act, on a proposal from the Commission, before the expiry of that period, on the abolition, where appropriate, of some or all of those derogations;

First recital
(89/465/EEC)
Obsolete

Whereas many of those derogations give rise, under the Communities’ own resources system, to difficulties in calculating the compensation provided for in Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax; whereas, in order to ensure that that system operates more efficiently, there are grounds for abolishing those derogations;

Second recital
(89/465/EEC)
Obsolete

Whereas the abolition of those derogations will also contribute to greater neutrality of the value added tax system at Community level;

Third recital
(89/465/EEC)
Obsolete

Whereas some of the said derogations should be abolished respectively from 1 January 1990, 1 January 1991, 1 January 1992 and 1 January 1993;

Fourth recital
(89/465/EEC)
Obsolete

Whereas, having regard to the provisions of the Act of Accession, the Portuguese Republic may, until 1 January 1994 at the latest, postpone the abolition of the exemption of the transactions referred to in points 3 and 9 in Annex I to Directive 77/338/EEC;

Fifth recital
(89/465/EEC)
Obsolete

Whereas it is appropriate that, before 1 January 1991, the Council should, on the basis of a Commission report, review the situation with regard to the other derogations provided for in Article 28(3) of Directive 77/388/EEC, including the one referred to in the second subparagraph of point 1 of Article 1 of this Directive, and that it should take a decision, on a proposal from the Commission, on the abolition of these derogations, bearing in mind any distortion of competition which has resulted from their application or which may arise in connection with the future completion of the internal market;

Sixth recital
(89/465/EEC)
Obsolete
(87) **Whereas**, it is necessary to promote the uniform application of the provisions of this Directive should be ensured; whereas and to this end a Community procedure for consultation should be laid down; whereas the setting up of a Value Added Tax—VAT Committee should be set up to enable the Member States and the Commission to cooperate closely.

(88) **Whereas**, Member States should be able, within certain limits and subject to certain conditions, to take, introduce, or retain to continue to apply, special measures derogating from this Directive in order to simplify the levying of tax or to avoid, fraud or prevent certain forms of tax evasion or avoidance.


(89) In the interests of transparency and legal certainty, it is preferable to ensure that, in every case, authorisation of a derogation authorised under Article 27 or Article 30 of Directive 77/388/EEC takes the form of an explicit express decision adopted by the Council acting on a proposal from the Commission.

The possibility of tacit approval by the Council on the expiry of a given period should therefore be removed.

(90) In order to ensure that a Member State which has submitted a request for derogation is not left in doubt as to what action the Commission plans to take in response, time-limits should be laid down within which the Commission must present to the Council either a proposal for authorisation or a communication setting out its objections.

(91) In order to enable Member States to follow more closely the processing of their requests, the Commission should be required, once it has all the information it considers necessary for appraising a request, to notify the requesting Member State accordingly and transmit the request, in its original language, to the other Member States.
In the second sentence of paragraph 1 of article 27 it is emphasised that the assessment of the negligible extent of the effect of the simplification measure on the amount of tax due at the final consumption stage is made in a global manner by reference to macro-economic forecasts relating to the likely impact of the measure on the Community’s own resources provided from VAT.

In the absence of any mechanism for the adoption of binding measures to govern the implementation of Directive 77/388/EEC, the application of rules laid down in that Directive varies from one Member State to another.

(92) In order to improve the functioning of the internal market, it is essential to ensure more uniform application of the current VAT system. The introduction of a procedure for the adoption of implementing measures to ensure the correct implementation of existing rules would represent a major step forward in that respect.

(93) Those measures should, in particular, address the problem of double taxation of cross-border transactions which can occur as the result of divergences between Member States in the application of the provisions of Directive 77/388/EEC, rules governing the place of supply where taxable transactions are carried out.

(94) However, the scope of each implementing measure must remain limited since, albeit designed to clarify a provision laid down in this Directive, it could never derogate from such a provision.

(95) Although the scope of the implementing measures would be limited, those measures would have a budgetary impact which for one or more Member States could be significant. Accordingly, the Council is justified in reserving to itself the right to exercise implementing powers.

The impact of such measures on the budgets of Member States justifies the Council reserving the right to exercise powers for the implementation of Directive 77/388/EEC itself.

(96) Given the restricted scope, the implementing measures envisaged for implementing Directive 77/388/EEC should be adopted by the Council acting unanimously on a proposal from the Commission.
Since, for those reasons, the objectives of this Directive cannot be sufficiently achieved by the Member States acting alone and can therefore be better achieved by at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Directive 77/388/EEC should therefore be amended accordingly,

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<th>Fourteenth recital (2004/7/EC)</th>
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Whereas the achievement of the objective referred to in Article 4 of the First Council Directive of 11 April 1967, as last amended by the Sixth Directive 77/388/EEC, requires that the taxation of trade between Member States be based on the principle of the taxation in the Member State of origin of goods and services supplied without prejudice, as regards Community trade between taxable persons, to the principle that tax revenue from the imposition of tax at the final consumption stage should accrue to the benefit of the Member State in which that final consumption takes place;

| (97) Whereas it might appear appropriate There may be occasions when it is desirable to authorize allow Member States to conclude with non-member third countries or with international organizations bodies agreements containing derogations from this Directive |

Whereas, however, the determination of the definitive system that will bring about the objectives of the common system of value added tax on goods and services supplied between Member States requires conditions that cannot be completely brought about by 31 December 1992;

Whereas, therefore, provision should be made for a transitional phase, beginning on 1 January 1993 and lasting for a limited period, during which provisions intended to facilitate transition to the definitive system for the taxation of trade between Member States, which continues to be the medium–term objective, will be implemented;

Whereas advantage must be taken of the transitional period of taxation of intra–Community trade to take measures necessary to deal with both the social repercussions in the sectors affected and the regional difficulties, in frontier regions in particular, that might follow the abolition of the imposition of tax on imports and of the remission of tax on exports in trade between Member States; whereas Member States should therefore be authorized, for a period ending on 30 June 1999, to exempt supplies of goods carried out within specified limits by duty–free shops in the context of air and sea travel between Member States;

Whereas it might appear appropriate There may be occasions when it is desirable to authorize allow Member States to conclude with non-member third countries or with international organizations bodies agreements containing derogations from this Directive.
Whereas the transitional arrangements will enter into force for four years and will accordingly apply until 31 December 1996; whereas they will be replaced by a definitive system for the taxation of trade between Member States based on the principle of the taxation of goods and services supplied in the Member State of origin, so that the objective referred to in Article 4 of the First Council Directive of 11 April 1967 is achieved;

Whereas to that end the Commission will report to the Council before 31 December 1994 on the operation of the transitional arrangements and make proposals for the details of the definitive system for the taxation of trade between Member States; whereas the Council, considering that the conditions for transition to the definitive system have been fulfilled satisfactorily, will decide before 31 December 1995 on the arrangements necessary for the entry into force and the operation of the definitive system, the transitional arrangements being automatically continued until the entry into force of the definitive system and in any event until the Council has decided on the definitive system;

Whereas, accordingly, Directive 77/388/EEC, as last amended by Directive 89/465/EEC, should be amended;

Whereas the transitional arrangements for taxation of trade between the Member States must be supplemented to take account both of the Community provisions relating to excise duties and the need to clarify and simplify the detailed rules for the application of the tax of certain operations which will be carried out between the Member States as from 1 January 1993;

Whereas this Directive lays down common provisions for simplifying the treatment of certain intra-Community operations; whereas, in a number of cases, it is for the Member States to determine the conditions for implementing these provisions; whereas certain Member States will not be able to complete the legislative procedure necessary to adapt their legislation on valued added tax within the period laid down; whereas an additional period should therefore be allowed for the implementation of this Directive; whereas a maximum period of twelve months is sufficient for this purpose;

Whereas it is accordingly necessary to amend Directive 77/388/EEC;

Whereas it is vital to provide for a transitional period to allow national laws in specified fields to be gradually adapted.
Since, for those reasons, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose into national law the provisions which are unchanged arises under the earlier Directives.

This Directive should be without prejudice to the obligations of the Member States in relation to the time–limits for transposition into national law of the Directives listed in Annex X, Part B.

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TITLE I

INTRODUCTORY PROVISIONS
SUBJECT–MATTER AND SCOPE

Article 1

1. Member States shall replace their present system of turnover taxes by This Directive establishes the common system of value added tax defined in Article 2 (VAT).

   In each Member State the legislation to effect this replacement shall be enacted as rapidly as possible, so that it can enter into force on a date to be fixed by the Member State in the light of the conjunctural situation; this date shall not be later than 1 January 1970.

   From the entry into force of such legislation, the Member State shall not maintain or introduce any measure providing for flat-rate equalisation of turnover taxes on importation or exportation in trade between Member States.

Article 2

2. The principle of the common system of value added tax involves VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which the tax is charged.

   On each transaction, value added tax VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of tax borne directly by the various cost components.

   The common system of value added tax VAT shall be applied up to and including the retail trade stage.
Article 3

The Council shall issue, on a proposal from the Commission, a second Directive concerning the structure of, and the procedure for applying, the common system of value added tax.

Article 4

In order to enable the Council to discuss this, and if possible to take decisions before the end of the transitional period, the Commission shall submit to the Council, before the end of 1968, proposals as to how and within what period the harmonisation of turnover taxes can achieve the aim of abolishing the imposition of tax on importation and the remission of tax on exportation in trade between Member States, while ensuring the neutrality of those taxes as regards the origin of the goods or services.

In this connection, particular account shall be taken of the relationship between direct and indirect taxes, which differs in the various Member States; of the effects of an alteration in tax systems on the tax and budget policy of Member States; and of the influence which tax systems have on conditions of competition and on social conditions in the Community.

Article 6

This Directive is addressed to the Member States.

Article 1

Member States shall modify their present value added tax systems in accordance with the following Articles.
They shall adopt the necessary laws, regulations and administrative provisions so that the systems as modified enter into force at the earliest opportunity and by 1 January 1978 at the latest.

**Article 2**

For the purposes of this Directive, the following definitions shall apply:

2-(1) Any reference in this Directive to ‘products subject to excise duty’ shall apply to the following: means products as defined by current which are subject to excise duties as harmonised by Community provisions legislation:

— mineral oils,

— alcohol and alcoholic beverages,

— manufactured tobacco.

(e)(2) For the purposes of points (c) and (d), transmission and storage of invoices ‘by electronic means’ shall mean transmission or making available to the recipient and storage means using electronic equipment for processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means.

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Article 1, second paragraph (77/388/EEC)

Obsolete

New

Article 33(2) (replaced by 91/680/EEC)

Modified

Article 33(2), first indent (replaced by 91/680/EEC)

Article 33(2), second indent (replaced by 91/680/EEC)

Article 33(2), third indent (replaced by 91/680/EEC)

Article 22(3)(e), first subparagraph contained in Article 28h (inserted by 2001/115/EC)

Modified
TITLE II

SCOPE

Article 2

1. The following transactions shall be subject to value added tax:

(a) the supply of goods or services effected for consideration within the territory of a Member State by a taxable person acting as such;

Article 28a

1. The following shall also be subject to value added tax:

(b) the intra-Community acquisition of goods for consideration within the territory of a Member State by:

(a)(i) intra-Community acquisitions of goods for consideration within the territory of the country by a taxable person acting as such, or by a non-taxable legal person, where the vendor is a taxable person acting as such who is not eligible for the exemption for small enterprises provided for in Article 24 Articles 277 to 280 and who is not covered by the arrangements laid down in the second sentence of Article 8(1)(a) or in Article 28b(1)(1) Article 34 or the first paragraph of Article 37;
(b)(ii) the intra-Community acquisition in the case of new means of transport—effected for consideration within the territory of the country by taxable persons, a taxable person, or a non-taxable legal persons who qualify for the derogation provided for in the second subparagraph of (a) or by any other non-taxable person, whose other acquisitions are not subject to VAT pursuant to Article 4(1), or any other non-taxable person;

(e)(iii) the intra-Community acquisition of goods which are in the case of products subject to excise duties efficted for consideration within the territory of the country by duty, where the excise duty on the intra-Community acquisition is chargeable, pursuant to Directive 92/12/EEC, within the territory of the Member State, a taxable person, or a non-taxable legal person who qualifies for the derogation referred to in the second subparagraph of point (a), and for which become, whose other acquisitions are not subject to VAT pursuant to Article 4(1);

1.(c) the supply of goods or services efficted for consideration within the territory of the country—a Member State by a taxable person acting as such;

2.(d) the importation of goods.

2. For the purposes of this Title:

(a)2. the following shall be considered-regarded as ‘new means of transport’—vessels exceeding 7.5 metres in length, aircraft the take-off weight of which exceeds 1 550 kilograms and motorized land vehicles the capacity of which exceeds 48 cubic centimetres or the power of which exceeds 7.2 kilowatts, where they are intended for the transport of persons or goods, except for the vessels and aircraft referred to in Article 15(5) and (6);
(a) the following shall be considered as ‘means of transport’:

vessels exceeding 7.5 metres in length, aircraft the take-off weight of which exceeds 1 550 kilograms and motorized land vehicles the capacity of which exceeds 48 cubic centimetres or the power of which exceeds 7.2 kilowatts,

intended for the transport of persons or goods, except for the vessels and aircraft referred to in Article 15(5) and (6) where the supply takes place within six months of the date of first entry into service or where the vehicle has travelled for no more than 6 000 kilometres;

Article 28a(2)(a)
(inserted by 91/680/EEC)

Adapted

(a)(b) the following shall be considered as ‘means of transport’:

vessels exceeding 7.5 metres in length, aircraft the take-off weight of which exceeds 1 550 kilograms and motorized land vehicles the capacity of which exceeds 48 cubic centimetres or the power of which exceeds 7.2 kilowatts,

intended for the transport of persons or goods, except for the vessels and aircraft referred to in Article 15(5) and (6) with the exception of vessels used for navigation on the high seas and carrying passengers for reward, and vessels used for the purposes of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing, where the supply takes place within three months of the date of first entry into service or where the vessel has sailed for no more than 100 hours;

Article 28a(2)(a)
(inserted by 91/680/EEC)

Adapted

(a)(c) the following shall be considered as ‘means of transport’:

vessels exceeding 7.5 metres in length, aircraft the take-off weight of which exceeds 1 550 kilograms and motorized land vehicles the capacity of which exceeds 48 cubic centimetres or the power of which exceeds 7.2 kilowatts,

intended for the transport of persons or goods, except for the vessels and aircraft referred to in Article 15(5) and (6), with the exception of aircraft used by airlines operating for reward chiefly on international routes, where the supply takes place within three months of the date of first entry into service or where the aircraft has flown for no more than 40 hours;

Article 28a(2)(a)
(inserted by 91/680/EEC)

Adapted

(b) the means of transport referred to in (a) shall not be considered to be ‘new’ where both of the following conditions are simultaneously fulfilled:

Article 28a(2)(b),
first subparagraph
(replaced by 94/5/EC)
they were supplied more than three months after the date of first entry into service. However, this period shall be increased to six months for the motorized land vehicles defined in (a),

they have travelled more than 6,000 kilometres in the case of land vehicles, sailed for more than 100 hours in the case of vessels, or flown for more than 40 hours in the case of aircraft.

Member States shall lay down the conditions under which the above facts can be regarded as established.

3. The land vehicles, vessels and aircraft referred to in paragraph 2 shall be regarded as ‘second-hand means of transport’ where they are second-hand goods, as defined in Article 304, supplied by one of the persons referred to in Article 306 and where they do not meet the conditions necessary to be regarded as new means of transport.

Article 4

By way of derogation from the first subparagraph, intra-Community acquisitions of goods made under the conditions set out in paragraph 1a by a taxable person or non-taxable legal person shall not be subject to value added tax.

1a.1. The following transactions shall benefit from the derogation set out in the second subparagraph of paragraph 1(a) not be subject to VAT:

(a) the intra-Community acquisitions of goods whose supply would be exempt pursuant to Article 15(4) to (10) Articles 144 and 147;
by way of derogation from Article 28a(1)(a), the intra-Community acquisition of second-hand goods, works of art, collectors’ items or antiques shall not be subject to value added tax where the vendor is, as defined in Article 304, where the vendor is a taxable dealer acting as such and VAT has been applied to the goods acquired have been subject to tax in the Member State of departure of the dispatch or transport in which their dispatch or transport began, in accordance with the special arrangements for taxing the margin provided for in B, or where the vendor is an organizer of sales by public auction acting as such and the goods acquired have been subject to tax in the Member State of departure of the dispatch or transport, in accordance with the special arrangements provided for in C.

(by) by way of derogation from Article 28a(1)(a), the intra-Community acquisition of second-hand means of transport are not subject to value added tax, where the vendor is a taxable dealer acting as such and VAT has been applied to the second-hand means of transport acquired have been subject to tax in the Member State of departure of the dispatch or transport in which their dispatch or transport began, in accordance with the transitional arrangements for second-hand means of transport.

(by) by way of derogation from Article 28a(1)(a), the intra-Community acquisition of second-hand goods, works of art, collectors’ items or antiques shall not be subject to value added tax where the vendor is a taxable dealer acting as such and the goods acquired have been subject to tax in the Member State of departure of the dispatch or transport, in accordance with the special arrangements for taxing the margin provided for in B, or where the vendor is, as defined in Article 304, where the vendor is an organizer of sales by public auction acting as such and VAT has been applied to the goods acquired have been subject to tax in the Member State of departure of the dispatch or transport in which their dispatch or transport began, in accordance with the special arrangements provided for in C for sales by public auction.
(b) the intra–Community acquisitions of goods, other than those at (a), made the acquisition of referred to in points (a), (b), (c) and (d), and other than new means of transport or products subject to excise duty, by a taxable person for the purposes of his agricultural, forestry or fisheries undertaking subject to the flat–rate scheme for farmers, or by a taxable person who carries out only supplies of goods or services in respect of which VAT is not deductible, or by a non–taxable legal person:

— by a taxable person for the purpose of his agricultural, forestry or fisheries undertaking, subject to the flat–rate scheme set out in Article 25, by a taxable person who carries out only supplies of goods or services in respect of which value added tax is not deductible, or by a non–taxable legal person,

2. The exemption provided for in point (e) of paragraph 1 shall apply only if the following conditions are satisfied:

(a) for a total amount not exceeding, during the current calendar year, the total value of intra–Community acquisitions of goods does not exceed a threshold which the Member States shall determine but which may not be less than 10 000 euro or the equivalent in national currency of ECU 10 000, and;

(b) provided that the total amount of intra–Community acquisitions of goods did not, during the previous calendar year, the total value of intra–Community acquisitions of goods did not exceed the threshold referred to fixed in the second indent point (a);

The threshold which serves as the reference for the application of the above—shall consist of the total amount value, exclusive of value added tax—VAT due or paid in the Member State from which dispatch or transport of the goods began, of intra–Community acquisitions of goods other than new means of transport and other than goods subject to excise duty.
3. Member States shall grant taxable persons and non-taxable legal persons eligible under the second subparagraph point (e) of paragraph 1 the right to opt for the general scheme laid down provided for in the first subparagraph Article 3(1)(b)(i).

Member States shall determine the detailed rules for the exercise of that option referred to in the first subparagraph, which shall in any case apply for event cover a period of two calendar years.

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TITRE II TITRE II

TERRITORIAL APPLICATION SCOPE

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Article 5

2. For the purposes of this Directive, shall apply to the ‘territory of the country’ shall be the area of application of the Treaty establishing the European Economic Community as defined in respect of each Member State in Article 227 determined in accordance with Article 299 of the Treaty.

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Article 6

3. The following territories of individual Member States shall also be excluded from the territory of the country forming part of the customs territory of the Community:

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Article 28a(1)(a), third subparagraph, first sentence (inserted by 91/680/EEC)

Article 28a(1)(a), third subparagraph, second sentence (inserted by 91/680/EEC)

Adapted

Title III (77/388/EEC)

Adapted

Article 3(2) (replaced by 91/680/EEC)

Adapted

Article 3(3), second subparagraph (replaced by 91/680/EEC)

Adapted
Hellenic Republic:
(a) Άγιον Όρος
Mount Athos;

Kingdom of Spain:
(b) the Canary Islands;

French Republic:
(c) the French overseas departments;

(d) the Åland Islands;

(e) the Channel Islands.

2. The following territories of individual Member States shall be excluded from the territory of the country not forming part of the customs territory of the Community:

Federal Republic of Germany:
(a) the Island of Heligoland;
(b) the territory of Buesingen;
Kingdom of Spain:

(c) Ceuta;
(d) Melilla;

Republic of Italy:

(e) Livigno;
(f) Campione d’Italia;
(g) the Italian waters of Lake Lugano;
(h) Gibraltar.

1. For the purposes of applying this Directive, the following definitions shall apply:

(a) ‘Member State’ and ‘territory of a Member State’ shall mean the territory of the country as defined in respect of each Member State in paragraphs 2 and 3, with the exception of any territory referred to in Article 6;

(b) ‘Community’ and ‘territory of the Community’ shall mean the territory of the Member States-Community as defined in respect of each Member State in paragraphs 2 and 3, determined in accordance with Article 299 of the Treaty with the exception of any territory referred to in Article 6;
‘third territory’ and ‘third country’ shall mean any territory other than those defined in paragraphs 2 and 3 as the territory of a Member State.

‘territories’ means the territories which form part of the territory of the Community and which are referred to in Article 6;

By way of derogation from paragraph 1, in view of: the conventions and treaties which they have concluded respectively with France and the United Kingdom, the Principality of Monaco and the Isle of Man shall not be regarded, for the purposes of the application of this Directive, as third countries. Similarly, in view of the Treaty concerning the Establishment of the Republic of Cyprus, the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia shall not be regarded as third territories.

— the conventions and treaties which the Principality of Monaco and the Isle of Man have concluded respectively with the French Republic and the United Kingdom of Great Britain and Northern Ireland;

— the Treaty concerning the Establishment of the Republic of Cyprus,
the Principality of Monaco, the Isle of Man and the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia shall not be treated for the purpose of the application of this Directive as third territories.

Member States shall take the measures necessary to ensure that transactions originating in or intended for the Principality of Monaco are treated as transactions originating in or intended for France, that transactions originating in or intended for the Isle of Man are treated as transactions originating in or intended for the United Kingdom, and that transactions originating in or intended for the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia are treated as transactions originating in or intended for Cyprus:

the Principality of Monaco are treated as transactions originating in or intended for the French Republic,

the Isle of Man are treated as transactions originating in or intended for the United Kingdom of Great Britain and Northern Ireland,

the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia are treated as transactions originating in or intended for the Republic of Cyprus.
**Article 9**

5. If the Commission considers that the provisions laid down in paragraphs 3 and 4, Articles 6 and 8 are no longer justified, particularly in terms of fair competition or own resources, it shall submit appropriate proposals to the Council.

**TITLE IV**

**TITLE III**

**TAXABLE PERSONS**

**Article 10**

1. ‘Taxable person’ shall mean any person who, independently, carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

2. The economic activities referred to in paragraph 1 shall comprise all activities. Any activity of producers, traders and persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as an ‘economic activity’. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall also be regarded as an economic activity.

4. In addition to the persons referred to in paragraph 1, any person who, from time to time, on an occasional basis, supplies a new means of transport, under the conditions laid down in Article 28c(A), which is dispatched or transported to the customer by the vendor or the customer, or on behalf of the vendor or the customer, to a destination outside the territory of a Member State but within the territory of the Community, shall also be regarded as a taxable person.
Article 11

4. The use of the word ‘condition’ in paragraph 1 that the economic activity be conducted ‘independently’ in paragraph 1 shall exclude employed and other persons from the tax VAT in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer’s liability.

Article 12

Subject to the consultations provided for in Article 29, After consulting the VAT Committee, each Member State may treat regard as a single taxable person persons established in the territory of the country that Member State who, while legally independent, are closely bound to one another by financial, economic and organizational links.

Article 13

3-1. Member States may also regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities as referred to in paragraph 2, the second subparagraph of Article 10(1) and in particular one of the following transactions:

(a) the supply, before first occupation, of buildings or parts of buildings and of the land on which they stand;

(b) the supply of building land.

2. A building shall be taken to For the purposes of paragraph 1(a), a ‘building’ shall mean any structure fixed to or in the ground.
Member States may **determine** lay down the conditions of application of this detailed rules for applying the criterion referred to in paragraph 1(a) to transformations conversions of buildings and may determine what is meant by ‘the land on which they stand a building stands’.

Member States may apply criteria other than that of first occupation, such as the period elapsing between the date of completion of the building and the date of first supply, or the period elapsing between the date of first occupation and the date of subsequent supply, provided that these periods do not exceed five years and two years respectively.

### Article 4(3)(a), first subparagraph, second sentence (77/388/EEC) **Adapted**

### Article 4(3)(a), second subparagraph (77/388/EEC)

### Article 4(3)(b), second subparagraph (77/388/EEC)

#### Article 4(3)(b), second subparagraph (77/388/EEC)

3. **Annex I**

4. **Annex I**

### Article 14

5. **States, regional and local government authorities and other bodies governed by public law shall not be considered regarded as** taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions.

However, when they engage in such activities or transactions, they shall be considered regarded as taxable persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to cause significant distortions of competition.

In any case, these bodies governed by public law shall be considered regarded as taxable persons in respect of the activities listed in Annex D Annex I, provided they are not carried out on such a small scale as to be negligible.
2. Member States may consider activities of these bodies, exempt under Article 13 or 28, Articles 129, 132, 133 or 364, or Articles 367 to 383, engaged in by bodies governed by public law as activities in which they engage in as public authorities.

Title V
TAXABLE TRANSACTIONS

Chapter 1
Supply of goods

Article 5
Supply of goods

1. ‘Supply of goods’ shall mean the transfer of the right to dispose of tangible property as owner.

4.2. In addition to the transaction referred to in paragraph 1, each of the following shall also be considered supplies within the meaning of paragraph 1 regarded as a supply of goods:

(a) the transfer, by order made by or in the name of a public authority or in pursuance of the law, of the ownership of property against payment of compensation;

(b) the actual handing over of goods, pursuant to a contract for the hire of goods for a certain period, or for the sale of goods on deferred terms, which provides that in the normal course of events ownership shall pass at the latest upon payment of the final instalment;

(c) the transfer of goods pursuant to a contract under which commission is payable on purchase or sale.
5.3. Member States may consider the handing over of certain works of construction to be supplies within the meaning of paragraph 1 as a supply of goods.

Article 5(5) (replaced by 95/7/EC)
Adapted

Article 16

2.1. Electric current, gas, heat, refrigeration and the like shall be considered tangible property.

Article 5(2) (77/388/EEC)
Adapted

3.2. Member States may consider the following rights as tangible property:

(a) certain interests in immovable property;

(b) rights in rem giving the holder thereof a right of use over immovable property;

(c) shares or interests equivalent to shares giving the holder thereof de jure or de facto rights of ownership or possession over immovable property or part thereof.

Article 5(3)(a) (77/388/EEC)
Adapted

Article 5(3)(b) (77/388/EEC)
Adapted

Article 5(3)(c) (77/388/EEC)
Adapted

Article 17

6. The application by a taxable person of goods forming part of his business assets for his private use or that of his staff, or their disposal free of charge or more generally, their application for purposes other than those of his business shall be treated as a supply of goods for consideration, where the value added tax on those goods or the component parts thereof was wholly or partly deductible, shall be treated as supplies made for consideration.

However, the application for the giving of goods for business use as samples or the making of gifts of small value for the purposes of the taxable person’s business shall not be so treated as a supply of goods for consideration.

Article 5(6), first sentence (77/388/EEC)
Adapted

Article 5(6), second sentence (77/388/EEC)
Adapted
Article 18

5. The following shall be treated as supplies of goods effected for consideration:

(b) the transfer by a taxable person of goods from forming part of his undertaking—business assets to another Member State shall be treated as a supply of goods for consideration.

The following shall be regarded as having been transferred to another Member State: any ‘Transfer to another Member State’ shall mean the dispatch or transport of tangible property dispatched or transported by or on behalf of the taxable person out of, for the purposes of his business, to a destination outside the territory defined in Article 3 of the Member State in which the property is located, but within the Community for the purposes of his undertaking, other than for the purposes of one of the following transactions:

2. The following shall be regarded as having been transferred to another Member State: any tangible property dispatched or transported by or on behalf of the taxable person out of the territory defined in Article 3 but within the Community for the purposes of his undertaking, other than dispatch or transport of goods for the purposes of one of the following transactions shall not be regarded as a transfer to another Member State:

(a) the supply of the goods in question by the taxable person within the territory of the Member State of arrival of in which the dispatch or transport under-ends, in accordance with the conditions laid down in the second sentence of Article 8(1)(a) and in Article 28b(B)(1) Article 34;

(b) the supply of the goods in question by the taxable person, for installation or assembly by or on behalf of the supplier, by the taxable person within the territory of the Member State of arrival of, in which dispatch or transport under of the goods ends, in accordance with the conditions laid down in the second sentence of Article 8(1)(a) and in Article 28b(B)(1) the first paragraph of Article 37;
–(c) the supply of the goods in question by the taxable person under on board a ship, an aircraft or a train in the course of a passenger transport operation in accordance with the conditions laid down in Article 8(1)(c) Article 38;

–(d) the supply of gas through the natural gas distribution system, or of electricity, under in accordance with the conditions set out laid down in Article 8(1)(d) or (e) Articles 39 or 40;

–(e) the supply of the goods in question by the taxable person within the territory of the country under Member State in which dispatch or transport of the goods ends, in accordance with the conditions laid down in Article 15 or in Article 28c(A) Articles 135, 142, 143, 144, 147 or 148;

–(f) the supply of a service performed for the taxable person and involving, and consisting in work on the goods in question physically carried out in the Member State in which the dispatch or transport of the goods ends, provided that the goods, after being worked upon, are re-dispatched returned to that taxable person in the Member State from which they had were initially been dispatched or transported;

–(g) the temporary use of the goods in question within the territory of the Member State of arrival of the dispatch or transport of the goods in which dispatch or transport of the goods ends, for the purposes of the supply of services by the taxable person established within the territory of the Member State of departure of the dispatch or transport of the goods began.
(h) the temporary use of the goods in question, for a period not exceeding twenty-four months within the territory of another Member State in which the importation of the same goods from a third country with a view to their temporary use would be eligible for coverage by the arrangements for temporary importation with full exemption from import duties.

3. However, when one of the conditions to which the benefit of the above is subordinated is no longer met, the goods shall be considered as having been transferred to a destination in another Member State. In this case, the transfer shall be deemed to take place at the moment that the condition ceases to be met.

Article 28a(5)(b) second subparagraph, seventh indent (inserted by 91/680/EEC) Adapted

Article 28a(5)(b) third subparagraph (inserted by 92/111/EEC) Adapted

Article 19

7. Member States may treat each of the following transactions as supplies made for consideration:

(a) the application by a taxable person for the purposes of his business of goods produced, constructed, extracted, processed, purchased or imported in the course of such business, where the value added tax on such goods, had they been acquired from another taxable person, would not be wholly deductible;

(b) the application of goods by a taxable person for the purposes of a non-taxable transaction, where the value added tax on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with subparagraph (a) point (a);

(c) except in those cases mentioned in paragraph 8 referred to in Article 20, the retention of goods by a taxable person or by his successors where he ceases to carry out a taxable economic activity, where the value added tax on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with subparagraph (a) point (a).
**Article 20**

8. In the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, Member States may consider that no supply of goods has taken place and in that event the recipient shall be treated as the successor to the transferor.

Where appropriate, Member States may take the necessary measures to prevent distortion of competition in cases where the recipient person to whom the goods are transferred is not wholly liable to tax for payment of VAT.

**Chapter 2**

**Intra–Community acquisition of goods**

**Article 21**

3. ‘Intra–Community acquisition of goods’ shall mean acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods by or on behalf of the vendor or the person acquiring the goods, to a Member State other than that in which dispatch or transport of the goods began.

Where goods acquired by a non–taxable legal person are dispatched or transported from a third territory or a third country and imported by that non–taxable legal person into a Member State other than the Member State of arrival in which dispatch or transport of the goods ends, the goods shall be deemed to have been dispatched or transported from the Member State of importation. That Member State shall grant the importer as defined in Article 21(2) designated or recognised under Article 193 as liable for payment of VAT a refund of the value added tax paid in connection with respect of the importation of the goods, in so far as provided that the importer establishes that his acquisition was subject to value added tax VAT has been applied to his acquisition in the Member State of arrival in which dispatch or transport of the goods dispatched or transported ended.
Article 22

6. —The intra-Community acquisition of goods for consideration shall include the use, by a taxable person, for the purposes of his undertaking business, of goods dispatched or transported by or on behalf of that taxable person from another Member State, within the territory of which the goods were produced, extracted, processed, purchased, or acquired as defined in paragraph 1 within the meaning of Article 3(1)(b), or of goods imported by the taxable person within the framework of his undertaking for the purposes of his business into that other Member State, shall be treated as an intra–Community acquisition of goods for consideration.

Article 23

The following shall also be deemed to be an intra–Community acquisition of goods effected for consideration: The appropriation of goods, by the armed forces of a State party to the North Atlantic Treaty, for their use or for the use of the civilian staff accompanying them, of goods which they have not purchased subject to the general rules governing taxation on the domestic market of one of the Member States, when imported into that Member State, shall be treated as an intra–Community acquisition of goods for consideration, where the importation of those goods would not benefit from the exemption set out in Article 14(1)(g).

Article 24

7. —Member States shall take the measures necessary to ensure that transactions, which would have been classed as ‘supply of goods’, as defined in paragraph 5 or Article 5 if they had been carried out within the territory of the country by a taxable person acting as such, are classed as ‘intra–Community acquisition of goods’.

Chapter 3

Supply of services

Article 6

Supply of services
1. ‘Supply of services’ shall mean any transaction which does not constitute a supply of goods within the meaning of Article 5.

2. ‘Telecommunications services’ shall be deemed to mean services relating to the transmission, emission or reception of signals, writing words, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception.

Article 26

Such transactions—A supply of services may include consist inter alia in one of the following transactions:

(a) the assignment of intangible property whether or not it is the subject of a document establishing title;

(b) the obligation to refrain from an act, or to tolerate an act or situation;

(c) the performance of services in pursuance of an order made by or in the name of a public authority or in pursuance of the law.
Article 27

2-1. The following transactions shall be treated as supplies of services for consideration:

(a) the use of goods forming part of the assets of a business for the private use of the taxable person or of his staff, or, more generally, for purposes other than those of his business, where the value added tax on such goods was wholly or partly deductible;

(b) supplies of services carried out free of charge by the taxable person for his private use or that of his staff, or, more generally, for purposes other than those of his business.

2. Member States may derogate from the provisions of this paragraph provided that such derogation does not cause distortion of competition.

Article 28

3. In order to prevent distortion of competition and subject to the consultations provided for in Article 29 after consulting the VAT Committee, Member States may treat as a supply of services for consideration the supply by a taxable person of a service for the purposes of his undertaking where the value added tax on such a service, had it been supplied by another taxable person, would not be wholly deductible.

Article 29

4. Where a taxable person acting in his own name but on behalf of another takes part in a supply of services, he shall be deemed to have received and supplied those services himself.
### Article 30

5. Article 5(8) of Article 20 shall apply in like manner to the supply of services.

### Chapter 4

### Importation of goods

#### Article 7

1. ‘Importation of goods’ shall mean:

   (a) ‘Importation of goods’ shall mean the entry into the Community of goods which do not fulfil the conditions laid down in Articles 9 and 10 of the Treaty establishing the European Economic Community or, where the goods are covered by the Treaty establishing the European Coal and Steel Community, are not in free circulation.

   (b) The addition to the transaction referred to in the first paragraph, the entry into the Community of goods which are in free circulation, coming from a third territory, other than the goods covered by (a) forming part of the customs territory of the Community, shall be regarded as the importation of goods.

#### Article 28n

### Transitional measures
1. When goods:

— entered the territory of the country within the meaning of Article 3 before 1 January 1993, and

— were placed, on entry into the territory of that country, under one of the regimes referred to in Article 14(1)(b) or (c), or Article 16(1)(A), and

— have not left that regime before 1 January 1993,

the provisions in force at the moment the goods were placed under that regime shall continue to apply for the period, as determined by those provisions, the goods remain under that regime.

2. The following shall be deemed to be an import of goods within the meaning of Article 7(1):

Article 28n(1) (inserted by 92/111/EEC)

Obsolete

Article 28n(1), first indent (inserted by 92/111/EEC)

Obsolete

Article 28n(1), second indent (inserted by 92/111/EEC)

Obsolete

Article 28n(1), third indent (inserted by 92/111/EEC)

Obsolete

Article 28n(1) in fine (inserted by 92/111/EEC)

Obsolete

Article 28n(2), first subparagraph (inserted by 92/111/EEC)

Obsolete
(a) — the removal, including irregular removal, of goods from the regime referred to in Article 14(1)(c) under which the goods were placed before 1 January 1993 under the conditions set out in paragraph 1;

(b) — the removal, including irregular removal, of goods from the regime referred to in Article 16(1)(A) under which the goods were placed before 1 January 1993 under the conditions set out in paragraph 1;

(c) — the termination of a Community internal transit operation started before 1 January 1993 in the Community for the purpose of supply of goods for consideration made before 1 January 1993 in the Community by a taxable person acting as such;

(d) — the termination of an external transit operation started before 1 January 1993;

(e) — any irregularity or offence committed during an external transit operation started under the conditions set out in (c) or any Community external transit operation referred to in (d);

(f) — the use within the country, by a taxable or non-taxable person, of goods which have been supplied to him, before 1 January 1993, within another Member State, where the following conditions are met:

Article 28n(2), first subparagraph, point (a) (inserted by 92/111/EEC) Obsolete

Article 28n(2), first subparagraph, point (b) (inserted by 92/111/EEC) Obsolete

Article 28n(2), first subparagraph, point (c) (inserted by 92/111/EEC) Obsolete

Article 28n(2), first subparagraph, point (d) (inserted by 92/111/EEC) Obsolete

Article 28n(2), first subparagraph, point (e) (inserted by 92/111/EEC) Obsolete

Article 28n(2), first subparagraph, point (f) (inserted by 92/111/EEC) Obsolete
the supply of these goods has been exempted, or was likely to be exempted, pursuant to Article 15(1) and (2),

the goods were not imported within the country before 1 January 1993.

