



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.5.2003
COM(2003) 234 final

2003/0091 (CNS)

Proposal for a

COUNCIL DIRECTIVE

**amending Directive 77/388/EEC
as regards value added tax on services provided in the postal sector**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. BACKGROUND

When the Sixth Value Added Tax Directive¹ was adopted in the 1970s, the postal sector was characterised by a monopoly situation and a limited range of services that were not subject to any competition. The tax arrangements then adopted, i.e. exemption of public postal services, were suited to that situation.

In some Member States, public postal services are still considered to fall outside the scope of Value Added Tax (VAT) since they are deemed to be provided by a public authority within the meaning of Article 4(5) of the Sixth Directive.

In other Member States, Article 13(A)(1)(a) is applied. This exempts:

The supply by the public postal services of services other than passenger transport and telecommunications, and the supply of goods incidental thereto.

Moreover, Article 13(B)(e) exempts:

The supply at face value of postage stamps valid for use for postal services within the territory of the country, fiscal stamps, and other similar stamps.

The exemption for postal services does not cover similar services supplied by other bodies such as railways, airlines or other carriers. However the supply of the postage stamps in this context is exempt, irrespective of who sells them.

There is however, some confusion across the Community as to the correct interpretation of this exemption. For example at least two Member States consider that it does not apply when public postal services are carried out by a limited company.

2. COMPETITIVE DISTORTIONS FROM EXEMPTIONS

Exemption does not mean tax-free. It simply means that tax is not charged on the value added of a particular supply. But this also means that VAT incurred on related costs cannot be deducted. This inevitably causes distortion. This is due to the effect of the exemption on the normally transparent nature of VAT in a chain of supplies and the effects of the resultant “hidden” VAT (often known as the cascade effect).

In the normal course of events, each taxable person in a chain of transactions will charge VAT and deduct the VAT that he has been charged. In this way the tax flows down the chain until it reaches the final consumer who is unable to deduct. Where there is a business within the chain that makes supplies that are exempt of VAT, it cannot deduct the VAT it has been charged. That VAT will be a cost that will feed through to its sales and will feature in its own selling prices (as “hidden” VAT). As a result, its prices will be slightly lower than they would

¹ Sixth 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, OJ L 145, 13.6.1977, p. 1, as last amended by Directive 2002/92/EC, OJ L 331, 7.12.2002, p. 27.

have been had it been charging VAT on its sales, because the hidden VAT does not include that business' own added value. It is the VAT on its costs not the VAT on its sales.

Where the person making an exempt supply sells to final consumers, they will benefit from a reduced price because the value added by that supplier has not been subject to tax. Even so, because the exempt business cannot deduct tax, the customer will pay hidden tax on the supplier's costs. However, where a taxable business is the consumer of an exempt supply it will incur costs from the exempt business that will include hidden VAT which it will be unable to deduct. The result is higher costs to the taxable business. When this taxable business charges VAT on its own sales, the value-added calculation will include the hidden VAT in its tax base. As a result the final consumer will pay more tax, as it will pay VAT on the hidden VAT.

3. DISTORTION IN THE POSTAL SECTOR.

In the context of postal services, the current exemption causes a distortion between similar services supplied by the public operator and the private operator because only the services of the former are exempt. The public operator's prices will be more favourable where postal services are supplied to persons who do not have a right of deduction (e.g. private persons, banks, insurance companies, charities etc.). Such consumers cannot recover all the VAT charged to them so it is currently more advantageous for them to buy such services from a VAT exempt service provider because they will benefit from a lower price despite the hidden tax. On the other hand, a business that is able to deduct VAT will prefer the prices of a taxed service provider (a private operator) who will charge him VAT that he will be able to deduct. This type of business, which currently is responsible for just over 60% of the public postal operators' turnover for mail services within the European Community, will prefer to go to an operator that charges VAT. This is because there will be no hidden tax and, although the price plus VAT charged will be higher, the VAT can be deducted, leaving a lower actual price paid. The consequence of the current exemption is that the public and private operators are not able to compete effectively in all markets. Furthermore, given that a large part of the sector remains reserved for public operators, the incidence of hidden VAT is very high.

Since public postal services now operate in markets that are subject to competition, the fact that VAT exemption is limited solely to the public sector inevitably distorts that competition. This situation, which is increasingly hard to justify, regularly gives rise to complaints on the part of both private and public operators. Increasing liberalisation in the sector increases the incidences of distortion.

