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2017/0349 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2006/112/EC on the common system of value added tax, with regard to the obligation to respect a minimum standard rate

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Value-added tax (VAT) is Europe's longest-standing consumption tax. In 1967, the commitment was made to establish a definitive VAT system operating within the European Community in the same way as it would within a single country[1] without agreeing specific rules on VAT rates apart from the application of a standard VAT rate, but no lower or upper rate limits were imposed[2].

The abolition of fiscal frontiers between Member States by the end of 1992 made it necessary to reconsider the way in which trade in goods was taxed within the Community. The goal was that goods would be taxed in the country of origin, perfectly reflecting the idea of a genuine internal market. Since the political and technical conditions were not ripe for such a system, transitional VAT arrangements were adopted[3].

The transitional system required rules on VAT rates to avoid distortions in cross-border shopping and trade following the abolition of fiscal frontiers. In October 1992 the Council agreed on rules limiting the discretion of Member States to set VAT rates[4]. Member States were required to apply a standard VAT rate of a minimum of 15% until 31 December 1996.

The minimum of 15% for the standard VAT rate has been prolonged six times since then. Currently, Article 97 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[5] (hereinafter "the VAT Directive") provides that from 1 January 2016 until 31 December 2017 the standard rate may not be less than 15%.

In its 2016 VAT Action Plan[6] the Commission proposed replacing the current transitional arrangements for the taxation of trade between Member States by definitive arrangements based on the principle of taxation in the Member State of destination in order to create a robust single European VAT area. Meanwhile, also the place of taxation of services had progressively changed to the country of destination since 2010. The decision was taken in 2008, when the Council adopted a proposal with a view to prevent distortions of competition between Member States operating different VAT rates[7].

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1 First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes.

2 Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes – Structure and procedures for application of the common system of value added tax.

3 Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ L 376 of 31.12.1991, p. 1).

4 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).

5 OJ L 347, 11.12.2006, p. 1.

6 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT – Towards a single EU VAT area – Time to decide (COM(2016) 148 final)

7 Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services (OJ L 44, 20.2.2008, p. 11).

On 4 October 2017 the Commission adopted the first proposal introducing the definitive system for the taxation of trade between Member States[8] and outlined successive steps and sub-steps for introducing this system in its follow-up to the VAT Action Plan[9]. It also announced that it would propose a reform of VAT rates, which would be consistent with the definitive arrangements based on the destination principle that will gradually replace the current transitional arrangements.

Although a definitive VAT system based on the principle of taxation in the Member State of destination would allow to grant Member States more flexibility in setting VAT rates, a minimum for the standard VAT rate should be maintained in such a definitive VAT system and therefore be made permanent.

Considering that all Member States currently apply a standard rate of at least 17%, the current arrangement for a minimum standard rate of 15% remains appropriate. It will permanently implement an agreed limit that ensures the proper functionning of the internal market whilst leaving flexibility for Member States in setting the standard VAT rate at the same time.

- **Consistency with existing policy provisions in the policy area**

By making permanent an existing, temporary provision (Article 97 of the VAT Directive), the proposal is consistent with current legislation.

- **Consistency with other Union policies**

Not relevant.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The Directive amends the VAT Directive. The legal basis is Article 113 of the Treaty on the Functioning of the European Union (TFEU). This Article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

- **Subsidiarity (for non-exclusive competence)**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the European Union. The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reasons:

The Union has already laid down harmonised provisions on the application of VAT rates, in the VAT Directive. These provisions may only be amended or extended by a Union act and Member State legislation cannot deviate from the harmonised rules.

Therefore, only Union action can achieve the objectives of the proposal and ensure equal treatment of citizens in the European Union. The proposal therefore complies with the subsidiarity principle.

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8 Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States (COM(2017) 569 final).

9 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – On the follow-up to the Action Plan on VAT – Towards a single EU VAT area – Time to act (COM(2017) 566 final).

- **Proportionality**

The proposal complies with the proportionality principle, because it maintains the current situation whereby Member States apply a standard VAT rate at a minimum of 15%.

- **Choice of the instrument**

A Directive is needed to amend the current VAT Directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not relevant.

- **Stakeholder consultations**

An open public consultation on VAT rates was held for 12 weeks from 21 December 2016 until 21 March 2017 resulting in 327 contributions. More than half of the respondents (52%) agreed to keep the current minimum of 15%, whereas 16% were against keeping it. 32% did not express an opinion on this matter.[10]

- **Impact assessment**

The proposal has no economic, social, regional or environmental impacts, because all Member States comply with the minimum requirement and no changes to national laws are required.

- **Regulatory fitness and simplification**

The proposal is not linked to REFIT and involves no regulatory burden.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the European Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will continue to monitor that Member States respect the minimum of 15% for the standard VAT rate.

- **Explanatory documents (for directives)**

Currently all Member States comply with the minimum 15% VAT rate. There is no need for explanatory documents on transposition.

- **Detailed explanation of the specific provisions of the proposal**

Article 97 prevents that the minimum of 15% for the standard rate expires on 1 January 2018 and ensures that all Member States apply a standard rate of a minimum of 15% on a permanent basis.

[10] Consultation page: https://ec.europa.eu/taxation_customs/consultations-get-involved/tax-consultations/review-existing-legislation-vat-reduced-rates_en

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Article 97 of Council Directive 2006/112/EC[3] provides that from 1 January 2016 until 31 December 2017 the standard rate may not be less than 15%.

(2) The application of a standard rate of value added tax (VAT) ensures the smooth functioning of the common system of VAT and should therefore be kept in place.

(3) It is appropriate to maintain the current minimum standard rate at 15%, also in a definitive VAT system based on the principle of taxation in the Member State of destination and to make it permanent.

(4) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 97 of Directive 2006/112/EC is replaced by the following:

"Article 97

The standard rate shall not be lower than 15 %."

[1] OJ C , , p. .

[2] OJ C , , p. .

[3] 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).

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2018 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President