



Communication from the Commission formally recognising that certain acts of Union law concerning requests to apply reduced rates of VAT to supplies of natural gas, electricity and district heating have become obsolete

(C/2023/1533)

1. Introduction

Improving the transparency of Union law is an essential element of the better law-making strategy that is being implemented by the Union institutions.

Currently, there are many Union acts that are obsolete and of no practical relevance or broader interest and that are either not repealed or do not contain a sunset clause. Those acts remain in force even though their legal effects have been exhausted. Consequently, those acts continue to be classified as 'acts in force' in the Directory of Union legislation and therefore remain part of the body of Union law, otherwise known as Union *acquis*.

Such acts complicate and obscure the overall picture of the Union *acquis*. Their removal from the Union *acquis* would facilitate access to the part of Union *acquis* that is applicable, thus permitting a more user-friendly presentation and more efficient and time-saving scrutiny of the Directory of Union legislation. Such acts should therefore be removed from the Union *acquis*.

This Communication concerns six obsolete Commission decisions that were adopted on the basis of Council Directives 77/388/EEC ⁽¹⁾ and 2006/112/EC ⁽²⁾.

2. Assessment

Article 12(3), point (b), of Directive 77/388/EEC, as inserted by Council Directive 92/77/EEC ⁽³⁾, allowed Member States to apply a reduced rate to supplies of natural gas and electricity provided that no risk of distortion of competition exists. Before doing so, a Member State intending to apply such a rate had to inform the Commission thereof, which in turn was required to take a decision on the existence of a risk of distortion of competition. Between 1999 and 2006, a total of five Commission Decisions were adopted on the basis of that provision.

Directive 77/388/EEC was recast and replaced by Directive 2006/112/EC which entered into force on 1 January 2006. Based on Article 102 of Directive 2006/112/EC, which replaced Article 12(3), point (b), of Directive 77/388/EEC, a further Commission decision was adopted in 2007. With the entry into force of Council Directive (EU) 2022/542 ⁽⁴⁾, Article 102 of Directive 2006/112/EC was deleted.

Each of the six Commission Decisions listed in the Annex has exhausted its effects and has become obsolete as its legal basis is no longer in force and its content has been incorporated into point (22) of Annex III to Directive 2006/112/EC. They should therefore be recognised as obsolete and removed from the Union *acquis*.

3. Conclusion

The Commission recognises that the acts listed in the Annex are obsolete and need to be removed from the Union *acquis*. It invites the Publications Office of the European Union to withdraw these acts from the Directory of Union legislation in force and to publish the Annex in the C series of the *Official Journal of the European Union*.

⁽¹⁾ 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 (OJ L 145, 13.6.1977, p. 1).

⁽²⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁽³⁾ Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates) (OJ L 316, 31.10.1992, p. 1).

⁽⁴⁾ Council Directive (EU) 2022/542 of 5 April 2022 amending Directives 2006/112/EC and (EU) 2020/285 as regards rates of value added tax (OJ L 107, 6.4.2022, p. 1).

ANNEX

List of acts to be removed from the Directory of Union legislation in force

1. Commission Decision 1999/200/EC of 26 February 1999 concerning the intention of the Hellenic Republic to apply a reduced rate of VAT to supplies of natural gas and electricity in accordance with Article 12(3)(b) of Council Directive 77/388/EEC (OJ L 69, 16.3.1999, p. 40)
2. Commission Decision 2003/633/EC of 27 August 2003 concerning a request by Portugal to apply a reduced rate of VAT to the supply of natural gas (OJ L 220, 3.9.2003, p. 7)
3. Commission Decision 2004/673/EC of 26 August 2004 concerning a request from the Republic of Malta to apply a reduced rate of VAT to the supply of electricity (OJ L 307, 5.10.2004, p. 7)
4. Commission Decision 2005/568/EC of 11 July 2005 concerning a request from the Republic of Hungary to apply a reduced rate of VAT to the supply of natural gas (OJ L 190, 22.7.2005, p. 28)
5. Commission Decision 2006/637/EC of 13 September 2006 concerning a request from the Republic of Lithuania to apply a reduced rate of VAT to the supply of district heating (OJ L 261, 22.9.2006, p. 35)
6. Commission Decision 2007/313/EC of 30 April 2007 concerning a request from the Republic of Italy to apply a reduced rate of VAT to the supply of electricity for the operation of facilities used for the irrigation, lifting and drainage of waters (OJ L 118, 8.5.2007, p. 18)