The existing system also complicates internal commercial relations within public operator based groups, whose independent subsidiaries (eg a transport company) are usually subject to the normal VAT rules and as a result, charge and deduct VAT. When a subsidiary supplies a service to the public operator, the VAT invoiced cannot be recovered by the public operator, and it therefore incurs a cost. Conversely, when the public operator supplies a service to its subsidiary, the supply will be exempt but will include hidden VAT. Thus VAT which in the normal course of events should flow through the businesses to the final consumer gets caught in the system, causing increased costs to business and consumer.

Some countries in the context of privatising their postal operators fully or partially, already tax the postal sector and this in turn gives rise to problems with regard to relations with postal operators in other countries in which the public operator is still exempt.

All of these problems indicate that the principle of neutrality at the heart of the common system of VAT is no longer respected in this sector. The purpose of this proposal is therefore to amend the Sixth Directive, with a view to making all the services provided by this sector subject to VAT. This will modernise and simplify the tax by removing the distortion and make the application of the tax in this sector fairer. This is in line with the Commission's Communication on a strategy to improve the operation of the VAT system published in June 2000².

4. THE PROPOSED SOLUTION TO THE PROBLEMS ENCOUNTERED

From a purely technical viewpoint, the best and most straightforward solution would be to tax all postal services at a standard rate. Taxation would bring to the public postal operators the right to deduct VAT incurred on purchases, thus removing the hidden VAT from the system for everyone and solving most of the problems of distortion for suppliers.

However, the introduction of full taxation at the standard rate could lead to price increases, in particular to postal services supplied to private consumers. It should be stressed that, in allowing postal operators associated input tax deduction, this taxation would not give rise to a price increase equivalent to the standard rate of VAT. Nevertheless, given the margins applied by postal operators and the standard VAT rates in the Community, some price increases for the final consumer would be likely, unless this additional income from taxation is used by Member States to increase their postal subsidies (either to the operator or to the consumer). Full taxation could also have significant impact in some sensitive areas of business such as charities and health, where non-deductible costs will increase.

The Commission has therefore sought to achieve a solution that will remove the distortion produced by exemption while allowing Member States to minimise the resultant impact of price increases on final consumers through the tax mechanism. This can be achieved by providing for the possibility of a reduced rate for those postal services used by private consumers. This is because the total tax on a postal operator's outputs at a reduced rate will not be significantly different from the total input tax at the standard rate on his inputs. (The actual result will depend on the relative levels of the reduced and standard rates applied and the degree of "value added" by the postal service supplier.)

In applying a reduced rate, however, it is necessary to bear in mind the unique nature of postal operations, in particular the ability for customers to buy stamps in various denominations in advance and to deposit their mail for collection in post boxes, without any contact with the operator. The dividing line between various products subject to different VAT rates is crucial if the key objective of simplification is to be achieved.

However, it has not been found to be technically feasible to target a reduced rate exclusively at private consumers alone, on account of the nature of the operations involved. Instead, it is proposed that a reduced VAT rate is made available to Member States to apply to standard postal services. This will include the majority of private mail but will also apply to some business mail. In fact it does not matter that the reduced rate is also available to businesses, given that taxable businesses can deduct VAT whatever the rate charged, and VAT exempt businesses will, like the final consumers, be in broadly the same position as they would be under the existing rules.

² A strategy to improve the operation of the VAT system within the context of the internal market COM(2000) 348 final.

The attached proposal for a Directive therefore seeks to amend the VAT rules applicable to public postal services by making them generally taxable. However, to minimise the impact of this change on prices paid by final consumers, the proposed solution includes an option for a limited reduced VAT rate for letters and small packages. These arrangements, a detailed description of which is given in the next section of this document, are intended to enable all enterprises operating in this sector to be treated more fairly, while minimising the impact of the change on final consumers.

It should nevertheless be stressed that the approach of taxing all postal services does not affect the process of liberalisation of the postal sector, which remains subject to the provisions of Directive 97/67/CE of 15 December 1997 (as amended)³. The application of VAT is not a prerequisite for greater liberalisation in this sector but merely the solution to the current difficulties arising in this partly liberalised market.

5. SUMMARY OF THE PROPOSED CHANGES

The proposal has three key elements:

- Removal of the exemption for the public postal services and postage stamps.
- Amended place-of-supply-rules to ensure only one VAT rate for most private post.
- An option for a reduced rate.