For the purpose of the application of (c), the expression ‘Community internal transit operation’ shall mean the dispatch or transport of goods under the cover of the internal Community transit arrangement or under the cover of a T2 L document or the intra-Community movement carnet, or the sending of goods by post.

3. In the cases referred to in paragraph 2(a) to (e), the place of import, within the meaning of Article 7(2), shall be the Member State within whose territory the goods cease to be covered by the regime under which they were placed before 1 January 1993.

4. By way of derogation from Article 10(3), the import of the goods within the meaning of paragraph 2 of this Article shall terminate without the occurrence of a chargeable event when:

(a) the imported goods are dispatched or transported outside the Community within the meaning of Article 3; or

Article 28n(2), first subparagraph, point (f), first indent (inserted by 92/111/EEC)

Obsolete

Article 28n(2), first subparagraph, point (f), second indent (inserted by 92/111/EEC)

Obsolete

Article 28n(3) (inserted by 92/111/EEC)

Obsolete

Article 28n(4), first subparagraph (inserted by 92/111/EEC)

Obsolete

Article 28n(4), first subparagraph, point (a) (inserted by 92/111/EEC)

Obsolete
(b) — the imported goods, within the meaning of paragraph 2(a), are other than a means of transport and are dispatched or transported to the Member State from which they were exported and to the person who exported them; or

(c) — the imported goods, within the meaning of paragraph 2(a), are means of transport which were acquired or imported before 1 January 1993, in accordance with the general conditions of taxation in force on the domestic market of a Member State, within the meaning of Article 3, and/or have not been subject by reason of their exportation to any exemption from or refund of value added tax.

This condition shall be deemed to be fulfilled when the date of the first use of the means of transport was before 1 January 1985 or when the amount of tax due because of the importation is insignificant.

**Title XVI C**

**Transitional Measures Applicable in the Context of the Accession to the European Union of Austria, Finland and Sweden on 1 January 1995 and of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia on 1 May 2004**

**Article 28p**

1. For the purpose of applying this Article:
— ‘Community’ shall mean the territory of the Community as defined in Article 3 before accession.

— ‘new Member States’ shall mean the territory of the Member States acceding to the European Union on 1 January 1995 and on 1 May 2004, as defined for each of those Member States in Article 3 of this Directive.

— ‘enlarged Community’ shall mean the territory of the Community as defined in Article 3, after accession.

2. — When goods:

— entered the territory of the Community or of one of the new Member States before the date of accession, and

— were placed, on entry into the territory of the Community or of one of the new Member States, under a temporary admission procedure with full exemption from import duties, under one of the regimes referred to in Article 16(1)(B)(a) to (d) or under a similar regime in one of the new Member States, and

— have not left that regime before the date of accession,
the provisions in force at the moment the goods were placed under that regime shall continue to apply until the goods leave this regime, after the date of accession.

3. When goods:

were placed, before the date of accession, under the common transit procedure or under another customs transit procedure, and

have not left that procedure before the date of accession,

the provisions in force at the moment the goods were placed under that procedure shall continue to apply until the goods leave this procedure, after the date of accession.

For the purposes of the first indent, ‘common transit procedure’ shall mean the measures for the transport of goods in transit between the Community and the countries of the European Free Trade Association (EFTA) and between the EFTA countries themselves, as provided for in the Convention of 20 May 1987 on a common transit procedure.
4. The following shall be deemed to be an importation of goods within the meaning of Article 7(1) where it is shown that the goods were in free circulation in one of the new Member States or in the Community:

(a) the removal, including irregular removal, of goods from a temporary admission procedure under which they were placed before the date of accession under the conditions set out in paragraph 2;

(b) the removal, including irregular removal, of goods either from one of the regimes referred to in Article 16(1)(B)(a) to (d) or from a similar regime under which they were placed before the date of accession under the conditions set out in paragraph 2;

(c) the termination of one of the procedures referred to in paragraph 3 which was started before the date of accession in one of new Member States for the purposes of a supply of goods for consideration effected before that date in that Member State by a taxable person acting as such;

(d) any irregularity or offence committed during one of the procedures referred to in paragraph 3 under the conditions set out at (c).

5. The use after the date of accession within a Member State, by a taxable or non-taxable person, of goods supplied to him before the date of accession within the Community or one of the new Member States shall also be deemed to be an importation of goods within the meaning of Article 7(1) where the following conditions are met:

the supply of those goods has been exempted, or was likely to be exempted, either under Article 15(1) and (2) or under a similar provision in the new Member States.
the goods were not imported into one of the new Member States or into the Community before the date of accession.

6. In the cases referred to in paragraph 4, the place of import within the meaning of Article 7(3) shall be the Member State within whose territory the goods cease to be covered by the regime under which they were placed before the date of accession.

7. By way of derogation from Article 10(3), the importation of goods within the meaning of paragraphs 4 and 5 of this Article shall terminate without the occurrence of a chargeable event when:

(a) the imported goods are dispatched or transported outside the enlarged Community; or

(b) the imported goods within the meaning of paragraph 4(a) are other than means of transport and are redispached or transported to the Member State from which they were exported and to the person who exported them; or

(c) the imported goods within the meaning of paragraph 4(a) are means of transport which were acquired or imported before the date of accession in accordance with the general conditions of taxation in force on the domestic market of one of the new Member States or of one of the Member States of the Community and/or have not been subject, by reason of their exportation, to any exemption from, or refund of, value added tax.
This condition shall be deemed to be fulfilled in the following cases:

when, in respect of Austria, Finland and Sweden, the date of the first use of the means of transport was before 1 January 1987;

when, in respect of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, the date of the first use of the means of transport was before 1 May 1996;

when the amount of tax due by reason of the importation is insignificant.

TITLE VI

PLACE OF TAXABLE TRANSACTIONS

Chapter 1

Place of supply of goods
Section 1

Supply of goods without transport

Article 8 and Article 32

Supply of goods

1. The place of supply of goods shall be deemed to be:

(b) In the case of Where goods are not dispatched or transported the place of supply shall be deemed to be the place where the goods are located at the time when the supply takes place;

Section 2

Supply of goods with transport

Article 33

(a) In the case of Where goods are dispatched or transported either by the supplier, or by the person to whom they are supplied customer, or by a third person, the place of supply shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the person to whom they are supplied customer begins.

2. By way of derogation from paragraph 1(a), where the place of departure of the consignment or transport of goods is However, if dispatch or transport of the goods begins in a third territory, or third country, both the place of supply by the importer as defined in Article 21(4)-designated or recognised under Article 193 as liable for payment of VAT and the place of any subsequent supply shall be deemed to be within the Member State of importation of the goods.

Article 34

B. Place of the supply of goods
1. By way of derogation from Article 8(1)(a) and (2) Article 33, the place of the supply of goods dispatched or transported by or on behalf of the supplier from a Member State other than that of arrival of the goods shall be deemed to be the place where the goods are located at the time when dispatch or transport to the purchaser ends, where the following conditions are fulfilled:

\(-\text{(a)}\) the supply of goods is carried out for a taxable person eligible for the derogation provided for in the second subparagraph of Article 28a(1)(a), for or a non-taxable legal person who is eligible for the same derogation, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 4(1) or for any other non-taxable person;

\(-\text{(b)}\) the supply is of goods other than supplied are neither new means of transport and other than nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

2. Where the goods supplied are dispatched or transported from a third territory or a third country and imported by the supplier into a Member State other than the Member State of arrival of the goods, they shall be regarded as having been dispatched or transported from the Member State of importation.

**Article 35**

2.1. However, where the supply is of goods other than products subject to excise duty, paragraph 1 shall not apply—Article 34 shall not apply— to supplies of goods dispatched or transported to a Member State of arrival of the dispatch or transport where, other than that of the supplier, in which dispatch or transport of the goods ends, if the following conditions are met:
2. (a) However, where the supply is of goods other than supplied are not products subject to excise duty, paragraph 1 shall not apply to supplies of goods dispatched or transported to the Member State of arrival of the dispatch or transport where:

(b) the total value, exclusive of VAT, of such supplies—less value added tax, within a Member State—does not in any one calendar year exceed 100,000 euro or the equivalent in national currency of ECU 100,000, and;

(c) the total value, less value added tax exclusive of VAT, of the supplies of goods within a Member State, other than products subject to excise duty—effected under the conditions laid down in paragraph 1 did not, in the previous calendar year, exceed 100,000 euro or the equivalent in national currency of ECU 100,000.

2. The Member State within the territory of which the goods are located at the time when their dispatch or transport to the purchaser—customer ends may limit the thresholds referred to above in paragraph 1 to 35,000 euro or the equivalent in national currency of ECU 35,000, where that Member State fears that the threshold of ECU 100,000 referred to above would lead to euro might cause serious distortions—distortion of the conditions of competition.

Member States which exercise this—the option under the first subparagraph shall take the measures necessary to inform accordingly the relevant—competent public authorities in the Member State of—in which dispatch or transport of the goods begins.
3. Before 31 December 1994, the Commission shall report present to the Council at the earliest opportunity a report on the operation of the special ECU 35 000 euro thresholds provided for in the preceding subparagraph referred to in paragraph 2, accompanied, if necessary, by appropriate proposals. In that report the Commission may inform the Council that the abolition of the special thresholds will not lead to serious distortions of the conditions of competition.

Until the Council takes a unanimous decision on a Commission proposal, the preceding subparagraph shall remain in force.

3-4. The Member State within the territory of which the goods are located at the time of departure of the when their dispatch or transport begins shall grant those taxable persons who effect carry out supplies of goods eligible under paragraph 2 of paragraph 1 the right to choose that opt for the place of such supplies shall supply to be determined in accordance with paragraph 1 Article 34.

The Member States concerned shall determine lay down the detailed rules for governing the exercise of that the option referred to in the first subparagraph, which shall in any ease apply for event cover two calendar years.

Article 36

(c) Articles 28b(B) and 28c(A)(a), (c) and (d) Articles 34 and 35 shall not apply to supplies of second–hand goods, works of art, collectors’ items or antiques, as defined in Article 304, nor to supplies of second–hand means of transport, subject to value added tax – VAT in accordance with either of the relevant special arrangements laid down in B and C.

(h) Articles 28b(B) and 28c(A)(a) and (d) shall not apply to supplies of second–hand means of transport subject to tax in accordance with (a).
Article 37

Where the goods, dispatched or transported by the supplier or by the customer or by a third person, are installed or assembled, with or without a trial run, by or on behalf of the supplier, the place of supply shall be deemed to be the place where the goods are installed or assembled.

In cases where the installation or assembly is carried out in a Member State other than that of the supplier, the Member State within the territory of which the installation or assembly is carried out shall take any necessary steps to avoid double taxation in that State.

Section 3

Supply of goods on board ships, aircraft or trains

Article 38

1. in the case of goods supplied on board ships, aircraft or trains during the section of a transport of passengers passenger transport operation effected within the Community, the place of supply shall be deemed to be at the point of departure of the passenger transport operation.

2. For the purposes of applying this provision:

-2. ‘part of the transport operation’ shall mean the part of the transport section of the operation effected, without a stop in a third territory, stopover outside the Community, between the point of departure and the point of arrival of the transport of passengers passenger transport operation.
The point of departure of the passenger transport operation shall mean the first scheduled point of passenger embarkation foreseen within the Community, where relevant after a leg applicable after a stopover outside the Community.

The point of arrival of the transport of passengers—a passenger transport operation—shall mean the last scheduled point of disembarkation of passengers foreseen within the Community of passengers who embarked in the Community, where relevant before a leg applicable before a stopover outside the Community.

In the case of a return trip, the return leg shall be considered to be regarded as a separate transport operation.

The Commission shall, by 30 June 1993 at the latest, submit to the Council a report, accompanied, if necessary, by appropriate proposals, on the place of taxation of the supply of goods supplied for consumption on board and the supply of services, including restaurant services, provided for passengers on board ships, aircraft or trains.

By 31 December 1993, after consulting the European Parliament, the Council shall take a unanimous decision on the Commission proposal.
Until 31 December 1993, **Pending adoption of the proposals referred to in the first subparagraph**, Member States may exempt or continue to exempt, with deductibility of the VAT paid at the preceding stage, the supply of goods supplied for consumption on board whose place of taxation is determined in accordance with the above provisions, with the right to deduct the value added tax paid at an earlier stage paragraph 1.

**Section 4**

Supply of goods through distribution systems

*Article 39*

(1) In the case of the supply of gas through the natural gas distribution system, or of electricity, to a taxable dealer, the place of supply shall be deemed to be the place where that taxable dealer has established his business or has a fixed establishment for which the goods are supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

2. ‘Taxable dealer’ for the purposes of this provision means a taxable person whose principal activity in respect of purchases of gas and electricity is reselling such products and whose own consumption of those products is negligible.

*Article 40*

(1) In the case of the supply of gas through the natural gas distribution system, or of electricity, where such a supply is not covered by point (d) Article 39, the place of supply shall be deemed to be the place where the customer has effective use and consumption of the goods.

Where all or part of the goods are gas or electricity is not in fact effectively consumed by this customer, these non-consumed goods shall be deemed to have been used and consumed at the place where he has established his business or has a fixed establishment for which the goods are supplied. In the absence of such a place of business or fixed establishment, he is the customer shall be deemed to have used and consumed the goods at the place where he has his permanent address or usually resides.
Chapter 2

Place of an intra–Community acquisition of goods

Article 28b

Article 41

Place of transactions

A.— Place of the intra–Community acquisitions of goods

1.— The place of the intra-Community acquisition of goods shall be deemed to be the place where dispatch or transport of the goods are at the time when dispatch or transport to the person acquiring them ends.

Article 28b(A)

Article 42

2.— Without prejudice to paragraph 1 Article 41, the place of the intra-Community acquisition of goods as referred to in Article 28a(1)(a) Article 3(1)(b)(i) shall, however, be deemed to be within the territory of the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that VAT has been applied to that acquisition has been subject to tax in accordance with paragraph 1 Article 41.

If, however, VAT is applied to the acquisition in accordance with the first paragraph and subsequently applied, pursuant to Article 41, to the acquisition is subject to tax in accordance with paragraph 1 in the Member State of arrival of the in which dispatch or transport of the goods after having been subject to tax in accordance with the first subparagraph, ends, the taxable amount shall be reduced accordingly in the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition.
**Article 43**

For the purposes of applying the first subparagraph, the first paragraph of Article 42 shall not apply, and VAT shall be deemed to have been applied to the intra–Community acquisition of goods shall be deemed to have been subject to tax in accordance with paragraph 1 when the following conditions have been met:

(a) the acquirer, person acquiring the goods, establishes that he has made the intra–Community acquisition for the needs purposes of a subsequent supply effected in within the Member State referred to in paragraph 1 and according to Article 41 for which the consignee, person to whom the supply is made, has been designated as the person in accordance with Article 190 as liable for the tax due in accordance with Article 28c(E)(3) payment of VAT;

(b) the person acquiring the goods has satisfied the obligations for declaration set out in the last subparagraph of Article 22(6)(b) have been satisfied by the acquirer laid down in Article 258 relating to submission of the recapitulative statement.

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**Article 9** (77/388/EEC)

**Headline of Article 9** (77/388/EEC)
1. The Subject to the particular provisions laid down in Section 2, the place where a service is supplied of supply of services, other than the supply of services by an intermediary, shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

Article 45

E. Place of the supply of services rendered by intermediaries

3. By way of derogation from Article 9(1), Subject to the particular provisions laid down in Section 2, the place of the supply of services rendered by intermediaries acting in the name and for the account of other persons, when such services form part of transactions other than those referred to in paragraph 1 or 2 or in Article 9(2)(e), shall be the place where those transactions are the principal transaction in which the intermediary takes part is carried out.

However, where the customer of the services supplied by the intermediary is identified for VAT purposes of value added tax in a Member State other than that within the territory of which those transactions are carried out, the place of the supply of the services rendered by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the value added tax VAT identification number under which the service was rendered to him by the intermediary.

Section 2

Particular provisions

Subsection 1

Supply of services relating to immovable property

Article 46

2. However:
(a) The place of the supply of services connected with relating to immovable property, including the services of estate agents and experts, and of services for preparing and co-ordinating relating to the preparation and coordination of construction works, such as the services of architects and of firms providing on-site supervision, shall be the place where the property is situated.

Subsection 2

Supply of transport

Article 47

(b) The place where of supply of transport services are supplied other than in relation to the intra-Community transport of goods shall be the place where the transport takes place, having regard to the proportionately in terms of distances covered.

Article 48

C. Place of the supply of services in the intra-Community transport of goods

1. By way of derogation from Article 9(2)(b), the place of the supply of services in the intra-Community transport of goods shall be determined in accordance with paragraphs 2, 3 and 4. For the purposes of this Title the following definitions shall apply:

2. The place of the supply of services in the intra-Community goods transport of goods shall be the place of departure of the transport.

3. However, by way of derogation from paragraph 2, the place of the supply of services in the where intra-Community goods transport of goods rendered is supplied to customers identified for VAT purposes of value added tax in a Member State other than that of the departure of the transport, the place of supply shall be deemed to be within the territory of the Member State which issued the customer with the value added tax VAT identification number under which the service was rendered to him.
Article 49

1. ‘the intra–Community transport of goods’ shall mean any transport where of goods in respect of which the place of departure and the place of arrival are situated within the territories of two different Member States.

The transport of goods where in respect of which the place of departure and the place of arrival are situated within the territory of the country, the same Member State shall be treated as an intra–Community transport of goods where such transport is directly linked to a transport of goods where in respect of which the place of departure and the place of arrival are situated within the territories of two different Member States.

2. ‘the place of departure’ shall mean the place where the transport of the goods actually starts, leaving aside distance actually travelled–effectively begins, irrespective of distances covered in order to reach the place where the goods are located, and ‘the place of arrival’ shall mean the place where transport of the goods effectively ends.

‘the place of arrival’ shall mean the place where the transport of goods actually ends.

Article 50

1. By way of derogation from Article 9(1), the place of the supply of services rendered by intermediaries, an intermediary, acting in the name and for the account on behalf of other persons, where they form part of the supply of services in the intermediary takes part in the intra–Community transport of goods, shall be the place of departure of the transport.

Article 28b(C)(1), first indent, first subparagraph (inserted by 91/680/EEC)

Article 28b(C)(1), first indent, second subparagraph (inserted by 95/7/EC)

Article 28b(C)(1), second indent (inserted by 91/680/EEC)

Article 28b(C)(1), third indent (inserted by 91/680/EEC)

Article 28b(E)(1), first subparagraph (inserted by 91/680/EEC)
However, where the customer for whom of the services rendered supplied by the intermediary are performed is identified for VAT purposes of value added tax in a Member State other than that of the departure of the transport, the place of the supply of services rendered by an by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the value added tax VAT identification number under which the service was rendered to him.

Article 28b(E)(1), second subparagraph (inserted by 91/680/EEC)
Adapted

Article 28b(C)(4) (inserted by 91/680/EEC)
Adapted

Subsection 3
Supply of cultural and similar services, ancillary transport services or services relating to tangible movable property

Article 52

(e) The place of the supply of the following services relating to shall be the place where the services are physically carried out:

(a) cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organizers of such activities, and, where appropriate, the supply of ancillary services;

(b) ancillary transport activities, such as loading, unloading, handling and similar activities;

(c) valuations of movable tangible property or work on such property;

(d) work on movable tangible property.
shall be the place where those services are physically carried out;

Article 53

D. Place of the supply of services ancillary to the intra–Community transport of goods

By way of derogation from Article 9(2)(c), the place of supply of services involving activities ancillary to the intra–Community transport of goods, rendered to customers identified for VAT purposes in a Member State other than that within which the services are physically performed, shall be deemed to be within the territory of the Member State which issued the customer with the VAT identification number under which the service was rendered to him.

Article 28b(D)

Adapted

Article 28b(E)(2), first subpara-

graph

Adapted

Article 28b(E)(2), second subpara-

graph

Adapted

Article 54

2. By way of derogation from Article 9(1), the place of supply of services rendered by intermediaries, acting in the name and on behalf of other persons, where they form part of the supply of services the purpose of which consists in activities ancillary to the intra–Community transport of goods, shall be the place where the ancillary services are physically performed.

However, where the customer of the services rendered by the intermediary is identified for VAT purposes in a Member State other than that within which the ancillary service is physically performed, the place of supply of the services rendered by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the VAT identification number under which the service was rendered to him by the intermediary.

Article 55

F. Place of the supply of services in the case of valuations of or work on movable tangible property

Article 9(2)(c) in fine (77/388/EEC)

Heading of Article 28b(D) (inserted by 91/680/EEC)

Article 28b(D) (inserted by 91/680/EEC)

Adapted

Article 28b(E)(2), first subpara-

graph (inserted by 91/680/EEC)

Adapted

Article 28b(E)(2), second subpara-

graph (inserted by 91/680/EEC)

Adapted

Article 28b(F) (inserted by 95/7/EC)
By way of derogation from Article 9(2)(e), Article 52(c), the place of the supply of services involving valuations or work on consisting in the valuation of tangible movable property, provided or in work on such property, supplied to customers identified for value added tax—VAT purposes in a Member State other than the one where those services are physically carried out, shall be deemed to be within the territory of the Member State which issued the customer with the value added tax—VAT identification number under which the service was carried out for
rendered to him.

This derogation referred to in the first paragraph shall not apply only where the goods are not dispatched or transported out of the Member State where the services were physically carried out.

Subsection 4

Miscellaneous services

Article 56

(e) transfers and assignments of copyrights, patents, licences, trade marks and similar rights;

(b) advertising services;

(c) the services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, as well as data processing and the supplying—provision of information.
– (d) obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this point (e) this paragraph;

– (e) banking, financial and insurance transactions, including reinsurance, with the exception of the hire of safes;

– (f) the supply of staff;

– (g) the hiring out of tangible movable property, with the exception of all forms of transport;

– (h) the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other directly linked services;

– (i) telecommunications. Telecommunications services within the meaning of this provision shall also include services, including the provision of access to global information networks;

– (j) radio and television broadcasting services;

– (k) electronically supplied services, inter alia such as those described referred to in Annex I, Annex II.
(1) the supply of services of agents who act by intermediaries, acting in the name and for the account of another, when they procure for their principal on behalf of other persons, where those intermediaries take part in the supply of the services referred to in this point (e) this paragraph;

2. Where the supplier of a service and his— the customer communicates via electronic mail, this shall not of itself mean that the service performed is an electronic service— within the meaning of the last indent of Article 9(2)(e) for the purposes of point (k) of paragraph 1.

3. Article 1—Points (j) and (k) of paragraph 1 shall apply for a period of three years starting from 1 July 2003.

**Article 57**

(1) Where the services referred to in the last indent of subparagraph (e) of Article 52(1) are supplied, when performed for to non–taxable persons who are established, in, or who have their permanent address or usually reside in, a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the service is supplied outside the Community, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, the place of supply shall be the place where the non–taxable person is established, or where he has his permanent address or usually resides.

2. Article 1—Paragraph 1 shall apply for a period of three years starting from 1 July 2003.

**Subsection 5**

**Criterion of effective use or enjoyment**

**Article 58**

3. In order to avoid double taxation, non–taxation or the distortion of competition— the Member States may, with regard to the supply of the services referred to in paragraph 2(e), except for the services referred to in the last indent when supplied— to non–taxable persons, and also with regard to the hiring out of forms means of transport— consider, exercise the following options:
(a) of regarding the place of supply of any or all of those services, which under this Article would be if situated within the their territory of the country, as being situated outside the Community where, if the effective use and or enjoyment of the services take place outside the Community;

(b) of regarding the place of supply of any or all of those services, which under this Article would be if situated outside the Community, as being situated within the their territory of the country where, if the effective use and or enjoyment of the services take place within the their territory of the country.

Article 59

4.1. In the case of Member States shall apply Article 58(b) to telecommunications services, as referred to in paragraph 2(e) Article 56(1)(i), supplied to non–taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State by a taxable person established who has established his business outside the Community or has a fixed establishment there from which the services are supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community to non–taxable persons established inside the Community, Member States shall make use of paragraph 3(b).

4.2. In the case of telecommunications services and For a period of three years from 1 July 2003, Member States shall apply Article 58(b) to radio and television broadcasting services, referred to in paragraph 2(e) when performed for point (j) of Article 56(1), supplied to non–taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or who has a fixed establishment there from which the services are supplied outside the Community, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, Member States shall make use of paragraph 3(b).

Chapter 4

Place of importation of goods
**Article 60**

2. The place of importation of goods shall be the Member State within whose territory of which the goods are located when they enter the Community.

**Article 61**

3. Notwithstanding paragraph 2, where By way of derogation from Article 60, where, on entry into the Community, goods referred to in paragraph 1(a) are, on entry into the Community, which are not in free circulation are placed under one of the arrangements referred to in Article 16(1)(B)(a), (b), (c) and (d), Article 151, or under arrangements for temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the place of importation of such goods shall be the Member State within whose territory of which they cease to be covered by those arrangements.

Similarly, where, on entry into the Community, goods referred to in paragraph 1(b) which are in free circulation are placed, on entry into the Community, under one of the arrangements referred to in Article 33a(1)(b) or (c) Articles 269 and 270, the place of importation shall be the Member State within whose territory this procedure ceases to apply the goods cease to be covered by those arrangements.

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**TITLE VII**

**TITLE VI**

**CHARGEABLE EVENT AND CHARGEABILITY OF TAX VAT**

**Chapter 1**

**General provisions**

**Article 10**

1. (a) ‘Chargeable event’ shall mean the occurrence by virtue of which the legal conditions necessary for VAT to become chargeable are fulfilled.
(b) The tax becomes VAT shall become ‘chargeable’ when the tax authority becomes entitled under the law at a given moment to claim the tax from the person liable to pay, notwithstanding that even though the time of payment may be deferred.

Chapter 2

Supply of goods or services

Article 63

2. The chargeable event shall occur and the tax VAT shall become chargeable when the goods are delivered or the services are performed supplied.

Article 64

1. Deliveries Where it gives rise to successive statements of account or successive payments, the supply of services or the supply of goods, other than those that consisting in the hire of goods for a certain period or the sale of goods on deferred terms, as referred to in Article 5(4)(b) and supplies of services which give rise to successive statements of account or payments Article 15(2)(b), shall be regarded as being completed at the time when on expiry of the periods to which such statements of account or payments pertain expire relate.

2. Member States may in certain cases provide that, in certain cases, the continuous supplies supply of goods and services which take place over a period of time shall is to be regarded as being completed at least at intervals of one year.

Article 65

However, where a payment is to be made on account before the goods are delivered or the services are performed, the tax supplied VAT shall become chargeable on receipt of the payment and on the amount received.
**Article 66**

By way of derogation from the above provisions, Articles 63, 64 and 65, Member States may provide that the tax shall VAT is to become chargeable, for in respect of certain transactions or for certain categories of taxable person, either at one of the following times:

(a) no later than the issue of time the invoice, or is issued;

(b) no later than receipt of the price, or the time the payment is received;

(c) where an invoice is not issued, or is issued late, within a specified period from the date of the chargeable event.

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**Article 67**

4.1. By way of derogation from Article 10(2) and (3), tax shall become chargeable for supplies of goods effected under the conditions laid down in Article 28c(A) Where, in accordance with the conditions laid down in Article 135, goods dispatched or transported to a Member State other than that in which dispatch or transport of the goods begins are supplied VAT–exempt or where goods are transferred VAT–exempt to another Member State by a taxable person for the purposes of his business, VAT shall become chargeable on the 15th day of the month following that during in which the chargeable event occurs.
2. However, tax by way of derogation from paragraph 1, VAT shall become chargeable on the issue of the invoice provided for in the first subparagraph of Article 22(3)(a) where Article 211, if that invoice is issued before the fifteenth–fifteenth day of the month following that during–in which the taxable–chargeable event occurs.

Chapter 3
Intra–Community acquisition of goods

Article 28d

Article 68

Chargeable event and chargeability of tax

1. The chargeable event shall occur when the intra–Community acquisition of goods is effected made.

The intra–Community acquisition of goods shall be regarded as being effected made when the supply of similar goods is regarded as being effected within the territory of the relevant Member State.

Article 69

2-1. For–In the case of the intra–Community acquisition of goods, tax VAT shall become chargeable on the 15th day of the month following that during–in which the chargeable event occurs.

Article 28d(4), second subparagraph (replaced by 92/111/EEC and amended by 2001/115/EC)

Adapted

Article 28d
(inserted by 91/680/EEC)

Heading of Article 28d
(inserted by 91/680/EEC)

Article 28d(1), first sentence
(inserted by 91/680/EEC)

Adapted

Article 28d(1), second sentence
(inserted by 91/680/EEC)

Adapted

Article 28d(2)
(inserted by 91/680/EEC)

Adapted
3.2. By way of derogation from paragraph 2, tax paragraph 1, VAT shall become chargeable on the issue of the invoice provided for in the first subparagraph of Article 22(3)(a) where Article 211, if that invoice is issued to the person acquiring the goods before the fifteenth day of the month following that in which the taxable event occurs.

Chapter 4

Importation of goods

Article 70

3. — The chargeable event shall occur and VAT shall become chargeable when the goods are imported.

Article 71

1. Where, on entry into the Community, goods are placed under one of the arrangements referred to in Article 7(3), Articles 151, 269 and 270, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the chargeable event shall occur and VAT shall become chargeable only when the goods cease to be covered by those arrangements.

However, where imported goods are subject to customs duties, or to agricultural levies or to charges having equivalent effect established under a common policy, the chargeable event shall occur and VAT shall become chargeable when the chargeable event in respect of those Community duties occurs and those duties become chargeable.

2. Where imported goods are not subject to any of those Community duties referred to in the second subparagraph of paragraph 1, Member States shall apply the provisions in force governing customs duties, as regards the occurrence of the chargeable event and the moment when VAT becomes chargeable, apply the provisions in force governing customs duties.

Article 28d(3) (replaced by 92/111/EEC and amended by 2001/115/EC) Adapted

Article 10(3), first subparagraph, first sentence (replaced by 91/680/EEC) Adapted

Article 10(3), first subparagraph, second sentence (replaced by 91/680/EEC) Adapted

Article 10(3), second subparagraph (replaced by 91/680/EEC) Adapted

Article 10(3), third subparagraph (replaced by 91/680/EEC) Adapted
Title VIII
(77/388/EEC)

Heading of
Title VIII
(77/388/EEC)

Chapter 1

Supply of goods or services

Article 11
(77/388/EEC)

Heading of
Article 11(A)
(77/388/EEC)

Article 11(A)(1)
(77/388/EEC)

Adapted

A. Within the territory of the country

1. The taxable amount shall be:

(a) in respect of supplies, in respect of the supply of goods and or services, other than those referred to in (b), (c) and (d) below, Articles 73 to 76, the taxable amount shall include everything which constitutes the consideration which has been obtained or is to be obtained by the supplier, in return for the supply, from the purchaser, the customer or a third party for such supplies, including subsidies directly linked to the price of such supplies, the supply.

Article 73

(b) in respect of supplies, where a taxable person applies or disposes of goods forming part of his business assets, or where goods are retained by a taxable person, or by his successors, when his taxable economic activity ceases, as referred to in Article 5(6) and (7), Articles 17 and 19, the taxable amount shall be the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined as at the time of supply when the application, disposal or retention takes place.

Article 74

(c) in respect of supplies referred to in Article 6(2), in respect of the supply of services, referred to in Article 27, where goods forming part of the assets of a business are used for private purposes or services are carried out free of charge, the taxable amount shall be the full cost to the taxable person of providing the services.
Article 75

2. For In respect of the supply of goods referred to in Article 28c(A)(d), the taxable amount shall be determined in accordance with Article 11(A)(1)(b) and paragraphs 2 and 3 consisting in the transfer of goods to another Member State, the taxable amount shall be the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time the transfer takes place.

Article 76

(d) in respect of supplies referred to in Article 6(3), In respect of the supply by a taxable person of a service for the purposes of his business, as referred to in Article 28, the taxable amount shall be the open market value of the service supplied.

‘Open The ‘open market value’ of a service shall mean the full amount which, in order to obtain the service in question, a customer at the marketing stage at which the supply takes place would have to pay, at the time of the supply and under conditions of fair competition, to a supplier at arm’s length within the territory of the country at the time of the supply, under conditions of fair competition to obtain the services in question in Member State in which the supply of a service referred to in paragraph 1 is taxable.

Article 77

2. The taxable amount shall include the following factors:

(a) taxes, duties, levies and charges, excluding the value added tax VAT itself;

(b) incidental expenses such as commission, packing, transport and insurance costs charged by the supplier to the purchaser or customer.
Expenses—For the purposes of point (b) of the first paragraph, Member States may regard expenses covered by a separate agreement may be considered to be as incidental expenses by the Member States.

Article 78

3. — The taxable amount shall not include the following factors:

(a) price reductions by way of discount for early payment;

(b) price discounts and rebates allowed granted to the customer and accounted for obtained by him at the time of the supply;

(c) the amounts received by a taxable person from his purchaser or the customer, as repayment for expenses paid out of expenditure incurred in the name and for the account—on behalf of the latter customer, and which are entered in his books in a suspense account.

The taxable person must furnish proof of the actual amount of this—the expenditure referred to in point (c) of the first paragraph and may not deduct any tax—VAT which may have been charged on these transactions.

Article 79

4. — By way of derogation from paragraphs 1, 2 and 3, Member States which, on— at 1 January 1993, did were not avail availing themselves of the option provided for in the third subparagraph of Article 12(3)(a) under Article 95 of applying a reduced rate may, where if they avail themselves of the option provided for in Title B(6) under Article 86, provide that, for in respect of the transactions—supply of works of art, as referred to in the second subparagraph of Article 12(3)(c) Article 99(2), the taxable amount shall—is to be equal to a fraction of the amount determined in accordance with paragraphs 1, 2 and 3 Articles 72, 73, 75, 77 and 78.
That the fraction referred to in the first paragraph shall be determined in such a way that the value added tax VAT thus due is, in any event, equal to at least 5% of the amount determined in accordance with paragraphs 1, 2 and 3 Articles 72, 73, 75, 77 and 78.

Chapter 2
Intra–Community acquisition of goods

Article 28e Article 80

Taxable amount and rate applicable

1. In the case of the intra–Community acquisition of goods, the taxable amount shall be established on the basis of the same elements factors as those used in accordance with Article 11(A)–Chapter 1 to determine the taxable amount for the supply of the same goods within the territory of the country. In particular, in the case of the Member State concerned. In the case of the transactions, to be treated as intra–Community acquisition acquisitions of goods, referred to in Article 28a(6), Articles 22 and 23, the taxable amount shall be determined in accordance with Article 11(A)(1)(b) and paragraphs 2 and 3 the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time of the supply.

Article 81

1. Member States shall take the measures necessary to ensure that the excise duty due or paid by the person effecting the intra–Community acquisition of a product subject to excise duty is included in the taxable amount in accordance with Article 11(A)(2)(a) point (a) of the first paragraph of Article 77.
2. When, Where, after the moment, the intra-Community acquisition of goods was effected, has been made, the acquirer, person acquiring the goods, obtains the refund of the excise duties duty paid in the Member State from which dispatch or transport of the goods were dispatched or transported began, the taxable amount shall be reduced accordingly in the Member State where in which the intra-Community acquisition took place was made.

Chapter 3

Importation of goods

Article 82

B. Importation of goods

1. The taxable amount shall be the value for customs purposes, determined in accordance with the Community provisions in force; this shall also apply for the import of goods referred to in Article 7(1)(b).

Article 83

3-1. The taxable amount shall include the following factors, in so far as they are not already included:

(a) taxes, duties, levies and other charges due outside the importing Member State of importation, and those due by reason of importation, excluding the value-added tax VAT to be levied;

(b) incidental expenses, such as commission, packing, transport and insurance costs, incurred up to the first place of destination within the territory of the importing Member State of importation.
The taxable amount shall also include the incidental expenses referred to above shall also be included in the taxable amount where they result from transport to another place of destination within the territory of the Community, if that place is known when the chargeable event occurs.

2. First, for the purposes of point (b) of the first subparagraph of paragraph 1, ‘first place of destination’ shall mean the place mentioned on the consignment note or any other document by means of which the goods are imported into the importing Member State. In the absence of such an indication of importation, if no such mention is made, the first place of destination shall be taken to be the place of the first transfer of cargo intermediate reloading in the importing Member State of importation.

Article 84

4. The taxable amount shall not include those factors referred to in A(3)(a) and (b):

(a) price reductions by way of discount for early payment;

(b) price discounts and rebates allowed to the customer and accounted for at the time of the supply.

Article 85

5. Where goods are temporarily exported from the Community and are re-imported after having undergone repair, processing, adaptation, or after having been made up or re-worked abroad, Member States shall take steps to ensure that the tax treatment of the goods for value added tax VAT purposes is the same as that which would have been applied to the goods in question had the above operations repair, processing, adaptation, making up or re-working been carried out within the territory of the country.
Article 86

6. By way of derogation from paragraphs 1 to 4, Member States which, on 1 January 1993, were not availavling themselves of the option provided for in the third subparagraph of Article 12(3)(a) under Article 95 of applying a reduced rate, may provide that for imports in respect of the importation of the works of art, collectors’ items and antiques, as defined in Article 26a(A)(a), (b) and (c), Article 304(1)(b), (c) and (d), the taxable amount shall be equal to a fraction of the amount determined in accordance with paragraphs 1 to 4 Articles 82, 83 and 84.

Chapter 4

Miscellaneous provisions

Article 87

C. Miscellaneous provisions

1. In the case of cancellation, refusal or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.

2. However, in the case of total or partial non-payment, Member States may derogate from this rule paragraph 1.
**Article 88**

2-1. Where information for determining the factors used to determine the taxable amount on importation is expressed in a currency other than that of the Member State where assessment takes place, the exchange rate shall be determined in accordance with the Community provisions governing the calculation of the value for customs purposes.

