

**Opinion of the European Economic and Social Committee on the Proposal for a Council Directive amending Directive 2006/112/EC as regards reduced rates of value added tax**

COM(2008) 428 final — 2008/0143 (CNS)

(2009/C 218/19)

On 28 August 2008 the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the

*'Proposal for a Council Directive amending Directive 2006/112/EC as regards reduced rates of value added tax'*

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 2 February 2009. The rapporteur was Mr SANTILLÁN CABEZA.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February), the European Economic and Social Committee adopted the following opinion by 171 votes in favour with seven abstentions.

## 1. Conclusions and recommendations

1.1 The EESC approves the technical amendments, many of them essential, that the proposal for a directive makes to Directive 2006/112/EC. However, it regrets the limited scope of the proposal resulting from the lack of political consensus.

1.2 As previously said, the application of VAT to energy-saving and environment-friendly services and goods is an aspect that needs to be considered.

1.3 With regard to reduced VAT for supply of services consisting in the renovation, repair, alteration, maintenance and cleaning of housing, the EESC questions whether it is appropriate to remove the reference to 'social' housing. In any case, since the application of reduced rates is not compulsory, this is a decision to be taken by each Member State.

1.4 The introduction for all Member States of the option of applying reduced VAT to restaurant and catering services – which some Member States reject – has as its purpose to establish equal conditions, since the risk of distorting competition under existing arrangements is low. The EESC approves the exclusion of alcoholic beverages from application of the lower rate.

1.5 Where 'minor repair of movable tangible property' is concerned, Member State laws will have to specify which services are to benefit from the reduced rate, given the broadness of the terms used.

1.6 The EESC proposes that dietetic products for certain illnesses should be declared to be exempt from VAT (see point 4.8.6 of the present opinion).

1.7 The EESC suggests that the proposal's criterion be changed to include car repair and maintenance services in Annex III in the terms indicated in point 4.8.5.1 of the present opinion.

1.8 The EESC agrees with the application of reduced rates to broader categories of goods and services insofar as this is compatible with the specific budget resources available in the Member States, the economic situation and the interests of the internal market between the Member States of the European Union.

1.9 The EESC welcomes the Commission's efforts to move towards full harmonisation of VAT, while regretting the lack of a political decision on the part of the EU Council.

## 2. Introduction

2.1 The proposal for a directive to which the present opinion refers consists of **additions and technical adaptations** to the 2006 directive, hereafter the 'VAT Directive' <sup>(1)</sup>.

<sup>(1)</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347 of 11.12.2006).

2.2 According to the Commission, the purpose is to introduce a number of urgent reforms to resolve 'legal and political problems which have arisen either because of divergent interpretations of the directive or because of a lack of a level playing field for all Member States as regards the possibility for Member States to apply reduced rates in those areas where the proper functioning of the internal market is not affected'.

2.3 The aim is to grant more autonomy and certainty as well as equal treatment to the Member States.

2.3.1 Although it is not aimed exclusively at SMEs, which are one of the priority action areas under the Lisbon strategy, it will have positive effects for them, since the sectors at issue include many SMEs and the proposal will give legal certainty on the continued application of VAT reduced rates in these sectors.

2.4 Four types of changes are made to the VAT Directive:

- insertion of locally supplied services including the introduction of permanent, updated provisions on the labour-intensive services listed in Annex IV that will expire on 31 December 2010. Annex IV will in consequence be deleted;
- deletion of articles or paragraphs of a temporary nature or relating to specific situations in Member States that no longer apply;
- improvements to the drafting;
- changes to the drafting of Annex III, containing the 'list of supplies of goods and services to which the reduced rates referred to in Article 98 may be applied'.

### 3. The new Annex III

3.1 Changes in drafting or additions to specific categories.

3.1.1 Category 3: **pharmaceutical products**. Inclusion of 'and absorbent hygiene products' which covers feminine sanitary protection and children's nappies.

3.1.2 Category 4: **equipment for the disabled**. Addition of 'apparatus and electrical, electronic or other equipment and means of transport ..., as well as the leasing or hiring ... of such goods'. The Proposal now includes also equipment or apparatus specially designed or adapted for disabled people (e.g. Braille keyboards, specially adapted cars).

3.1.3 Category 6: **books**. Inclusion of 'audio books, CD, CD-ROMs or any similar physical support ...'. Extension to books on CD, CD-ROM or any similar physical medium that predominantly reproduce the same textual information content as printed books.

3.1.4 Category 8: **radio and television broadcasting services**. Clarification that the taxable services are the supplies themselves, not reception of them.

3.1.5 Category 9: **supply of services by writers, etc.** Clarification that the category also covers 'those remunerated by means of the royalties due to them'. The text has been rephrased because royalties are not the taxable services, but the consideration for certain services.

3.1.6 Category 16: **funeral undertaking services or cremation services**. The new wording is intended to separate the object of the definition from the quality of the supplier.

3.1.7 Category 18: **street cleaning, waste treatment, etc.** Inconsistencies are removed by granting the reduced rate to three additional services not included under the existing wording: 'purification and recycling of waste water', 'sewage' and 'waste recycling and services leading to reuse'.

