

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive on the common system of value added tax (Recast)'

COM(2004) 246 final - 2004/0079 (CNS)

(2005/C 74/05)

On 30 April 2004, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 July 2004. The rapporteur was **Mr Burani**.

At its 411th plenary session (meeting of 15 September 2004) the European Economic and Social Committee adopted the following opinion by 147 votes to six with 10 abstentions.

1. Introduction

1.1 The proposal in question ⁽¹⁾ differs from the usual work of codifying Community legislation. The Commission noted that the **provisions on VAT** – originally laid down in the Sixth Council Directive 77/388/EEC and subsequently amended on a number of occasions – needed thorough revision. Over the years, the material had been revised, corrected and supplemented a number of times, which had inevitably led to repetition, unclear provisions and duplication. The text needed to be amended in such a way as to make it clearer and more comprehensible, without altering the meaning or scope of the provisions: this is **much more than a mere codification operation**.

1.2 Moreover, in the same way, other amendments have been introduced to bring the text into line with the principles endorsed by the European Parliament, the Council and the Commission for the production of **high-quality legislation**. The new text is being referred to the Council and the European Parliament for approval: although the amendments are essentially cosmetic, this is not a codification operation but complex **recasting**, in which the acts are amended, codified and brought together within a single legislative text, in accordance with the 2001 Interinstitutional Agreement ⁽²⁾.

1.3 The proposal resulting from the Commission's impressive work **supersedes the Sixth VAT Directive**: each individual article has been revised to make it clearer and more concise, with the result that there are now 402 articles instead of 53. The text also has a **table of contents** now, which makes it much easier and quicker to consult: this is certainly a welcome improvement.

2. The EESC's comments

2.1 Since this is ultimately a recast and not a new directive, the EESC could confine itself to **taking note** of the Commis-

sion's good work and congratulating it on the result: operators and administrations will obviously benefit from the faster consultation and less ambiguous interpretation now possible. The rapporteur naturally accepts the Commission's statement that **the scope of the new text is in line with the texts currently in force**: a thorough check would be impossible and, in any case, such a check has already been carried out by national experts and operators, who were duly consulted.

2.2 Nevertheless, closer scrutiny of the proposal prompts some basic comments on VAT policy and, more generally, on a fiscal policy whose **expressed goal is to harmonise the conditions under which the single market operates**. In this regard, the proposal states (in the fifth recital) that 'A VAT system achieves the highest degree of simplicity and of neutrality when the tax is levied **in as general a manner as possible** It is therefore in the interests of the common market and of Member States to adopt a **common system**'.

2.3 However, in the following two recitals, the Commission introduces an initial note of caution: 'It is necessary to proceed by stages, since **the harmonisation of turnover taxes leads to alterations in tax structure**'. It then states that, even if the rates and exemptions are not 'fully' harmonised, the ultimate purpose of (harmonised) VAT is to provide **neutrality in competition** 'within each Member State'.

2.4 The Committee notes that these points **are taken from the original text** of the Sixth Directive: if, after almost 40 years, it is felt that there is a need to repeat them, then it must also be acknowledged that little or no progress has been made in that time. **As regards harmonisation, the EU seem to be marking time**, and there are other signs, mentioned in the following paragraphs, which do not give cause for optimism.

⁽¹⁾ COM(2004) 246 final – 2004/0079 (CNS)

⁽²⁾ OJ C 77 of 28.3.2002

2.5 It should be pointed out, once again, that the VAT system introduced by the Sixth Directive, which is still in use, is **'transitional'**, and there is no sign of any intention to change over to a 'definitive' system once and for all. This would seem to be a clear indication of uncertainty as to the fairness of the system, which the Committee commented on, making specific proposals, in its opinion on the place of supply of services ⁽¹⁾.

2.6 There are further points to be made regarding the system of **derogations**, which – if really necessary – should still be **temporary** if a single market is to be achieved. The most recent derogations were granted to the ten **new Member States**, some of them on a temporary basis, and others with no expiry date. However, **other derogations**, granted to the **'second wave'** of Member States (Austria, Greece, Finland, Portugal, Spain and Sweden), are still in force. In this connection, it must be pointed out that only some of these appeared in the directives amending the Sixth Directive, most of them being 'concealed' in the Acts of Accession. One of the merits of the new directive is that it has revealed **all the derogations**, however they were granted.

2.7 There seems to be no plan to discuss the derogations – including those granted a long time ago – with a view to abolishing them. Not even the **founding Member States** seem interested in raising the issue: originally, they, too, were granted **derogations** which they take care not to call into question (at least for as long as the 'transitional system' remains), not least the famous **'zero rate'** originally granted to two countries. Far from being abolished, the 'zero rate' **has been extended to a number of new States**.

2.8 In actual fact, not all the **derogations** are groundless: some of the **permanent derogations** apply to overseas territories, islands and outermost regions which were showing signs of underdevelopment at the time when the decisions were taken. However, given the amount of time that has passed, it would be appropriate to review all the exemptions granted to these regions and ascertain whether the conditions which originally justified them still remain today.

2.9 Other fairly major derogations concern **small enterprises**: 16 Member States (the new Member States and the 'second wave' States) are authorised to grant **VAT exemptions** even where turnover exceeds the limits laid down by the Sixth

Directive. The Committee does not understand this: even if exemptions can in some way be justified where the ten new Member States are concerned, **there is no reason why the other States should continue to be able to grant such exemptions** 12 years on from their accession.

2.10 The Committee believes that VAT exemptions for such enterprises could amount to **distortion of competition**, although the overall impact may well be limited. The Member States and the Commission should look into this matter in greater depth.

3. Conclusions

3.1 The Committee congratulates the Commission on accomplishing a huge task carefully, accurately and, most importantly, **transparently**. Without transparency it would have been difficult to see how much the **rules** – which apply to all as a general principle – are undermined by **derogations, exemptions and 'differentiation'**. Clearly, not all cases of departure from a principle are groundless, but there would seem to be a need for the Member States to get down to work and **renegotiate** those derogations which are no longer necessary, if possible abolishing them.

3.2 The Committee cannot see evidence of any such intention: indeed, one of the larger Member States has already expressed **general reservations**, which could even jeopardise endorsement of the Commission's proposal. Given past history, the outlook does not seem good: a **1996 Commission communication** containing a work programme and a proposal for harmonising taxes is gathering dust in the Council and has never been discussed, and the **2000 Communication** presenting a new VAT strategy does not, in practice, appear to have met with much success.

3.3 The EESC's intention in issuing this opinion is not to criticise Member States' VAT policies; it is fully aware that there are still many internal economic and political factors influencing their decisions. The Committee calls for the issue as a whole to be reviewed in the near future so that a **definitive system** can be put in place and one of the **greatest remaining barriers to the achievement of a single market** based on Community rules can be reduced or even removed.

Brussels, 15 September 2004.

The President
of the European Economic and Social Committee
Roger BRIESCH

⁽¹⁾ OJ C 117 of 30.4.2004