

COUNCIL DIRECTIVE 2004/7/EC
of 20 January 2004

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

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,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Whereas:

- (1) Articles 27 and 30 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 ⁽³⁾, lay down procedures that may result in the tacit approval of derogations by the Council.
- (2) In the interests of transparency and legal certainty, it is preferable to ensure that every derogation authorised under Article 27 or Article 30 of Directive 77/388/EEC takes the form of an explicit decision adopted by the Council acting on a proposal from the Commission.
- (3) The possibility of tacit approval by the Council on the expiry of a given period should therefore be removed.
- (4) 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.
- (5) 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.
- (6) In the second sentence of paragraph 1 of Article 27 of Directive 77/388/EEC 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 macroeconomic forecasts relating to the likely impact of the measure on the Community's own resources provided from VAT.
- (7) 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.
- (8) 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 measures to ensure the correct implementation of existing rules would represent a major step forward in that respect.
- (9) 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 governing the place of supply.
- (10) However, the scope of each implementing measure should remain limited since, albeit designed to clarify a provision laid down in Directive 77/388/EEC, it could never derogate from such a provision.
- (11) 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.
- (12) 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.
- (13) Given the restricted scope of the measures envisaged, measures implementing Directive 77/388/EEC should be adopted by the Council acting unanimously on a proposal from the Commission.
- (14) 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 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.

⁽¹⁾ Opinion delivered on 16 December 2003 (not yet published in the Official Journal).

⁽²⁾ Opinion delivered on 30 October 2003 (not yet published in the Official Journal).

⁽³⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2003/92/EC (OJ L 260, 11.10.2003, p. 8).

- (15) Directive 77/388/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/388/EEC is amended as follows:

1. In Article 27, paragraphs 1, 2, 3 and 4 shall be replaced by the following:

'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 charging the tax or to prevent certain types of tax evasion or avoidance. Measures intended to simplify the procedure for charging the tax, except to a negligible extent, may not 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 shall be completed within eight months of receipt of the application by the Commission.'

2. In Title XVII, the following Article 29a shall be inserted:

'Article 29a

Implementing measures

The Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement this Directive.'

3. Article 30 shall be replaced by the following:

'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 set out in paragraphs 2 and 3 shall be completed within eight months of receipt of the application by the Commission.'

Article 2

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 20 January 2004.

For the Council

The President

C. McCREEVY