2. Where information for the determination of the factors used to determine the taxable amount of a transaction other than an import transaction is expressed in a currency other than that of the Member State where assessment takes place, the exchange rate applicable shall be the latest selling rate recorded, at the time the tax becomes chargeable, on the most representative exchange market or markets of the Member State concerned, or a rate determined by reference to that or those markets, in accordance with the rules laid down by that Member State.

However, for some of those transactions referred to in the first subparagraph or for certain categories of taxable person, Member States may continue to apply the exchange rate determined in accordance with the Community provisions in force governing the calculation of the value for customs purposes.

**Article 89**

3. As regards the costs of returnable packing material, Member States may take one of the following measures:

   (a) either exclude them from the taxable amount and take the necessary measures necessary to ensure that this amount is adjusted if the packing material is not returned;

   (b) or include them in the taxable amount and take the necessary measures necessary to ensure that this amount is adjusted where-if the packing material is in fact returned.
Chapter 1
Application of rates

Article 12(Article 90)

1. The rate applicable to taxable transactions shall be that in force at the time of the chargeable event.

However, in the following situations, the rate applicable shall be that in force when VAT becomes chargeable:

(a) in the cases provided for referred to in the second and third subparagraphs of Article 10(2), the rate to be used shall be that in force when the tax becomes chargeable Articles 65 and 66;

(b) The tax rate applicable to in the case of an intra-Community acquisition of goods shall be that in force when the tax becomes chargeable;

(c) in the cases provided for concerning the importation of goods, referred to in the second and third subparagraphs of Article, the rate applicable shall be that in force at the time when the tax becomes chargeable second subparagraph of Article 71(1) and in Article 71(2).
Article 91

4.1. The tax rate applicable to the intra–Community acquisition of goods shall be that applied to the supply of like goods within the territory of the country Member State.

Article 28e(4)
(inserted by 91/680/EEC and renumbered by 92/111/EEC)

Adapted

Article 92

2. In the event of changes in the rates, Member States may:

–Where rates are changed, Member States may, in the cases referred to in Articles 65 and 66, effect adjustments in the cases provided for in paragraph 1(a) in order to take account of the rate applicable at the time when the goods or services were supplied;

–Member States may also adopt all appropriate transitional measures.

Chapter 2

Structure and level of rates

Section 1

Standard rate
**Article 93**

3. (a) The Member States shall apply a standard rate of value added tax VAT, which shall be fixed by each Member State as a percentage of the taxable amount and which shall be the same for the supply of goods and for the supply of services.

**Article 94**

1. From 1 January 2001 until 31 December 2005, the percentage the standard rate may not be less than 15%.

2. On a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, the Council shall decide unanimously, in accordance with Article 93 of the Treaty, on the level of the standard rate to be applied after 31 December 2005.

**Section 2**

**Reduced rates**

**Article 95**

1. Member States may also apply either one or two reduced rates.
2. The reduced 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 goods or services in the categories of goods and services specified in Annex H set out in Annex III.

Article 12(3)(a), third subparagraph, second sentence (replaced by 1999/49/EC)

Adapted

3. The third subparagraph The reduced rates shall not apply to the services referred to in the last indent of Article 9(2)(e) Article 56(1)(k).

Article 12(3)(a), fourth subparagraph (inserted by 2002/38/EC)

Adapted

3. In transposing the categories below which refer to goods into national legislation, when applying the reduced rates provided for in paragraph 1 to categories of goods, Member States may use the combined nomenclature Combined Nomenclature to establish the precise coverage of the category concerned.

Annex H, first paragraph (inserted by 92/77/EEC)

Adapted

Article 96

1. The reduced 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 12(3)(a), third subparagraph, second sentence (replaced by 1999/49/EC)

Adapted

4. Each reduced rate shall be so fixed that the amount of value added tax VAT resulting from the application thereof shall be such as in the normal way to permit the deduction therefrom of is such that the whole of the value added tax VAT deductible under the provisions of Article 17 Articles 162 to 171 can normally be deducted in full.

Article 12(4), first subparagraph (amended by 92/77/EEC)

Adapted
Article 97
On the basis of a report from the Commission, the Council shall, starting in 1994, review the scope of the reduced rates every two years.

The Council, acting unanimously on a proposal from the Commission, may, in accordance with Article 93 of the Treaty, decide to alter the list of goods and services set out in Annex I to Annex III.

Section 3
Particular provisions

Article 98
(b) Member States may apply a reduced rate to supplies of natural gas and/or of electricity, provided that no risk of distortion of competition exists thereby arises.

Any Member State intending to apply such a reduced rate under the first paragraph must, before doing so, inform the Commission accordingly. The Commission shall give a decision on the existence of a risk of distortion of competition. If the Commission has not taken that decision within three months of the receipt of the information, no risk of distortion of competition shall be deemed to exist.

Article 99
(e) Member States may provide that the reduced rate, or one of the reduced rates, which they apply in accordance with the third paragraph of (a) shall, Articles 95 and 96 is also to apply to imports of works of art, collectors’ items and antiques as referred to in Article 26a(A)(a), (b) and (c), as defined in points (b), (c) and (d) of Article 304(1).
2. Where they avail themselves of this option, Member States may also apply the reduced rate to supplies of works of art, within the meaning of Article 26a(A)(a) the following:

- (a) the supply of works of art, by their creator or his successors in title,

- (b) the supply of works of art, on an occasional basis, by a taxable person other than a taxable dealer, where the works of art have been imported by the taxable person himself, or where they have been supplied to him by their creator or his successors in title, or where they have entitled him to full deduction of value added tax VAT.

**Article 100**

(b) For the purposes of applying Article 12(3)(a), the Republic of Austria may, in the communes of Jungholz and Mittelberg (Kleines Walsertal), apply a second standard rate in the communes of Jungholz and Mittelberg (Kleines Walsertal) which is lower than the corresponding rate applied in the rest of Austria but not less than 15%.

**Article 101**

6. The Portuguese Republic Portugal may apply to, in the case of transactions carried out in the autonomous regions of the Azores and Madeira and to direct imports to those regions, apply reduced rates in comparison to those applying on the mainland.

**Chapter 3**

Temporary provisions for particular labour-intensive services
Article 102

6. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State, allow Member States, to apply for a maximum period of six years between 1 January 2000 and 31 December 2005, the reduced rates provided for in the third subparagraph of Article 12(3)(a) to services listed in as maximum of two of the categories set out in Annex K, Annex IV, for a maximum period of six years between 1 January 2000 and 31 December 2005.

In exceptional cases, a Member State may be authorised, allowed, to apply the reduced rates to services from three of the abovementioned categories.

Article 103

The services referred to in Article 102 must satisfy the following requirements:

(a) they must be labour-intensive;
(b) they must be largely be provided direct to final consumers;  

(c) they must be mainly local and not likely to cause distortion of competition; 

(d) there must also be a close link between the lower prices decrease in prices resulting from the rate reduction and the foreseeable increase in demand and employment. Application of a reduced rate must not prejudice the smooth functioning of the internal market.

The application of a reduced rate must not prejudice the smooth functioning of the internal market.

Article 104

Any Member State wishing to introduce the measure provided for in the first subparagraph Article 102 shall inform the Commission accordingly before 1 November 1999 and shall provide it before that date with all relevant particulars information, and in particular the following:

(a) scope of the measure and detailed description of the services concerned;
(b) particulars showing that the conditions laid down in the second and third subparagraphs Article 103 have been met; Article 28(6), fourth subparagraph, point (b) (inserted by 1999/85/EC) Adapted

(c) particulars showing the budgetary cost of the measure envisaged. Article 28(6), fourth subparagraph, point (c) (inserted by 1999/85/EC)

Member States authorised to apply the reduced rate referred to in the first subparagraph shall, before 1 October 2002, draw up a detailed report containing an overall assessment of the measure’s effectiveness in terms notably of job creation and efficiency. Article 28(6), fifth subparagraph (inserted by 1999/85/EC) Obsolete

Before 31 December 2002 the Commission shall forward a global evaluation report to the Council and Parliament accompanied, if necessary, by a proposal for appropriate measures for a final decision on the VAT rate applicable to labour-intensive services. Article 28(6), sixth subparagraph (inserted by 1999/85/EC) Obsolete

Chapter 4

Special provisions applying until the adoption of definitive arrangements

Article 105

2. Notwithstanding Article 12(3), the following Pending introduction of the definitive arrangements, referred to in Article 395, for taxation of trade between Member States, the provisions laid down in this Chapter shall apply during the transitional period referred to in Article 281:

Article 28(2) (replaced by 92/77/EEC) Adapted
Article 106

(a) Exemptions—Member States which, at 1 January 1991, were granting exemptions, with refund of deductibility of the tax VAT paid at the preceding stage and, or applying reduced rates lower than the minimum rate laid down in Article 12(3) in respect of the reduced rates, which were in force on 1 January 1991 and which are in accordance with Community law, and satisfy the conditions stated in the last indent of Article 17 of the second Council Directive of 11 April 1967, may be maintained Article 96, may continue to grant those exemptions or apply those reduced rates.

Article 28(2)(a), first subpara-graph (replaced by 92/77/EEC) Adapted

Article 28(2)(a), first subpara-graph (replaced by 92/77/EEC) Adapted

Article 28(2)(a), second subpara-graph (replaced by 92/77/EEC) Modified

Article 107

Subject to the conditions laid down in the second paragraph of Article 103, exemptions, with deductibility of the VAT paid at the preceding stage, may continue to be granted in the following cases:

(f)(a) For the purposes of applying Article 28(2)(a), the Republic of by Finland may, during the transitional period referred to in Article 281, apply exemptions, with refund of tax paid at the preceding stage, which are in accordance with Community law, and satisfy the conditions set out in the last indent of Article 17 of the second Council Directive of 11 April 1967, to supplies in respect of the supply of subscribed newspapers and periodicals sold by subscription and the printing of publications distributed to the members of corporations for the public good.

Annex IX(2)(l) (Act of Accession, AT, FI and SE) Adapted

Article 106

(a) Exemptions—Member States which, at 1 January 1991, were granting exemptions, with refund of deductibility of the tax VAT paid at the preceding stage and, or applying reduced rates lower than the minimum rate laid down in Article 12(3) in respect of the reduced rates, which were in force on 1 January 1991 and which are in accordance with Community law, and satisfy the conditions stated in the last indent of Article 17 of the second Council Directive of 11 April 1967, may be maintained Article 96, may continue to grant those exemptions or apply those reduced rates.

Member States shall adopt the measures necessary to ensure the determination of own resources relating to these operations.

Article 28(2)(a), first subpara-graph (replaced by 92/77/EEC) Adapted

Article 28(2)(a), first subpara-graph (replaced by 92/77/EEC) Adapted

Article 28(2)(a), second subpara-graph (replaced by 92/77/EEC) Modified

Article 107

Subject to the conditions laid down in the second paragraph of Article 103, exemptions, with deductibility of the VAT paid at the preceding stage, may continue to be granted in the following cases:

(f)(a) For the purposes of applying Article 28(2)(a), the Republic of by Finland may, during the transitional period referred to in Article 281, apply exemptions, with refund of tax paid at the preceding stage, which are in accordance with Community law, and satisfy the conditions set out in the last indent of Article 17 of the second Council Directive of 11 April 1967, to supplies in respect of the supply of subscribed—newspapers and periodicals sold by subscription and the printing of publications distributed to the members of corporations for the public good.
For the purposes of applying Article 28(2)(a), the Kingdom of Sweden may, during the transitional period referred to in Article 28l, apply exemptions with the refund of tax paid at the preceding stage, which are in accordance with Community law, and satisfy the conditions set out in the last indent of Article 17 of the second Council Directive of 11 April 1967, to supplies in respect of the supply of newspapers, including radio and cassette newspapers for the visually impaired people, pharmaceutical products supplied to hospitals or on prescription, and the production of, or other related services concerning, periodicals of non-profit-making organisations.

**Article 108**

In the event that the provisions of this paragraph create distortion of competition in the supply of energy products for heating and lighting, Ireland may, on specific request, be authorised by the Commission to apply a reduced rate to such supplies, in accordance with Articles 95 and 96.

In that case referred to in the first paragraph, Ireland shall submit a request to the Commission together with all necessary information. If the Commission has not taken a decision within three months of receiving the request, Ireland shall be deemed to be authorised to apply the proposed reduced rates.

**Article 109**

Member States which, at 1 January 1991, in accordance with Community law, were granting exemptions, with the refund of tax deductibility of the VAT paid at the preceding stage, or applying reduced rates lower than the minimum laid down in Article 12(3), may apply the reduced rate, or one of the two reduced rates, provided for in Article 12(3), to any such supplies.
**Article 110**

1. Member States which **under the terms of Article 12(3) will be, on 1 January 1993, were** obliged to increase their standard rate as **applied in force** at 1 January 1991 by more than 2% may apply a reduced rate lower than the minimum laid down in **Article 12(3)** in respect of the reduced rate to supplies **Article 96 to the supply of categories of goods and services specified in the categories set out in Annex I, Annex III.**

   Furthermore, those **The Member States referred to in the first subparagraph may also apply such a rate to restaurant services, children’s clothing, children’s footwear and housing.**

2. Member States may not **rely on paragraph 1 to introduce exemptions with refund of deductibility of the tax-VAT paid at the preceding stage on the basis of this paragraph.**

**Article 111**

**d**—Member States which, at 1 January 1991 **applied, were applying** a reduced rate to restaurant services, children’s clothing, children’s footwear **and or housing,** may continue to apply such a rate to such supplies **the supply of those goods or services.**

**Article 112**

**k**—The Portuguese Republic **Portugal may apply one of the two reduced rates provided for in the third subparagraph of Article 12(3)(a) Article 95 to restaurant services, provided that the rate is not lower than 12%.**
**Article 113**

(f)1. For the purposes of applying Article 28(2)(d), the Republic of Austria may continue to apply a reduced rate, in accordance with Articles 95 and 96, to restaurant services.

(f)2. The Republic of Austria may apply one of the two reduced rates provided for in the third subparagraph of Article 12(3)(a) Article 95 to the letting of immovable property for residential use, provided that the rate is not lower than 10%.

**Article 114**

(e) Member States which, at 1 January 1991 applied, were applying a reduced rate to supplies, the supply of goods and or services other than those specified in Annex II—Annex III may apply the reduced rate or one of the two reduced rates provided for in Article 12(3) Article 95 to such supplies, the supply of those goods or services, provided that the rate is not lower than 12%.

This provision may not apply to supplies, the supply of second-hand goods, works of art, collectors’ items or antiques, as defined in points (a) to (d) of Article 304(1), subject to value added tax VAT in accordance with one of the special arrangements—margin scheme provided for in Article 26a(B) and (C) in Articles 305 to 317 or the arrangements for sales by public auction.

**Article 115**

(g) For the purposes of applying Article 28(2)(e), the Republic of Austria may apply a reduced rate to wine from farm production carried out by the producing farmer and supplies of electrically driven vehicles wines produced on an agricultural holding by the producer–farmer, provided that the rate is not lower than 12%.
**Article 116**

(f) The Hellenic Republic—Greece—may apply VAT rates up to 30% lower than the corresponding rates applied in mainland Greece in the departments of Lesbos, Chios, Samos, the Dodecanese and the Cyclades, and on the following islands in the Aegean: Thasos, of Thassos, the Northern Sporades, Samothrace and Skiros.

**Article 117**

(h) Member States which, at 1 January 1993, were availing themselves of the option provided for in Article 5(5)(a) as in force on that date, may apply to supplies regarded as the supply of goods the rate applicable to the delivery of work under contract the rate applicable to the goods obtained after making up execution of the work under contract.

For the purposes of applying this provision, supplies under a contract to make up the first paragraph, the delivery of work under contract shall be deemed to be delivery, meaning the handing over by a contractor to his customer of movable property made or assembled by the contractor from materials or objects entrusted to him by the customer for that purpose, whether or not the contractor has provided any part of the materials used.

**Article 118**

(i) Member States may apply a reduced rate to supplies—the supply of live plants (and other floricultural products, including bulbs, roots and the like, cut flowers and ornamental foliage), and of wood for use as firewood.

(g) On the basis of a report from the Commission, the Council shall, before 31 December 1994, re-examine the provisions of subparagraphs (a) to (f) above in relation to the proper functioning of the internal market in particular. In the event of significant distortions of competition arising, the Council, acting unanimously on a proposal from the Commission, shall adopt appropriate measures.

**Chapter 5**

*Temporary provisions*
**Article 119**

(a) By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, the Czech Republic may maintain, until 31 December 2007, continue to apply a reduced rate of value added tax of not less than 5% until 31 December 2007 on a) the supply of heat energy used by households and small entrepreneurs who are not registered for VAT for heating and the production of hot water, excluding raw materials used to generate heat energy, and b) on the supply of construction work for residential housing not provided as part of a social policy, and excluding building materials to the following transactions:


**Article 120**

(a) By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Estonia may maintain, until 30 June 2007, continue to apply a reduced rate of value added tax of not less than 5% on the supply of heating sold to natural persons, housing associations, apartment associations, churches, congregations, and institutions or bodies financed from the state State, rural municipality or city budget, as well as on the supply of peat, fuel briquettes, coal and firewood to natural persons until 30 June 2007.

Article 121

1. By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Cyprus may maintain until 31 December 2007, continue to grant an exemption with refund deductibility of tax VAT paid at the preceding stage on in respect of the supply of pharmaceuticals and foodstuffs for human consumption, with the exception of ice cream, ice lollies, frozen yoghurt, water ice and similar products and savoury food products (potato crisps/sticks, puffs and similar products packaged for human consumption without further preparation), until 31 December 2007.

2. By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Cyprus may maintain until 31 December 2007, continue to apply a reduced rate of value added tax of not less than 5% on to the supply of restaurant services until 31 December 2007 or until the end of the transitional period introduction of definitive arrangements, as referred to in Article 28(1) of the Directive Article 39, whichever is the earlier.

Article 122

(a) By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Latvia may maintain until 31 December 2004, continue to grant an exemption from value added tax on with deductibility of VAT paid at the preceding stage in respect of the supply of heating sold to households until 31 December 2004.

Article 123

(a) By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Hungary may maintain continue to apply a reduced rate of not less than 12% to the following transactions:

(i) a reduced rate of value added tax of no less than 12% on the supply of coal, coal–brick and coke, firewood and charcoal, and on the supply of district heating services, until 31 December 2007, and;
(ii)(b) a reduced rate of value added tax of no less than 12% on the supply of restaurant services and of foodstuffs sold on similar premises until 31 December 2007 or until the end-introduction of the transitional period-definitive arrangements as referred to in Article 281 of the Directive Article 395, whichever is the earlier.

Article 124

1. By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Malta may maintain, until 1 January 2010, continue to grant an exemption with refund-deductibility of tax VAT paid at the preceding stage on in respect of the supply of foodstuffs for human consumption and pharmaceuticals until 1 January 2010.

Article 125

(a)1. By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Poland may (i) apply, until 31 December 2007, or until the introduction of definitive arrangements as referred to in Article 395, whichever is the earlier, grant an exemption with refund-deductibility of tax VAT paid at the preceding stage on in respect of the supply of certain books and specialist periodicals, until 31 December 2007, and (ii) maintain a reduced rate of value added tax of not less than 7% on the supply of restaurant services until 31 December 2007 or until the end of the transitional period referred to in Article 281 of the Directive, whichever is the earlier.

(a)2. By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Poland may (i), until 31 December 2007 or until the introduction of definitive arrangements as referred to in Article 395, whichever is the earlier, continue to apply an exemption with refund of tax paid at the preceding stage on the supply of certain books and specialist periodicals, until 31 December 2007, and (ii) maintain a reduced rate of value added tax of not less than 7% on to the supply of restaurant services until 31 December 2007 or until the end of the transitional period referred to in Article 281 of the Directive, whichever is the earlier.
(b)3. By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Poland may maintain (i) until 30 April 2008, continue to apply a reduced rate of value added tax of no less than 3% on to the supply of foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption, live animals, seeds, plants and ingredients normally intended for use in preparation of foodstuffs; products normally intended to be used to supplement or substitute foodstuffs; and on the supply of goods and services of a kind normally intended for use in agricultural production, but excluding capital goods such as machinery or buildings, referred to in points 1 and 10 point (1) of annex II to the Directive, until 30 April 2008, and (ii) a reduced rate of value added tax of no less than 7% on the supply of services, not provided as part of a social policy, for construction, renovation and alteration of housing, excluding building materials, and on the supply before first occupation of residential buildings or parts of residential buildings as referred to in Article 4(3)(a) of the Directive until 31 December 2007 Annex III.

(b)4. By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Poland may maintain (i) until 30 April 2008, continue to apply a reduced rate of value added tax of no less than 3% on foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption, live animals, seeds, plants and ingredients normally intended for use in preparation of foodstuffs; products normally intended to be used to supplement or substitute foodstuffs; and on the supply of goods and services of a kind normally intended for use in agricultural production, but excluding capital goods such as machinery or buildings, referred to in points 1 and 10 point (11) of annex II to the Directive, until 30 April 2008, and (ii) a reduced rate of value added tax of no less than 7% on the supply of services, not provided as part of a social policy, for construction, renovation and alteration of housing, excluding building materials, and on the supply before first occupation of residential buildings or parts of residential buildings as referred to in Article 4(3)(a) of the Directive until 31 December 2007 Annex III.

Annex XII(9)(1)
(b)
(2003 Act of Accession)
Adapted
By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Poland may maintain (i) until 31 December 2007, continue to apply a reduced rate of value added tax of no less than 3% on foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption, live animals, seeds, plants and ingredients normally intended for use in preparation of foodstuffs, products normally intended to be used to supplement or substitute foodstuffs, and on the supply of goods and services of a kind normally intended for use in agricultural production, but excluding capital goods such as machinery or buildings, referred to in points 1 and 10 of annex H to the Directive, until 30 April 2008, and (ii) a reduced rate of value added tax of no less than 7% on the supply of services, not provided as part of a social policy, for construction, renovation and alteration of housing, excluding building materials, and on the supply before first occupation of residential buildings or parts of residential buildings as referred to in Article 4(3)(a) of the Directive until 31 December 2007. Article 13(1)(a).

Article 126

By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Slovenia may maintain (i) until 31 December 2007 or until the introduction of definitive arrangements as referred to in Article 395, whichever is the earlier, continue to apply a reduced rate of value added tax of not less than 8.5% on the preparation of meals until 31 December 2007 or until the end of the transitional period referred to in Article 28l of the Directive, whichever is the earlier, and (ii) a reduced rate of value added tax of not less than 5% on the supply of construction, renovation and maintenance work for residential housing not provided as part of a social policy, and excluding building materials until 31 December 2007.

Annex XII(9)(1) (b)
(2003 Act of Accession)

Adapted

Annex XIII(6)(1) (a)
(2003 Act of Accession)

Adapted

Annex XIII(6)(1) (a)
(2003 Act of Accession)

Adapted
**Article 127**

By way of derogation from Article 12(3)(a) of Directive 77/388/EEC, Slovakia may maintain a) continue to apply a reduced rate of value added tax of not less than 5% on the supply of heat energy used by private households and small entrepreneurs who are not registered for VAT for heating and the production of hot water, excluding raw materials used to generate heat energy, until 31 December 2008, and b) a reduced rate of value added tax of not less than 5% on the supply of heat energy used by private households and small entrepreneurs who are not registered for VAT for heating and the production of hot water, excluding raw materials used to generate heat energy, until 31 December 2008, and b) a reduced rate of value added tax of not less than 5% on the supply of construction work for residential housing not provided as part of a social policy, and excluding building materials, until 31 December 2007.

**TITLE X**

**TITLE IX**

**EXEMPTIONS**

**Chapter 1**

**General provisions**

Annex XIV(7)(1), first subparagraph (2003 Act of Accession) Adapted

Annex XIV(7)(1), first subparagraph (2003 Act of Accession) Adapted

Annex XIV(7)(1), first subparagraph (2003 Act of Accession) Adapted

Title X (77/388/EEC)

Heading of Title X (77/388/EEC)
Article 128

1. Without prejudice to other Community provisions, Member States shall exempt the following under and in accordance with conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

Chapter 2

Exemptions for certain activities in the public interest

Article 129

Exemptions within the territory of the country

A. Exemptions for certain activities in the public interest

1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

(a) the supply by the public postal services of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto;

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;

(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

(d) supplies of human organs, blood and milk;

Article 13(A)(1) (77/388/EEC) Adapted

| (e) | the supply of services supplied by dental technicians in their professional capacity and the supply of dental prostheses supplied by dentists and dental technicians; |
| (f) | the supply of services supplied by independent groups of persons whose activities are carrying on an activity which is exempt from VAT or in relation to which they are not subject to value added tax, taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of their activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to produce cause distortion of competition; |
| (g) | the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other organizations recognized as charitable by the Member State concerned as being devoted to social wellbeing; |
| (h) | the supply of services and of goods closely linked to the protection of children and young persons by bodies governed by public law or by other organizations recognized as charitable organizations recognized by the Member State concerned as being devoted to social wellbeing; |
| (i) | the provision of children’s or young people’s education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, provided by bodies governed by public law having such as their aim or by other organizations defined as being devoted to social wellbeing; |
| (j) | tuition given privately by teachers and covering school or university education; |
| (k) | certain supplies the supply of staff by religious or philosophical institutions for the purpose of subparagraphs (b), (g), (h) and (i) of this Article—the activities referred to in points (b), (g), (h) and (i) and with a view to spiritual welfare; |
(l) the supply of services, and the supply of goods closely linked thereto for the benefit of their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;

(m) the supply of certain services closely linked to sport or physical education supplied by non-profit-making organisations to persons taking part in sport or physical education;

(n) the supply of certain cultural services, and the supply of goods closely linked thereto supplied, by bodies governed by public law or by other cultural bodies recognized by the Member State concerned;

(o) the supply of services and goods by organisations whose activities are exempt under the provisions of subparagraphs (b), (g), (h), (i), (l), (m) and (n) above pursuant to points (b), (g), (h), (i), (l), (m) and (n), in connection with fund-raising events organized exclusively for their own benefit, provided that exemption is not likely to cause distortion of competition;

(p) the supply of transport services for sick or injured persons in vehicles means of transport specially designed for the purpose, by duly authorised bodies;

(q) the activities of public radio and television bodies other than those of a commercial nature.

2. For the purposes of point (o) of paragraph 1, Member States may introduce any necessary restrictions, in particular as regards the number of events or the amount of receipts which give entitlement to exemption.
2. (a) Member States may make the granting to bodies other than those governed by public law of each exemption provided for in (1)(b), (g), (h), (i), (l), (m) and (n) of this Article—points (b), (g), (h), (i), (l), (m) and (n) of Article 120(1)—subject in each individual case to one or more of the following conditions:

- (a) the bodies in question must not systematically aim to make a profit, but any profits-surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied;

- (b) those bodies must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned;

- (c) those bodies must charge prices which are approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to value added tax VAT;

- (d) exemption of the services concerned shall not be likely to create distortions of competition such as to place those enterprises liable subject to value added tax VAT at a disadvantage to the disadvantage of commercial enterprises liable subject to value added tax VAT.

Article 131

(b) The supply of goods or services or goods shall not be granted exemption as provided for in (1)(b), (g), (h), (i), (l), (m) and (n) above if points (b), (g), (h), (i), (l), (m) and (n) of Article 120(1) in the following cases:

- (a) where the supply is not essential to the transactions exempted.
its where the basic purpose of the supply is to obtain additional income for the organization by carrying out body in question through transactions which are in direct competition with those of commercial enterprises liable for value added tax subject to VAT.

Chapter 3

Exemptions for other activities

Article 132

B. Other exemptions

1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse of transactions:

(a) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents;

(d)—the following transactions:

1. the granting and the negotiation of credit and the management of credit by the person granting it;

2. the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;

3. transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection and factoring;

4. transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of ‘collectors’ items’ which shall be taken to mean, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest;
transactions, including negotiation, excluding but not management and safe keeping or safekeeping, in shares, interests in companies or associations, debentures and other securities, but excluding documents establishing title to goods, and the rights or securities referred to in Article 16(2);

documents establishing title to goods,

the rights or securities referred to in Article 5(3),

the management of special investment funds as defined by Member States;

the supply at face value of postage stamps which are valid for use for postal services for postage within the territory of the country, a Member State, fiscal stamps, and other similar stamps;

betting, lotteries and other forms of gambling, subject to the conditions and limitations laid down by each Member State;

the supply of buildings or parts thereof, and of the land on which they stand, other than as described the supply referred to in Article 4(3)(a) Article 13(1)(a);

the supply of land which has not been built on other than the supply of building land as described referred to in Article 4(3)(b) Article 11(1)(b);

the leasing or letting of immovable property excluding:

The following shall be excluded from the exemption provided for in point (l) of paragraph 1:
1.(a)  the provision of accommodation, as defined in the laws of the Member States, in the hotel sector or in sectors with a similar function, including the provision of accommodation in holiday camps or on sites developed for use as camping sites;

2.(b)  the letting of premises and sites for the parking of vehicles of means of transport;

3.(c)  the letting of permanently installed equipment and machinery;

4.(d)  the hire of safes.

Member States may apply further exclusions to the scope of this exemption referred to in point (l) of paragraph 1.

**Article 133**

Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse of transactions:

(e)(a)  the supply of goods used wholly for an activity exempted under this Article or under Article 28(3)(b) when those Articles 129, 132 or 364, or under Articles 368 to 383, if those goods have not given rise to the right to deduction, or of goods on the acquisition or production of which, by virtue of Article 17(6), value added tax did not become deductible of the VAT paid at the preceding stage;
supplies of goods used wholly for an activity exempted under this Article or under Article 28(3)(b) when these goods have not given rise to the right to deduction, or the supply of goods on the acquisition or production of which, by virtue of Article 17(6), value added tax did not become deductible application of which VAT was not deductible, pursuant to Article 170.

Article 134

C. Options

1. Member States may allow taxpayers a right of option for taxation in cases respect of the following transactions:

- the financial transactions covered in B(d), (g) and (h) above referred to in points (b) to (g) of Article 120(1);
- the transactions covered in B(d), (g) and (h) above supply of a building or of parts thereof, and of the land on which the building stands, other than the supply referred to in Article 13(1)(a);
- the transactions covered in B(d), (g) and (h) above supply of land which has not been built on, other than the supply of building land as referred to in Article 13(1)(b);
- the leasing or letting and leasing of immovable property.
2. Member States may restrict the scope of this right of option and shall fix the details of its use, lay down the detailed rules governing exercise of the option under paragraph 1.

Member States may restrict the scope of this right of option and shall fix the details of its use.

Chapter 4
Exemptions for intra–Community transactions

Section 1
Exemptions related to the supply of goods

Article 28c Article 135

Exemptions

A. Exempt supplies of goods

(a)1. supplies. Member States shall exempt the supply of goods, as defined in Article 5, dispatched or transported to a destination outside their territory but within the Community, by or on behalf of the vendor or the person acquiring the goods out of the territory referred to in Article 3 but within the Community, effected for another taxable person, or for a non–taxable legal person acting as such in a Member State other than that of the departure of the in which dispatch or transport of the goods began.
2. Without prejudice to other Community provisions and subject to conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for below and preventing any evasion, avoidance or abuse—In addition to the supply of goods referred to in paragraph 1, Member States shall exempt the following transactions:

(b) the supply of means of transport, dispatched or transported to the purchaser-customer at a destination outside their territory but within the Community, by or on behalf of the vendor or the purchaser out of the territory referred to in Article 3 but within the Community, for taxable persons, or non-taxable legal persons who qualify for the derogation provided for in the second subparagraph of Article 28a(1)(a), whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 4(1), or for any other non-taxable person;

(c) the supply of goods—products subject to excise duty, dispatched or transported to a destination outside their territory but within the Community, to the purchaser-customer, by or on behalf of the vendor, by or on behalf of the purchaser or on his behalf, territory referred to in Article 3 but inside the Community, for taxable persons, or non-taxable legal persons who qualify for the derogation set out in the second subparagraph of Article 28a(1)(a), when the dispatch or transport of the goods is carried out, whose intra-Community acquisitions of goods other than products subject to excise duty are not subject to VAT pursuant to Article 4(1), where those products have been dispatched or transported in accordance with Article 7(4) and (5), or Article 16 of Directive 92/12/EEC;

(d) the supply, consisting in the transfer of goods, within the meaning of Article 28a(5)(b), which benefit from the exemptions set out above if they have to another Member State, which would have been entitled to exemption under paragraph 1 and points (a) and (b) if it had been made on behalf of another taxable person.
Article 136

1. The exemption provided for in Article 135(1) shall not apply to supplies of goods carried out by taxable persons exempt from tax pursuant to Article 24 or to supplies of goods effected for taxable persons or non-taxable legal persons who qualify for the derogation in the second subparagraph of Article 28a(1)(a) who are covered by the exemption for small enterprises provided for in Articles 277 to 280.

2. The exemption provided for in Article 135(2)(b) shall not apply to supplies of goods subject to excise duty effected by taxable persons who benefit from the exemption from tax set out for small enterprises provided for in Article 24 Articles 277 to 280.

(e) Articles 28b(B) and 28c(A)(a), (c) and (d) The exemption provided for in Article 135(1) and (2)(b) and (c) shall not apply to supplies of goods subject to value added tax in accordance with either of the special arrangements laid down in B and C the margin scheme provided for in Articles 305 to 317 or the special arrangements for sales by public auction.

(h) Articles 28b(B) and 28c(A)(a) and (d) The exemption provided for in Article 135(1) and (2)(c) shall not apply to supplies of second-hand means of transport subject to tax in accordance with (a) the transitional arrangements for second-hand means of transport.

Section 2

Exemptions for intra-Community acquisitions of goods

178
Article 137

B. — Exempt intra–Community acquisitions of goods

Without prejudice to other Community provisions and subject to conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for below and preventing any evasion, avoidance or abuse, Member States shall exempt the following transactions:

(a) the intra–Community acquisition of goods the supply of which by taxable persons would in all circumstances be exempt within the territory of the country Member State concerned;

(b) the intra–Community acquisition of goods the importation of which would in all circumstances be exempt under Article 14(1);

(c) the intra–Community acquisition of goods where, pursuant to Article 17(3) and (4) Articles 164 and 165, the person acquiring the goods would in all circumstances be entitled to full reimbursement of the value added tax due under Article 28a(1) Article 3(1)(b).

Article 138

3) — Each Member State shall take specific measures to ensure that value added tax, subject to the criteria laid down in Article 41, is not charged on the intra–Community acquisition of goods, within the meaning of Article 28b(A)(1), within its territory when, where the following conditions are met:

(a) the intra–Community acquisition of goods is made by a taxable person who is not established in the territory of the country Member State concerned but who is identified for VAT purposes in another Member State.
the intra-Community acquisition of goods is *made* for the purpose of the subsequent supply of those goods made in the Member State concerned, by a taxable person in the territory of the country referred to in point (a).

The goods so thus acquired by this taxable person referred to in point (a) are directly dispatched or transported, from a Member State other than that in which he is identified for value added tax VAT purposes, to the person for whom he effects is to carry out the subsequent supply.

The person to whom the subsequent supply is to be made is a another taxable person or a non-taxable legal person, who is identified for value added tax VAT purposes within the territory of the country Member State concerned.

The person to whom the subsequent supply is made referred to in point (d) has been designated in accordance with Article 21(1)(c) Article 190 as the person liable for payment of the tax VAT due on the supplies carried out by the taxable person who is not established within the territory of the country in the Member State in which the tax is due.

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### Section 3

**Exemptions for certain transport services**

#### C. Exempt transport services

**Article 139**

Member States shall exempt the supply of intra-Community goods transport services involved in the dispatch or transport of goods to and from the islands making up the autonomous regions of the Azores and Madeira, as well as the dispatch or transport of goods supply of goods transport services between those islands.
Chapter 5

Exemptions on importation

Article 14

Exemptions on importation

1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemption and of preventing any possible evasion, avoidance or abuse transactions:

(a) the final importation of goods of which the supply by a taxable person would in all circumstances be exempt within the country their territory;

(d)(b) the final importation of goods qualifying for exemption from customs duties other than as provided for in the Common Customs Tariff. However, Member States shall have the option of not granting exemption where this would be liable to have a serious effect on conditions of competition governed by Council Directives 69/169/EEC, 78/1035/EEC and 83/181/EEC;

(c) This exemption shall also apply to the importation of goods, within the meaning of Article 7(1)(b), in free circulation from a third territory forming part of the Community customs territory, which would be capable of benefiting from the entitled to exemption set out above if they had been imported within the meaning of Article 7(1)(a) under point (b);

D. Exempt importation of goods

Where the importation of goods dispatched or transported from a third territory or a third country and imported into a Member State other than that of arrival of which the dispatch or transport are ends, where the supply of such goods by the importer as defined in Article 21(4) designated or recognised under Article 193 as liable for payment of VAT is exempt in accordance with paragraph A under Article 135:

Member States shall lay down the conditions governing this exemption with a view to ensuring its correct and straightforward application and preventing any evasion, avoidance or abuse.

The reimportation, by the person who exported them, of goods in the state in which they were exported, where they qualify for exemption those goods are exempt from customs duties;

Importations of goods:

The importation, under diplomatic and consular arrangements, of goods which qualify for exemption are exempt from customs duties;

The importation of goods by international organizations recognized as such by the public authorities of the host country, and Member States, or by members of such organizations bodies, within the limits and under the conditions laid down by the international conventions establishing the organizations bodies or by headquarters agreements;

The importation of goods, into the territory of Member States which are parties to the North Atlantic Treaty, by the armed forces of other States which are parties to that Treaty for the use of those forces or the civilian staff accompanying them or for supplying their messes or canteens where such forces take part in the common defence effort;
Article 14(1)(g), fourth indent (inserted by Protocole No 3 to the 2003 Act of Accession)

Adapted

Article 14(1)(h) (77/388/EEC)

Adapted

Article 14(1)(j) (77/388/EEC)

Adapted

Article 14(1)(k) (inserted by 2003/92/EC)

Adapted

Article 14(1)(i) (77/388/EEC)

Adapted

Article 141

2-1. The Commission shall submit, where appropriate, present to the Council at the earliest opportunity proposals designed to lay down Community tax rules clarifying delimit the scope of the exemptions referred to in paragraph 1 provided for in Article 140 and to lay down the detailed rules for their implementation.

