

**Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive laying down detailed rules for the refund of value added tax, provided for in Directive 77/388/EEC, to taxable persons not established in the territory of the country but established in another Member State'**

(COM(2004) 728 final — 2005/0807 (CNS))

(2006/C 28/18)

On 20 July 2005 the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the abovementioned proposal.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Burani as rapporteur-general at its 421st plenary session, held on 26 and 27 October 2005 (meeting of 26 October), and adopted the following opinion *nem. con.* with 79 votes in favour and 1 abstention.

## 1. Introduction: the Commission document

1.1 In October 2003 the Commission issued a document <sup>(1)</sup> summarising the VAT strategy previously defined in June 2000. One of the objectives of this strategy was to simplify procedures, by means of three specific initiatives proposed in the subsequent Commission document of October 2004 <sup>(2)</sup>: two of these initiatives <sup>(3)</sup> have already been addressed by an EESC opinion <sup>(4)</sup> and the present document discusses the third.

1.2 The Commission proposal seeks to accelerate and simplify VAT refund procedures for taxable persons not established in the country in respect of tax charged to them for goods or services supplied by another taxable person within the country or in connection with the import of goods into the country.

1.3 The general rules on the subject remain essentially unchanged: the real progress lies in the proposal to substantially cut red tape for persons entitled to refunds while, at the same time, establishing their right to compensation when the refunding tax administration delays payment beyond a certain time limit.

<sup>(1)</sup> COM(2003) 614 final.

<sup>(2)</sup> COM(2004) 728 final.

<sup>(3)</sup> Proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying value added tax obligations and Proposal for a Council Regulation amending Regulation (EC) No 1798/2003 as regards the introduction of administrative cooperation arrangements in the context of the one-stop scheme and the refund procedure for value added tax.

<sup>(4)</sup> EESC Opinion on the Proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying value added tax obligations and the Proposal for a Council Regulation amending Regulation (EC) No 1798/2003 as regards the introduction of administrative cooperation arrangements in the context of the one-stop scheme and the refund procedure for value added tax COM(2004) 728 final - 2004/0261 (CNS) - 2004/0262 (CNS).

1.4 Article 5 of the proposal deals with cutting red tape, stating that, in order to obtain the refund, the person in question only has to submit an **application electronically**, rather than on a standardised form supported by original invoices and customs documentation. The request must, of course, contain certain information specified in the article to enable the tax administration to ascertain and verify the legality of transactions.

1.5 As a general rule, the application must relate to purchases of goods or services invoiced or imports made during a **period of not less than three months and not more than one calendar year** and must be submitted **within six months** of the end of the calendar year in which the tax became chargeable. However, in certain circumstances it is possible for both the reference period and the submission requirements to be changed.

1.6 The tax administration of the Member State where the value added tax was incurred must **make its decision known to the applicant within three months** of the date on which the application for a refund was submitted and the **payment** must also be made **before the end of that period**. Grounds must be given for any refusal of an application. **Appeals** may be made, subject to the same time limits and conditions as are laid down for taxable persons established in the Member State. **Additional information** may be requested but only within three months of the date on which the application was submitted; in that case, however, the payment deadline shall be calculated from the date on which the additional information was requested. **If an express refusal is not forthcoming within the appropriate time limit**, the application will be deemed to have been granted.

1.7 As stated in point 1.6 above, the **payment** of sums owed must take place **within three months** of the date on which the application was submitted; where this time period is exceeded for any reason, the Member State must pay the applicant **interest of 1 % of the sum due per month**.

## 2. The EESC's comments

2.1 The EESC endorses all proposals seeking to cut red tape for users, particularly when, as in the case in point, this causes state administrations, too, to streamline their methods and encourages them to organise their work better. The simplification proposed here, however, is not just the result of a desire to streamline procedures but is truly necessary: indeed, as the EESC has already stressed <sup>(5)</sup>, the Commission itself states in the explanatory memorandum introducing the three proposals <sup>(6)</sup> that '... the present refund procedure ... seems to be so burdensome that more than an estimated 53.5 % of large companies have not requested refunds to which they were entitled at some point due to these problems.'

2.2 The directive applies, as the title states, to 'taxable persons not established in the territory of the country but established in another Member State', in accordance with the procedures and with regard to the transactions stipulated by the provisions currently in force.

2.3 The key innovation is that laid down in Article 5 of the proposal, which states that it will no longer be necessary to submit the refund application in paper form with attached invoices, original customs certificates and other supporting documents: an **application submitted electronically** containing all the appropriate information for tracing the necessary documentation, already in the possession of the administration, will be accepted. The EESC supports this proposal, of course, but points out that the administrations would actually be able to apply this procedure now, even without the help of electronic media, if only their work were organised better and more effectively.

2.4 This last point is not as trite as it might seem and conveys a specific message: if it takes too long to implement the directive, tax and customs administrations should, in the meantime, start to **streamline their methods**, whether paper-based or electronic, so as to enable the user to submit less complex documentation.

2.5 The EESC fully endorses Article 6 of the proposal <sup>(7)</sup>: it welcomes the Commission's endeavours to lay down a **rule** for

Member States which should always underpin their relations with the public, both economic operators and other citizens, whereby **the public administration has a duty always to reply to the requests submitted to it and to do so swiftly**. The response times set — in particular the period of three months within which the public administration has to make the refund or refuse the application — seem appropriate and reasonable. However, the question arises of whether these time limits are *realistic* for all 25 EU Member States: indeed, in some countries the refund delays are so long that they can only be the result of intrinsic inefficiency, which may take some time to eliminate.

2.6 Article 8 also follows a principle of fairness which should always be applied in relations between the public administration and taxpayers, namely that if payment of the refund has not been made within three months of the date on which the application or request for further information is made, the public administration must pay the applicant **interest on the delayed payment of 1 % per month**. The EESC endorses the principle but feels that the measure laid down will not be easy to apply. Indeed, it points out that a monthly interest rate of 1 % is equivalent to a **yearly compound rate of 12.68 %**. Given that in certain countries consumer protection laws set limits above which a rate is deemed to be **excessive**, in countries where 12.68 % is above this limit the interest rate applied to the public administration set by one law would be illegal under another law. The EESC therefore proposes that Article 8 be amended to the effect that the interest on the delayed payment should be calculated in each country **on the basis of the rates applied by national laws to taxpayers who are in arrears**.

2.7 To sum up, the EESC endorses the principles introduced by the proposal, particularly those relating to applicants' entitlement to refunds and the — indirect but effective — encouragement to improve the way public administrations work. It merely recommends that the rules laid down be more *realistic*, bearing in mind that levels of consumer protection, efficiency and technological resources continue to differ widely among the 25 Member States.

Brussels, 26 October 2005

The President  
of the European Economic and Social Committee  
Anne-Marie SIGMUND

<sup>(5)</sup> OJ C 267 of 27.10.2005

<sup>(6)</sup> COM(2004) 728 of 29.10.2004, point 1(7).

<sup>(7)</sup> See points 1.6 and 1.7 of this document.