It is proposed that the postal services exemption and the exemption for postage stamps will be abolished. In principle this will mean that all postal services will follow the basic VAT rules for transport as set out in Articles 9(2)(b) and 28B(C)(2) of the Sixth VAT Directive. Transport is taxable to the extent that it takes place within the Community but transport of goods destined to a place outside the Community is exempt with a right to deduct.

Without additional change, the immediate effect of removing the exemption would therefore be to create two liabilities for postal services: Post collected for delivery *within* the Community would be standard rated, whereas post collected for delivery *outside* the Community would be exempt with a right to deduct. This would cause some difficulty, for example requiring two sets of stamps which would be further complicated by the fact that stamps are generally available in a variety of values. Therefore, in order to ease the impact of this change on final consumers, and to simplify control systems, it is proposed that standard postal services concerning all addressed items weighing 2 Kg or less will have a special place-of-supply-rule. It is proposed that all such supplies destined for delivery *outside* the Community should be treated as if they are for delivery *within* the Community. At the same time changes are proposed for the export rules to remove the exemption (with a right to deduct) for this category of service. Thus only one rate would apply. This is consistent with similar VAT systems in this sector outside the Community.

In principle, therefore all basic postal services involving addressed items weighing 2 Kg or less would become taxable at the standard rate. However it is also proposed that there should be an option for Member States to apply a reduced VAT rate to all of these services.

³ OJ L 15, 21.1.1998, p. 14.

Non standard services, services relating to unaddressed mail and services relating to items greater than 2 Kg will come under the normal VAT place-of-supply-rules for transport services and will be ineligible for the reduced rate. Such post collected for delivery *within* the Community would be standard rated, whereas such post collected for delivery *outside* the Community would be exempt with a right to deduct.

6. DETAILS OF THE PROPOSED TAXATION SYSTEM

6.1. General provisions

Although postal services comprise various activities including the clearance, sorting, transport and distribution of postal items, as far as the customer is concerned the service provided is the movement of goods from one place to another. It is therefore proposed that the provision of postal services should be treated as a single supply of transport services. Various sub-contracted services such as railway transport will remain unaffected by these measures.

It is further proposed that stamps will be treated as evidence of advanced payment, unless a special scheme is used, in which case it is proposed that the possibility be available for them to be deemed to be supplies of goods and exempt with a right to deduct. (This special scheme, which is to avoid the need for several sets of stamps, is set out in more detail below.)

Finally it is proposed that the supply of stamps for philatelic purposes should be a supply of goods at the standard rate, since they are unconnected with the supply of postal services. They would therefore be outside the scope of the postal operators scheme and the normal supply rules would apply.

6.2. Special place-of-supply-rule for mail destined to third countries

It is proposed that the place of supply of the basic transport of letters and small packages no heavier than 2 Kg will be in the country of departure. This will remove the difficulties arising from the adoption of the normal place of supply of transport rules and related control problems for stamps for cross border postal services, which would be exempt with a right to deduct. It will also remove the need for third country operators to register for VAT in respect of the Community leg of postal transport originating in a third country.

The proposed place-of-supply-rules will cover all the activity of the postal services (ie clearance, sorting, transport, and delivery) in relation to the defined postal items but not the activity of any component part provided by a subcontractor. They will cover any ordinary item up to the given weight, marked with the name and address of the recipient. They will apply to such items transported by any carrier, including addressed direct mail, books catalogues, newspapers and any small packages. But this will not include any services provided by an operator that are additional to basic mail services, such as express mail. These are excluded, as they are more generally services supplied to business customers.

In combination with the special place-of-supply-rule, it is proposed that the exemption with a right to deduct for basic transport to a third country, of postal items weighing less than 2 Kg be removed by an amendment to Article 15(13).

These special place-of-supply-rules will mean a simpler rule for operators and customers alike, namely only one VAT rate (which would be either at the standard or reduced rate) for all mail below 2 Kg. At the same time opportunity for error and abuse is greatly reduced by having a high weight threshold.

6.3. Optional reduced rate

Against a background of full taxation at the standard rate, It is proposed that Member States will be given the option to apply a reduced rate for the standard postal service relating to addressed letters and packets no heavier than 2 Kg. This will include direct mail, books, catalogues, newspapers etc provided that they have been addressed to a named person. Direct mail addressed “To the Occupier” will therefore not be eligible. With an upper limit of the reduced rate up to and including 2 Kg there is a reduced need for different sets of stamps. The majority of postal activity concerns far lighter items. The reduced rate will only apply when postal services are supplied to the customer. It will not apply to sub-contracted elements supplied to the supplier of the postal services.