Until the entry into force of these rules, Member States may:

2. Pending the entry into force of the rules referred to in paragraph 1, Member States may maintain their national provisions in force on matters related to the above provisions.
Member States may adapt their national provisions so as to minimize distortion of competition and, in particular, the non-imposition, to prevent non-taxation or double imposition of value added tax within the Community.

Member States may use whatever administrative procedures they consider most appropriate to achieve exemption.

Article 14(2), second subpara-graph, second indent (77/388/EEC)

Adapted

Article 14(2), second subpara-graph, third indent (77/388/EEC)

Adapted

3. Member States shall inform to the Commission, which shall inform the other Member States, of accordingly, the measures they have adopted and are adopting pursuant to the preceding provisions of national law which are in force and those which they adopt pursuant to paragraph 2.

Article 14(2), third subpara-graph (77/388/EEC)

Adapted

Chapter 6

Exemptions on exportation

Article 15

Exemption of exports from the Community and like transactions and international transport

Article 15, introductory sentence (77/388/EEC)

Article 15, amended by 91/680/EEC

1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse transactions:

(a) the supply of goods dispatched or transported to a destination outside the Community by or on behalf of the vendor;
2. (b) the supply of goods dispatched or transported to a destination outside the Community by or on behalf of a purchaser-customer not established within the territory of the country, with the exception of goods transported by the purchaser-customer himself for the equipping, fuelling and or provisioning of pleasure boats and private aircraft or any other means of transport for private use.

12. (c) the supply of goods supplied to approved bodies which export them from out of the Community as part of their humanitarian, charitable or teaching activities outside the Community.

2. (d) the supply of services consisting of work on movable property acquired or imported for the purpose of undergoing such work within the territory of the Community, and dispatched or transported out of the Community by the person providing the services or supplier, by the customer if not established within the territory of the country or on behalf of either of them;

13. (c) the supply of services, including transport and ancillary operations, but excluding the supply of services exempted in accordance with Articles 129 and 132, where these are directly connected with the export or import of goods covered by the provisions of Article 7(3) or Article 16(1), Title-A Article 61 and Article 152(1)(a).

2. This exemption provided for in point (c) of paragraph 1 may be implemented by means of a refund of the tax VAT.

Article 143

1. In the case of Where the supply of goods referred to in Article 142(1)(b) relates to goods to be carried in the personal luggage of travellers, this the exemption shall apply on condition that only if the following conditions are met:
the traveller is not established within the Community;

the goods are transported to a destination outside the Community before the end of the third month following that in which the supply takes place;

the total value of the supply, including VAT, is more than 175 euro or the equivalent in national currency of ECU 175, fixed in accordance with Article 7(2) of Directive 69/169/EEC; however, Member States may exempt a supply with a total value of less than that amount annually by applying the conversion rate obtaining on the first working day of October with effect from 1 January of the following year.

however, Member States may exempt a supply with a total value of less than that specified in point (c) of paragraph 1.

For the purposes of applying the second subparagraph:

For the purposes of paragraph 1, ‘a traveller who is not established within the Community’ shall be taken to mean a traveller whose domicile, permanent address or habitual residence is not situated within the Community. For the purposes of this provision, ‘domicile’, ‘permanent address’ or habitual residence’ shall mean the place entered as such in a passport, identity card or other identity documents which document recognised as an identity document by the Member State within whose territory the supply takes place recognizes as valid.
proof of exportation shall be furnished by means of the invoice or other document in lieu thereof, endorsed by the customs office where the goods left of exit from the Community.

Each Member State shall transmit to the Commission specimens of the stamps it uses for the endorsement referred to in the second indent of the third subparagraph. The Commission shall transmit this information to the tax authorities in the other Member States.

Article 28k

Miscellaneous provisions

The following provisions shall apply until 30 June 1999:

1. Member States may exempt supplies by tax-free shops of goods to be carried away in the personal luggage of travellers taking intra-Community flights or sea crossings to other Member States.
For the purposes of this Article:

(b) “traveller to another Member State” shall mean any passenger holding a transport document for air or sea travel stating that the immediate destination is an airport or port situated in another Member State;

(c) “intra-Community flight or sea crossing” shall mean any transport, by air or sea, starting within the territory of the country as defined in Article 3, where the actual place of arrival is situated within another Member State.

Supplies of goods effected by tax-free shops shall include supplies of goods effected on board aircraft or vessels during intra-Community passenger transport.

This exemption shall also apply to supplies of goods effected by tax-free shops in either of two Channel Tunnel terminals, for passengers holding valid tickets for the journey between those two terminals.

2. Eligibility for the exemption provided for in paragraph 1 shall apply only to supplies of goods:

Obsolete
(a) the total value of which per person per journey does not exceed ECU 90.

By way of derogation from Article 28m, Member States shall determine the equivalent in national currency of the above amount in accordance with Article 7(2) of Directive 69/169/EEC.

Where the total value of several items or of several supplies of goods per person per journey exceeds those limits, the exemption shall be granted up to those amounts, on the understanding that the value of an item may not be split.

(b) involving quantities per person per journey not exceeding the limits laid down by the Community provisions in force for the movement of travellers between third countries and the Community.

The value of supplies of goods effected within the quantitative limits laid down in the previous subparagraph shall not be taken into account for the application of (a).

3. Member States shall grant every taxable person the right to a deduction or refund of the value added tax referred to in Article 17(2) in so far as the goods and services are used for the purposes of his supplies of goods exempt under this Article.
4. Member States which exercise the option provided for in Article 16(2) shall also grant eligibility under that provision to imports, intra-Community acquisitions and supplies of goods to a taxable person for the purposes of his supplies of goods exempt pursuant to this Article.

5. Member States shall take the measures necessary to ensure the correct and straightforward application of the exemptions provided for in this Article and to prevent any evasion, avoidance or abuse.

Chapter 7
Exemptions related to international transport

Article 144

1. Without prejudice to other Community provisions Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse of transactions:

4. the supply of goods for the fuelling and provisioning of vessels:

(a) the supply of goods for the fuelling and provisioning of vessels used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing, with the exception, in the case of vessels used for inshore fishing, of ships’ provisions;

(b) used for rescue or assistance at sea, or for inshore fishing, with the exception, for the latter, of ships’ provisions;

(c) of war as defined in subheading 89.01 A of the Common Customs Tariff, leaving the country the supply of goods for the fuelling and provisioning of fighting ships, falling within CN code 8906 10 00, leaving their territory and bound for foreign ports or anchorages outside the Member State concerned;
5-(c) the supply, modification, repair, maintenance, chartering and hiring of the sea–going vessels referred to in paragraph 4(a) and (b)—point (a), and the supply, hiring, repair and maintenance of equipment—incorporated or used therein;

8-(d) the supply of services other than those referred to in paragraph 5—point (c), to meet the direct needs of the sea–going vessels referred to in that paragraph—point (a) or of their cargoes;

7-(e) the supply of goods for the fuelling and provisioning of aircraft referred to in paragraph 1—point (g) used by airlines operating for reward chiefly on international routes;

6-(f) the supply, modification, repair, maintenance, chartering and hiring of the aircraft used by airlines operating for reward chiefly on international routes referred to in point (e), and the supply, hiring, repair and maintenance of equipment incorporated or used therein;

9-(g) the supply of services, other than those referred to in paragraph 6—point (f), to meet the direct needs of the aircraft referred to in that paragraph—point (e) or of their cargoes.

Article 145

15. the Portuguese Republic Portugal may treat sea and air transport between the islands making up the autonomous regions of the Azores and Madeira and between those regions and the mainland in the same way as international transport.

Article 146

1. The Commission shall submit, where appropriate, present to the Council as soon as possible proposals to establish Community fiscal rules specifying designed to delimit the scope of and practical arrangements for implementing the exemptions provided for in (5) to (9) Article 144 and to lay down the detailed rules for their implementation.

Article 15(5) (77/388/EEC) Adapted

Article 15(8) (77/388/EEC) Adapted

Article 15(7) (77/388/EEC) Adapted

Article 15(6) (77/388/EEC) Adapted

Article 15(9) (77/388/EEC) Adapted

Article 15(15) (inserted by Act of Accession, ES and PT) Adapted

Article 144 and to lay down the detailed rules for their implementation.

Article 15(4) second subparagraph, first sentence (replaced by 92/111/EEC) Adapted
2. Until these rules come into force of the provisions referred to in paragraph 1, Member States may limit the extent of these scope of the exemptions provided for in points (a) and (b) of Article 144.

Chapter 8

Exemptions relating to certain transactions treated as exports

Article 147

1. Without prejudice to other Community provisions Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse the following transactions:

10. supplies of goods and services:

(a) the supply of goods or services under diplomatic and consular arrangements;

(b) the supply of goods or services to international organizations recognized as such by the public authorities of the host country, Member State, and to members of such organizations, within the limits and under the conditions laid down by the international conventions establishing the organizations or by headquarters agreements;

(c) effected the supply of goods or services within a Member State which is a party to the North Atlantic Treaty and intended either for the use of the forces of other States which are parties to that Treaty or for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defence effort.
(d) the supply of goods or services to another Member State and, intended for the forces of any Member State which is a party to the North Atlantic Treaty, other than the Member State of destination itself, for the use of those forces or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defence effort.

(e) the exemptions set out in the third indent shall extend to imports by and supplies of goods and services to the armed forces of the United Kingdom stationed in the island of Cyprus pursuant to the Treaty of Establishment concerning the Republic of Cyprus, dated 16 August 1960, which are for the use of those forces or of the civilian staff accompanying them, or for supplying their messes or canteens.

This exemption—Pending the adoption of common tax rules, the exemptions provided for in the first subparagraph shall be subject to the limitations laid down by the host Member State until Community tax rules are adopted.

2. In cases where the goods are not dispatched or transported out of the country Member State in which the supply takes place, and in the case of services, the benefit of the exemption may be granted by means of a refund of the tax VAT.

Article 148

11. Member States shall exempt the supply of gold to Central Banks.

Chapter 9

Exemptions for the supply of services by intermediaries
**Article 149**

14. Member States shall exempt the supply of services supplied by brokers and other intermediaries, acting in the name and for account on behalf of another person, where they form part of the transactions specified referred to in this Article Chapters 6, 7 and 8, or of transactions carried out outside the Community.

This The exemption does referred to in the first paragraph shall not apply to travel agents who in the name and for account on behalf of the travellers, supply services which are supplied carried out in other Member States.

**Chapter 10**

Exemptions for transactions relating to international trade

**Section 1**

Customs or tax warehouses and similar arrangements

**Article 16**

Special exemptions linked to international goods traffic

1. Without prejudice to other Community provisions, Member States may, subject to the consultations provided for in Article 29, take special measures designed to relieve from value added tax all or some of the following transactions, provided that they are not aimed at final use and/or consumption and that the amount of value added tax charged at entry for home use corresponds to the amount of the tax which should have been charged had each of these transactions been taxed on import or within the territory of the country:

A. imports of goods which are intended to be placed under warehousing arrangements other than customs;
<table>
<thead>
<tr>
<th>B. supplies of goods which are intended to be:</th>
<th>Article 16(1)(B), first subparagraph (replaced by 91/680/EEC)</th>
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<tbody>
<tr>
<td>(a) produced to customs and, where applicable, placed in temporary storage;</td>
<td>Obsolete</td>
</tr>
<tr>
<td>(b) placed in a free zone or in a free warehouse;</td>
<td>Obsolete</td>
</tr>
<tr>
<td>(c) placed under customs warehousing arrangements or inward processing arrangements;</td>
<td>Obsolete</td>
</tr>
<tr>
<td>(d) admitted into territorial waters:</td>
<td>Obsolete</td>
</tr>
<tr>
<td>— in order to be incorporated into drilling or production platforms, for purposes of the construction, repair, maintenance, alteration or fitting out of such platforms, or to link such drilling or production platforms to the mainland,</td>
<td>Obsolete</td>
</tr>
</tbody>
</table>
— for the fuelling and provisioning of drilling or production platforms;

(e) placed under warehousing arrangements other than customs.

The places referred to in (a), (b), (c) and (d) shall be as defined by the Community customs provisions in force;

C. supplies of services relating to the supplies of goods referred to in B;

D. supplies of goods and of services carried out in the places listed in B and still subject to one of the arrangements specified therein;

E. supplies:
of goods referred to in Article 7(1)(a) still subject to arrangements for temporary importation with total exemption from import duty or to external transit arrangements;

of goods referred to in Article 7(1)(b) still subject to the internal Community transit procedure provided for in Article 33a;

as well as supplies of services relating to such supplies.

1. Without prejudice to other Community tax provisions, Member States may, subject to the consultations provided for in Article 29 after consulting the VAT Committee, take special measures designed to exempt all or some of the following transactions referred to in this Section, provided that they are not aimed at final use and/or consumption and that the amount of value added tax due on cessation of the arrangements or situations referred to at A to E in this Section corresponds to the amount of tax which would have been due had each of these transactions been taxed within the territory of the country:

Article 151

B.1. supplies of goods which are intended to be

Article 16(1)(E), first indent (inserted by 91/680/EEC)

Obsolete

Article 16(1)(E), second indent (inserted by 91/680/EEC)

Obsolete

Article 16(1)(E) in fine (inserted by 91/680/EEC)

Obsolete

Article 16(1) first subparagraph contained in Article 28c(E)(1) (replaced by 95/7/EC)

Adapted

Article 16(1)(B), first subparagraph, contained in Article 28c(E)(1) (replaced by 95/7/EC)
(a) produced the supply of goods which are intended to be presented to customs and, where applicable, placed in temporary storage;

(b) the supply of goods which are intended to be placed in a free zone or in a free warehouse;

(c) the supply of goods which are intended to be placed under customs warehousing arrangements or inward processing arrangements;

(d) admitted into territorial waters:

(d) the supply of goods which are intended to be admitted into territorial waters in order to be incorporated into drilling or production platforms, for purposes of the construction, repair, maintenance, alteration or fitting–out of such platforms, or to link such drilling or production platforms to the mainland.
(e) the supply of goods which are intended to be admitted into territorial waters for the fuelling and provisioning of drilling or production platforms.

2. The places referred to in (a), (b), (c) and (d) shall be as paragraph 1 shall be those defined as such by the Community customs provisions in force.

Article 16(1)(B), second subparagraph, contained in Article 28c(E)(1) (replaced by 95/7/EC)

Adapted

Article 152

1. Member States may exempt the following transactions:

A. (a) imports the importation of goods which are intended to be placed under warehousing arrangements other than customs warehousing;

Article 16(1)(A), contained in Article 28c(E)(1) (replaced by 95/7/EC)

Adapted

(e)(b) the supply of goods which are intended to be placed, within the territory of the country, under warehousing arrangements other than customs warehousing.

Article 16(1)(B), first subparagraph, point (e), first subparagraph, contained in Article 28c(E)(1) (replaced by 95/7/EC)

Adapted
2. For the purposes of this Article paragraph 1, warehouses other than customs warehouses shall be taken to be, in the case of products subject to excise duty, mean the places defined as tax warehouses by Article 4(b) of Directive 92/12/EEC and, in the case of products not subject to excise duty, the places defined as such by the Member States:

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Adapted

Article 16(1)(B), first subparagraph, point (e), second subparagraph, contained in Article 28c(E)(1) (replaced by 95/7/EC)

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for products subject to excise duty, the places defined as tax warehouses for the purposes of Article 4(b) of Directive 92/12/EEC;

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Article 16(1)(B), first subparagraph, point (e), second subparagraph, first indent, contained in Article 28c(E)(1) (replaced by 95/7/EC)

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for goods other than those subject to excise duty, the places defined as such by the Member States.

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Article 16(1)(B), first subparagraph, point (e), second subparagraph, second indent, first sentence, contained in Article 28c(E)(1) (replaced by 95/7/EC)

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However, Member States may not, however, provide for warehousing arrangements other than customs warehousing where the goods in question are intended to be supplied at the retail stage.

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Article 16(1)(B), first subparagraph, point (e), second subparagraph, second indent, second sentence, contained in Article 28c(E)(1) (replaced by 95/7/EC)
Article 153

1. Nevertheless, by way of derogation from the second subparagraph of Article 152(2), Member States may provide for such warehousing arrangements for goods intended for other than customs warehousing in the following cases:

— taxable persons for the purposes of supplies effected under the conditions laid down in Article 28k;

--(a) where the goods are intended for tax–free shops within the meaning of Article 28k, for the purposes of supplies to the supply of goods to be carried in the personal luggage of travellers taking flights or sea crossings to third territories or third countries, where those supplies are exempt pursuant to Article 15 point (b) of Article 142(1);
(b) where the goods are intended for taxable persons, for the purposes of carrying out supplies to travellers on board an aircraft or vessels during a ship in the course of a flight or sea crossing where the place of arrival is situated outside the Community.

(c) where the goods are intended for taxable persons, for the purposes of supplies effected free of tax carrying out supplies which are, exempt from VAT pursuant to Article 15, point 10 Article 147.

2. For the purposes of point (a) of paragraph 1, ‘tax–free shop’ shall mean any establishment which is situated within an airport or port and which fulfils the conditions laid down by the competent public authorities pursuant, in particular, to paragraph 5.

Article 154

C. Member States may exempt the supply of services relating to the supply of goods referred to in B Article 151, Article 152(1)(b) or Article 153±. Article 16(1)(C), contained in Article 28c(E)(1) (replaced by 95/7/EC)
**Article 155**

D. 1. **supplies of goods and of services carried out**

Member States may exempt the following transactions:

(a) in the places listed supply of goods or services carried out in the circumstances referred to in B(a), (b), (c) and (d) and still subject to Article 151(1), where one of the situations specified therein still applies within their territory;

(b) in the places listed supply of goods or services carried out in the circumstances referred to in B(e) and still subject, within the territory of the country, to Article 152(1)(b) or Article 153, where one of the situations specified therein in Article 152(1)(b) or in Article 153(1) still applies within their territory.

2. Where they exercise the option provided for in (a) for paragraph 1 in respect of transactions effected in customs warehouses, Member States shall take the measures necessary to ensure that they have defined warehousing arrangements other than customs warehousing under which the provisions in (b) to point (b) of paragraph 1 may be applied to the same transactions concerning when they concern goods listed in Annex I which Annex V and are carried out in warehouses other than customs warehouses.
**Article 156**

E. supplies Member States may exempt supply of the following goods and of services relating thereto:

(a) the supply of goods referred to in Article 7(1)(a) still subject to the first paragraph of Article 31 while they remain covered by arrangements for temporary importation with total exemption from import duty or to by external transit arrangements.

(b) the supply of goods referred to in Article 7(1)(b) still subject to the second paragraph of Article 31 while they remain covered by the internal Community transit procedure provided for referred to in Article 33a Article 269.

services relating to supplies of goods referred to under points (a) and (b).

**Article 157**

1a. Where they --Member States-- exercise the option provided for in paragraph 1, Member States this Section, they shall take the measures necessary to ensure that the intra-Community acquisitions of goods intended to be placed under one of the arrangements or in one of the situations referred to in paragraph 1(B) benefit from Article 151, Article 152(1)(b) or Article 153 is covered by the same provisions as supplies the supply of goods effected carried out within the country their territory under the same conditions.

**Article 16(1)(E), contained in Article 28c(E)(I) (replaced by 95/7/EC)**

Article 16(1)(E), first indent, contained in Article 28c(E)(I) (replaced by 95/7/EC)

Adapted

Article 16(1)(E), second indent, contained in Article 28c(E)(I) (replaced by 95/7/EC)

Adapted

Article 16(1)(E), in fine, contained in Article 28c(E)(I) (replaced by 95/7/EC)

Adapted

Article 16(1a), contained in Article 28c(E)(I) (replaced by 95/7/EC)
Article 158

When the removal of goods from cease to be covered by the arrangements or situations referred to in this paragraph gives rise to importation within the meaning of Article 7(3), the Member State of importation shall take the measures necessary to avoid double taxation within the country.

Section 2

Transactions with a view to export

Article 159

2-1. Subject to the consultation provided for in Article 29, Member States may opt to, after consulting the VAT Committee, exempt intra-Community acquisitions of goods made by a taxable person and imports for and supplies of goods to a taxable person intending to export them outside the Community as they are or after processing, as well as supplies of services linked with his export business, up to a maximum equal to the value of his exports during the preceding 12 months.

2-(a) Subject to the consultation provided for in Article 29, Member States may opt to exempt intra-Community acquisitions of goods made by a taxable person and imports for and supplies of goods to a taxable person intending to export them outside the Community as they are or after processing, as well as supplies of services linked with his export business, up to a maximum equal to the value of his exports during the preceding 12 months.

2-(b) Subject to the consultation provided for in Article 29, Member States may opt to exempt intra-Community acquisitions of goods made by a taxable person and imports for and supplies of goods to a taxable person intending to export them outside the Community as they are or after processing, as well as supplies of services linked with his export business, up to a maximum equal to the value of his exports during the preceding 12 months of the taxable person.

Article 16(1), third subparagraph, contained in Article 28c(E)(1) (replaced by 95/7/EC)

Adapted

Article 16(2), first subparagraph (amended by Article 28c(E)(2) of 92/111/EEC)

Adapted

Article 16(2), first subparagraph (amended by Article 28c(E)(2) of 92/111/EEC)

Adapted

Article 16(2), first subparagraph (amended by Article 28c(E)(2) of 92/111/EEC)

Adapted
When they take up this option the Member States shall, subject to the consultation provided for in Article 29, extend the benefit of this after consulting the VAT Committee, apply that exemption also to transactions relating to supplies carried out by the person intending to supply them, as they are or after processing, under in accordance with the conditions laid down in Article 28c(A), as well as supplies of goods to a taxable person effecting a maximum amount equal to the value of the supplies of goods under the conditions laid down in Article 28c(A) the supplies carried out by that person, in accordance with the same conditions, during the preceding twelve months.

Article 160

Member States may set a common maximum amount for transactions which they exempt pursuant to Article 159.

Section 3

Provisions common to Sections 1 and 2

Article 161

The Commission shall submit, where appropriate, to the Council at the earliest opportunity proposals concerning common arrangements for applying value added tax to the transactions referred to in paragraphs 1 and 2.

TITLE X

DEDUCTIONS

Chapter 1

Origin and scope of right of deduction
Article 17 (77/388/EEC)

Heading of Article 17 (77/388/EEC)

Origin and scope of the right to deduct

1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:
   
   (a) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;
   
   (b) value added tax due or paid in respect of imported goods;
   
   (c) value added tax due under Articles 5(7)(a) and 6(3).

3. Member States shall also grant to every taxable person the right to a deduction or refund of the value added tax referred to in paragraph 2 in so far as the goods and services are used for the purposes of:
   
   (a) transactions relating to the economic activities as referred to in Article 4(2) carried out in another country, which would be eligible for deduction of tax if they had occurred in the territory of the country;
   
   (b) transactions which are exempt under Article 14(1)(i) and under Articles 15 and 16(1)(B), (C) and (D), and paragraph 2;
(c) any of the transactions exempted under Article 13B(a) and (d), paragraphs 1 to 5, when the customer is established outside the Community or when these transactions are directly linked with goods intended to be exported to a country outside the Community.

4. The Council shall endeavour to adopt before 31 December 1977, on a proposal from the Commission and acting unanimously, Community rules laying down the arrangements under which refunds are to be made in accordance with paragraph 3 to taxable persons not established in the territory of the country.

Until such Community arrangements enter into force, Member States shall themselves determine the method by which the refund concerned shall be made. Where the taxable person is not resident in the territory of the Community, Member States may refuse the refund or impose supplementary conditions.

**Article 17(3)(c)**

(77/388/EEC) Obsolete

4. The Council shall endeavour to adopt before 31 December 1977, on a proposal from the Commission and acting unanimously, Community rules laying down the arrangements under which refunds are to be made in accordance with paragraph 3 to taxable persons not established in the territory of the country.

Until such Community arrangements enter into force, Member States shall themselves determine the method by which the refund concerned shall be made. Where the taxable person is not resident in the territory of the Community, Member States may refuse the refund or impose supplementary conditions.

**Article 17(4), first subparagraph**

(77/388/EEC) Obsolete

**Article 17(4), second subparagraph**

(77/388/EEC) Obsolete

Article 28f Article 163 Right of deduction

2. In so far as the goods and services are used for the purposes of his taxable transactions of a taxable person, the taxable person shall be entitled to deduct the following from the tax VAT which he is liable to pay:

(a) value added tax the VAT due or paid within in the territory of the country Member State in respect of supplies to him of goods or services supplied, carried out or to be supplied to him carried out by another taxable person;

**Article 17(2), contained in Article 28f(1)**

(inserted by 91/680/EEC) Adapted

**Article 17(2)(a), contained in Article 28f(1)**

(replaced by 95/7/EC) Adapted
(c)(b) value added tax—the VAT due in respect of transactions treated as supplies of goods or services pursuant to Articles 5(7)(a), 6(3) and 28a(6) Articles 19(a), 22, 23 or 28;

(d)(c) value added tax—the VAT due in respect of intra–Community acquisitions of goods pursuant to Article 19(a), 22, 23 or 28 or Article 17(2)(c), contained in Article 28f(1) (inserted by 91/680/EEC) Adapted

(b)(d) value added tax—the VAT due or paid in respect of imported goods within the territory of the country Member State;

Article 164

3. Member States shall also grant every taxable person the right to deduct or refund the value added tax referred to in paragraph 2—Article 163, or to obtain a refund of that VAT, in so far as the goods and services are used for the purposes of the following:

(a) transactions relating to the economic activities referred to in Article 4(2) the second subparagraph of Article 10(1), carried out in another country, which outside the Member State, in respect of which VAT would be deductible if they had been performed carried out within the territory of the country that Member State;
transactions which are exempt under Article 14(1)(g) and (i) and under Articles 15, 16(1)(B) and (C), and paragraph 2 pursuant to Articles 135 or 139, point (1) of Article 140, Articles 142 to 145, Articles 147, 148, 149 or 151, Article 152(1)(b), Articles 153 to 156 or Article 159;

Article 135 or 139, point (1) of Article 140, Articles 142 to 145, Articles 147, 148, 149 or 151, Article 152(1)(b), Articles 153 to 156 or Article 159;

Article 17(3)(b), contained in Article 28f(1) (replaced by Protocol No 3 to the 2003 Act of Accession)

any of the transactions which are exempt pursuant to Article 13(B)(a) and (d)(1) to (5), when Article 132(1)(a) to (f), where the customer is established outside the Community or when those transactions are relate directly linked with to goods to be exported to a country outside out of the Community.

Article 17(3)(b), contained in Article 28f(1) (replaced by Protocol No 3 to the 2003 Act of Accession)

Article 17(3)(c), contained in Article 28f(1) (inserted by 91/680/EEC)

Article 17(4), first subparagraph, contained in Article 28f(1) (inserted by 91/680/EEC)

For the purpose of applying the above:

Article 17(4), first subparagraph, first indent, contained in Article 28f(1) (inserted by 91/680/EEC)

VAT shall be refunded to taxable persons who are not established within in the territory of the country Member State concerned, but who are established in another Member State, in accordance with the detailed implementing rules laid down in Directive 79/1072/EEC.

Article 17(4), first subparagraph, first indent, contained in Article 28f(1) (inserted by 91/680/EEC)

Adapted

Adapted

The taxable persons referred to in Article 1 of Directive 79/1072/EEC shall also, for the purposes of applying that Directive, be considered for the purpose of applying the said Directive regarded as taxable persons who are not established in the country when, inside the territory of the country, in that Member State concerned where, in that Member State, they have only carried out supplies—the supply of goods and/or services only to a person who has been designated in accordance with Articles 187, 188 or 190 as the person liable to pay the tax in accordance with Article 21(1)(a) and (c) for payment of VAT.

VAT shall be refunded to taxable persons who are not established within the territory of the Community in accordance with the detailed implementing rules laid down in Directive 86/560/EEC.

The taxable persons referred to in Article 1 of Directive 86/560/EEC shall also be considered, for the purposes of applying the said Directive, be regarded as taxable persons who are not established in the Community when, inside the territory of the country, where, in the Member State concerned, they have only carried out supplies—the supply of goods and/or services only to a person who has been designated in accordance with Articles 187, 188 or 190 as the person liable to pay the tax in accordance with Article 21(1)(a) for payment of VAT.

Directives 79/1072/EEC and 86/560/EEC shall not apply to supplies—the supply of goods which are is, or may be, exempted under Article 28c(A) when pursuant to Article 135 where the goods thus supplied are dispatched or transported by or on behalf of the acquirer or for his account person acquiring the goods.

Article 166

The Member State within the territory of which the supply is effected shall grant the taxable person the right of deduction on the basis of the following provisions:
Any person who is regarded as a taxable person by reason of the fact that he supplies, on an occasional basis, a new means of transport in accordance with the conditions specified in Article 135(2)(a) shall be authorised, in the Member State in which the supply takes place, to deduct the value added tax included in the purchase price or paid on in respect of the importation or the intra-Community acquisition of the means of transport, up to an amount not exceeding the amount of VAT for which he would be liable if the supply were not exempt.

A right of deduction shall arise and may be exercised only at the time of the supply of the new means of transport.

Member States shall lay down detailed rules for the implementation of these provisions, paragraph 1.

Chapter 2

Proportional deduction

As regards goods and services to be used by a taxable person both for transactions covered by paragraphs 2 and 3, in respect of which value added tax is deductible pursuant to Articles 163 and 164, and for transactions in respect of which value added tax is not deductible, only such proportion of the value added tax shall be deductible as is attributable to the former transactions.

The deductible proportion shall be determined, in accordance with Articles 168 and 169, for all the taxable transactions carried out by the taxable person.
However, Member States may take the following measures:

(a) authorize the taxable person to determine a proportion for each sector of his business, provided that separate accounts are kept for each sector;

(b) compel the taxable person to determine a proportion for each sector of his business and to keep separate accounts for each sector;

(c) authorize or compel the taxable person to make the deduction on the basis of the use made of all or part of the goods and services;

(d) authorize or compel the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph of paragraph 1, in respect of all goods and services used for all transactions referred to therein;

(e) provide that, where the value added tax which is not deductible by the taxable person is insignificant, it shall be treated as nil.

Article 17(5), third subpara-graph (77/388/EEC)

Article 17(5), third subpara-graph, point (a) (77/388/EEC)

Adapted

Article 17(5), third subpara-graph, point (b) (77/388/EEC)

Adapted

Article 17(5), third subpara-graph, point (c) (77/388/EEC)

Adapted

Article 17(5), third subpara-graph, point (d) (77/388/EEC)

Adapted

Article 17(5), third subpara-graph, point (e) (77/388/EEC)

Adapted

Article 19 (77/388/EEC)

Heading of Article 19 (77/388/EEC)
1. The deductible proportion deductible under the first subparagraph of Article 17(5) shall be made up of a fraction comprising the following amounts:

-(a) as numerator, the total amount, exclusive of value added tax VAT, of turnover per year attributable to transactions in respect of which value added tax VAT is deductible under Article 17(2) and (3) pursuant to Articles 163 and 164;

-(b) as denominator, the total amount, exclusive of value added tax VAT, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which value added tax VAT is not deductible.

The In addition to the amount referred to in point (b) of the first subparagraph, Member States may also include in the denominator the amount of subsidies, other than those specified in Article 11A(1)(a) directly linked to the price of supplies of goods or services.

2. By way of derogation from the provisions of paragraph 1, the following amounts shall be excluded from the calculation of the deductible proportion, amounts of turnover attributable to the supplies of capital goods used by the taxable person for the purposes of his business:

2-(a) By way of derogation from the provisions of paragraph 1, there shall be excluded from the calculation of the deductible proportion, amounts—the amount of turnover attributable to the supplies of capital goods used by the taxable person for the purposes of his business;

(b) Amounts—the amount of turnover attributable to transactions specified in Article 13B(d), in so far as these are incidental transactions, and to incidental real estate and financial transactions shall also be excluded.

(c) Amounts—the amount of turnover attributable to the transactions specified in Article 13B(d), points (b) to (g) of Article 132(1) in so far as these transactions are incidental transactions, and to incidental real estate and financial transactions shall also be excluded.
Where Member States exercise the option provided under Article 20(5) not to require adjustment in respect of capital goods, they may include disposals of capital goods in the calculation of the deductible proportion.

**Article 169**

1. The deductible proportion shall be determined on an annual basis, fixed as a percentage and rounded up to a figure not exceeding the next unit whole number.

2. The provisional proportion for a year shall be that calculated on the basis of the preceding year’s transactions. In the absence of any such transactions to refer to, or where they were insignificant in amount, the deductible proportion shall be estimated provisionally, under the supervision of the tax authorities, by the taxable person from the basis of his own forecasts.

However, Member States may retain their current the rules in force at 1 January 1979 or, in the case of the Member States which acceded to the Community after that date, on the date of their accession.

3. Deductions made on the basis of such provisional proportions shall be adjusted when the final proportion is fixed during the next following year.

**Chapter 3**

Restrictions on the right of deduction

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Article 19(2), third sentence (77/388/EEC)

Article 19(1), second subparagraph (77/388/EEC)

Adapted

Article 19(3), first subparagraph, first and second sentences (77/388/EEC)

Adapted

Article 19(3), first subparagraph, third sentence (77/388/EEC)

Adapted

Article 19(3), second subparagraph (77/388/EEC)

Adapted
Article 170

6. Before a period of four years at the latest has elapsed from the date of entry into force of this Directive, the Council, acting unanimously on a proposal from the Commission, shall decide what expenditure in respect of which VAT shall not be eligible for a deduction of value added tax. Value added tax deductible. VAT shall in no circumstances be deductible on expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Until the above rules come into force, Member States may retain all the exclusions provided for under their national laws when this Directive comes into force either at 1 January 1979 or, in the case of the Member States which acceded to the Community after that date, on the date of their accession.

Article 171

7. Subject to the consultation provided for in Article 29, each Member State may, for cyclical economic reasons, totally or partly exclude all or some capital goods or other goods from the system of deductions.

To maintain identical conditions of competition, Member States may, instead of refusing deduction, tax the goods manufactured by the taxable person himself or goods which he has purchased in the country or imported, in such a way that the tax does not exceed the value added tax amount of VAT which would have been charged on the acquisition of similar goods.

Chapter 4

Rules governing exercise of the right to deduct

Article 172

Rules governing the exercise of the right to deduct
1. To exercise his right to deduct, the taxable person must:

(a) in respect of deductions under Article 17(2)(a), hold an invoice, drawn up in accordance with Article 22(3);

(b) in respect of deductions under Article 17(2)(b), hold an import document, specifying him as consignee or importer, and stating or permitting calculation of the amount of tax due;

(c) in respect of deductions under Article 17(2)(c), comply with the formalities established by each Member State;

(d) when he is required to pay the tax as a customer or purchaser where Article 21(1) applies, comply with the formalities laid down by each Member State.

1. In order to exercise his right of deduction, a taxable person must meet the following conditions:

(a) in respect for the purposes of deductions pursuant to Article 17(2)(a), Article 163(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Article 22(3) Articles 211 to 229 and Articles 231, 232 and 233;

(e)(b) in respect for the purposes of deductions pursuant to Article 17(2)(c), Article 163(b), in respect of transactions treated as the supply of goods or service, he must comply with the formalities established as laid down by each Member State;
(c) in respect for the purposes of deductions pursuant to Article 17(2)(d), in respect of the intra–Community acquisition of goods, he must set out in the declaration VAT return provided for in Article 22(4)–Article 242 all the information needed for the amount of the tax VAT due on his intra–Community acquisitions of goods to be calculated and he must hold an invoice drawn up in accordance with Article 22(3) Articles 211 to 229;

(d) in respect for the purposes of deductions pursuant to Article 17(2)(b), in respect of the importation of goods, he must hold an import document specifying him as consignee or importer, and stating or permitting the calculation of the amount of tax VAT due or enabling that amount to be calculated;

(e) when he is required to pay the tax VAT as a customer or purchaser where Article 21(1) applies, Articles 187 to 190 or Article 192 apply, he must comply with the formalities as laid down by each Member State;

**Article 173**

2. The taxable person shall effect the deduction by subtracting from the total amount of the tax VAT due for a given tax period the total amount of the tax VAT in respect of which, during the same period, the right to deduct has arisen and can be exercised under the provisions of paragraph 1 in accordance with Article 172.

However, Member States may require that as regards taxable persons who carry out occasional transactions, as defined in Article 4(3), the right to deduct shall be exercised Article 13, exercise their right of deduction only at the time of the supply.

Article 18(1)(e), contained in Article 28f(2) (inserted by 91/680/EEC)

Adapted

Article 18(1)(b), contained in Article 28f(2) (inserted by 91/680/EEC)

Adapted

Article 18(1)(d), contained in Article 28f(2) (inserted by 91/680/EEC and amended by 2000/65/EC)

Adapted

Article 18(2), first subparagraph (77/388/EEC)

Adapted

Article 18(2), second subparagraph (77/388/EEC)

Adapted
**Article 174**

3. Member States shall determine the conditions and procedures whereby a taxable person may be authorised to make a deduction which he has not made in accordance with the provisions of paragraphs 1 and 2 Articles 172 and 173.

**Article 175**

3a. Member States may authorise a taxable person who does not hold an invoice drawn up in accordance with Article 22(3) Articles 211 to 222 and Articles 231, 232 and 233 to make the deduction referred to in Article 17(2)(d) Article 163(c) in respect of his intra–Community acquisitions of goods.

**Article 176**

they shall determine the conditions and arrangements for applying this provision Articles 174 and 175.

**Article 177**

4. Where, for a given tax period, the amount of authorised deductions exceeds the amount of tax due, the Member States may, in accordance with conditions which they shall determine, either make a refund or carry the excess forward to the following period according to conditions which they shall determine.

However, Member States may refuse to refund or carry forward if the amount of the excess is insignificant.
Chapter 5
Adjustment of deductions

Article 20
Article 178

Adjustments of deductions

(a) The initial deduction shall be adjusted where that deduction was higher or lower than that to which the taxable person was entitled.