3.2 Extension of supplies relating to the housing sector and some non-commercial buildings.

3.2.1 The modification of Category 10 and the addition of new Category 10a are intended to:

- give greater room for manoeuvre to the Member States by deleting the reference to 'housing provided as part of a social policy';
- add 'renovation, repair, and cleaning of housing' (currently in Annex IV) and its maintenance;
- extend the reduced rate to services consisting in renovation, repair, alteration, maintenance and cleaning supplied in 'places of worship and of cultural heritage and historical monuments'.

3.3 Inclusion of two new categories

3.3.1 Restaurant and catering services

3.3.2 Category 12 of the existing Annex III (which is not amended) covers:

*'Accommodation provided in hotels and similar establishments, including the provision of holiday accommodation and the letting of places on camping or caravan sites'.*

3.3.3 The new Category (12a) covers:

*'Restaurant and catering services excluding the supply of alcoholic beverages'.*

3.3.3.1 There are two reasons for this addition: a) the need to treat all Member States equally, and b) because these services fulfil the same criteria as the other locally supplied services added.

3.3.4 Locally supplied services

3.3.4.1 These new categories cover five cases:

*'19) supply of gardening or landscaping services and maintenance of gardens;*

*20) minor repair of movable tangible property, including bicycles and tricycles of all types but excluding all other means of transport;*

*21) cleaning and maintenance services of movable tangible property;*

*22) supply of domestic care services, such as home help and care of the young, elderly, sick or disabled;*

*23) personal care of the kind provided in hairdressing salons and personal grooming establishments'.*

3.3.4.2 These Categories include services which already appear in the present Annex IV, which establishes temporary arrangements until 31 December 2010, but also include some new services of a similar nature.

#### 4. Comments

4.1 The EESC thoroughly discussed the subject of the present opinion when it examined the Commission's Communication of 5 July 2007 on VAT rates other than standard VAT rates <sup>(1)</sup>,

<sup>(1)</sup> COM(2007) 380 final, of 5 July 2007.

which was in turn based on a study submitted by Copenhagen Economics.

4.2 In its opinion <sup>(2)</sup>, the EESC highlighted the following aspects:

— VAT is used by the Member States to achieve purely fiscal goals.

— Reduced rates are a response to political and social criteria.

— VAT harmonisation remains a pipedream, justifying (according to the Commission) an attempt at harmonisation for activities that have a cross-border impact or comply with accepted Community policy criteria.

— It must be ensured that any reductions in VAT rates are **genuinely** based on social grounds.

— Simplification and transparency make the task of businesses and controls by the authorities easier.

— Putting the 'mirage' of a definitive regime on the back burner, greater autonomy must be granted to the Member States to set reduced rates for **local services**.

4.2.1 The comments made in that opinion are still entirely valid.

4.3 The proposal for a directive makes only partial and urgently needed changes to the current arrangements. As the Commission explains, it does not seek to carry out an in-depth revision of the existing directive, on which the debate 'has only started'. It does however address issues of social and economic importance, such as VAT on restaurants, labour-intensive sectors, and locally supplied services.

#### 4.4 Technical amendments

The purely technical amendments generally merit the EESC's support insofar as they are necessary, improve the drafting, and clarify controversial aspects.

#### 4.5 Amendments regarding the housing sector

<sup>(2)</sup> EESC opinion on the *Communication from the Commission to the Council and the European Parliament on VAT rates other than standard VAT rates*, OJ C 211 of 19.8.2008, p. 67.

#### 4.5.1 Supply and construction of housing

4.5.1.1 Permanent application to all types of housing – not only that forming part of a ‘social policy’, as stipulated in the current Category 10 – significantly broadens the scope of VAT reductions. This change is backed up by the argument that the Member States have interpreted the meaning of ‘social policy’ in different ways and also because of the rules of the place of taxation of these supplies, which sets the taxation at the place where the property is located.

4.5.1.2 Although this achieves harmonisation, it may be wondered if this blanket approach goes too far, bearing in mind the impact of the reform <sup>(1)</sup>. Does applying a reduced rate to all housing, of whatever price and for whatever purpose, achieve a socially and economically desirable objective?

#### 4.6 Repair of housing and other buildings

4.6.1 Renovation and alteration were already included in Annex III for housing as a part of social policy and renovation and repair of private dwellings, and cleaning in private households was already included in Annex IV. Quite rightly, ‘places of worship and of cultural heritage and historical monuments’ are added.

4.6.2 Moreover, the exclusion of ‘materials which account for a significant part of the value of the services supplied’ is removed. The proposal is therefore to make it possible to all to include such supply under the reduced rate, when the goods are part of the service supplied.

4.6.2.1 The EESC views both these amendments as reasonable.

#### 4.7 Reduced VAT in restaurant and catering services

4.7.1 Reduced VAT in the restaurant and catering sector is a sensitive issue that has been long discussed and continues to be opposed by some Member States.