The principle aim of this reduced rate is to ensure that the removal of exemption in this area will not result in price increases for the private customer. Of course the appropriate rate will be different in each Member States because the standard rate is different. Where Member States decide not to take up the option of a reduced rate, the standard rate will apply.

This reduced rate will be one of the two already available under Article 12(3) and will involve an additional category in Annex H.

Many businesses will also benefit from a reduced rate, as it is impossible to distinguish between private and business mail. For the vast majority of businesses which themselves make taxable supplies, this is of absolutely no consequence. They are able to deduct the VAT charged to them whatever the rate. For VAT exempt businesses, (banks, insurers, schools, charities etc) the result will be the same as for final consumers. However, un-addressed direct mail cannot be confused with private mail and is therefore outside the scope of the reduced rate.

In some Member States all postal services are already taxed at the standard rate in the context of a fully liberalised market while in some others, taxation is applied to non-reserved services irrespective of who provides the service. Thus not all Member States will wish to apply a reduced rate to minimise the impact of the introduction of taxation since the impact will vary considerably from state to state.

6.4. Postal services for packages greater than 2 Kg

With regard to services in relation to packages greater than 2 Kg it is proposed that no reduced rate be available and that the normal place-of-supply-rules for transport (Articles 9(2)(b) and 28B(C)(2)) will apply. This will mean:

- Items collected and delivered in a Member State will be taxable in that Member State.
- Items collected in a Member State and delivered to another Member State will be taxable in the Member State of departure.
- Items collected in a Member State and delivered to a place outside the Community will be taxable in that Member State for the element of the journey that takes place in the Community. It is proposed that this supply will be exempt with a right to deduct under an amended Article 15(13).

- Items collected in a place outside the Community and delivered to a Member State will be within the scope of VAT of any Member State of the Community for any element of the journey that takes place in that Member State. This supply will still be exempt with a right to deduct by existing Article 14(1)(i).

6.5. Treatment of Terminal Dues

As well as delivering goods collected within the Member State, the activities of operators include the delivery of items collected in another Member State or third countries. The operator who collects the mail will charge the customer for its complete transport and delivery. He will subcontract the delivery element to the operator in the other country. The payment received by the second operator is called a *terminal due*. This represents the consideration for a supply from the operator who delivers to the operator who collects. It is proposed that the tax treatment of these will be as follows:

Cross border terminal dues involving a third country, will be exempt with a refund of tax at the preceding stage, under Article 14(1)(i). The alternative would be for Community operators to charge VAT, which would in principle, be eligible for deduction by the third country operator. However, many third country postal operators would be ineligible for a 13th Directive claim, because they are state operations and not taxable persons. Furthermore the 13th Directive permits Member States to reject claims by third country entities where there is no reciprocity between the countries. Given that postal operations involve operators from almost every country in the world, there would be significant distortion in terms of eligibility for refund.

With regard to intra-Community terminal dues it is necessary to identify where the postal items in question are at the moment the subcontractor takes over the transport. The result is the same but for different reasons.

Where the principal operator, X based in Member State A, delivers the item to the subcontractor Y, based in Member State B, and the hand-over takes place in Member State A, the place of supply of the services will be in Member State A, by virtue of Article 28B(C)(1) and 28B(C)(2). This is because the subcontractor's services are an intra-Community supply and the place of supply is the place of departure of the transport. VAT will be due in Member State A and should be accounted for by operator X under the reverse charge rule set out in Article 21(1)(b).

Where the principal operator, X based in Member State A, delivers the item to the subcontractor Y, based in Member State B, and the hand-over takes place in Member State B, the place of supply of the services will still be in Member State A, by virtue of Article 28B(C)(1) and 28B(C)(3). This is because the subcontractor's services are linked to an intra-Community supply and the customer is in a member state other than that of the departure of the transport. VAT will be due in Member State A and should be accounted for by operator X under the reverse charge rule set out in Article 21(1)(b).

However, where the sub-contractor, Y, is identified for VAT purposes in the other Member State (A), he will, in both cases above, be responsible for accounting for the tax.

6.6. Treatment of reply paid mail

Businesses can register with their postal operator under the Business Reply Service, which enables the addressee to offer a message free of charge. For VAT purposes there are two types of reply paid mail. The first is given by businesses to customers who are in the same country as the business. The second is where the business and customer are in different countries.