Article 179

(b)1. Adjustment shall, in particular, be made where, after the return is made, some change occurs in the factors used to determine the amount to be deducted, in particular for example where purchases are cancelled or price reductions are obtained.

2. By way of derogation from paragraph 1, no adjustment shall not be made in cases of transactions remaining totally or partially unpaid and or in the case of destruction, loss or theft of property duly proved or confirmed, nor or in the case of applications goods reserved for the purpose of making gifts of small value and or of giving samples specified as referred to in Article 5(6) Article 17.

However, Member States may require adjustment in cases of transactions remaining totally or partially unpaid and or in the case of theft, Member States may require adjustment to be made.

Article 180

1. The initial deduction shall be adjusted according to the procedures laid down by the Member States, in particular shall lay down the detailed rules for applying Articles 178 and 179.
**Article 181**

2-1. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured.

By way of derogation from the preceding subparagraph, Member States may, however, base the adjustment on a period of five full years starting from the time at which the goods are first used.

In the case of immovable property acquired as capital goods, the adjustment period may be extended up to 20 years.

2. The annual adjustment shall be made only in respect of one-fifth of the tax imposed VAT charged on the capital goods, or, if the reference period has been extended, in respect of the corresponding fraction thereof.

The adjustment referred to in the first subparagraph shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired or manufactured or used.

**Article 182**

3-1. In the case of supply of capital goods acquired as capital goods shall be regarded as if they had still been applied for business use by an economic activity of the taxable person up until expiry of the period of adjustment.

**Article 20(2), first subparagraph, first sentence** (77/388/EEC)

**Article 20(2), second subparagraph** (77/388/EEC)

Adapted

**Article 20(2), third subparagraph** (replaced by 95/7/EC)

Adapted

**Article 20(3), first subparagraph, first sentence** (77/388/EEC)

Adapted
Such business activities are presumed to be fully taxed in cases where the delivery of the said capital goods is taxed; they are presumed to be fully exempt where the delivery is exempt.

Such business activities are presumed to be fully taxed in cases where the delivery of the said goods is taxed; they are presumed to be fully exempt in cases where the delivery of the capital goods is exempt.

2. The adjustment provided for in paragraph 1 shall be made only once for in respect of all the time covered by the whole period of adjustment still to be covered. However, in the latter case where the supply of capital goods is exempt, Member States may waive the requirement for adjustment in so far as the purchaser is a taxable person using the capital goods in question solely for transactions in respect of which value added tax is deductible.

Article 183

4. For the purposes of applying the provisions of paragraphs 2 and 3 of Articles 181 and 182, Member States may take the following measures:

(a) define the concept of capital goods;

(b) indicate the amount of the tax which is to be taken into consideration for adjustment;

(c) adopt any suitable measures with a view to ensuring that adjustment does not give rise to any unjustified advantage;

(d) permit administrative simplifications.
Article 184

5. If, in any Member State, the practical effect of applying paragraphs 2 and 3 would be insignificant, Articles 181 and 182 is negligible, that Member State may subject to the consultation provided for in Article 29 forego application of these paragraphs having regard to the need to avoid distortion of competition, after consulting the VAT Committee, refrain from applying those provisions, having regard to the overall tax effect impact of VAT in the Member State concerned and the need for due economy of administration administrative simplification, and provided that no distortion of competition thereby arises.

Article 20(5)
(77/388/EEC) Adapted

Article 185

6. Where the a taxable person transfers from being taxed in the normal way to a special scheme or vice versa, Member States may take all necessary measures necessary to ensure that the taxable person neither benefits nor is prejudiced unjustifiably does not enjoy unjustified advantage or sustain unjustified harm.

Title XII

Title XI

Persons liable for payment for taxobligations of taxable persons and certain non-taxable persons

Chapter 1

Obligation to pay

Section 1

Persons liable for payment of VAT to the tax authorities

Article 21

Persons liable to pay tax to the authorities

Article 20(6)
(77/388/EEC) EN amended

Title XII
(77/388/EEC) Adapted

Heading of Article 21
(77/388/EEC)
The following shall be liable to pay value added tax:

1. under the internal system:

   (a) taxable persons who carry out taxable transactions other than those referred to in Article 9(2)(e) and carried out by a taxable person resident abroad. When the taxable transaction is effected by a taxable person resident abroad Member States may adopt arrangements whereby tax is payable by someone other than the taxable person residing abroad. Inter alia a tax representative or other person for whom the taxable transaction is carried out may be designated as such other person. The Member States may also provide that someone other than the taxable person shall be held jointly and severally liable for payment of the tax;

   (b) taxable persons to whom services covered by Article 9(2)(e) are supplied or persons who are identified for value added tax purposes within the territory of the country to whom services covered by Article 28b(C), (D), (E) and (F) are supplied, if the services are carried out by a taxable person established abroad; however, Member States may require that the supplier of services shall be held jointly and severally liable for payment of the tax;

   (c) any person who mentions the value added tax on an invoice or other document serving as invoice;

2. on importation: the person or persons designated or accepted as being liable by the Member States into which the goods are imported.
Article 28g

Persons liable for payment of the tax

Article 21, contained in Article 28g
(replaced by 2000/65/EC)

Persons liable for payment for tax

Article 21(1), contained in Article 28g
(replaced by 2000/65/EC)

1. Under the internal system, the following shall be liable to pay value added tax:

(a) the VAT shall be payable by any taxable person carrying out the a taxable supply of goods or of services, except for in the cases referred to in (b), (c) and (f) Articles 187 to 191.

Article 28g (inserted by 91/680/EEC)

Heading of Article 28g (inserted by 91/680/EEC)

Article 21, contained in Article 28g (replaced by 2000/65/EC)

Heading of Article 21, contained in Article 28g (replaced by 2000/65/EC)

Article 21(1), contained in Article 28g (replaced by 2000/65/EC)

Article 21(1)(a), first subparagraph, contained in Article 28g (replaced by 2003/92/EC)

Adapted
**Article 187**

Where the taxable supply of goods or of services is effects-carried out by a taxable person who is not established within the territory of the country in which the VAT is due, Member States may, under conditions determined by them, lay down that the person liable to pay tax for payment of VAT is the person for whom the taxable supply of goods or of services is carried out.

**Article 188**

(f) VAT shall be payable by any person who are-is identified for value added tax purposes within the territory of the country and to whom goods are supplied under circumstances specified in Articles 39 or 40, if the supplies are carried out by a taxable person not established within the territory of the country.

**Article 189**

(b) VAT shall be payable by any taxable person to whom the services covered by Article 28b(C), (D), (E) and (F)-Articles 41, 44, 46, 47, 50 and 51 are supplied, if the services are supplied by a taxable person not established within the territory of the country in that Member State.
**(c) 1.** VAT shall be payable by the person to whom the supply of goods is made are supplied when the following conditions are met:

- *(a)* the taxable operation transaction is a supply of goods made under carried out in accordance with the conditions laid down in Article 28c(E)(3) Article 138;

- *(b)* the person to whom the supply of goods is made are supplied is another taxable person, or a non–taxable legal person, identified for the purposes of value added tax within the territory of the country VAT purposes in the Member State in which the supply is carried out and in which the supplier is not identified for VAT purposes;

- *(c)* the invoice issued by the taxable person not established within in the territory of the country conforms to Article 22(3) Member State of the person to whom the goods are supplied is drawn up in accordance with Articles 211 to 222;
2. However, where a tax representative is appointed as the person liable for payment of VAT pursuant to Article 196, Member States may provide for a derogation from this obligation, where the taxable person who is not established within the territory of the country has appointed a tax representative in that country paragraph 1.

Article 191

F. Reverse charge procedure

By way of derogation from Article 21(1)(a), as amended by Article 28g, in the case of supplies of—where gold material or semi-manufactured products of a purity of 325 thousandths or greater, or supplies of investment gold where an option referred to in C of this Article has been exercised is supplied by a taxable person exercising one of the options under Articles 340, 341 and 342, Member States may designate the purchaser–customer as the person liable to pay the tax according to the procedures and conditions which they shall lay down for payment of VAT.

By way of derogation from Article 21(1)(a), as amended by Article 28g, in the case of supplies of gold material or semi-manufactured products of a purity of 325 thousandths or greater, or supplies of investment gold where an option referred to in C of this Article has been exercised, Member States may designate the purchaser as the person liable to pay the tax according to the procedures and conditions which they shall lay down for implementation of the first paragraph.

Article 192

(e) VAT shall be payable by any person effecting a taxable intra–Community acquisition of goods.

Article 21(1)(e), second subparagraph, contained in Article 28g (replaced by 2000/65/EC)

Adapted

Heading of Article 26b(F) (inserted by 98/80/EC)

Article 26b(F), first sentence (inserted by 98/80/EC)

Adapted

Article 26b(F), first sentence (inserted by 98/80/EC)

Adapted

Article 21(1)(e), contained in Article 28g (replaced by 2000/65/EC)

Adapted
**Article 193**

4. On importation, value added tax VAT shall be payable by the person or persons designated or accepted recognised as being liable by the Member State into which the goods are imported of importation.

**Article 194**

By way of derogation from the first subparagraph of Article 21(1)(a), VAT shall be payable by the person liable to pay the tax due in accordance with the first subparagraph shall be the person who causes the goods to cease to be-covered by the arrangements or situations listed in Articles 151, 152, 153, 155 and 156 to cease to be so covered.

**Article 195**

(d) VAT shall be payable by any person who mentions enters the value added tax VAT on an invoice.

**Article 196**

2. By way of derogation from the provisions of paragraph 1:
1. Where, pursuant to Articles 186 to 189 and Article 191, the person liable to pay tax in accordance with the provisions of paragraph 1 for payment of VAT is a taxable person who is not established within the territory of the country in which the VAT is due, Member States may allow him to appoint a tax representative as the person liable to pay tax for payment of the VAT.

2. Furthermore, where the taxable transaction is carried out by a taxable person who is not established within the territory of the country in which the VAT is due and no legal instrument exists, with the country in which that taxable person is established or has his seat, relating to mutual assistance similar in scope to that laid down by Directives provided for in Council Directive 76/308/EEC and 77/799/EEC and by Council Regulation (EEC) No 218/92, of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) (EC) No 1798/2003. Member States may take steps to provide that the person liable for payment of the tax shall be a tax representative appointed by the non-established taxable person.

10. Article 21(2)(b) shall be subject to the conditions and procedures laid down by each Member State.


**Article 197**

3. In the situations referred to in paragraphs 1 and 2, Articles 186 to 189 and Articles 191, 194 and 195, Member States may provide that someone other than the person liable for payment of VAT is to be held jointly and severally liable for payment of the tax.

**Article 198**

5. Every taxable person shall pay the net amount of the value added tax when submitting the regular VAT return provided for in Article 242. Member States may, however, set a different date for the payment of that amount or may demand interim payments to be made.

**Article 199**

7. Member States shall take the measures necessary to ensure that those persons who, in accordance with Article 21(1) and (2), Articles 187 to 190 and Article 196, are considered to be regarded as liable to pay the tax instead of a taxable person not established within the territory of the country in their territory comply with the payment obligations relating to declaration and payment set out in this Article.

Member States shall also take the measures necessary to ensure that those persons who, in accordance with Article 21(3), Article 197, are held to be jointly and severally liable for payment of the tax, comply with the payment obligations relating to payment set out in this Article.
**Article 200**

When they, if, in the case of gold material, semi-manufactured products of a purity of 325 thousandths or greater, or investment gold, Member States exercise the option, Member States of designating the customer as the person liable for payment of VAT, they shall take the measures necessary to ensure that the person designated as liable for the tax due fulfils the payment obligations to submit a statement and to pay the tax in accordance with Article 22 set out in this Section.

**Article 201**

10. Member States shall take the measures necessary to ensure that non-taxable legal persons who are liable for the tax payable payment of VAT due in respect of intra-Community acquisitions of goods, covered by the first subparagraph of Article 28a(1)(a), as referred to in Article 3(1)(b)(i), comply with the above payment obligations relating to declaration and payment and that they are identified by an individual number as defined in paragraph 1(e), (d) and (e) set out in this Section.

**Article 202**

11. In the case of intra-Community acquisitions of products subject to excise duty referred to in Article 28a(1)(c) as well as in the case of intra-Community acquisitions of new means of transport covered by Article 28a(1)(b), Member States shall adopt arrangements for declaration and subsequent payment of VAT on intra-Community acquisitions of new means of transport, as referred to in Article 3(1)(b)(ii), and on intra-Community acquisitions of products subject to excise duty, as referred to in Article 3(1)(b)(iii).

**Article 203**

As regards imported goods, Member States shall lay down the detailed rules for payment in respect of the making of the declarations and payments on importation of goods.
In particular, Member States may provide that, in the value added tax payable on the case of the importation of goods by taxable persons or certain categories thereof, or by persons liable to tax for payment of VAT or certain categories of these two thereof, the VAT due by reason of the importation need not be paid at the time of importation, on condition that the tax is entered as such in the VAT return to be submitted under Article 22(4) in accordance with Articles 242 and 243.

Article 204

(c) Member States may release taxable persons from payment of the tax-VAT due where the amount involved is insignificant.

TITLE XIII

OBLIGATIONS OF PERSONS LIABLE FOR PAYMENT

Article 22

Obligations under the internal system

1. Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

2. Every taxable person shall keep accounts in sufficient detail to permit application of the value added tax and inspection by the tax authority.
3. (a) Every taxable person shall issue an invoice, or other
document serving as invoice in respect of all goods and
services supplied by him to another taxable person, and
shall keep a copy thereof.

(b) Every taxable person shall likewise issue an invoice in
respect of payments on account made to him by another
taxable person before the supply of goods or services is
effected or completed.

(c) The invoice shall state clearly the price exclusive of tax and
the corresponding tax at each rate as well as any
exemptions.

The Member States shall determine the criteria for
considering whether a document serves as an invoice.

4. Every taxable person shall submit a return within an interval to be
determined by each Member State. This interval may not exceed
two months following the end of each tax period. The tax period
may be fixed by Member States as a month, two months, or a
quarter. However, Member States may fix different periods
provided that these do not exceed a year.

The return must set out all the information needed to calculate the
tax that has become chargeable and the deductions to be made,
including, where appropriate, and in so far as it seems necessary
for the establishment of the tax basis, the total amount of the
transactions relative to such tax and deductions, and the total
amount of the exempted supplies.

5. Every taxable person shall pay the net amount of the value added
tax when submitting the return. The Member States may,
however, fix a different date for the payment of the amount or
may demand an interim payment.

6. Member States may require a taxable person to submit a
statement, including the information specified in paragraph 4, and
concerning all transactions carried out the preceding year. This
statement must provide all the information necessary for any
adjustments.

Article 22(3)(a), first subparagraph
(77/388/EEC)
Obsolete

Article 22(3)(a), second subparagraph
(77/388/EEC)
Obsolete

Article 22(3)(b)
(77/388/EEC)
Obsolete

Article 22(3)(c)
(77/388/EEC)
Obsolete

Article 22(4), first subparagraph
(77/388/EEC)
Obsolete

Article 22(4), second subparagraph
(77/388/EEC)
Obsolete

Article 22(5)
(77/388/EEC)
Obsolete

Article 22(6)
(77/388/EEC)
Obsolete
7. Member States shall take the necessary measures to ensure that those persons who, in accordance with Article 21(1)(a) and (b), are considered to be liable to pay the tax instead of a taxable person established in another country or who are jointly, and severally liable for the payment, shall comply with the above obligations relating to declaration and payment.

8. Without prejudice to the provisions to be adopted pursuant to Article 17(4), Member States may impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of fraud.

9. Member States may release taxable persons:

   — from certain obligations,

   — from all obligations where those taxable persons carry out only exempt transactions,

   — from the payment of the tax due where the amount is insignificant.

Chapter 2
Identification

Article 28h

Obligations of persons liable for payment
Obligations under the internal system

1. **(a)** Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

   Member States shall, subject to conditions which they lay down, allow the taxable person to make such statements by electronic means, and may also require that the statement to be made by electronic means are used, in accordance with conditions which they lay down.

   **(b)** Without prejudice to **(a)** the first subparagraph of paragraph 1, every taxable person referred to in Article 28a(1)(a), second subparagraph, shall or non–taxable legal person who makes intra–Community acquisitions of goods which are not subject to VAT pursuant to Article 4(1) must state that he is effecting intra–Community–makes such acquisitions of goods when–if the conditions for application of the derogation provided for, laid down in that Article are–provision, for not making such transactions subject to VAT cease to be fulfilled.

2. **(c)** Member States shall take the measures necessary to identify by means of an individual number:

   **Article 206**

   1. **(c)** Member States shall take the measures necessary to identify by means of an individual number:
(a) every taxable person, with the exception of those referred to in Article 28a(4), Article 10(2), who within the territory of the country carries out supplies of goods or of services giving him the right of deduction on which VAT is deductible, other than supplies of goods or of services for which tax VAT is payable solely by the customer or the recipient or the person for whom the goods or services are intended, in accordance with Articles 21(1)(a), (b), (c) or (f), Articles 187 to 190.

(b) every taxable person referred to in paragraph 1(b), or non-taxable legal person, who makes intra-Community acquisitions of goods subject to VAT pursuant to Article 3(1)(b) and every taxable person or non-taxable legal person who exercises the option provided for in the third subparagraph of Article 28a(1)(a) under Article 4(3) of making their intra-Community acquisitions subject to VAT;

(c) every taxable person who, within the territory of the country, makes intra-Community acquisitions of goods for the purposes of his operations relating to the economic activities referred to in Article 4(2), the second subparagraph of Article 10(1) and which are carried out abroad outside that territory.

2. However, Member States need not identify certain taxable persons referred to in Article 4(3) who carry out transactions on an occasional basis, as referred to in Article 13.
Article 207

(d) Each individual identification number shall have a prefix in accordance with ISO International Standard No. code 3166 – alpha 2 – by which the Member State of issue may be identified.

Article 22(1)(d), first sentence, contained in Article 28h (inserted by 91/680/EEC)
Adapted

Nevertheless, the Hellenic Republic shall be authorised to Greece may use the prefix ‘EL’.

Article 22(1)(d), second sentence, contained in Article 28h (inserted by 2001/115/EC)
Adapted

Article 208

(e) Member States shall take the measures necessary to ensure that their identification systems distinguish the taxable persons referred to in (e) Article 206 to be identified and thus to ensure the correct application of the transitional arrangements for the taxation of intra-Community transactions, as laid down in this Title referred to in Article 395.

Article 22(1)(e), contained in Article 28h (inserted by 91/680/EEC)
Adapted

Chapter 3
Invoicing
Section 1
Concept of invoice
**Article 209**

For the purposes of this Directive, Member States shall accept documents or messages in electronic form as invoices if they meet the conditions laid down in this paragraph Chapter.

**Article 210**

Any document or message that amends and refers specifically and unambiguously to the initial invoice is to be treated as an invoice.

**Section 2**

**Issue of invoices**

**Article 211**

3. (a) Every taxable person shall ensure that, in respect of the following, an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of goods or services which he has supplied or rendered to another taxable person or to a non-taxable legal person.
| 3 (1) | (a)—Every taxable person shall ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of the supplies of goods or services which he has supplied or rendered made to another taxable person or to a non–taxable legal person. |
|       | Article 22(3)(a), first subparagraph, first sentence, contained in Article 28h (replaced by 2001/115/EC) |
| 2     | Every taxable person shall also ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of the supplies of goods as referred to in Article 28b(B)(1) and in respect of goods supplied under the conditions laid down in Article 28c(A) Article 34; |
| 3     | Every taxable person shall also ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of the supplies of goods referred to in Article 28b(B)(1) and in respect of goods supplied under carried out in accordance with the conditions laid down specified in Article 28c(A) Article 135; |
| 4     | Every taxable person shall likewise ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of any payment on account made to him before any one of the supplies of goods referred to in the first subparagraph points (1), (2) and in respect of any payment on account made to him by another taxable person or non–taxable legal person before the provision of services is completed (3) was carried out; |
|       | Article 22(3)(a), second subparagraph, contained in Article 28h (replaced by 2001/115/EC) |
Every taxable person shall likewise ensure that an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party, in respect of any payment on account made to him before any supplies of goods referred to in the first subparagraph and in respect of any payment on account made to him by another taxable person or non–taxable legal person before the provision of services is completed.

**Article 212**

1. Member States may impose on taxable persons an obligation to issue an invoice in respect of supplies of goods or services made in their territory, other than those referred to in the preceding subparagraphs, which they have supplied or rendered on their territory Article 211.

When they do so, Member States may impose fewer obligations in respect of the invoices referred to in the first subparagraph, impose fewer obligations than those listed under points (b), (c) and (d) laid down in Articles 217, 218, 236 and 238.

2. The Member States may release taxable persons from the obligation laid down in Article 211 to issue an invoice in respect of supplies of goods or services which they have supplied or rendered made in their territory and which are exempt, with or without refund deductibility of the tax VAT paid at the preceding stage, pursuant to Article 13, Article 28(2)(a) and Article 28(3)(b), Articles 106 and 107, Article 121(1), Articles 122 and 124, Article 125(1), Articles 129 to 133, Article 364 and Articles 368 to 383.
Article 213

Member States may impose time limits for the issue of invoices on taxable persons supplying goods and services in their territory.

| Article 22(3)(a), sixth subparagraph, contained in Article 28h (inserted by 2001/115/EC) |

Article 214

Under In accordance with conditions to be laid down by the Member States in whose territory goods or services are supplied or rendered, a summary invoice may be drawn up for several separate supplies of goods or services.

| Article 22(3)(a), seventh subparagraph, contained in Article 28h (inserted by 2001/115/EC) |

EN amended

Article 215

1. Invoices may be drawn up by the customer of a taxable person in respect of the supply to him, by a taxable person, of goods or services supplied or rendered to him by that taxable person, on condition that, if there is at the outset an a prior agreement between the two parties, and on condition provided that a procedure exists for the acceptance of each invoice by the taxable person supplying the goods or services.

| Article 22(3)(a), eighth subparagraph, first sentence, contained in Article 28h (inserted by 2001/115/EC) |

Adapted

2. The Member States in whose territory the goods or services are supplied or rendered shall determine the terms and conditions of the agreement such prior agreements and of the acceptance procedures between the taxable person and his the customer.

| Article 22(3)(a), eighth subparagraph, second sentence, contained in Article 28h (inserted by 2001/115/EC) |

Adapted
Member States may impose further conditions on taxable persons supplying goods or services in their territory concerning the issue of invoices by the customers of taxable persons supplying goods or services on their territory. For example, they may, in particular, require that such invoices be issued in the name and on behalf of the taxable person.

Such conditions referred to in the first subparagraph must always be the same wherever the customer is established.

Article 216

Member States may also lay down specific conditions for taxable persons supplying goods or services in their territory in cases where the third party, or the customer, who issues invoices is established in a country with which no legal instrument exists relating to mutual assistance similar in scope to that laid down by Council provided for in Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation and by Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) (EC) No 1798/2003.

Section 3

Content of invoices
**Article 217**

(2) Without prejudice to the specific arrangements—particular provisions laid down by in this Directive, only the following details are required for VAT purposes on invoices issued under the first, second and third subparagraphs of point (a) pursuant to Articles 211 and 212:

| (1) | the date of issue; |
| (2) | a sequential number, based on one or more series, which uniquely identifies the invoice; |
| (3) | the VAT identification number referred to in paragraph 1(c) Article 206 under which the taxable person supplied the goods or services; |

<table>
<thead>
<tr>
<th>Article 22(3)(b), first subpara- graph, contained in Article 28h (replaced by 2001/115/EC)</th>
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<td>Article 22(3)(b), first subpara- graph, first indent, contained in Article 28h (inserted by 2001/115/EC)</td>
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<td>Article 22(3)(b), first subpara- graph, second indent, contained in Article 28h (inserted by 2001/115/EC)</td>
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<td>Article 22(3)(b), first subpara- graph, third indent, contained in Article 28h (inserted by 2001/115/EC)</td>
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(4) where the customer is liable to pay tax on goods supplied or services rendered or has been supplied with goods as referred to in Article 28c(A)—the customer’s VAT identification number as referred to in paragraph 1(c)—Article 206, under which the customer received a supply of goods were supplied or the services rendered to him in respect of which he is liable for payment of VAT, or received a supply of goods as referred to in Article 135;

(5) the full name and address of the taxable person and of his—the customer;

(6) the quantity and nature of the goods supplied or the extent and nature of the services rendered;

(7) the date on which the supply of goods or of services was made or completed or the date on which the payment on account referred to in the second subparagraph of point (a)—points (3) and (4) of Article 211 was made, in so far as that a date can be determined and differs from the date of issue of the invoice;

| Article 22(3)(b), first subparagraph, fourth indent, contained in Article 28h (inserted by 2001/115/EC) |
| Adapted |
| Article 22(3)(b), first subparagraph, fifth indent, contained in Article 28h (inserted by 2001/115/EC) |
| EN amended |
| Article 22(3)(b), first subparagraph, sixth indent, contained in Article 28h (inserted by 2001/115/EC) |
| Article 22(3)(b), first subparagraph, seventh indent, contained in Article 28h (inserted by 2001/115/EC) |
| (8) | the taxable amount per rate or exemption, the unit price exclusive of VAT and any discounts or rebates if they are not included in the unit price; |
| (9) | the VAT rate applied; |
| (10) | the VAT amount payable, except where a specific arrangement is applied under which, in accordance with this Directive, such a detail is excluded; |
| (11) | where—in the case of— an exemption is involved—or where the customer is liable to pay the tax for payment of VAT, reference to the appropriate provision of this Directive, to the corresponding national provision, or to any indication—other reference indicating—that the supply of goods or services is exempt or subject to the reverse charge procedure; |
where in the case of the intra-Community supply of a new means of transport is involved, made in accordance with the conditions specified in Article 135, the particulars specified, characteristics as identified in Article 28a(2), Article 3(2):

Article 22(3)(b), first subpara-
graph, twelfth indent, contained in Article 28h (inserted by 2001/115/EC)

Adapted

where the margin scheme for travel agents is applied, reference to Article 26 or 26a, Article 299, or to the corresponding national provisions, or to any other indication reference indicating that the margin scheme has been applied;

Article 22(3)(b), first subpara-
graph, thirteenth indent, contained in Article 28h (inserted by 2001/115/EC)

Adapted

where one of the margin scheme special arrangements applicable to second-hand goods, works of art, collectors’ items or antiques is applied, reference to Article 26 or 26a, Articles 305, 318 or 325, or to the corresponding national provisions, or to any other indication reference indicating that the margin scheme one of those arrangements has been applied;

Article 22(3)(b), first subpara-
graph, thirteenth indent, contained in Article 28h (inserted by 2001/115/EC)

Adapted

where the person liable to pay the tax for payment of VAT is a tax representative within the meaning for the purposes of Article 21(2) Article 196, the VAT identification number, referred to in paragraph 1(e) Article 206, of that tax representative, together with his full name and address.

Article 22(3)(b), first subpara-
graph, fourteenth indent, contained in Article 28h (inserted by 2001/115/EC)

Adapted
Article 218

Member States may require taxable persons established on their territory and supplying goods or services on their territory there to indicate the VAT identification number referred to in paragraph 1(c) of Article 206, of their the customer in cases other than those referred to in the fourth indent of the first subparagraph point (4) of Article 217.

Article 219

Member States in whose territory goods or services are supplied or rendered may allow some of the obligatory compulsory details to be left out of such omitted from documents or messages treated as invoices pursuant to Article 210.

Article 220

Member States shall not require invoices to be signed.
**Article 221**

The amounts which appear on the invoice may be expressed in any currency, provided that the amount of **VAT payable** is expressed in the national currency of the Member State **in which** the supply of goods or services takes place, using the conversion mechanism laid down in **Article 11 C(2)** Article 88.

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**Article 222**

Where necessary for control purposes, Member States may require invoices in respect of **supplies of goods** supplied—or services rendered—in their territory and invoices received by taxable persons established in their territory to be translated into their national languages.

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**Section 4**

**Sending invoices and making them available**

**Article 223**

- Invoices issued pursuant to **point (a)** Section 2 may be sent either on paper or, subject to an acceptance by the customer, **recipients**, they may be sent or made available by electronic means.

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**Adapted**
**Article 224**

Invoices sent or made available by electronic means shall be accepted by Member States provided that the authenticity of the origin and integrity of the contents are guaranteed.

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**Article 225**

1. The authenticity and integrity of the content of invoices sent or made available by electronic means may be guaranteed by means of an advanced electronic signature within the meaning of point (2) of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. 44

Member States may, however, ask for the advanced electronic signature to be based on a qualified certificate and created by a secure–signature–creation device, within the meaning of points (6) and (10) of Article 2(6) and (10) of the aforementioned Directive 1999/93/EC.

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In addition to the possibility provided for in paragraph 1, the authenticity and integrity of invoices sent or made available by electronic means may be guaranteed by means of electronic data interchange (EDI), as defined in Article 2 of Commission Recommendation 1994/820/EC of 19 October 1994 relating to the legal aspects of electronic data interchange when \(^{45}\) if the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data.

However, Member States may, subject to conditions which they lay down, require that an additional summary document on paper is necessary be sent.

Invoices may, however, be sent or made available by other electronic means other than those provided for in Article 225, subject to acceptance by the Member States concerned.

**Article 227**

Member States may not impose on taxable persons supplying goods or services in their territory any other obligations or formalities relating to the transmission of sending or making available of invoices by electronic means.

However, Member States may provide, however, until 31 December 2005, that the use of such a system is to be subject to prior notification.

**Article 228**

Member States may lay down specific conditions for invoices issued by electronic means for in respect of goods or services supplied in their territory from a country with which no legal instrument exists relating to mutual assistance similar in scope to that laid down by Directives provided for in Directive 76/308/EEC and 77/799/EEC and by Regulation (EEC) No 218/92 (EC) No 1798/2003.

**Article 229**

When batches containing several invoices are sent or made available to the same recipient by electronic means, the details that are common to the individual invoices may be mentioned only once if, for each invoice, all the information is accessible.
Article 230

The Commission **shall** present, at the latest on 31 December 2008, a report, together with a proposal and, if appropriate, a proposal amending the conditions on electronic invoicing in order to take account of possible future technological developments in this field.

Section 5

Simplification measures

Article 231

(d) Subject to consultation of the VAT Committee provided for in Article 29 and under the conditions which they may lay down, Member States may, in accordance with conditions which they may lay down, provide that in the following cases some of the information required under Article 217 need not be entered on invoices in respect of supplies of goods supplied or services rendered in their territory:

(a) where the amount of the invoice is minor, or
Article 22(9)(d), first sub-paragraph, second indent, contained in Article 28h (inserted by 2001/115/EC)

Adapted

Article 22(9)(d), second sub-paragraph, contained in Article 28h (inserted by 2001/115/EC)

Article 22(9)(d), second sub-paragraph, first indent, contained in Article 28h (inserted by 2001/115/EC)

Article 22(9)(d), second sub-paragraph, second indent, contained in Article 28h (inserted by 2001/115/EC)

Article 22(9)(d), second sub-paragraph, third indent, contained in Article 28h (inserted by 2001/115/EC)

EN amended

2. In any case, these invoices must, in any event, contain the following information:

(a) the date of issue;

(b) identification of the taxable person;

(c) identification of the type of goods supplied or services rendered.
(d) the tax \textit{VAT} due or the information needed to calculate it.

3. The simplified arrangements provided for in this point paragraph 1 may not be applied to the transactions referred to in paragraph 4(e) Articles 21, 22, 23, 34, 37, 135 and 138 in the cases specified in Article 243.

\textit{Article 232}

(e) In cases where Member States make use of the option provided for in the third indent of point (a) to refrain from under Article 265(1)(b) of not allocating a VAT identification number as referred to in paragraph 1(e) to taxable persons who do not carry out any of the transactions referred to in paragraph 4(e) Articles 21, 22, 23, 34, 37, 135 and 138 in the cases specified in Article 243, and where the supplier or the customer have not been allocated an identification number of this type, the invoice should feature instead another number called the tax reference number, as defined by the Member States concerned, shall be entered on the invoice instead.

\textit{Article 233}

When the taxable person has been allocated an a VAT identification number as referred to in paragraph 1(e), the Member States referred to in the first subparagraph exercising the option under Article 265(1)(b) may also require the invoice to show the following:
for-in respect of the supply of services rendered, as referred to in Article 28b(C), (D), (E) and (F). Articles 45, 48, 50, 51, 53, 54 and 55, and for supplies—the supply of goods, as referred to in Article 28c(A) and (B) point 3. Articles 135 and 138, the VAT identification number referred to in paragraph 1(e) and the tax reference number of the supplier;

for-in respect of other supplies of goods and/or services, only the tax reference number of the supplier or only the VAT identification number referred to in paragraph 1(e).

Chapter 4

Accounting

Section 1

General obligations

Article 234

2. Every taxable person shall keep accounts in sufficient detail for value added tax—VAT to be applied and inspected—its application checked by the tax authorities.
Article 235

(1) Every taxable person shall keep a register of the goods he has dispatched or transported or which have been dispatched or transported by that person or on his behalf out of the territory defined in Article 3, to a destination outside the territory of the Member State of departure but within the Community for the purposes of the transactions consisting in work on those goods or their temporary use as referred to in the fifth, sixth or seventh indents of Article 28a(5)(b) points (f), (g) and (h) of Article 18(2).

Article 22(2)(b), first subparagraph, contained in Article 28h (replaced by 95/7/EC)

Adapted

Article 22(2)(b), second subparagraph, contained in Article 28h (replaced by 95/7/EC)

Adapted

Section 2

Specific obligations relating to the storage of all invoices

Article 236

(1) Every taxable person shall ensure that copies of the invoices issued by himself, or by his customer or, in his name and on his behalf, by a third party, and all the invoices which he has received, are stored.

Article 22(3)(d), first subparagraph, contained in Article 28h (inserted by 2001/115/EC)

Adapted
**Article 237**

1. For the purposes of this Directive, the taxable person may decide the place of storage provided that he makes the invoices or information stored there in accordance with Article 236 available without undue delay to the competent authorities without undue delay whenever they so request.

2. Member States may, however, require taxable persons established in their territory to notify them of the place of storage, if it is outside their territory.

**Article 238**

The authenticity of the origin and the integrity of the content of the invoices stored, as well as their readability, must be guaranteed throughout the storage period.
As regards the invoices referred to in the third subparagraph of point (c), the information they contain must remain legible throughout the aforementioned storage period.

**Article 239**

1. The Member States shall determine the period for which taxable persons must store invoices relating to the supply of goods or services supplied in their territory and invoices received by taxable persons established in their territory.

2. In order to ensure that the conditions laid down in the third subparagraph Article 238 are met, Member States referred to in the fourth subparagraph may require that the invoices referred to in paragraph 1 be stored in the original form in which they were sent or made available, whether paper or electronic. They may also require that when invoices are stored by electronic means, Member States may require that the data guaranteeing the authenticity of the origin of the invoices and the integrity of their content also be stored.

3. Member States referred to in the fourth subparagraph may impose specific conditions prohibiting or restricting the storage of invoices referred to in paragraph 1 in a country with which no legal instrument exists relating to mutual assistance similar in scope to that laid down by Directives provided for in Directive 76/308/EEC, 77/799/EEC and Regulation (EEC) No 218/92 and (EC) No 1798/2003 or to the right of referred to in Article 241 to access by electronic means, to download and to use referred to in Article 22a.
**Article 240**

Member States may, subject to conditions which they lay down, require the storage of invoices received by non-taxable persons.

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**Section 3**

**Right of access to invoices stored by electronic means in another Member State**

**Article 22a**

When a taxable person stores invoices which he issues or receives by electronic means guaranteeing on-line access to the data and where the place of storage is in a Member State other than that in which he is established, the competent authorities in the Member State in which he is established shall have a right, for the purposes of this directive, have the right to access those invoices by electronic means, to download and to use these invoices, within the limits set by the regulations of the Member State in which the taxable person is established and as far as that State requires for supervisory purposes.

**Chapter 5**

**Returns**
Article 242

(b) Every taxable person shall submit a VAT return shall set out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, where appropriate, and in so far as it seems necessary for the establishment of the basis of assessment, the total value of the transactions related to such tax and deductions and the value of any exempt transactions.

Article 243

(e) In addition to the information referred to in Article 242, the VAT return shall also set out show the following:

(a) on the one hand, the total value, less value added tax exclusive of VAT, of the supplies of goods referred to in Article 28c(A) on Article 135 in respect of which VAT has become chargeable during the period covered by the return;

(b) The following shall also be added: the total value, less value added tax exclusive of VAT, of the supplies of goods referred to in the second sentence of Article 8(1)(a) and in Article 28b(B)(1) effected Article 34 and the first paragraph of Article 37 carried out within the territory of another Member State for, in respect of which tax VAT has become chargeable during the return period covered by the return, where the place of dispatch or transport of the goods began is situated in the territory of the country Member State in which the return must be submitted;

Article 22(4)(b), contained in Article 28h (inserted by 91/680/EEC)

Adapted

Article 22(4)(c), contained in Article 28h (inserted by 91/680/EEC)

Adapted

Article 22(4)(c), first indent, first subparagraph, contained in Article 28h (inserted by 91/680/EEC)

Adapted

Article 22(4)(c), first indent, second subparagraph, contained in Article 28h (inserted by 91/680/EEC)

Adapted
(c) on the other hand, the total amount, less value added tax, value, exclusive of VAT, of the intra-Community acquisitions of goods and transactions treated as such, as referred to in Article 28a(1) and (6) effected within the territory of the country on Articles 22 and 23, made in the Member State in which the return must be submitted and in respect of which tax—VAT has become chargeable during the period covered by the return;

(d) The following shall also be added: the total value, less value added tax, exclusive of VAT, of the supplies of goods referred to in the second sentence of Article 8(1)(a) and in Article 28b(B)(1) effected, Article 34 and the first paragraph of Article 37 carried out in the territory of the country on which tax has become chargeable during the return period covered by the return, where the place of departure of the dispatch or transport of the goods began is situated within the territory of another Member State, and the total amount, less value added tax, of the supplies of goods made within the territory of the country for which the taxable person has been designated as the person liable for the tax in accordance with Article 28c(E)(3) and under which the tax has become payable in the course of the period covered by the declaration;

(e) The following shall also be added: the total value, less value added tax, value, exclusive of VAT, of the supplies of goods referred to in the second sentence of Article 8(1)(a) and in Article 28b(B)(1) effected in the territory of the country on which tax has become chargeable during the return period, where the place of dispatch or transport of the goods is situated within the territory of another Member State, and the total amount, less value added tax, of the supplies of goods made within the territory of the country for which the taxable person has been designated, in accordance with Article 190, as the person liable for the tax in accordance with Article 28c(E)(3) payment of VAT and under in respect of which the tax—VAT has become payable in the course of chargeable during the return period covered by the declaration.
**Article 244**

4.1. (a) Every taxable person shall submit a VAT return by a deadline to be determined by Member States. That deadline may not be more than two months after the end of each tax period.