4.7.2 According to the Commission’s Impact Assessment <sup>(2)</sup>, the bars, restaurants and catering services sector represents 6.1 % of private consumption <sup>(3)</sup> and 1.9 % of added value. It

<sup>(1)</sup> In all, the construction sector represents 6.2 % of added value (EU-27), with house building accounting for half of this percentage, i.e. 3.1 %.

<sup>(2)</sup> SEC(2008) 2190. Brussels, 7.7.2008.

<sup>(3)</sup> EU-25 (all Member States except Bulgaria and Romania).

also accounts for 3.3 % of total employment <sup>(4)</sup>. The HOTREC trade association indicates that the sector contains 1 600 000 establishments <sup>(5)</sup>.

4.7.3 As the EESC has already pointed out, the rate applied to the sector affects what is a quintessentially local service, but also influences how tourism is spread between the Member States. This state of affairs, together with the fact that VAT on restaurants is a major source of revenue, complicates the adoption of a single criterion in the EU, and this has not yet been achieved <sup>(6)</sup>.

4.7.3.1 For tourism, the effects are likely to differ between Member States. Moreover, for the hotel sector (similar to restaurant services from an internal market perspective) currently eligible for reduced VAT rates, the Commission is not aware of VAT driven distortions. Furthermore the restaurant cost does not seem to be the major part of a holiday package.

4.7.4 The current arrangement, based on temporary provisions under Directive 2006/112/EC, entails significant disparities: 11 Member States already apply lower rates on the basis of specific derogations <sup>(7)</sup>, while the other 16 are refused this possibility. The proposed amendment therefore moves towards a general levelling-out in this area.

4.7.5 The exclusion of alcoholic beverages is necessary in the interests of consistency with existing provisions governing their purchase in establishments for subsequent consumption <sup>(8)</sup>.

4.7.6 It should in any case be borne in mind that the application of reduced rates is not mandatory, but a possibility available to Member States.

#### 4.8 Locally supplied services <sup>(9)</sup>

4.8.1 The new Categories 19 to 23 cover a wide range of services, some of which are already included in the existing directive under temporary provisions: consequently, if the text were not to be amended, they would attract the normal VAT rate from 1 January 2011.

<sup>(4)</sup> EU-27. If hotels are added, it accounts for 4.4 % of total employment.

<sup>(5)</sup> Hotels, Restaurants and Cafés in Europe. The figure refers to all three sectors. HOTREC puts the number of people employed in them at 9 000 000 minimum.

<sup>(6)</sup> While some Member States, such as France, favour applying the reduced rate that already pertains in other countries, Germany – amongst others – opposes this, as it opposes any extension of the scope of reduced VAT rates.

<sup>(7)</sup> They are: Greece, Spain, Ireland, Italy, Cyprus, Luxembourg, the Netherlands, Austria, Poland, Portugal and Slovenia.

<sup>(8)</sup> Directive 2006/112/EC, Annex III, Category 1 covers: ‘Foodstuffs (including beverages but excluding alcoholic beverages) ...’

<sup>(9)</sup> Local services – including a major portion of labour-intensive services – represent 4.8 % of private consumption (EU-25, excluding Bulgaria and Romania) and 2.1 % of added value. They are considered to have little economic weight, except in the case of building repairs.

4.8.2 There is in general no risk of distortion of competition in this type of service, which employs a sizeable number of people.

4.8.3 The inclusion of gardening and related services seems justified, as they share the same characteristics as the other services.

4.8.4 Repair of 'movable tangible property':

- a) the criterion defining 'minor' repairs is retained;
- b) however, by introducing an important conceptual change, a general definition is chosen instead of the specific mention of certain goods (such as bicycles, footwear, etc.). **Movable** property is that which can be transported from one place to another (according to the definition in the Spanish civil code), and the interpretation of **tangible** property is that established in several European legal systems. The new category is very broad, so national legislation will have to specify the types of property to which the directive applies according to each country's body of law, although the EESC suggests not placing restrictions on the different types of service.

4.8.5 Car repair and maintenance:

- In view of the major financial efforts being made by the European Union and the Member States in support of the car industry, it would seem necessary to explicitly include car repair and maintenance among locally supplied services, in order to boost the purchasing power of European motorists, enhance the quality and safety of cars on the road, and safeguard employment in this sector.

4.8.5.1 The following changes to Annex III of the proposal are therefore suggested:

- (8)(20) After '... tricycles of all types', replace 'but excluding all other means of transport' with 'private and industrial motor vehicles';
- (8)(21) After 'tangible property', add 'including those for private and industrial motor vehicles'.

4.8.6 Special foods for certain illnesses:

- Dietetic foods for certain illnesses, such as phenylketonuria or coeliac disease, should be considered to be exempt from VAT.

4.9 Labour-intensive services

4.9.1 These services are already included in the locally supplied services (section 4.8).

4.9.2 In general, this entails work done by – compared to the overall economy – a larger part of low-skilled men or women in temporary employment. More favourable tax treatment may promote greater employment stability for them.

4.9.3 With regard to the effects, Copenhagen Economics provides some data on estimated GDP increase as a result of VAT reduction on locally supplied services and restaurants because of shifts to the formal economy from DIY and the black economy.

Brussels, 25 February 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

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