2. The tax period shall be fixed by each Member State at one month, two months or a quarter three months.

Member States may, however, set different tax periods provided that those periods do not exceed one year.

**Article 245**

(x) The Kingdom of Sweden may apply the following simplified procedure for small and medium-sized enterprises, provided that the provisions are in conformity with the Treaty establishing the European Communities, and in particular Articles 95 and 96 thereof.

Submission of value added tax returns three months after the end of the annual direct tax period by taxable persons carrying out domestic taxable transactions only.
Article 246

(d) — In the case of supplies of new means of transport **effected under carried out in accordance with** the conditions **laid down specified** in Article 28c(A)(b), Article 135(2)(a) by a taxable person identified for VAT purposes of value added tax to **for a purchaser customer not identified for VAT purposes of value added tax**, or by a taxable person as defined in Article 28a(4), Article 10(2), Member States shall take the measures necessary to ensure that the vendor communicates all the information **necessary needed** for **value added tax to be applied and inspected its application checked** by the tax authority authorities.

Article 247

When they **If, in the case of gold material, semi–manufactured products of a purity of 325 thousandths or greater, or investment gold, Member States exercise this the option, Member States of designating the customer as liable for payment of VAT, they shall take the measures necessary to ensure that the person designated as liable for the tax due he fulfils the obligations to submit a statement and to pay the tax in accordance with Article 22 relating to submission of a VAT return, as laid down in this Chapter.**

Article 248

7. — Member States shall take the measures necessary to ensure that **those persons who, in accordance with Article 21(1) and (2) Articles 187 to 190 and Article 196, are considered to be regarded as liable to pay the tax instead—for payment of VAT in the stead of a taxable person not established within the their territory of the country** comply with the obligations relating to declaration and payment set out **submission of a VAT return, as laid down in this Article Chapter.**

Article 249

10. — Member States shall take **the measures necessary** to ensure that **non–taxable legal persons who are liable for the tax payable payment of VAT due in respect of intra–Community acquisitions of goods covered by the first subparagraph of Article 28a(1)(a), as referred to in Article 3(1)(b)(i), comply with the above-obligations relating to declaration and payment and that they are identified by an individual number as defined in paragraph 1(c), (d) and (e) submission of a VAT return, as laid down in this Chapter.**
**Article 250**

1. In the case of intra–Community acquisitions of products subject to excise duty referred to in Article 28a(1)(c) as well as in the case of intra–Community acquisitions of new means of transport covered by Article 28a(1)(b), Member States shall adopt arrangements for declaration and subsequent payment lay down detailed rules for the submission of VAT returns in respect of intra–Community acquisitions of new means of transport, as referred to in Article 3(1)(b)(ii), and intra–Community acquisitions of products subject to excise duty, as referred to in Article 3(1)(b)(iii).

**Article 251**

Member States may also require persons who make intra–Community acquisitions of new means of transport as defined in Article 28a(1)(b) referred to in Article 3(1)(b)(ii), to provide, when submitting the VAT return referred to in paragraph 4, all the information necessary for value added tax VAT to be applied and inspected by the tax authorities.

**Article 252**

As regards imported goods, Member States shall lay down the detailed rules for the making of the declarations and payments submission of VAT returns in respect of the importation of goods.

**Article 253**

6. (a) Member States may require the taxable person to submit a statement, including VAT return showing all the particulars specified in paragraph 4, concerning Articles 242 and 243 in respect of all transactions carried out in the preceding year. That statement return shall provide all the information necessary for any adjustments.
**Article 254**

Member States shall, subject to conditions which they lay down, allow, and may require, the taxable person to make such VAT returns referred to in Articles 242 and 253 to be submitted by electronic means, and may also require that electronic means are used in accordance with conditions which they lay down.

**Article 22(4)(a), fifth sentence, contained in Article 28h (inserted by 2002/38/EC)**

**Adapted**

**Article 22(6)(a), third sentence, contained in Article 28h (inserted by 2002/38/EC)**

**Chapter 6**

**Recapitulative statements**

**Article 255**

(b) Every taxable person identified for value added tax VAT purposes shall also submit a recapitulative statement of the acquirees persons identified for value added tax VAT purposes to whom he has supplied goods under in accordance with the conditions provided for specified in Article 28e(A)(a) and (d) Article 135(1) and Article 135(2)(c), and of consignees the persons identified for value added tax VAT purposes in the transactions referred to in the fifth subparagraph to whom goods were supplied by way of intra–Community acquisitions as referred to in Article 43.

**Article 22(6)(b), first subparagraph, contained in Article 28h (replaced by 95/7/EC)**

**Adapted**

**Article 22(6)(b), second subparagraph, second sentence, contained in Article 28h (replaced by 2002/38/EC)**

**Adapted**

**Article 256**

1. The recapitulative statement shall be drawn up for each calendar quarter within a period and in accordance with procedures to be determined by the Member States, which shall take the measures necessary to ensure that the provisions concerning administrative co operation in the field of indirect taxation are in any event complied with.
(c) By way of derogation from subparagraph (b), Member States may, however, provide that recapitulative statements are to be submitted on a monthly basis:

require recapitulative statements to be filed on a monthly basis,

2. Member States shall, subject to conditions which they lay down, allow, and may require, the taxable person to make such recapitulative statements referred to in paragraph 1, to be submitted by electronic means, and may also require that electronic means are used in accordance with conditions which they lay down.

Article 237

1. The recapitulative statement shall set out the following information:

Article 22(6)(c), contained in Article 28h (inserted by 91/680/EEC)

Adapted

Article 22(6)(c), first indent, contained in Article 28h (inserted by 91/680/EEC)

Article 22(6)(b), second subparagraph, second sentence, contained in Article 28h (inserted by 2002/38/EC)

Adapted

Article 22(6)(b), third subparagraph, contained in Article 28h (inserted by 91/680/EEC)
–(a) the number by means of which the taxable person is identified for VAT purposes of value added tax in the territory of the country Member State in which the recapitulative statement must be submitted and under which he has carried out the supply of goods in accordance with the conditions laid down specified in Article 28c(A)(a) Article 135(1);

–(b) the number by means of which each person acquiring the goods is identified for VAT purposes of value added tax in another a Member State other than that in which the recapitulative statement must be submitted and under which the goods were supplied to him;

–(c) for the supplies of goods covered by Article 28c(A)(d), the number by means of which the taxable person is identified for VAT purposes of value added tax in the territory of the country Member State in which the recapitulative statement must be submitted and under which he has carried out a transfer of goods to another Member State, as referred to in Article 135(2)(c), and the number by means of which he is identified in the Member State of arrival of in which the dispatch or transport and the total amount of the supplies, determined in accordance with Article 28e(2) ended;

–(d) for each person acquiring goods, the total value of the supplies of goods carried out by the taxable person;
The recapitulative statement shall also set out:

- (c) for the supplies—*in respect of supplies consisting in the transfer of goods covered by Article 28c(A)(d), the number by means of which the taxable person is identified for purposes of value added tax in the territory of the country; the number by which he is identified in the Member State of arrival of the dispatch or transport and to another Member State, as referred to in Article 135(2)(c), the total amount value of the supplies, determined in accordance with Article 28e(2).* Article 75.

- (d) the amounts of adjustments made pursuant to Article 11(C)(1) Article 87.

2. Those amounts—The value referred to in point (d) of paragraph 1 shall be declared for the calendar quarter during which the tax VAT became chargeable.
Those amounts referred to in point (f) of paragraph 1 shall be declared for the calendar quarter during which the person acquiring the goods was notified of the adjustment.

Article 258

1. In the cases set out in the third subparagraph of Article 28b(A)(2), case of intra–Community acquisitions of goods, as referred to in Article 43, the taxable person identified for value added tax VAT purposes within the territory of the country in the Member State in which the tax is due shall mention in a clear way set the following information out clearly on the recapitulative statement:

(a) the number by means of which he is identified for value added tax VAT purposes within the territory of the country in that Member State and under which he carried out the intra–Community acquisition and the subsequent supply of goods;

(b) the number by means of which, within the territory of the Member State of arrival of the dispatch or transport of the goods, the consignee of the person to whom the subsequent supply was made by the taxable person is identified in the Member State in which dispatch or transport of the goods ended;

Article 22(6)(b), fourth subparagraph, second indent, second sentence, contained in Article 28h (inserted by 91/680/EEC)

Article 22(6)(b), fifth subparagraph, contained in Article 28h (inserted by 92/111/EEC)

Adapted

Article 22(6)(b), fifth subparagraph, first indent, contained in Article 28h (inserted by 92/111/EEC)

Adapted

Article 22(6)(b), fifth subparagraph, second indent, contained in Article 28h (inserted by 92/111/EEC)

Adapted
(c) and, for each consignee person to whom the subsequent supply was made, the total amount, less value added tax value, exclusive of VAT, of the supplies made by the taxable person within the territory of the Member State of arrival of the dispatch or transport of the goods ended.

2. These amount shall be declared for the calendar quarter during which the tax became chargeable.

Article 259

(e) By way of derogation from (b) Articles 257 and 258, Member States may provide that additional information is to be given in recapitulative statements.

Article 22(6)(b), fifth subparagraph, third indent, third indent, first sentence, contained in Article 28h (inserted by 92/111/EEC)

Adapted

Article 22(6)(b), fifth subparagraph, third indent, second sentence, contained in Article 28h (inserted by 92/111/EEC)

Article 22(6)(c), contained in Article 28h (inserted by 91/680/EEC)

Adapted

Article 22(6)(c), second indent, contained in Article 28h (inserted by 91/680/EEC)
Article 260

7. Member States shall take the measures necessary to ensure that those persons who, in accordance with Article 21(1) and (4), Articles 187 to 190 and Article 196, are considered to be regarded as liable to pay the tax instead for payment of VAT, in the stead of a taxable person who is not established within the territory of the country in their territory, comply with the obligations relating to declaration and payment set out obligation to submit a recapitulative statement as provided for in this Article Chapter.

Article 261

(e) Member States may require that taxable persons who, in the territory of the country effect, make intra-Community acquisitions of goods as defined in Article 28a(1)(a) and (6) to or transactions treated as such, as referred to in Articles 22 and 23, submit statements giving details of such acquisitions provided, however, that such statements may not be required in respect of a period of less than one month.

Article 262

12. Acting unanimously on a proposal from the Commission, the Council may authorise any Member State to introduce particular special measures provided for in Articles 263 and 264 to simplify the statement obligations laid down in paragraph 6(b) of this Chapter, to submit a recapitulative statement. Such simplification measures, which shall may not jeopardise the proper monitoring of intra-Community transactions, may take the following forms:

Article 263

(a) By virtue of the authorisation referred to in Article 262, Member States may authorise taxable persons who meet the following three conditions to file one-year to submit annual recapitulative statements indicating the numbers by which serve to identify for VAT purposes, in another Member State, the persons to whom those taxable persons have supplied goods under in accordance with the conditions laid down specified in Article 28c(A) are identified for purposes of value added tax in other Member States Article 135, where the taxable persons meet the following three conditions:
(a) the total annual value, less value added tax exclusive of VAT, of their supplies of goods or provisions of services, as defined in Articles 5, 6 and 28a(5), does not exceed by more than ECU 35 000 euro, or the equivalent in national currency, the amount of the annual turnover which is used as a reference for application of the exemption from tax provided for in Article 24 for small enterprises provided for in Articles 277 to 280;

(b) none of the supplies of goods effected or carried out by them under the conditions laid down specified in Article 28c(A) Article 135, does not exceed the equivalent in national currency of ECU 15 000 euro or the equivalent in national currency;

(c) none of the supplies of goods effected or carried out by them under the conditions laid down specified in Article 135 Article 28c(A) are other than supplies is a supply of new means of transport.

Article 264

(b) By virtue of the authorisation referred to in Article 262, Member States which set at over three months the tax period for which taxable persons must submit the VAT return provided for in paragraph 4 Article 242 may authorise such persons to submit recapitulative statements for the same period where those taxable persons meet the following three conditions:

(a) the overall total annual value, less value added tax exclusive of VAT, of their supplies of goods and services they supply, as defined in Articles 5, 6 and 28a(5), does not exceed the equivalent in national currency of ECU 200 000 euro or the equivalent in national currency;
(b) the total annual value, less value added tax exclusive of VAT, of supplies of goods effected carried out by them under in accordance with the conditions laid down specified in Article 28c(A) Article 135 does not exceed the equivalent in national currency of ECU 15 000 euro or the equivalent in national currency;

(c) none of the supplies of goods effected carried out by them under in accordance with the conditions laid down specified in Article 28c(A) are other than supplies Article 135 is a supply of new means of transport.

Chapter 7

Miscellaneous provisions

Article 265

9.1. (a) Member States may release the following taxable persons from certain or all obligations:

–(a) taxable persons eligible for the exemption from tax provided for in Article 24 and for the derogation provided for in Article 28a(1)(a), second subparagraph whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 4(1);
(c) taxable persons carrying out none of the transactions referred to in paragraph 4(e) Articles 21, 22, 23, 34, 37, 135 and 138;

(a)(c) taxable persons carrying out only supplies of goods or of services which are exempt pursuant to Articles 13 and 15 Articles 129 to 133, Articles 142 to 145 or Articles 147, 148 or 149;

(d) taxable persons eligible for covered by the exemption from tax provided for in Article 24 and for the derogation provided for in Article 28a(1)(a), second subparagraph for small enterprises provided for in Articles 277 to 280;

4.(c) Member States may release taxable persons covered by the common flat-rate scheme for farmers from the obligations imposed upon taxable persons by Article 22.

Without prejudice to the provisions laid down in point (d), Member States may not, however, release the taxable persons referred to in the third indent referred to in point (b) from the invoicing obligations referred to laid down in Article 22(3) Articles 211 to 222 and Articles 231, 232 and 233.
2. When Member States exercise this option, Member States under point (e) of paragraph 1, they shall take the measures necessary to ensure the correct application of the transitional arrangements for the taxation of intra–Community transactions as laid down in Title XVIa.

(b) Member States may release taxable persons other than those referred to in (a) paragraph 1, from certain of the accounting obligations referred to in 2(a) Article 234.

Article 266

8. Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion, VAT and to prevent fraud, subject to the requirement of equal treatment for as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The option provided for in the first subparagraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in paragraph 3 Chapter 3.

Chapter 8

Obligations relating to certain importations and exportations
Article 23

Obligations in respect of imports

Section 1
Importation

Article 33a

1. Articles 268, 269 and 270 shall apply to the importation of goods referred to in Article 7(1)(b) entering in free circulation which enter the Community from a third territory which forms part of the customs territory of the Community but which is considered as a third territory for the purposes of applying this Directive shall be subject to the following provisions:

Article 268

(a) the formalities relating to the entry of such goods into the Community referred to in Article 267 shall be the same as those laid down by the Community customs provisions in force for the importation of goods into the customs territory of the Community;

Article 269

(b) when the place of arrival of the goods referred to in Article 267 ends at a place situated outside the Member State where they enter, they shall circulate in the Community under the internal Community transit procedure laid down by the Community customs provisions in force, in so far as they have been the subject of a declaration placing them under this regime when the goods entered that procedure on their entry into the Community.
Article 270

c—when at the moment of their entry into the Community the goods referred to in Article 267 are found to be in one of the situations which would qualify them, if they were imported within the meaning of Article 7(1)(a), to be covered by one of the arrangements referred to in Article 16(1)(B)(a), (b), (c) and (d) Article 151, or under a temporary importation arrangement with full exemption from import duties, the Member States shall take the measures necessary to ensure that the goods may remain in the Community under the same conditions as those laid down for the application of such arrangements.

Section 2

Exportation

Article 271

2.—Goods not referred to in Article 7(1)(a) Articles 272 and 273 shall apply to the exportation of goods in free circulation which are dispatched or transported from a Member State to a destination in a third territory that forms part of the customs territory of the Community but which is considered as a third territory for the purposes of applying this Directive shall be subject to the following provisions:

Article 272

(a)—the formalities relating to the exportation of those goods outside referred to in Article 271 from the territory of the Community shall be the same as those laid down by the Community customs provisions in force in relation to exportation of goods outside the customs territory of the Community.

Article 273

(b)—in the case of goods which are temporarily exported outside from the Community, in order to be reimported, the Member States shall take the measures necessary to ensure that, on reimportation into the Community, such goods may benefit from be covered by the same provisions as would have applied if they had been temporarily exported outside from the customs territory of the Community.
Title XIV
(77/388/EEC)

Special schemes

Article 24
(77/388/EEC)

Article 24(1)
(77/388/EEC)

1. Member States which might encounter difficulties in applying the normal VAT arrangements to small undertakings, by reason of their activities or structure shall have the option, under such conditions and within such limits as they may set, subject to the consultation provided for in Article 29, of applying simplified procedures, such as flat-rate schemes, for charging and collecting VAT provided that they do not lead to a reduction thereof.

Section 2

Exemptions or graduated relief

Article 275

3. The concepts of exemptions and graduated tax relief provided for in this Section shall apply to the supply of goods and services by small undertakings.
Article 276

1. The provisions of paragraph 2 shall not, in any case, apply to the following transactions referred to in Article 4(3).

(a) The provisions of paragraph 2 shall not, in any case, apply to the transactions carried out on an occasional basis, as referred to in Article 4(3).

(b) In all circumstances supplies of new means of transport effected under the conditions laid down in Article 28c(A) as well as supplies of goods and services effected by a taxable person who is not established in the territory of the country shall be excluded from the exemption from tax under paragraph 2.

(c) In all circumstances supplies of new means of transport effected under the conditions laid down in Article 28c(A) as well as supplies of goods and services effected by a taxable person who is not established in the territory of the country shall be excluded from the exemption from tax under paragraph 2.

2. Member States may exclude certain transactions other than those referred to in paragraph 1 from the arrangements provided for in paragraph 2.

Adapted
Article 277

(a) 1. Member States which have made use of the option under Article 14 of the second Council Directive of 11 April 1967 to introduce 67/228/EEC of introducing exemptions or graduated tax relief may retain them, and the arrangements for applying them, if they conform with the value added tax system VAT rules.

2. Those Member States which apply an exemption from tax to taxable persons whose annual turnover was less than the equivalent in national currency of 5,000 European units of account at the conversion rate on which this Directive is adopted, may increase this exemption up to 5,000 European units of account.

Member States which applied graduated tax relief may neither increase nor render the conditions for the granting of it more favourable.

Article 278

(b) — Member States which have not made use of the option under Article 14 of Directive 67/228/EEC may grant an exemption from tax to taxable persons whose annual turnover is at the maximum equal to the equivalent in national currency of no higher than 5,000 European units of account at the conversion rate on which this Directive is adopted euro or the equivalent in national currency.

where appropriate, they — The Member States referred to in the first paragraph may grant graduated tax relief to taxable persons whose annual turnover exceeds the ceiling fixed by the Member States for the its application of exemption.

Article 279

(c) Member States which apply an exemption from tax to, at 17 May 1977, exempted taxable persons whose annual turnover was equal to or higher than the equivalent in national currency of 5 000 European units of account at the conversion rate of the day on which this Directive is adopted on that date, may increase that ceiling in order to maintain its value in real terms.

Article 24(2)(c) (77/388/EEC) Adapted

Article 24a (inserted by the 2003 Act of Accession) Adapted

Article 24a, first paragraph (inserted by the 2003 Act of Accession)

Annex VIII, Part II(2)(a) (Act of Accession, EL)

Annex XXXII, Part IV(3)(a) (Act of Accession, ES and PT)

Annex XXXII, Part IV(3)(a), first indent (Act of Accession, ES and PT)

Annex XXXII, Part IV(3)(a), second indent, first sentence (Act of Accession, ES and PT)

In implementing Article 24(2) to (6), the following Member States which acceded after 1 January 1978 may grant an exemption from value added tax to taxable persons whose annual turnover is less than the equivalent in national currency of the following amounts at the conversion rate on the day of their accession:

(a)(1) For the implementation of Article 24(2) to (6), the Hellenic Republic may grant a tax exemption to taxable persons whose turnover is less than the equivalent in national currency of 10,000 European units of account at the conversion rate of the day of its accession.

(a) For the implementation of Article 24(2) to (6):

(2) the Kingdom of Spain may grant tax exemption to taxable persons whose annual turnover does not exceed the equivalent in national currency of ECU 10 000 at the conversion rate of the day of its accession;

(3) the Portuguese Republic may grant tax exemption to taxable persons whose annual turnover does not exceed the equivalent in national currency, respectively, of ECU 15 000 during the first three years following the coming into force for Portugal of the common system of value added tax, and of ECU 10 000 thereafter, at the conversion rate of the day of its accession.
the Republic of Austria may apply an exemption from value added tax to taxable persons whose annual turnover is less than the equivalent in national currency of ECU 35 000;

In implementation of Article 24(2) to (6) and pending the adoption of Community provisions in this field, the Republic of Finland may apply an exemption from value added tax to taxable persons whose annual turnover is less than the equivalent in national currency of ECU 10 000;

In implementation of Article 24(2) to (6), and pending the adoption of Community provisions in this field, the Kingdom of Sweden may apply the following simplified procedure for small and medium-sized enterprises, provided that the provisions are in conformity with the Treaty establishing the European Communities, and in particular Articles 95 and 96 thereof: ECU 10 000;

In the Czech Republic: EUR 35 000 euro;

In Estonia: EUR 16 000 euro;

In Cyprus: EUR 15 600 euro;
in Latvia: EUR 17 200 euro;

in Lithuania: EUR 29 000 euro;

in Hungary: EUR 35 000 euro;

in Malta: EUR 37 000 when euro if the economic activity consists principally in the supply of goods, EUR 24 300 when euro if the economic activity consists principally in the supply of services with a low value added (high inputs), and EUR 14 600 euro in other cases, namely service providers supplies of services with a high value added (low inputs);

in Poland: EUR 10 000 euro;

in Slovenia: EUR 25 000 euro;
in Slovakia: EUR 35 000 euro.

**Article 281**

4. The turnover which shall serve as a reference for the purposes of applying the provisions of paragraph 2 shall consist of the amount following amounts, exclusive of value added tax, of goods and services supplied as defined in Articles 5 and 6, to the extent that they are taxed, including transactions exempted with refund of tax previously paid in accordance with Article 28(2), and the amount of the transactions exempted pursuant to Article 15, the amount of real property transactions, the financial transactions referred to in Article 13B(d), and insurance services, unless these transactions are ancillary transactions VAT:

4(1) The turnover which shall serve as a reference for the purposes of applying the provisions of paragraph 2 shall consist of the amount, exclusive of value added tax, value of supplies of goods and services supplied as defined in Articles 5 and 6, to the extent that, in so far as, they are taxed subject to tax, including transactions exempted which are exempt with refund of tax previously paid in accordance with Article 28(2), and the amount of the transactions exempted pursuant to Article 15, the amount of real property transactions, the financial transactions referred to in Article 13B(d), and insurance services, unless these transactions are ancillary transactions at the preceding stage, pursuant to Articles 106 or 107, Article 121(1), Articles 122 or 124, or Article 125(1);

4(2) The turnover which shall serve as a reference for the purposes of applying the provisions of paragraph 2 shall consist of the amount, exclusive of value added tax, of goods and services supplied as defined in Articles 5 and 6, to the extent that they are taxed, including transactions exempted with refund of tax previously paid in accordance with Article 28(2), and the amount value of the transactions exempted which are exempt pursuant to Article 15, the amount of real property transactions, the financial transactions referred to in Article 13B(d), and insurance services, unless these transactions are ancillary transactions Articles 142 to 145 or Articles 147, 148 or 149;
4.(3) The turnover which shall serve as a reference for the purposes of applying the provisions of paragraph 2 shall consist of the amount, exclusive of value added tax, of goods and services supplied as defined in Articles 5 and 6, to the extent that they are taxed, including transactions exempted with refund of tax previously paid in accordance with Article 28(2), and the amount of the transactions exempted pursuant to Article 15, the amount value of real property—estate transactions, the—financial transactions as referred to in Article 13B(d) points (b) to (g) of Article 132(1), and insurance services, unless those transactions are ancillary transactions.

However, disposals of the tangible or intangible capital assets of an undertaking—enterprise shall not be taken into account for the purposes of calculating turnover.

Article 282

5.—Taxable persons exempt from tax shall not be entitled to deduct tax in accordance with the provisions of Article 17, nor to Articles 162 to 171, and may not show the tax on their invoices.

Article 283

6.—Taxable persons eligible for who are entitled to exemption from tax may opt either for the normal arrangements or for the simplified procedures referred to provided for in paragraph 1. In this case Article 261. If they choose the latter option, they shall be entitled to any graduated tax relief which may be laid down by provided for under national legislation.

Article 284

7.—Subject to the application of paragraph 1 Article 274, taxable persons enjoying graduated relief shall be treated—regarded as taxable persons subject to the normal value added tax scheme.
**Article 285**

2. Until the arrangements provided for in this Section shall apply until a date to be fixed by the Council acting unanimously on a proposal from the Commission, but in accordance with Article 93 of the Treaty, which shall—may not be later than that on which the charging of tax on imports and the remission of tax on exports in trade between the Member States are abolished, the definitive arrangements referred to in Article 395 enter into force.

**Section 3**

**Reporting and review**

**Article 286**

8. At four-yearly intervals, and for the first time on 1 January 1982, and after consultation of the Member States, the Commission shall report to the Council, on the basis of information obtained from the Member States, a report on the application of the provisions of this Article. It shall as far as may be necessary, Chapter, together, where appropriate and taking into account the need to ensure the long-term convergence of national regulations, attach to this report with proposals for on the following subjects:

(a)(1) improvements to be made to the special scheme for small undertakings enterprises;

(b)(2) the adaptation of national systems as regards exemptions from VAT and graduated value added tax VAT relief;

(c)(3) the adaptation of the limit of 5,000 European units of account ceilings provided for in Section 2.
Article 287

9. The Council shall decide at the appropriate time whether the realisation of the objective referred to in Article 4 of the first Council Directive of 11 April 1967 requires the introduction of an enterprise is necessary under the definitive arrangements and will, if appropriate, decide on the common limits and common implementing conditions of this for the implementation of that scheme. Until the introduction of such a scheme, Member States may retain their own special schemes which they will apply in accordance with the provisions of this Article and of subsequent acts of the Council.

Chapter 2

Common flat-rate scheme for farmers

Article 25

Article 25(2)

(77/388/EEC)

Adapted

Heading of Article 25

(77/388/EEC)

Adapted

2. For the purposes of this Article, the following definitions shall apply:

(1) ‘farmer’ means any taxable person whose economic activity is carried out in one of the undertakings defined below: an agricultural, forestry or fisheries undertaking;

(2) ‘agricultural, forestry or fisheries undertakings’: undertaking means an undertaking considered to be such by each Member State within the framework of the production activities listed in Annex A; Annex VI;

(3) ‘flat-rate farmer’ : means any farmer subject to covered by the flat-rate scheme provided for in paragraphs 3 et seq. this Chapter.;
(4) ‘agricultural products’: means goods produced by an agricultural, forestry or fisheries undertaking in each Member State as a result of the activities listed in Annex A or Annex VI.

(5) ‘agricultural service’: means any service as set out, and in particular those listed in Annex B or Annex VII, supplied by a farmer using his labour force and/or by means of or the equipment normally available or employed in the agricultural, forestry or fisheries undertaking operated by him, and normally playing a part in agricultural production;

(6) ‘value added tax charge on inputs’: ‘input VAT charged’: means the amount of the total value added tax VAT attaching to the goods and services purchased by all agricultural, forestry and fisheries undertakings of each Member State subject to the flat-rate scheme where such tax would be deductible under Article 17 in accordance with Articles 162 to 171 by a farmer subject to the normal value added tax scheme VAT arrangements;

(7) ‘flat-rate compensation percentages’: means the percentages fixed by Member States in accordance with paragraph 3 Articles 290, 291 and 292 and applied by them in the cases specified in paragraph 5 Article 293 in order to enable flat-rate farmers to offset at a fixed rate the value added tax charge on inputs input VAT charged;

(8) ‘flat-rate compensation’: means the amount arrived at by applying the flat-rate compensation percentage provided for in paragraph 3 to the turnover of the flat-rate farmer in the cases referred to specified in paragraph 5 Article 293.

V.2. Where a farmer processes, using means normally employed in an agricultural, forestry or fisheries undertaking, products deriving essentially from his agricultural production, such processing activities shall also be regarded as agricultural production activities, as listed in Annex VI.
**Article 289**

1. Where the application to farmers of the normal value added tax scheme, or the simplified special scheme provided for in Article 24, would give rise to difficulties, Member States may apply to farmers, in accordance with this Chapter, a flat-rate scheme designed to offset the value added tax charged on purchases of goods and services made by the flat-rate farmers pursuant to this Article.

9.2. Each Member State may exclude from the flat-rate scheme certain categories of farmers and farmers, as well as farmers for whom the application of the normal value added tax scheme, or of the simplified procedures provided for in Article 24(1), would not give rise to administrative difficulties.

10.3. Every flat-rate farmer may opt, subject to the rules and conditions to be laid down by each Member State, for application of the normal value added tax scheme or, as the case may be, the simplified procedures provided for in Article 24(1).

**Article 290**

3. Member States shall fix the flat-rate compensation percentages, where necessary, and shall notify the Commission before applying them. Member States may fix varying percentages for forestry, for the different sub-divisions of agriculture and for fisheries.

3. Member States shall fix the flat-rate compensation percentages, where necessary, and shall notify the Commission of the flat-rate compensation percentages fixed in accordance with the first paragraph before applying them.
**Article 291**

Such flat-rate compensation percentages shall be based on calculated on the basis of macro-economic statistics for flat-rate farmers alone for the preceding three years.

The percentages may be rounded up or down to the nearest half-point. Member States shall have the option of reducing—may also reduce such percentages to a nil rate. The percentage may be rounded up or down to the nearest half-point.

**Article 292**

The flat-rate compensation percentages may not be used to obtain have the effect of obtaining for flat-rate farmers refunds greater than the value added tax charges on inputs input VAT charged.

**Article 293**

5. The flat-rate percentages provided for in paragraph 3 shall be applied to the price, exclusive of tax, of the agricultural products and agricultural services supplied by the flat-rate farmers to taxable persons other than a flat-rate farmer. This compensation shall exclude all other forms of deduction.

5. The flat-rate compensation percentages provided for in paragraph 3 shall be applied to the prices, exclusive of tax VAT, of the following goods and services:

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Article 25(3), first subparagraph, second sentence (77/388/EEC) Adapted

Article 25(3), first subparagraph, fourth and fifth sentences (77/388/EEC) Adapted

Article 25(3), first subparagraph, third sentence (77/388/EEC) Adapted

Article 25(5) (77/388/EEC) Obsolete

Article 25(5), first subparagraph, contained in Article 28j(2) (inserted by 91/680/EEC)
(a)(1) agricultural products supplied by flat–rate farmers to taxable persons other than those eligible within the territory of the country for which the Member State concerned, by this flat–rate scheme provided for in this Article;

(b)(2) agricultural products supplied by flat–rate farmers, under the conditions laid down in Article 28c(A), Article 135, to non–taxable legal persons not eligible, whose intra–Community acquisitions are subject to VAT, pursuant to Article 3(1)(b), in the Member State of arrival of the dispatch or transport of the agricultural products thus supplied, for the derogation provided for in Article 28a(1)(a), second subparagraph ends;

(c)(3) agricultural services supplied by flat–rate farmers to taxable persons other than those eligible within the territory of the country for which the Member State concerned, by this flat–rate scheme provided for in this Article.

Article 294

6. Member States may provide for the flat–rate compensation to be paid:

(a)—either by the taxable person to whom the goods or services are supplied. In this case, the taxable person to whom the goods or services are supplied shall be authorised, following the procedure laid down by the Member States, to deduct from the value added tax for which he is liable, the amount of the flat–rate compensation has paid to the flat–rate farmers;
(b)—or by the public authorities.

6.1. In the case of the *supply* of agricultural products and of *or* agricultural services *referred to specified in paragraph 5* Article 293, Member States shall provide for—*that the* flat–rate compensation *is* to be paid either *by the customer or by the public authorities*:

(a)—by the purchaser or customer.

(b)—by the public authorities.

8.2. As regards all supplies *In respect of any supply of agricultural products and or agricultural services other than those covered by paragraph 5 specified in Article 293*, the flat–rate compensation *is* to be deemed to be paid by the purchaser or customer.

*Article 295*

This—compensation—*If a flat–rate farmer is entitled to flat–rate compensation he shall exclude any other form of deduction not be entitled to deduction of VAT in respect of activities covered by this flat–rate scheme.*
**Article 296**

1. In that event, the taxable purchaser or customer pays flat-rate compensation pursuant to Article 294(1), he shall be authorised, as provided for, in accordance with the conditions laid down in Article 17, Articles 162 to 171 and in accordance with the procedures laid down by the Member States, to deduct the compensation amount from the tax—VAT for which he is liable within the territory of the country the amount of the flat-rate compensation he has paid to flat-rate farmers Member State concerned.

2. Member States shall refund to the purchaser or customer the amount of the flat-rate compensation he has paid to flat-rate farmers in respect of any of the following transactions:

   - (a) supplies the supply of agricultural products effected under, carried out in accordance with the conditions laid down specified in Article 28c(A)—Article 135, to taxable persons, or to non-taxable legal persons, acting as such in another Member State within which they are not eligible for the derogation provided for in the second subparagraph of Article 28a(1)(a), their intra-Community acquisitions of goods are subject to VAT pursuant to Article 3(1)(b).
(b) supplies the supply of agricultural products effected under the conditions laid down in Articles 142 to 145, Articles 147, 148, 149 and 151, Articles 152(1)(b) and Articles 153, 155 and 156, to a taxable purchasing customer established outside the Community, provided that in so far as the products are used for the purposes of the transactions referred to in Articles 17(3)(a) and (b) Article 164(a) and (b) or for the purposes of supplies of services which are deemed to be supplied within the territory of the country-Member State in which the customer is established and on respect of which tax VAT is payable solely by the customer pursuant to Article 189.

(c) supplies the supply of agricultural services to a taxable customer established within the Community but in another Member State or to a taxable customer established outside the Community, provided that in so far as the services are used for the purposes of the transactions referred to in Articles 17(3)(a) and (b) Article 164(a) and (b) or for the purposes of supplies of services which are deemed to be supplied within the territory of the country-Member State in which the customer is established and on respect of which tax VAT is payable solely by the customer pursuant to Article 189.

3. Member States shall determine the method by which the refunds provided for in paragraph 2 are to be made. In particular, they may apply Article 17(4) or the provisions of Directives 79/1072/EEC and 86/560/EEC.

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**Article 297**

7. Member States shall make take all necessary provisions to check properly the payment of the flat-rate compensation to the flat-rate farmers.
Article 289

Whenever they exercise the option provided for in this Article, Member States shall apply this flat-rate scheme, they shall take all measures necessary to ensure that the same method of taxation is applied to supplies of agricultural products. 

Whenever they exercise the option provided for in this Article, Member States shall apply this flat-rate scheme, they shall take all measures necessary to ensure that the same method of taxation is applied to supplies of agricultural products. 

Member States shall apply value added tax to the operations of travel agents in accordance with the provisions of this Article, where the travel agents deal with customers in their own name and use the supplies and services of other taxable persons, in the provision of travel facilities.

This special scheme shall not apply to travel agents who are acting only as intermediaries and accounting for tax in accordance with Article 11A(3)(c) to whom point (c) of the first paragraph of Article 78 applies.
In this Article travel agents include For the purposes of this Chapter, tour operators shall also be regarded as travel agents.

Article 300

All transactions performed by the travel agent in respect of the travel facilities for a journey shall be treated as a single service supplied by the travel agent to the traveller.

Article 301

The taxable amount and the price exclusive of tax VAT, within the meaning of Article 22(3)(b) point (8) of Article 217, in respect of this single service provided by the travel agent shall be the travel agent’s margin, that is to say, the difference between the total amount to be paid by the traveller, exclusive of value added tax, VAT, to be paid by the traveller and the actual cost to the travel agent of supplies and services provided by other taxable persons, where these transactions are for the direct benefit of the traveller.

Article 302

If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the supply of services carried out by the travel agent’s service shall be treated as an exempted intermediary activity under Article 15(14) exempted pursuant to Article 149.

Where these transactions are performed both inside and outside the Community, only that part of the travel agent’s service relating to transactions outside the Community may be exempted.
Article 303

4. Tax VAT charged to the travel agent by other taxable persons on the in respect of transactions described which are referred to in paragraph 2 Articles 300 and 301 and which are for the direct benefit of the traveller, shall not be eligible for deduction deductible or refund refundable in any Member State.

Chapter 4

Special arrangements for second-hand goods, works of art, collectors’ items and antiques

Section 1

Definitions

Article 304

A. Definitions

1. For the purposes of this Chapter, and without prejudice to other Community provisions, the following definitions shall apply:

   (d)(a) ‘second-hand goods’ shall mean tangible movable property that is suitable for further use as it is or after repair, other than works of art, collectors’ items or antiques and other than precious metals or precious stones as defined by the Member States.
(a) ‘works of art’ shall mean means the objects referred to listed in (a) of Annex I Annex VIII, Part A;

(b) ‘collectors’ items’ shall mean means the objects referred to listed in (b) of Annex I Annex VIII, Part B;

(c) ‘antiques’ shall mean means the objects referred to listed in (c) of Annex I Annex VIII, Part C;

(e) ‘taxable dealer’ shall mean a means any taxable person who, in the course of his economic activity and with a view to resale, purchases, or acquires applies for the purposes of his undertaking business, or imports with a view to resale, second-hand goods and/or works of art, collectors’ items or antiques, whether that taxable person is acting for himself or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale;

(f) ‘organiser of a sale by public auction’ shall mean means any taxable person who, in the course of his economic activity, offers goods for sale by public auction with a view to handing them over to the highest bidder;

(g) ‘principal of an organiser of a sale by public auction’ shall mean means any person who transmits goods to an organiser of a sale by public auction under pursuant to a contract under which commission is payable on a sale subject to the following provisions;

2. However, Member States shall have the option of need not considering regard as ‘works of art’ the items mentioned objects listed in the final three indents in (a) in Annex I points (5), (6) or (7) of Annex VIII, Part A.
The contract under which commission is payable on a sale, referred to in point (g) of paragraph 1, must provide that the organizer of the sale by public auction offers the goods for sale in his own name but on behalf of his principal and that he is to hand over the goods, in his own name but on behalf of his principal, to the highest bidder at the public auction.

Section 2

Special arrangements for taxable dealers

B. Special arrangements for taxable dealers

Subsection 1

Margin scheme

Article 305

1. In respect of supplies of second-hand goods, works of art, collectors’ items and antiques carried out by taxable dealers, Member States shall apply a special arrangements scheme for taxing the profit margin made by the taxable dealer, in accordance with the following provisions of this Subsection.

(a) The scheme referred to in paragraph 1 shall not apply to the supply of new means of transport, within the meaning of Article 28a(2), effected in accordance with the conditions laid down in Article 28c(A) shall be excluded from the special arrangements provided for in B and C.
**Article 306**

2. The supplies of goods referred to in paragraph 1 shall be supplies. The margin scheme shall apply to the supply by a taxable dealer of second-hand goods, works of art, collectors’ items or antiques dealer of the goods referred to in Article 305(1) where those goods have been supplied to him within the Community by one of the following persons:

- (a) by a non-taxable person, or;

- (b) by another taxable person, in so far as the supply of goods by that other taxable person is exempt in accordance with Article 13(B)(c), or pursuant to Article 133;

- (c) by another taxable person, in so far as the supply of goods by that other taxable person qualifies for the exemption for small enterprises provided for in Articles 24 and 277 to 280 and involves capital assets or goods;

- (d) by another taxable dealer, in so far as VAT has been applied to the supply of goods by that other taxable dealer was subject to value added tax in accordance with these special arrangements this margin scheme.

**Article 307**

3.1. The taxable amount in respect of the supply of goods as referred to in paragraph 2—Article 306—shall be the profit margin made by the taxable dealer, less the amount of value added tax relating to the profit margin.
The profit margin of the taxable dealer shall be equal to the difference between the selling price charged by the taxable dealer for the goods and the purchase price.

2. For the purposes of this paragraph, the following definitions shall apply:

   (a) ‘selling price’ means everything which constitutes the consideration, which has been, or is to be, obtained or to be obtained by the taxable dealer from the purchaser-customer or from a third party, including subsidies directly linked to that transaction, taxes, duties, levies and charges and incidental expenses such as commission, packaging, transport and insurance costs charged by the taxable dealer to the purchaser-customer, but excluding the amounts referred to in Article 11(A)(3) Article 78;

   (b) ‘purchase price’ means everything which constitutes the consideration defined in the first indent, for the purposes of point (a), obtained, or to be obtained, from the taxable dealer by his supplier.

Article 308

4.1. Member States shall grant taxable dealers the right to opt for application of the special arrangements margin scheme to supplies of the following transactions:
(a) the supply of works of art, collectors’ items or antiques, which they have imported themselves;

(b) the supply of works of art supplied to them by their creators or their successors in title;

(c) the supply of works of art supplied to them by a taxable person other than a taxable dealer where the reduced rate has been applied to that supply pursuant to Article 12(3)(c) Article 99.

2. Member States shall determine the detailed rules for exercising this exercise of the option provided for in paragraph 1, which shall in any event cover a period of at least equal to two calendar years.

Article 309

If a taxable dealer exercises the option is taken up under Article 308, the taxable amount shall be determined in accordance with paragraph 3 Article 307.
For In respect of the supplies of works of art, collectors’ items or antiques which the taxable dealer has imported himself referred to in Article 308(1)(a), the purchase price to be taken into account in calculating the profit margin shall be equal to the taxable amount on importation, determined in accordance with Article 11(B) Articles 82 to 86, plus the value added tax VAT due or paid on importation.

**Article 310**

10. In order to simplify the procedure for charging collecting the tax and subject to consultation of after consulting the VAT Committee as provided for in Article 29, Member States may provide that, for certain transactions or for certain categories of taxable dealers, the taxable amount of in respect of supplies of goods subject to the special arrangements for taxing the margin shall scheme is to be determined for each tax period during which the taxable dealer must submit the VAT return referred to in Article 22(4) Article 242.

In that the event that such provision is made in accordance with the first subparagraph, the taxable amount for in respect of supplies of goods to which the same rate of value added tax VAT is applied shall be the total profit margin made by the taxable dealer less the amount of value added tax VAT relating to that margin.

2. The total profit margin shall be equal to the difference between the following two amounts:

- (a) the total amount value of supplies of goods subject to the special arrangements for taxing the margin effected scheme and carried out by the taxable dealer during the period; that amount shall be equal to covered by the VAT return, that is to say, the total of the selling prices determined in accordance with paragraph 3, and;
(b) the total amount of purchases of goods, as referred to in paragraph 2, of the period, by the taxable dealer, that amount shall be equal to that amount covered by the VAT return, that is to say, the total of the purchase prices determined in accordance with paragraph 3.

3. Member States shall take the measures necessary to ensure that the taxable persons concerned do not enjoy unjustified advantages or sustain unjustified loss.

Article 311

11. The taxable dealer may apply the normal VAT arrangements to any supply covered by the special arrangements pursuant to paragraph 2 or 4 margin scheme.

Article 312

Where the taxable dealer applies the normal VAT arrangements to:

(a) Where the taxable dealer applies the normal VAT arrangements to the supply of a work of art, a collectors' item or an antique which he has imported himself, he shall be entitled to deduct from his tax liability the VAT for which he is liable the value added tax due or paid on the import of those goods.
(b) Where the taxable dealer applies the normal VAT arrangements to the supply to him of a work of art supplied to him by its creator or his—the creator’s successors in title, or by a taxable person other than a taxable dealer, he shall be entitled to deduct from his tax liability—the VAT for which he is liable—the value added tax due or paid for in respect of the work of art supplied to him.

(e) The supply of a work of art supplied to him by a taxable person other than a taxable dealer, he shall be entitled to deduct from his tax liability the value added tax due or paid for the work of art supplied to him.

2. The right to deduct shall arise at the time when the VAT due for on the supply in respect of which the taxable dealer opts for application of the normal value added tax arrangements becomes chargeable.

Article 313

5. Where they are effected carried out in accordance with the conditions laid down specified in Article 15, the supplies Articles 142 to 145 or Articles 147, 148 or 149, the supply of second-hand goods, works of art, collectors’ items or antiques subject to the special arrangements for taxing the margin scheme shall be exempt.

Article 314

7. In so far as goods are used for the purpose of supplies carried out by him and subject to the special arrangements for taxing the margin scheme, the taxable dealer shall may not be entitled to deduct the following from the tax-VAT for which he is liable:

(a) the value added tax VAT due or paid in respect of works of art, collectors’ items or antiques which he has imported himself.
(b) the value added tax VAT due or paid in respect of works of art which have been, or are to be, supplied to him by their creators creator or their by the creator’s successors in title;

(c) the value added tax VAT due or paid in respect of works of art which have been, or are to be, supplied to him by a taxable person other than a taxable dealer.

**Article 315**

6. Taxable persons shall be entitled may not deduct from the tax VAT for which they are liable the value added tax VAT due or paid in respect of goods which have been, or are to be, supplied to them by a taxable dealer, in so far as the supply of those goods by the taxable dealer is subject to the special arrangements for taxing the margin scheme.

**Article 316**

8. Where he is led to apply both the normal VAT arrangements for value added tax and the special arrangements for taxing the margin, the taxable dealer and the margin scheme, he must follow show separately in his accounts the transactions falling under each of those arrangements, according to in accordance with the rules laid down by the Member States.

**Article 317**

9. The taxable dealer may not indicate enter separately on the invoices which he issues, tax the VAT relating to supplies of goods to which he makes subject to the special arrangements for taxing applies the margin scheme.

**Subsection 2**

Transitional arrangements for second-hand means of transport
TITLE XVI B

TRANSITIONAL PROVISIONS APPLICABLE IN THE FIELD OF SECOND-HAND GOODS, WORKS OF ART, COLLECTORS’ ITEMS AND ANTIQUES

Article 280 Article 318

1. Member States which, at 31 December 1992, were applying special tax arrangements other than those provided for in Article 26a(B) to supplies the margin scheme to the supply by taxable dealers of second-hand means of transport effected by taxable dealers may, pending introduction of the definitive arrangements referred to in Article 395, continue to apply those arrangements during the period referred to in Article 281 in so far as they comply with, or are adjusted to comply with, the following conditions laid down in this Subsection:

2. By way of derogation from the first sentence of paragraph 1, the Kingdom of Denmark shall be entitled to apply the may introduce special tax arrangements laid down in subparagraphs 1(a) to (h) during the period as referred to in Article 281 the first paragraph.

Article 319

(a)1. The special transitional arrangements shall apply only to supplies of the second-hand means of transport referred to in Article 28a(2)(a) and regarded as second-hand goods within the meaning of Article 26a(A)(d), effected carried out by taxable dealers within the meaning of Article 26a(A)(e), and subject to the special tax arrangements for taxing the margin pursuant to Article 26a(B)(1) and (2) scheme.

2. Supplies transitional arrangements shall not apply to the supply of new means of transport within the meaning of Article 28a(2)(b) that are carried out under in accordance with the conditions specified in Article 28c(A) shall be excluded from these special arrangements specified in Article 135.

308
Article 320

(b) the tax—The VAT due in respect of each supply referred to in (a) is equal to the amount of VAT that would have been due if that supply had been subject to the normal VAT arrangements for value added tax, less the amount of value added tax regarded as being incorporated by the taxable dealer in the purchase price of the means of transport by the taxable dealer.

Article 321

(e) the tax—The VAT regarded as being incorporated by the taxable dealer in the purchase price of the means of transport by the taxable dealer shall be calculated according to the following method:

– (a) the purchase price to be taken into account shall be the purchase price within the meaning of Article 26a(B)(3) Article 307(2)(b),

– (b) that purchase price paid by the taxable dealer shall be deemed to include the VAT that would have been due if the taxable dealer’s supplier had subjected the supply to the normal value added tax arrangements.

– (c) the rate to be taken into account shall be the rate applicable within the meaning of Article 12(1) pursuant to Article 90, in the Member State within which the place of the supply to the taxable dealer, as determined in accordance with Article 8 Articles 32 and 33, is deemed to be situated.

Article 322

(d) the tax—The VAT due in respect of each supply of means of transport as referred to in (a) the first paragraph of Article 319, determined in accordance with the provisions of (b) Article 320, may not be less than the amount of VAT that would be due if that supply had been subject to the special arrangements for taxing the margin in accordance with Article 26a(B)(3) scheme.
For the application of the above provisions, the Member States have the option of providing that, if the supply had been subject to the special arrangements for taxation which may provide that, if the supply had been subject to the margin, that scheme, the margin would not have been less than 10% of the selling price, within the meaning of Article 307(2)(a);

Article 323
(f) taxable persons shall not be entitled to deduct from the tax due or paid in respect of second-hand means of transport supplied to them by a taxable dealer, in so far as the supply of those goods by the taxable dealer is subject to the arrangements in accordance with these transitional arrangements;

Article 324
(e) the taxable dealer shall not be entitled to indicate separately on the invoices he issues tax relating to supplies to which he is subjecting to the special arrangements; applies these transitional arrangements;

4. For supplies by a taxable dealer of works of art, collectors' items or antiques that have been supplied to him under the conditions provided for in Article 26a(B)(2), the Federal Republic of Germany shall be entitled, until 30 June 1999, to provide for the possibility for taxable dealers to apply either the special arrangements for taxable dealers, or the normal VAT arrangements according to the following rules:

(a) for the application of the special arrangements for taxable dealers to these supplies of goods, the taxable amount shall be determined in accordance with Article 11(A)(1), (2) and (3);
(b) in so far as the goods are used for the needs of his operations which are taxed in accordance with (a), the taxable dealer shall be authorised to deduct from the tax for which he is liable:

the value added tax due or paid for works of art, collectors’ items or antiques which are or will be supplied to him by another taxable dealer, where the supply by that other taxable dealer has been taxed in accordance with (a),

the value added tax deemed to be included in the purchase price of the works of art, collectors’ items or antiques which are or will be supplied to him by another taxable dealer, where the supply by that other taxable dealer has been subject to value added tax in accordance with the special arrangements for the taxation of the margin provided for in Article 26a(B), in the Member State within whose territory the place of that supply, determined in accordance with Article 8, is deemed to be situated.

This right to deduct shall arise at the time when the tax due for the supply taxed in accordance with (a) becomes chargeable;

(c) for the application of the provisions laid down in the second indent of (b), the purchase price of the works of art, collectors’ items or antiques the supply of which by a taxable dealer is taxed in accordance with (a) shall be determined in accordance with Article 26a(B)(3) and the tax deemed to be included in this purchase price shall be calculated according to the following method:
— the purchase price shall be deemed to include the value added tax that would have been due if the taxable margin made by the supplier had been equal to 20% of the purchase price,

— the rate to be taken into account shall be the rate applicable, within the meaning of Article 12(1), in the Member State within whose territory the place of the supply that is subject to the special arrangements for taxation of the profit margin, determined in accordance with Article 8, is deemed to be situated;

(d) — where he applies the normal arrangements for value added tax to the supply of a work of art, collectors’ item or antique which has been supplied to him by another taxable dealer and where the goods have been taxed in accordance with (a), the taxable dealer shall be authorised to deduct from his tax liability the value added tax referred to in (b);

(e) — the category of rates applicable to these supplies of goods shall be that which was applicable on 1 January 1993;

(f) — for the application of the fourth indent of Article 26a(B)(2), the fourth indent of Article 26a(C)(1) and Article 26a(D)(b) and (c), the supplies of works of art, collectors’ items or antiques, taxed in accordance with (a), shall be deemed by Member States to be supplies subject to value added tax in accordance with the special arrangements for taxation of the profit margin provided for in Article 26a(B);

(g) — where the supplies of works of art, collectors’ items or antiques taxed in accordance with (a) are effected under the conditions provided for in Article 28c(A), the invoice issued in accordance with Article 22(3) shall contain an endorsement indicating that the special taxation arrangements for taxing the margin provided for in Article 28o(4) have been applied.

Section 3

Special arrangements for sales by public auction
### Article 325

1. By way of derogation from B, Member States may determine, in accordance with the following provisions, the taxable amount of supplies of this Section, apply special arrangements for taxation of the profit margin made by an organiser of a sale by public auction in respect of the supply of second-hand goods, works of art, collectors’ items or antiques effected by an organiser of sales by public auction that organiser, acting in his own name, pursuant to and on behalf of the persons referred to in Article 326, pursuant to a contract under which commission is payable on the sale of those goods by public auction, on behalf of:

<table>
<thead>
<tr>
<th>(a)</th>
<th>supplies: The arrangements referred to in paragraph 1 shall not apply to the supply of new means of transport, within the meaning of Article 28a(2), effected within, carried out in accordance with the conditions laid down specified in Article 28c(A) shall be excluded from the special arrangements provided for in B and C.</th>
</tr>
</thead>
</table>

### Article 326

1. By way of derogation from B, Member States may determine, in accordance with the following provisions, the taxable amount of These special arrangements shall apply to supplies of second-hand goods, works of art, collectors’ items or antiques effected carried out by an organiser of sales a sale by public auction, acting in his own name, pursuant to a contract under which commission is payable on the sale of those goods by public auction, on behalf of one of the following persons:

<table>
<thead>
<tr>
<th>(a)</th>
<th>a non-taxable person, or</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td>another taxable person, in so far as the supply of goods, within the meaning of Article 5(4)(e), carried out by that other taxable person in accordance with a contract under which commission is payable on a sale, is exempt in accordance with Article 13(B)(e), or pursuant to Article 133;</td>
</tr>
</tbody>
</table>
—(c) another taxable person, in so far as the supply of goods, within the meaning of Article 5(4)(c) carried out by that other taxable person qualifies for in accordance with a contract under which commission is payable on a sale, is covered by the exemption for small enterprises provided for in Article 24–Articles 277 to 280 and involves capital assets, or goods;

—(d) a taxable dealer, in so far as the supply of goods, within the meaning of Article 5(4)(c), carried out by that other taxable dealer in accordance with a contract under which commission is payable on a sale, is subject to tax—VAT in accordance with the special arrangements for taxing the margin provided for in B scheme.

**Article 327**

7. The supply of goods to a taxable person who is an organizer of sales by public auction shall be regarded as being effected when the sale of those goods by public auction is itself effected.

**Article 328**

2. The taxable amount in respect of each supply of goods referred to in paragraph 1 of this Section shall be the total amount invoiced in accordance with paragraph 4 of Article 331 to the purchaser by the organizer of the sale by public auction, less the following:

—(a) the net amount paid or to be paid by the organizer of the sale by public auction to his principal, as determined in accordance with paragraph 3, and Article 329;

—(b) the amount of the tax due—VAT payable by the organizer of the sale by public auction in respect of his supply.

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Article 26a(C)(1), third indent (inserted by 94/5/EC)  
*Adapted*

Article 26a(C)(1), fourth indent (inserted by 94/5/EC)  
*Adapted*

Article 26a(C)(7) (inserted by 94/5/EC)  
*Adapted*

Article 26a(C)(2) (inserted by 94/5/EC)  
*Adapted*
Article 329

3. The net amount paid or to be paid by the organizer of the sale by public auction to his principal shall be equal to the difference between the auction price of the goods and the amount of the commission obtained or to be obtained by the organizer of the sale by public auction from his principal pursuant to the contract under which commission is payable on the sale:

--- the price of the goods at public auction, and

--- the amount of the commission obtained or to be obtained by the organizer of the sale by public auction from his principal, under the contract whereby commission is payable on the sale.

Article 330

6. Organisers of sales by public auction who supply goods under in accordance with the conditions laid down in paragraph 1—Article 326 must indicate the following in their accounts, in suspense accounts:

-(a) the amounts obtained or to be obtained from the purchaser of the goods;

-(b) the amounts reimbursed or to be reimbursed to the vendor of the goods.

These amounts referred to in the first paragraph must be duly substantiated.
Article 331

4. The organizer of the sale by public auction must issue to the purchaser an invoice itemising the following:

(a) the auction price of the goods;

(b) taxes, dues, levies and charges;

(c) incidental expenses, such as commission, packing, transport and insurance costs, charged by the organizer to the purchaser of the goods.

That the invoice issued by the organizer of the sale by public auction must not indicate any value added tax(VAT) separately.

Article 332

5. The organizer of the sale by public auction to whom the goods have been transmitted under a contract whereby commission is payable on a public auction sale must issue a statement to his principal.

Adapted
The statement issued by the organiser of the sale by public auction must itemise—specify separately—the amount of the transaction, i.e. that is to say, the auction price of the goods less the amount of the commission obtained or to be obtained from the principal.

2. The statement so drawn up in accordance with paragraph 1 shall serve as the invoice which the principal, where he is a taxable person, must issue to the organiser of the sale by public auction in accordance with Article 22(3) Articles 211 and 212.

Article 333

3. Where they apply the special arrangements for sales by public auction provided for in Article 26a(C), Member States which apply the arrangements provided for in this Section shall also apply these special arrangements to supplies of second-hand means of transport effected by an organiser of sales by public auction, acting in his own name, pursuant to a contract under which commission is payable on the sale of those goods by public auction, on behalf of a taxable dealer, in so far as the supply of the second-hand means of transport, within the meaning of Article 5(4)(c), is subject to tax VAT in accordance with paragraphs 1 and 2 the transitional arrangements for second-hand means of transport.

D. Transitional arrangements for the taxation of trade between Member States

During the period referred to in Article 28l, Member States shall apply the following provisions:

Section 4

Measures to prevent distortion of competition and fraud
**Article 334**

Member States may take measures concerning the right to deduct value added tax of deduction in order to avoid ensure that the taxable dealers concerned enjoying covered by special arrangements as provided for in Section 2 do not enjoy unjustified advantage or sustaining unjustified loss harm.

**Article 335**

Acting unanimously on a proposal from the Commission, the Council may authorize allow any Member State to introduce particular special measures for the purpose of combating to combat fraud, by providing that pursuant to which the tax VAT due in application of under the arrangements for taxing the profit margin provided for in Article 26a(I) cannot scheme may not be less than the amount of tax VAT which would be due if the profit margin were equal to a certain percentage of the selling price.

This The percentage of the selling price shall be fixed taking into account in the light of the normal profit margins realized made by economic operators in the sector concerned.

**Chapter 5**

Special scheme for investment gold

**Section 1**

General provisions

**Article 26b**

**Article 336**

Special scheme for investment gold

**A.**—Definition

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**Article 2**

(94/5/EC)

Adapted

**Article 3, first sentence**

(94/5/EC)

Adapted

**Article 3, second sentence**

(94/5/EC)

Adapted

**Article 26b**

(inserted by 98/80/EC)

Heading of Article 26b

(inserted by 98/80/EC)

Heading of Article 26b(A)

(inserted by 98/80/EC)
For the purposes of this Directive, and without prejudice to other Community provisions, ‘investment gold’ shall mean:

1. gold, in the form of a bar or a wafer of weights accepted by the bullion markets, of a purity equal to or greater than 995 thousandths, whether or not represented by securities.

2. gold coins which of a purity equal to or greater than 900 thousandths and minted after 1800, which are or have been legal tender in the country of origin, and are normally sold at a price which does not exceed the open market value of the gold contained in the coins by more than 80%.

- are of a purity equal to or greater than 900 thousandths,

- are minted after 1800,

- are or have been legal tender in the country of origin, and

- are normally sold at a price which does not exceed the open market value of the gold contained in the coins by more than 80%.
2. Member States may exclude from the special scheme small bars or wafers of a weight of 1 g or less.

3. For the purposes of this Directive, the coins referred to in point (2) of paragraph 1 shall not, for the purpose of this Directive, be regarded as sold for numismatic interest.

**Article 337**

Each Member State shall inform the Commission before 1 July each year, starting in 1999, of the coins meeting the criteria laid down in point (2) of Article 336(1) which are traded in that Member State. The Commission shall, before 1 December each year, publish a comprehensive list of those coins in the ‘C’ series of the Official Journal of the European Union before 1 December each year. Coins included in the published list shall be deemed to fulfil those criteria for throughout the whole year for which the list is published.

**Section 2**

**Exemption from VAT**

B. Special arrangements applicable to investment gold transactions
Article 338

Member States shall exempt from value added tax VAT the supply, the intra–Community acquisition and the importation of investment gold, including investment gold represented by certificates for allocated or unallocated gold or traded on gold accounts and including, in particular, gold loans and swaps, involving a right of ownership or claim in respect of investment gold, as well as transactions concerning investment gold involving futures and forward contracts leading to a transfer of right of ownership or claim in respect of investment gold.

Article 339

Member States shall also exempt the services of agents who act in the name and for the account on behalf of another a third party when they intervene take part in the supply of investment gold for their principal.

Section 3

Taxation option

C. Option to tax

Article 340

Member States shall allow taxable persons who produce investment gold of whatever origin or transform any gold into investment gold as defined in Article 338, a the right of option to opt for the taxation of supplies of investment gold to another taxable person which would otherwise be exempt under B pursuant to Article 338.
**Article 341**

1. Member States may allow taxable persons who, in the course of their economic activity, normally supply gold for industrial purposes, the right of option to opt for the taxation of supplies of investment gold—gold bars or wafers, as defined referred to in A(i)—point (1) of Article 336(1), to another taxable person, which would otherwise be exempt pursuant to Article 338.

2. Member States may restrict the scope of the option provided for in paragraph 1.

**Article 342**

Where the supplier has exercised the right of option under Articles 340 and 341 to opt for taxation pursuant to the first or second paragraph, Member States shall allow the agent to opt for taxation for the agent in respect of the services mentioned referred to in the second paragraph of B Article 339.

**Article 343**

Member States shall specify the details of the options provided for in this Section, and shall inform the Commission of the rules of application for the exercise of these options in that Member State accordingly.

**Section 4**

**Transactions on a regulated gold bullion market**

G——Procedure for transactions on a regulated gold bullion market
Article 344

1. Each Member State may, subject to consultation provided for under Article 29, disapply the exemption for investment gold provided for by this special scheme in respect of specific transactions, other than intra-Community supplies or exports, concerning investment gold taking after consulting the VAT Committee, apply VAT to specific transactions which take place in that Member State between taxable persons who are members of a gold bullion market regulated by the Member State concerned or between such a taxable person and another taxable person who is not a member of that market. However, the Member State may not apply VAT to supplies carried out in accordance with the conditions specified in Article 135 or to exports of investment gold:

(a) between taxable persons who are members of a bullion market regulated by the Member State concerned, and

(b) where the transaction is between a member of a bullion market regulated by the Member State concerned and another taxable person who is not a member of that market.

Under these circumstances, these transactions shall be taxable and the following shall apply:

Article 345

2. (a) For transactions under 1(a), for the purpose of simplification, the Member States which, pursuant to Article 344, tax transactions between taxable persons who are members of a regulated gold bullion market shall, for the purposes of simplification, authorise suspension of the tax to be collected as well as dispense with the recording and relieve taxable persons of the accounting requirements of value added tax in respect of VAT.

Article 26b(G)(1), first subpara-graph (inserted by 98/80/EC)

Adapted

Article 26b(G)(1), first subpara-graph, point (a) (inserted by 98/80/EC)

Article 26b(G)(1), first subpara-graph, point (b) (inserted by 98/80/EC)

Article 26b(G)(1), second subpara-graph (inserted by 98/80/EC)

Article 26b(G)(2) (a) (inserted by 98/80/EC)

Adapted
Article 346

(b) For transactions under 1(b), the reverse charge procedure under F Member States which, pursuant to Article 344, tax transactions between a taxable person who is a member of a regulated gold bullion market and another taxable person who is not a member of that market shall be applicable designate the customer as the person liable for payment of VAT in accordance with procedures and conditions laid down by Member States pursuant to Article 191.

2. Where a non-member of the bullion market would not, other than for these transactions, be liable for registration for VAT in the relevant Member State the customer who is not a member of the regulated gold bullion market is a taxable person subject to VAT solely in respect of the transactions referred to in Article 344, the member-vendor shall fulfil the fiscal-tax obligations on behalf of the non-member, according to customer, in accordance with the provisions—law of that—the Member State in which taxation takes place.

Section 5

Special rights and obligations for traders in investment gold

D. Right of deduction

Article 347

1. Taxable persons. Where a subsequent supply of investment gold is exempt pursuant to this Chapter, the taxable person shall be entitled to deduct the following:

(a) tax the VAT due or paid in respect of investment gold supplied to them him by a person who has exercised the right of option under C—Articles 340 and 341 or supplied to them pursuant to the procedure laid down in G him in accordance with Section 4;

Article 26b(G)(2)
(b), first sentence (inserted by 98/80/EC)

Adapted

Article 26b(G)(2)
(b), second sentence (inserted by 98/80/EC)

Adapted

Section 5

Special rights and obligations for traders in investment gold

D. Right of deduction

Article 347

1. Taxable persons. Where a subsequent supply of investment gold is exempt pursuant to this Chapter, the taxable person shall be entitled to deduct the following:

(a) tax the VAT due or paid in respect of investment gold supplied to them him by a person who has exercised the right of option under C—Articles 340 and 341 or supplied to them pursuant to the procedure laid down in G him in accordance with Section 4;

Article 26b(D)(1)
(inserted by 98/80/EC)

Adapted

Article 26b(D)(1)
(a) (inserted by 98/80/EC)

Adapted
(b) tax the VAT due or paid in respect of a supply to them him, or in respect of an intra–Community acquisition or importation carried out by them him, of gold other than investment gold which is subsequently transformed by them him or on their his behalf into investment gold;

(c) tax the VAT due or paid in respect of services supplied to them him consisting of in a change of form, weight or purity of gold including investment gold;

if their subsequent supply of this gold is exempt under this Article.

Article 348

2. Taxable persons who produce investment gold or transform any gold of whatever origin into investment gold, shall be entitled to deduct tax the VAT due or paid by them in respect of supplies, or the supply, intra–Community acquisition or importation of goods or services linked to the production or transformation of that gold, as if their the subsequent supply of the gold exempted under this Article pursuant to Article 338 were taxable taxed.

E. Special obligations for traders in investment gold

Article 349

1. Member States shall, as a minimum, ensure that traders in investment gold who carry out transactions which are exempt pursuant to this Chapter keep account, as a minimum, accounts of all substantial transactions in investment gold and keep the documentation to allow identification of documents which enable the customer customers in such transactions to be identified.

Article 26b(D)(1)
(b) (inserted by 98/80/EC)

Adapted

Article 26b(D)(1)
(c) (inserted by 98/80/EC)

Adapted

Article 26b(D)(1), end
(inserted by 98/80/EC)

Article 26b(D)(2)
(inserted by 98/80/EC)

Adapted

Heading of Article 26b(E)
(inserted by 98/80/EC)

Article 26b(E), first subparagraph
(inserted by 98/80/EC)

Adapted
Traders shall keep the information referred to in the first subparagraph for a period of at least five years.

2. Member States may accept equivalent obligations under measures adopted pursuant to other Community legislation, such as Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, to meet the requirements of the first paragraph under paragraph 1.

3. Member States may lay down stricter obligations which are more stringent, in particular on as regards the keeping of special record keeping records or special accounting requirements.

Chapter 6

Special scheme for non–established taxable persons supplying electronic services to non–taxable persons

Section 1

General provisions

Article 350

Article 1—This Chapter shall apply for a period of three years starting from 1 July 2003.

Article 26c

Special scheme for non–established taxable persons supplying electronic services to non–taxable persons

Heading of Article 26c

Article 26c

(inserted by 2002/38/EC)

Article 26c

(2002/38/EC)

A. Definitions

For the purposes of this Article Chapter, and without prejudice to other Community provisions, the following definitions shall apply:

(a)(1) ‘Non-established taxable person’ means a taxable person who neither has established his business nor in the territory of the Community and who has a fixed establishment within the territory of the Community and who is not otherwise required to be identified for tax purposes under Article 22 pursuant to Article 206:

(b)(2) ‘Electronic services’ and ‘services supplied electronically’ means those services referred to in the last indent of Article 9(2)(e) point (k) of Article 56(1):

(c)(3) ‘Member State of identification’ means the Member State which the non-established taxable person chooses to contact to state when his activity as a taxable person within the territory of the Community commences in accordance with the provisions of this Article Chapter:

(d)(4) ‘Member State of consumption’ means the Member State in which, pursuant to Article 57, the supply of the electronic services is deemed to take place according to Article 9(2)(f):

(e)(5) ‘Value added tax return’ means the statement containing the information necessary to establish the amount of tax that has become chargeable VAT due in each Member State.

Section 2

Special scheme for electronically supplied services

B. Special scheme for services supplied electronically

Heading of Article 26c(A) (inserted by 2002/38/EC)

Article 26c(A) (inserted by 2002/38/EC)

Article 26c(A)(a) (inserted by 2002/38/EC)

Article 26c(A)(b) (inserted by 2002/38/EC)

Article 26c(A)(c) (inserted by 2002/38/EC)

Article 26c(A)(d) (inserted by 2002/38/EC)

Article 26c(A)(e) (inserted by 2002/38/EC)

Adapted

Adapted

Adapted
Article 352

1. Member States shall permit any non-established taxable person supplying electronic services to a non-taxable person who is established in a Member State or who has his permanent address or usually resides in a Member State, to use this special scheme in accordance with the following provisions. This scheme applies to all electronic services supplied within the Community.

Article 353

2. The non-established taxable person shall state to the Member State of identification when he commences or ceases his activity as a taxable person commences, ceases, or changes to the extent that activity in such a way that he no longer qualifies meets the conditions necessary for the use of this special scheme. Such a statement shall be made. He shall communicate that information electronically.

Article 354

1. The information from which the non-established taxable person must provide to the Member State of identification when he commences a taxable activity commences activity shall contain the following details for the identification:

   (a) name, postal address, electronic addresses, including websites, national tax number, if any, and a statement that the person is not identified for value added tax purposes within the Community;

   (b) name, postal address, electronic addresses, including websites, national tax number, if any, and a statement that the person is not identified for value added tax purposes within the Community.
(c) name, postal address, electronic addresses, including websites, national tax number, if any, and a statement that the person is not identified for value added tax purposes within the Community.

(d) name, postal address, electronic addresses, including websites, national tax number, if any, and a statement that the person is not identified for value added tax purposes within the Community.

(c) name, postal address, electronic addresses, including websites, national tax number, if any, and a statement that the person is not identified for value added tax VAT purposes within the Community.

2. The non–established taxable person shall notify the Member State of identification of any changes in the submitted information provided.

Article 355

The Member State of identification shall identify allocate to the non–established taxable person by means of an individual identification number. Based on and shall notify him of that number by electronic means. On the basis of the information used for this identification, Member States of consumption may keep their own identification systems.

The Member State of identification shall notify the non–established taxable person by electronic means of the identification number allocated to him.
**Article 356**

4. The Member State of identification shall exclude the non-established taxable person from the identification register if in the following cases:

(a) he notifies that Member State that he no longer supplies electronic services,

(b) if it may be assumed that his taxable activities have ended,

(c) he no longer fulfills the requirements necessary to be allowed to use this special scheme,

(d) if he persistently fails to comply with the rules concerning the special scheme.

**Article 357**

5. The non-established taxable person shall submit by electronic means to the Member State of identification a VAT return for each calendar quarter, whether or not electronic services have been supplied. The VAT return shall be submitted within 20 days following the end of the reporting period to which it relates.
Article 358

The value-added tax–VAT return shall set out show the identification number and, for each Member State of consumption where tax has become due, in which VAT is due, the total value, less value added tax exclusive of VAT, of supplies of electronic services for carried out during the reporting tax period and the total amount of the corresponding tax VAT. The applicable tax rates and the total tax VAT due shall also be indicated on the return.

Article 359

6.1. The value-added tax–VAT return shall be made out in Euro.

Member States which have not adopted the Euro may require the tax–VAT return to be made out in their national currencies. If the supplies have been made in other currencies, the non–established taxable person shall, for the purposes of completing the VAT return, use the exchange rate valid for applying on the last date of the reporting tax period shall be used when completing the value added tax return.

2. The exchange–conversion shall be done following made by applying the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.

Article 360

7. The non–established taxable person shall pay the value–added tax VAT when submitting the VAT return.
Payment shall be made to a bank account denominated in Euro, designated by the Member State of identification. Member States which have not adopted the Euro may require the payment to be made to a bank account denominated in their own currency.

**Article 361**

8. Notwithstanding Article 1(1) of Directive 86/560/EEC, the non-established taxable person making use of this special scheme shall, instead of making deductions under Article 17(2), deducting VAT pursuant to Article 163, be granted a refund according to Directive 86/560/EEC. Articles 2(2), 2(3) and (3) and Article 4(2) of Directive 86/560/EEC will not apply to the refund relating to electronic supplies covered by this special scheme.

**Article 362**

9.1. The non-established taxable person shall keep records of the transactions covered by this special scheme in sufficient detail. Those records must be sufficiently detailed to enable the tax administration authorities of the Member State of consumption to determine that the value added tax return referred to in (5) is correct.

2. Those records should be made available electronically on request to the Member State of identification and to the Member State of consumption.

These records shall be maintained for a period of ten years from the end of the year during which the transaction was carried out.
Chapter 1
General derogations

Section 1

Derogations for States which were members of the Community on 1 January 1978

1. Any provisions brought into force by the Member States under the provisions of the first four indents of Article 17 of the second Council Directive of 11 April 1967 shall cease to apply, in each Member State, as from the respective dates on which the provisions referred to in the second paragraph of Article 1 of this Directive come into force.

1a. Until a date which may not be later than 30 June 1999, the United Kingdom of Great Britain and Northern Ireland may, for imports of works of art, collectors’ items or antiques which qualified for an exemption on 1 January 1993, apply Article 11(D)(6) in such a way that the value added tax due on importation is, in any event, equal to 2.5% of the amount determined in accordance with Article 11(D)(1) to (4).

3. During the transitional period referred to in paragraph 4, Member States may:

(a) continue to subject to tax Member States which, at 1 January 1978, taxed the transactions exempt under Article 13 or 15 set out listed in Annex E to this Directive Annex IX, Part A, may continue to tax those transactions.

Adapted
Article 364

(b) — continue to exempt the activities set out in Member States which, at 1 January 1978, exempted the transactions listed in Annex F under Annex IX, Part B, may continue to exempt those transactions, in accordance with the conditions existing applying in the Member State concerned on that date.

Article 365

(d) — continue to apply measures in Member States which, at 1 January 1978, applied provisions derogating from the principle of immediate deduction laid down in the first paragraph of Article 18(2) Article 173 may continue to apply those provisions.

Article 366

(e) — continue to apply measures in Member States which, at 1 January 1978, applied provisions derogating from the provisions of Articles 6(4) and 11(A)(3)(c) Article 29 or from point (c) of the first paragraph of Article 78 may continue to apply those provisions.

Article 367

(g) — by way of derogation from Articles 17(3) and 26(3), continue to exempt Articles 164 and 302, Member States which, at 1 January 1978, exempted without repayment of input tax deductibility of the VAT paid at the preceding stage, the services of travel agents as referred to in Article 26(3). This Article 302, may continue to exempt those services. That derogation shall also apply in respect of travel agents acting in the name and on behalf of the traveller.

Section 2

Derogations for States which acceded to the Community after 1 January 1978

Article 28(3)(b)

(77/388/EEC)

Adapted

Article 28(3)(d)

(77/388/EEC)

Adapted

Article 28(3)(e)

(amended by 94/5/EC)

Adapted

Article 28(3)(g)

(77/388/EEC)

Adapted
Article 368

(b) For the purposes of implementing the provisions laid down in Article 28(3), the Hellenic Republic is authorized Greece may continue to exempt under the conditions laid down in Article 28(4) the following transactions listed in Annex E points (2), (8), (9), (11) and (12) of Annex IX, Part B, in accordance with the conditions applying in that Member State on the date of its accession:

2. services supplied by authors, artists, performers, lawyers and other members of the liberal professions, other than the medical and paramedical professions, in so far as these are not services specified in Annex B to the second Council Directive of 11 April 1967;

9. treatment of animals by veterinary surgeons;

12. the supply of water by public authorities;

16. supplies of those buildings and land described in Article 4(3);

18. the supply, modification, repair, maintenance, chartering and hiring of commercial inland waterway vessels and the supply, hiring, repair and maintenance of equipment incorporated or used therein;

23. the supply, modification, repair, maintenance, chartering and hiring of aircraft, including equipment incorporated or used therein, used by State institutions;

25. the supply, modification, repair, maintenance chartering and hiring of warships.
**Article 369**

Pending a decision by the Council, which, under Article 3 of Directive 89/465/EEC, is to act on the abolition of the transitional derogations provided for in paragraph 3, Spain shall be authorised to continue to exempt the transactions referred to supply of services performed by authors, listed in point 2, point (2) of Annex F in respect of services rendered by authors—Annex IX, Part B, and the transactions referred to listed in points 23 and 25, points (11) and (12) of—Annex F, Annex IX, Part B, in accordance with the conditions applying in that Member State on the date of its accession.

**Article 370**

(b) For the application of the provisions in Article 28(3)(b), the Portuguese Republic shall be authorized to exempt the transactions listed in points 2, 3, 6, 9, 10, 16, 17, 18, 26 and 27 points (2), (4), (7), (9), (10) and (13) of—Annex F, Annex IX, Part B, in accordance with the conditions applying in that Member State on the date of its accession.

**Article 371**

(h) For the purposes of Article 28(3)(a), the Republic of Austria may continue to tax the transactions listed in point (2) of Annex IX, Part A.

——the transactions listed in point 7 of Annex E.
2. For the purposes of applying Article 28(3)(b), the Republic of Austria may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt from value added tax the following transactions:

   - (a) the transactions listed in points 7 and 16 points (5) and (9) of Annex F, so long as the same exemptions are applied to any of the present Member States Annex IX, Part B;

   - (b) with refund of tax deductibility of the VAT paid at the preceding stage, all parts of international passenger transport operations, carried out by air, sea or inland waterways, from Austria to another Member State or to a third country or vice versa, other than passenger transport operations on Lake Constance, so long as the same exemption applies to any of the present Member States.

Article 372

1. For the purposes of implementing Article 28(3)(a), and so long as such transactions are subject to tax by any of the present Member States, the Republic of Finland may continue to tax the transactions listed in point 7 point (2) of Annex E Annex IX, Part A, for as long as the same transactions are taxed in any of the Member States which were members of the Community on 31 December 1994.

2. For the purposes of implementing Article 28(3)(b), and so long as the same exemption is applied by any of the present Member States, the Republic of Finland may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt from value added tax the supply of services by authors, artists and performers, listed in point (2) of Annex IX, Part B, and the transactions listed in points (5), (9) and (10) of Annex IX, Part B, for as long as the same exemptions are applied in any of the Member States which were members of the Community on 31 December 1994.
— services supplied by authors, artists and performers referred to in point 2 of Annex F;

— the transactions listed in points 7, 16 and 17 of Annex F.

**Article 373**

(aa) For the purposes of applying Article 28(3)(b), so long as the same exemptions are applied to any of the present Member States, the Kingdom of Sweden may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt from value added tax the supply of services by authors, artists and performers, listed in point (2) of Annex IX, Part B, and the transactions listed in points (1), (9) and (10) of Annex IX, Part B, for as long as the same exemptions are applied in any of the Member States which were members of the Community on 31 December 1994;

— services supplied by authors, artists and performers referred to in point 2 of Annex F;

— the transactions listed in points 1, 16 and 17 of Annex F.
**Article 374**

(b) For the purposes of applying Article 28(3)(b) of Directive 77/388/EEC, The Czech Republic may maintain an exemption from value added tax on, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point 12 point (10) of Annex F to the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or Annex IX, Part B, for as long as the same exemption is applied by in any of the present Member States, whichever is the earlier which were members of the Community on 30 April 2004.

**Article 375**

(b) For the purposes of applying Article 28(3)(b) of Directive 77/388/EEC, Estonia may maintain an exemption from value added tax on, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point 12 point (10) of Annex F to the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or Annex IX, Part B, for as long as the same exemption is applied by in any of the present Member States, whichever is the earlier which were members of the Community on 30 April 2004.

**Article 376**

For the purposes of applying Article 28(3)(b) of Directive 77/388/EEC, Cyprus may maintain an exemption from value added tax on, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point 12 point (10) of Annex F to the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or Annex IX, Part B, for as long as the same exemption is applied by in any of the present Member States, whichever is the earlier which were members of the Community on 30 April 2004.
Article 377

For the purposes of applying Article 28(3)(b) of Directive 77/388/EEC, as long as the same exemptions are applied in any of the Member States which were members of the Community on 30 April 2004, Latvia may maintain an exemption from value added tax on services supplied by authors, artists and performers, referred to in point 2 of Annex F of the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or so long as the same exemptions are applied by any of the present Member States, whichever is the earlier, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the following transactions:

(a) For the purposes of applying Article 28(3)(b) of Directive 77/388/EEC, Latvia may maintain an exemption from value added tax on the supply of services supplied by authors, artists and performers, as referred to in point 2 of Annex F of the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or so long as the same exemptions are applied by any of the present Member States, whichever is the earlier Annex IX, Part B;

(b) For the purposes of applying Article 28(3)(b) of Directive 77/388/EEC, Latvia may also maintain an exemption from value added tax on the international transport of passengers, as referred to in point 17 of Annex F of the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or so long as the same exemptions are applied by any of the present Member States, whichever is the earlier Annex IX, Part B.

Article 378

For the purposes of applying Article 28(3)(b) of Directive 77/388/EEC, Lithuania may maintain an exemption from value added tax on the international transport of passengers, as referred to in point 17 of Annex F of the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or Annex IX, Part B, for as long as the same exemption is applied by any of the present Member States, whichever is the earlier which were members of the Community on 30 April 2004.
Article 379

(c) For the purposes of applying Article 28(3)(b) of Directive 77/388/EEC, Hungary may maintain an exemption from value added tax on, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point 17-point (10) of Annex F to the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or Annex IX, Part B, for as long as the same exemption is applied by any of the present Member States, whichever is the earlier which were members of the Community on 30 April 2004.

Article 380

2. For the purposes of applying Article 28(3)(b) of Directive 77/388/EEC, for as long as the same exemptions are applied in any of the Member States which were members of the Community on 30 April 2004, Malta may maintain, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the following exemptions transactions:

(b)(a) from value added tax without credit for input deductibility of the VAT on paid at the preceding stage, the supply of water by a body governed by public authorities—law, as referred to in point 12 point (8) of Annex F to the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or for as long as the same exemption is applied by any of the present Member States, whichever is the earlier Annex IX, Part B;

(e)(b) from value added tax without credit for input deductibility of the VAT on paid at the preceding state, the supply of buildings and building land, as referred to in point 16-point (9) of Annex F to the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or for as long as the same exemption is applied by any of the present Member States, whichever is the earlier Annex IX, Part B;

(a)(c) from value added tax on with deductibility of the VAT paid at the preceding stage, inland passenger transport, international passenger transport and domestic inter–island sea passenger transport, as referred to in point 17-point (10) of Annex F to the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or for as long as the same exemption is applied by any of the present Member States, whichever is the earlier Annex IX, Part B;


Article 381

For the purposes of applying Article 28(3)(b) of Directive 77/388/EEC, Poland may maintain an exemption from value added tax on, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point 17-point (10) of Annex F to the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or Annex IX, Part B, for as long as the same exemption is applied by in any of the present Member States, whichever is the earlier which were members of the Community on 30 April 2004.

Article 382

For the purposes of applying Article 28(3)(b) of Directive 77/388/EEC, Slovenia may maintain an exemption from value added tax on, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point 17-point (10) of Annex F to the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or Annex IX, Part B, for as long as the same exemption is applied by in any of the present Member States, whichever is the earlier which were members of the Community on 30 April 2004.

Article 383

For the purposes of applying Article 28(3)(b) of Directive 77/388/EEC, Slovakia may maintain an exemption from value added tax on, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point 17-point (10) of Annex F to the Directive, until the condition set out in Article 28(4) of the Directive is fulfilled or Annex IX, Part B, for as long as the same exemption is applied by in any of the present Member States, whichever is the earlier which were members of the Community on 30 April 2004.

Section 3

Provisions common to Sections 1 and 2
Article 384

(c) Member States which exempt the transactions referred to in Article 364 or Articles 368 to 383 may grant to taxable persons the option right to opt for taxation of exempt those transactions under the conditions set out in Annex G.

Article 385

(f) Member States may provide that for supplies in respect of the supply of buildings and building land purchased for the purpose of resale by a taxable person for whom the VAT on the purchase was not deductible, the taxable amount shall be the difference between the selling price and the purchase price.

Article 386

4.1. The transitional period shall last initially for five years as from 1 January 1978. At the latest six months before the end of this period, and subsequently as necessary, the Council shall, on the basis of a report from the Commission, review the situation with regard to the derogations set out provided for in paragraph 2 on the basis of a report from the Commission Sections 1 and 2 and shall unanimously determine on a proposal from the Commission, acting in accordance with Article 93 of the Treaty, decide whether any or all of those derogations shall be abolished.

5.2. At the end of the transitional period, passenger transport shall be taxed in the country Member State of departure for that part of the journey taking place within the Community according to the detailed rules of procedure to be laid down by the Council in accordance with Article 93 of the Treaty.

Chapter 2

Derogations subject to authorisation

Section 1

Simplification measures and measures to prevent tax evasion or avoidance
TITLE XV
SIMPLIFICATION PROCEDURES

Article 387

5. Those Member States which, applied on 1 January 1977, applied special measures of the type referred to in paragraph 1 above to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance may retain them provided that they notify the Commission of them accordingly before 1 January 1978 and providing that such derogations are designed to simplify the procedure for charging tax they conform with the requirement laid down in paragraph 1 above the second subparagraph of Article 388(1).

Article 27

1. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

Measures intended to simplify the procedure for collecting VAT may not, except to a negligible extent, affect the overall amount of the tax revenue of the Member State collected at the stage of final consumption.

2. A Member State wishing to introduce the measure referred to in paragraph 1 shall send an application to the Commission and provide it with all the necessary information. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify what additional information is required.
Once the Commission has all the information it considers necessary for appraisal of the request it shall within one month notify the requesting Member State accordingly and it shall transmit the request, in its original language, to the other Member States.

3. Within three months of giving the notification referred to in the last sentence of paragraph 2, the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.

4. In any event, the procedure set out in paragraphs 2 and 3 above shall, in any event, be completed within eight months of receipt of the application by the Commission.

Section 2

International agreements

Article 30

International agreements

1. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to conclude with a third country or an international organisation an agreement which may contain derogations from this Directive.

2. A Member State wishing to conclude such an agreement shall send an application to the Commission and provide it with all the necessary information. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify what additional information is required.

Once the Commission has all the information it considers necessary for appraisal of the request it shall within one month notify the requesting Member State accordingly and it shall transmit the request, in its original language, to the other Member States.
3. Within three months of giving the notification referred to in the last sentence of paragraph 2, the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.

4. In any event, the procedure laid down in paragraphs 2 and 3 above shall, in any event, be completed within eight months of receipt of the application by the Commission.

**TITLE XVIII**

**MISCELLANEOUS**

**Chapter 1**

**Implementing measures**

*Article 29a, Article 390*

**Chapter 2**

**VAT Committee**

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The Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement this Directive.
1. An Advisory Committee on value added tax, hereinafter called ‘the VAT Committee’, is hereby set up.

2. The VAT Committee shall consist of representatives of the Member States and of the Commission.

   The chairman of the Committee shall be a representative of the Commission.

   Secretarial services for the Committee shall be provided by the Commission.

3. The VAT Committee shall adopt its own rules of procedure.

4. In addition to the points forming the subject of consultation provided for under this Directive, the VAT Committee shall examine questions raised by its chairman, on his own initiative or at the request of the representative of a Member State, which concern the application of the Community provisions on value added tax VAT.

   Chapter 3

   Conversion rates
1. The unit of account used in this Directive shall be the European unit of account (EUA) defined by Decision 75/250/EEC.

Article 28m

Rate of conversion

To determine Without prejudice to any other particular provisions, the equivalents in their national currencies of the amounts expressed in ECU’s in this Title shall be determined on the basis of the conversion rate of exchange applicable on 16 December 1991.

However, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia shall use the rate of exchange applicable on the date of their accession.

Article 393

2. When converting this unit of account—the amounts referred to in Article 392 into national currencies, Member States shall have the option of rounding the amounts resulting from this conversion either upwards or downwards by up to 10%.

Chapter 4

Other taxes, duties and charges
Without prejudice to other Community provisions, in particular those laid down in the Community provisions in force relating to the general arrangements for the holding, movement and monitoring of products subject to excise duty, of Community law, this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties and or, more generally, any taxes, duties or charges which cannot be characterized as turnover taxes, provided however that the collecting of those taxes, duties or charges does not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The transitional arrangements provided for in this Title shall enter into force on 1 January 1993. Before 31 December 1994 the Commission shall report to the Council on the operation of the transitional arrangements and submit proposals for a definitive system.
1. The transitional arrangements provided for in this Directive for the taxation of trade between Member States are transitional and shall be replaced by a definitive system for the taxation of trade between Member States. The arrangements based in principle on the taxation in the Member State of origin of the supply of goods or services supplied.

2. To that end, after having made a detailed examination of that report and considering the conditions for transition to the definitive system have been fulfilled satisfactorily, the Council shall act, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall decide before 31 December 1995 on the arrangements in accordance with Article 93 of the Treaty, adopt the provisions necessary for the entry into force and for the operation of the definitive system arrangements.

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Article 396

Article 1—The arrangements governing radio broadcasting and television services and certain electronically supplied services shall apply for a period of three years starting from 1 July 2003.

The on the basis of a report from the Commission, the Council, on the basis of a report from the Commission, shall, before 30 June 2006, review the provisions of Article 1 of this Directive before 30 June 2006—points (j) and (k) of Article 56(1), Articles 57, 58 and 59, the second sentence of Article 95(2), Articles 350 to 362 and Annex II and shall either, acting in accordance with Article 93 of the Treaty, adopt measures—on a non–discriminatory basis for charging calculating, declaring, collecting and allocating tax—VAT revenue on electronically supplied services with taxation in taxed at the place of consumption, or, if considered necessary for practical reasons, it shall, acting unanimously on the basis of a proposal from the Commission, extend the period mentioned in Article 4 laid down in the first paragraph.
At the appropriate time the Council shall, acting unanimously on a proposal from the Commission, after receiving the opinion of the European Parliament and of the Economic and Social Committee, and in accordance with the interests of the common market, adopt further Directives on appropriate for the purpose of supplementing the common system of value added tax (VAT) and, in particular, to restrict progressively or to repeal measures taken by the Member States by way of derogation from that system, in order to achieve complete parallelism of the national value added tax systems and thus permit the attainment of the objective stated in Article 4 of the first Council Directive of 11 April 1967.

For the first time on 1 January 1982 and thereafter every two years, the Commission shall, after consulting the Member States, send the Council on the basis of information obtained from the Member States, present a report every four years to the European Parliament and to the Council on the operation of the common system of value added tax in the Member States. That report shall be transmitted by the Council to the European Parliament accompanied, where appropriate, by proposals concerning the definitive arrangements.

The fourth paragraph of Article 2 and Article 5 of the first Council Directive of 11 April 1967 are repealed.

Second Council Directive 67/228/EEC of 11 April 1967 on value added tax shall cease to have effect in each Member State as from the respective dates on which the provisions of this Directive are brought into application.
**Article 399**


References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex XI.

**Article 400**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 2, 38(3), 59, 132(1)(h), 140(b), 392 and 398 by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

**Article 401**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

**Article 38 Article 402**

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President
ANNEX I

LIST OF THE ACTIVITIES REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 4(5) ARTICLE 14

1.(1) Telecommunications services;

2.(2) The supply of water, gas, electricity and steam thermal energy;

3.(3) The transport of goods;

4.(4) Port and airport services;

5.(5) Passenger transport;

6.(6) Supply of new goods manufactured for sale;

7.(7) The transactions of agricultural intervention agencies in respect of agricultural products, carried out by agricultural intervention agencies pursuant to Regulations on the common organization of the market in these products;

8.(8) The running organisation of trade fairs and exhibitions;

9.(9) Warehousing;

10.(10) The activities of commercial advertising agencies;

11.(11) The activities of travel agencies;
12-(12) The running of staff shops, cooperatives and industrial canteens and similar institutions;

13-(13) Transactions other than those specified in Article 13A(1)(q), activities of a commercial nature, carried out by radio and television bodies.
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>ILLUSTRATIVE LIST OF THE ELECTRONICALLY</td>
<td>Annex L, first paragraph, point (2) (inserted by 2002/38/EC)</td>
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<tr>
<td>SUPPLIED SERVICES REFERRED TO IN ARTICLE 9(2)(E)</td>
<td>Annex L, first paragraph, point (3) (inserted by 2002/38/EC)</td>
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<td>ARTICLE 56(1)(K)</td>
<td>Annex L, first paragraph, point (4) (inserted by 2002/38/EC)</td>
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<tr>
<td>Adapted</td>
<td>Annex L, first paragraph, point (5) (inserted by 2002/38/EC)</td>
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<table>
<thead>
<tr>
<th>1.(1)</th>
<th><strong>Website</strong> supply, web–hosting, distance maintenance of programmes and equipment.</th>
</tr>
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<tbody>
<tr>
<td>2.(2)</td>
<td><strong>Supply of software and updating thereof.</strong></td>
</tr>
<tr>
<td>3.(3)</td>
<td><strong>Supply of images, text and information and making available of databases.</strong></td>
</tr>
<tr>
<td>4.(4)</td>
<td><strong>Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events.</strong></td>
</tr>
<tr>
<td>5.(5)</td>
<td><strong>Supply of distance teaching.</strong></td>
</tr>
</tbody>
</table>
# Annex H (92/77/EEC)

### Heading of Annex H

(Inserted by 92/77/EEC)

### Annex H, second paragraph

(Inserted by 92/77/EEC)

### Annex H, second paragraph, point 1

(Inserted by 92/77/EEC)

### Annex H, second paragraph, point 2

(Inserted by 92/77/EEC)

### Annex H, second paragraph, point 3

(Inserted by 92/77/EEC)

### Annex H, second paragraph, point 4

(Inserted by 92/77/EEC)

### Annex H, second paragraph, point 5

(Inserted by 92/77/EEC)

## Annex III

### List of Supplies of Goods and Services to Which May Be Subject to the Reduced Rates of VAT Referred to in Article 95 May Be Applied

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>1. (1)</td>
<td><strong>Foodstuffs</strong></td>
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<td>2. (2)</td>
<td><strong>Water supplies</strong></td>
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<td>3. (3)</td>
<td><strong>Pharmaceutical</strong></td>
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<td>4. (4)</td>
<td><strong>Medical</strong></td>
</tr>
<tr>
<td>5. (5)</td>
<td><strong>Transport</strong></td>
</tr>
</tbody>
</table>

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6(6) Supply, including on loan by libraries, of books (including brochures, leaflets and similar printed matter, children’s picture books, drawing books or colouring books, music printed or in manuscript form, maps and hydrographic or similar charts), newspapers and periodicals, other than material wholly or substantially devoted to advertising matter;

7(7) Admissions to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities;

(8) Reception of radio and television broadcasting services;

8(9) Services supplied by or royalties due to writers, composers and performing artists, or of the royalties due to them;

9(10) Supply, provision, construction, renovation and alteration of housing, as part of a social policy;

10(11) Supplies of goods and services of a kind normally intended for use in agricultural production but excluding capital goods such as machinery or buildings.
11(12) Accommodation, provided by hotels and similar establishments, including the provision of holiday accommodation and the letting of places on camping or caravan sites and caravan parks;

Annex H, second paragraph, point 11 (inserted by 92/77/EEC)

12(13) Admission to sporting events;

Annex H, second paragraph, point 12 (inserted by 92/77/EEC)

13(14) Use of sporting facilities;

Annex H, second paragraph, point 13 (inserted by 92/77/EEC)

14(15) Supply of goods and services by organizations recognized as charities being devoted to social wellbeing by Member States and engaged in welfare or social security work, insofar as those supplies are not exempt under Article 13 pursuant to Articles 129, 132 and 133;

Annex H, second paragraph, point 14 (inserted by 92/77/EEC)

15(16) Services supplied by undertakers and cremation services, together with the supply of goods related thereto;

Annex H, second paragraph, point 15 (inserted by 92/77/EEC)

16(17) Provision of medical and dental care as well as thermal treatment in so far as those services are not exempt under Article 13 pursuant to Article 129(1)(b) to (e);

Annex H, second paragraph, point 16 (inserted by 92/77/EEC)
Services supplied-supply of services provided in connection with street cleaning, refuse collection and waste treatment, other than the supply of such services by bodies referred to in Article 4(5) Article 14. Annex H, second paragraph, point 17 (inserted by 92/77/EEC) Adapted
ANNEX K

ANNEX IV

LIST OF SUPPLIES OF THE SERVICES REFERRED TO IN ARTICLE 28(6) ARTICLE 102

1.(1) Small services—Minor repairing of repairing:

(a) bicycles;

(b) shoes and leather goods;

(c) clothing and household linen (including mending and alteration).

2.(2) Renovation—renovation and repairing of private dwellings, excluding materials which form account for a significant part of the value of the supply service supplied.

3.(3) Window—window—cleaning and cleaning in private households.

4.(4) Domestic care services (e.g. such as home help and care of the young, elderly, sick or disabled).
5(5) Hairdressing (inserted by 1999/85/EC)

Annex K(5)
ANNEX V

CATEGORIES OF GOODS, REFERRED TO IN ARTICLE 155, WHICH MAY BE COVERED BY WAREHOUSING ARRANGEMENTS OTHER THAN CUSTOMS WAREHOUSING

<table>
<thead>
<tr>
<th>CN–code</th>
<th>Description of goods</th>
</tr>
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<tbody>
<tr>
<td>(1) 0701</td>
<td>Potatoes</td>
</tr>
<tr>
<td>(2) 0711 20</td>
<td>Olives</td>
</tr>
<tr>
<td>(3) 0801</td>
<td>Coconuts, Brazil nuts and cashew nuts</td>
</tr>
<tr>
<td>(4) 0802</td>
<td>Other nuts</td>
</tr>
<tr>
<td>(5) 0901 11 00</td>
<td>Coffee, not roasted</td>
</tr>
<tr>
<td>0901 12 00</td>
<td></td>
</tr>
<tr>
<td>(6) 0902</td>
<td>Tea</td>
</tr>
<tr>
<td>(7) 1001 to 1005</td>
<td>Cereals</td>
</tr>
<tr>
<td>1007 to 1008</td>
<td></td>
</tr>
<tr>
<td>(8) 1006</td>
<td>Cereals-Husked rice only</td>
</tr>
<tr>
<td></td>
<td>Adapted</td>
</tr>
<tr>
<td>(9) 1201 to 1207</td>
<td>Grains and Oil seeds (including soya beans) and oleaginous fruits</td>
</tr>
<tr>
<td></td>
<td>Adapted</td>
</tr>
<tr>
<td></td>
<td>Oil seeds and oleaginous fruit</td>
</tr>
<tr>
<td>(10) 1507 to 1515</td>
<td>Vegetable oils and fats and their fractions, whether or not refined, but not chemically modified</td>
</tr>
<tr>
<td>(11) 1701 11</td>
<td>Raw sugar</td>
</tr>
</tbody>
</table>
1701 12

(12) 1801  Cocoa beans, whole or broken, raw or roasted

(13) 2709  Mineral oils (including propane and butane; also including crude petroleum oils)
       2710
       2711 12
       2711 13

(14)  Chapters 28 and 29  Chemicals in bulk

(15)  4001  Rubber, in primary forms or in plates, sheets or strip
       4002

(16)  5101  Wool

(17)  7106  Silver

(18)  7110 11 00  Platinum (palladium, rhodium)
       7110 21 00
       7110 31 00

(19)  7402  Copper
       7403
       7405
       7408

(20)  7502  Nickel

(21)  7601  Aluminium

(22)  7801  Lead

(23)  7901  Zinc

(24)  8001  Tin

(25)  ex 8112 94 92  Indium (Adapted)
       ex 8112 99

364
ANNEX VI

LIST OF THE AGRICULTURAL PRODUCTION ACTIVITIES REFERRED TO IN ARTICLE 288

I.1-(1) CROP PRODUCTION

Crop production:

1.-a) General agriculture, including viticulture;

2.-b) Growing of fruit (including olives) and of vegetables, flowers and ornamental plants, both in the open and under glass;

2.-c) Production of mushrooms, spices, seeds and propagating materials;

2.-d) Production of mushrooms, spices, seeds and propagating materials; running of nurseries;

II.2-(2) STOCK FARMING TOGETHER WITH CULTIVATION

Stock farming together with cultivation:

1.-a) General stock farming;

2.-b) Poultry farming;

2.-c) Rabbit farming;

4.-d) Beekeeping;

5.-e) Silkworm farming;

6.-f) Snail farming;
### III.3.(3) FORESTRY

Forestry;  
Annex A(III)  
(77/388/EEC)

### IV.4.(4) FISHERIES

Fishing:  
Annex A(IV)  
(77/388/EEC)

1. (a) Freshwater fishing;  
Annex A(IV)(1)  
(77/388/EEC)

2. (b) Fish farming;  
Annex A(IV)(2)  
(77/388/EEC)

3. (c) Breeding of mussels, oysters and other molluscs and crustaceans;  
Annex A(IV)(3)  
(77/388/EEC)

4. (d) Frog farming;  
Annex A(IV)(4)  
(77/388/EEC)
## ANNEX B

### ANNEX VII

**LIST OF THE AGRICULTURAL SERVICES REFERRED TO IN ARTICLE 288**

Supplies of agricultural services which normally play a part in agricultural production shall be considered the supply of agricultural services, and include the following in particular:

1. **Field work**, reaping and mowing, threshing, baling, collecting, harvesting, sowing and planting;

2. Packing and preparation for market, for example such as drying, cleaning, grinding, disinfecting and ensilage of agricultural products;

3. Storage of agricultural products;

4. Stock minding, rearing and fattening;

5. Hiring out, for agricultural purposes, of equipment normally used in agricultural, forestry or fisheries undertakings;

6. Technical assistance;

7. Destruction of weeds and pests, dusting and spraying of crops and land;

8. Operation of irrigation and drainage equipment;

9. Lopping, tree felling and other forestry services.
ANNEX C

COMMON METHOD OF CALCULATION

I. For the purposes of calculating the value added for all agricultural, forestry and fisheries undertakings, the following shall be taken into account exclusive of value added tax:

1. the value of the total final production including farmers’ own consumption of the classes ‘agricultural products and game’ and ‘wood in the rough’ as set out in points IV and V below, plus the output of the processing activities referred to in point V of Annex A;

2. the value of the total inputs required to achieve the production referred to in (1);

3. the value of the gross fixed asset formation in connection with the activities listed in Annexes A and B.

II. To determine the deductible taxable inputs and outputs of flat-rate farmers, the inputs and outputs of farmers taxed under the normal value added tax scheme shall be deducted from the national accounts, taking into account the same factors as those in paragraph I.

III. The value added for flat-rate farmers is equal to the difference between the value of total final production, exclusive of value added tax, as referred to in point I(1), and the total value of inputs as referred to in point I(2) together with gross fixed asset formation as referred to in point I(3). All these factors relate to flat-rate farmers only.

IV. AGRICULTURAL PRODUCTS AND GAME

Obsolete
### Annex VIII

**WORKS OF ART, COLLECTORS’ ITEMS AND ANTIQUES, AS REFERRED TO IN ARTICLE 304(1)(B), (C) AND (D)**

For the purposes of this Directive:

(a) **Works of art** shall mean:

1. pictures, collages and similar decorative plaques, paintings and drawings, executed entirely by hand by the artist, other than plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, hand-decorated manufactured articles, theatrical scenery, studio back cloths or the like of painted canvas (CN code 9701);
2. original engravings, prints and lithographs, being impressions produced in limited numbers directly in black and white or in colour of one or of several plates executed entirely by hand by the artist, irrespective of the process or of the material employed by him, but not including any mechanical or photomechanical process (CN code 9702 00 00);
3. original sculptures and statuary, in any material, provided that they are executed entirely by the artist; sculpture casts the production of which is limited to eight copies and supervised by the artist or his successors in title (CN code 9703 00 00); on an exceptional basis, in cases determined by the Member States, the limit of eight copies may be exceeded for statuary casts produced before 1 January 1989.
tapestries (CN code 5805 00 00) and wall textiles (CN code 6304 00 00) made by hand from original designs provided by artists, provided that there are not more than eight copies of each.\(^{(4)}\)

individual pieces of ceramics executed entirely by the artist and signed by him;\(^{(5)}\)

enamels on copper, executed entirely by hand, limited to eight numbers of copies bearing the signature of the artist or the studio, excluding articles of jewellery and goldsmiths’ and silversmiths’ wares;\(^{(6)}\)

photographs taken by the artist, printed by him or under his supervision, signed and numbered and limited to 30 copies, all sizes and mounts included;\(^{(7)}\)

`collectors’ items’ shall mean:\(^{(b)B}\)

postage or revenue stamps, postmarks, first–day covers, pre-stamped stationery and the like, franked, or if unfranked not being of legal tender and not being intended for use as legal tender (CN code 9704 00 00);\(^{(1)}\)

collections and collectors’ pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic or numismatic interest (CN code 9705 00 00);\(^{(2)}\)

‘antiques’ shall mean objects other than works of art or collectors’ items, which are more than 100 years old (CN code 9706 00 00);\(^{(e)C}\)

‘antiques’ shall mean objects other than works of art or collectors’ items, which are more than 100 years old (CN code 9706 00 00).\(^{(e)}\)
ANNEX E
ANNEX IX

LIST OF TRANSACTIONS COVERED BY THE DEROGATIONS REFERRED TO IN ARTICLES 363 AND 364 AND ARTICLES 368 TO 383

ANNEX F

Part A

TRANSACTIONS REFERRED TO IN ARTICLE 28(3)(A) Transactions which Member States may continue to tax

2.1 (1) Transactions referred to in Article 13A(1)(e) The supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians;

7.2 (2) Transactions referred to in Article 13A(1)(q) the activities of public radio and television bodies other than those of a commercial nature;

11.3 (3) Supplies covered by Article 13B(g) in so far as they are made the supply of a building, or parts thereof, or of the land on which it stands, other than as referred to in Article 13(1)(a), where carried out by taxable persons who were entitled to deduction of input tax on the VAT paid at the preceding stage in respect of the building concerned;

15.4 (4) The supply of the services of travel agents as referred to in Article 26, Article 299, and those of travel agents acting in the name and on account of the traveller, for journeys outside the Community;

Part B

TRANSACTIONS REFERRED TO IN ARTICLE 28(3)(B) Transactions which Member States may continue to exempt

Annex E (77/388/EEC)
New

Annex F (77/388/EEC)

Heading of Annex E (77/388/EEC)

Adapted

Annex E(2) (77/388/EEC)

Adapted

Annex E(7) (77/388/EEC)

Adapted

Annex E(11) (77/388/EEC)

Adapted

Annex E(15) (77/388/EEC)

Adapted

Heading of Annex F (77/388/EEC)

Adapted
1. Admission to sporting events;

2. Services supplied—by authors, artists, performers, lawyers and other members of the liberal professions, other than the medical and paramedical professions, in so far as these are not services specified in Annex B to the second Council Directive of 11 April 1967 with the exception of the following:

1-(a) assignments of patents, trade marks and other similar rights, and the granting of licences in respect of such rights;

2-(b) work, other than that referred to in Article 5(2)(d), the supply of contract work, on tangible movable property, carried out for a taxable person;

3-(c) provision of services to prepare or coordinate the carrying out of works of construction work, such as, for example, services provided by architects and by firms providing on-site supervision of works;

4-(d) commercial advertising services;

5-(c) transport and storage of goods, and ancillary services;

6-(f) hiring out of tangible movable property to a taxable person;

7-(g) provision of staff to a taxable person;

8-(h) provision of services provided by consultants, engineers, planning offices and similar services, in scientific, economic or technical fields;

9-(i) the carrying out of compliance with an obligation to refrain from exercising, in whole or in part, a business activity or a right included in this list covered by points (a) to (h) or point (j);

10-(j) the services of forwarding agents, brokers, business agents and other independent intermediaries, in so far as they relate to the supply or importation of goods or the provision of services included in this list covered by points (a) to (i);
<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
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<tbody>
<tr>
<td>5.(3) Telecommunications—the supply of telecommunications services supplied, and of goods related thereto, by public postal services and supplies of goods incidental thereto;</td>
<td>Annex F(5) (77/388/EEC) Adapted</td>
</tr>
<tr>
<td>6.(4) Services supplied—the supply of services by undertakers and cremation services, together with and the supply of goods related thereto;</td>
<td>Annex F(6) (77/388/EEC) Adapted</td>
</tr>
<tr>
<td>7.(5) Transactions—transactions carried out by blind persons or by workshops for the blind, provided those exemptions do not give rise to cause significant distortion of competition;</td>
<td>Annex F(7) (77/388/EEC) Adapted</td>
</tr>
<tr>
<td>8.(6) The supply of goods and services to official bodies responsible for the construction, setting out and maintenance of cemeteries, graves and monuments commemorating the war dead;</td>
<td>Annex F(8) (77/388/EEC)</td>
</tr>
<tr>
<td>10.(7) Transactions of transactions carried out by hospitals not covered by Article 13A(1)(b) Article 129(1)(b);</td>
<td>Annex F(10) (77/388/EEC) Adapted</td>
</tr>
<tr>
<td>12.(8) The supply of water by a body governed by public authorities law;</td>
<td>Annex F(12) (77/388/EEC) Adapted</td>
</tr>
<tr>
<td>16.(9) Supplies and the supply before first occupation of those buildings, a building, or parts thereof, or of the land described on which it stands, as referred to in Article 4(3) Article 13;</td>
<td>Annex F(16) (77/388/EEC) Adapted</td>
</tr>
<tr>
<td>17.(10) Passenger—the transport of passengers and, in so far as the transport of the passengers is exempt, the transport of goods accompanying them, such as luggage or motor vehicles, or the supply of services relating to the transport of passengers;</td>
<td>Annex F(17), first subparagraph (77/388/EEC) Adapted</td>
</tr>
<tr>
<td>——— The transport of goods such as luggage or motor vehicles accompanying passengers and the supply of services related to the transport of passengers, shall only be exempted in so far as the transport of the passengers themselves is exempt</td>
<td>Annex F(17), second subparagraph (77/388/EEC)</td>
</tr>
<tr>
<td>23.(11) The supply, modification, repair, maintenance, chartering and hiring of aircraft used by State institutions, including equipment incorporated or used therein, used by State institutions in such aircraft;</td>
<td>Annex F(23) (77/388/EEC) Adapted</td>
</tr>
</tbody>
</table>
25-(12) The supply, modification, repair, maintenance, chartering and hiring of warships fighting ships.

27-(13) The supply of the services of travel agents, as referred to in Article 26–Article 299, and those of travel agents acting in the name and on account of the traveller, for in relation to journeys within the Community.


Annex F(27) (77/388/EEC) Adapted
**ANNEX G**

**RIGHT OF OPTION**

1. The right of option referred to in Article 28(3)(c) may be granted in the following circumstances:

   (a) in the case of transactions specified in Annex E: Member States which already exempt these supplies but also give right of option for taxation, may maintain this right of option

   (b) in the case of transactions specified in Annex F: Member States which provisionally maintain the right to exempt such supplies may grant taxable persons the right to opt for taxation

2. Member States already granting a right of option for taxation not covered by the provisions of paragraph 1 above may allow taxpayers exercising it to maintain it until at the latest the end of three years from the date the Directive comes into force.
ANNEX X

Part A

Repealed Directives with their successive amendments (referred to in Article 399)

    Directive 77/388/EEC

    Directive 95/7/EC (OJ L 102, 5.5.1995, p. 18)

**Part B**

**Time limits for transposition into national law**
**(referred to in Article 399)**

<table>
<thead>
<tr>
<th>Directive</th>
<th>Deadline for transposition</th>
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<tr>
<td>Directive 77/388/EEC</td>
<td>1 January 1978</td>
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<tr>
<td>Directive 78/583/EEC</td>
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<td>Directive 80/368/EEC</td>
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<td>Directive 84/386/EEC</td>
<td>1 July 1985</td>
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<td>1 January 1994 for Portugal</td>
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<td>Directive 92/111/EEC</td>
<td>1 January 1993</td>
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<td>1 October 1993 for Germany</td>
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<td>Directive 94/4/EC</td>
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<td>Directive 2001/115/EC</td>
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<td>Directive 2002/38/EC</td>
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### ANNEX XI

#### CORRELATION TABLE

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<td>Annex XIV(7), second subparagraph, of the 2003 Act of Accession</td>
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<td>Annex XIV(7), third subparagraph, of the 2003 Act of Accession</td>
<td>Article 383</td>
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