In the first case the situation is straightforward. The postal operator charges the business a fee for registration and charges again per item delivered to it. Both these charges will be subject to VAT in the normal way and eligible for the reduced rate where applied.

In the second case the situation is more complex. The business registers with its local operator and pays the registration fee and a charge for each item received. Both these charges will be subject to VAT in the normal way and eligible for the reduced rate where applied. There is however an additional charge from the foreign operator to the local operator for the collection of the item. These charges form part of the terminal dues. They will be exempt with refund under Article 15(13) when the collection is of an item destined to a third country.

When the item is being collected in one Member State and sent to another, it will be taxable in the Member States of departure in accordance with Article 28B(C)(1) and 28B(C)(2). This is because the subcontractor's services are linked to an intra-Community supply and the place of supply is the place of departure of the transport. It will be subject to a reverse charge under Article 21(1)(b) in cases where the sub-contractor is not identified for VAT purposes in the other Member State.

6.7. Option for special tax accounting scheme for postal operators

Operators in Member States that adopt the reduced rate may have to account for VAT at three levels (Standard rate, reduced rate and nil ie exempt). Where no reduced rate is adopted, operators will have to account for VAT at two levels. This implies the necessity for separate sets of stamps, although, with the proposed changes both to the place-of-supply-rules and to the exemption for mail below 2 Kg, and the setting of a reduced rate at the same level of 2 Kg, the need for separate sets of stamps is greatly reduced.

As a simplification, in order to avoid the need for different classes of stamps, it is proposed that postal operators should be permitted to operate a special scheme by which they work out the amount of VAT due from their postal operations by an alternative method. This would leave the customer to have to deal with only one set of stamps. It is clear from discussions with various operators that some operators would not be interested in a special scheme, whereas others recognise that several sets of stamps would unnecessarily complicate the issue for their customers and such operators would welcome the opportunity for a simplification. At the same time it is also clear that systems and the extent of technology vary greatly from Member State to Member State. Whatever scheme is suitable for one operator would not necessarily be appropriate for another. It is therefore proposed that Member States should be able to design their own special scheme tailored to the systems in their territory.

Whatever the scheme, in principle it would have to determine:

- The extent of mail for which VAT will be due at the reduced rate
- The extent of mail for which VAT will be due at the standard rate

- The extent of mail above 2 Kg destined to non Community countries for which no VAT will be due
- Any reverse charges due by the operator in respect of terminal dues received from other Member States (standard rate)

This system will also need to include a scheme to ensure proper evidence for deduction is available to business customers.

This approach includes the possibility of avoiding the double taxation of postage stamps/postal services by, for example treating the stamps as goods and zero-rating them.

The advantage of using such a scheme is that the introduction of taxation would mean no change in the operation of the postal service from the consumer's point of view.

7. CONCLUSION

When the Sixth VAT Directive was adopted, postal services were almost exclusively supplied by national monopolies, a fact that explains the decision made at that time in favour of a system of general exemption of postal services. Nowadays, however, these services are increasingly being provided within a competitive environment. Exempting the activities of public operators therefore creates distortions of competition vis-à-vis private operators, who are subject to VAT.

In order to rectify the distortions that arise from this exemption, the only viable solution is to tax all activities of this type. Nevertheless, the impact on the final consumer of such a change could be mitigated by the introduction of a limited reduced rate without significant revenue effect or distortion.

The proposed change to the VAT treatment of postal services will mean that for any addressed postal item below 2 Kg there will be one rate of VAT for the standard service. This will be either at the standard rate or the reduced rate, depending on whether the Member State has taken up the option for the latter. For any postal item over 2 Kg there are two possible rates. The services will be standard rated if the item is to be delivered within the Community and exempt with a right to deduct if it is to be delivered to a third country.

8. COMMENTS REGARDING THE INDIVIDUAL PROVISIONS

Article 1

Point 1

Place of supply of services relating to letters

This provision provides for postal services relating to certain mail below 2 Kg to be taxed in the Member State of departure, and the service in question is deemed to have been carried out within that country. Consequently, the service is always taxable, even if the mail is intended for a third country. This outcome is obtained by derogating from the principle set out in Article 9(2)(b), under which the place where transport services are supplied is the place where transport takes place, having regard to the distances covered. This links also to the place of departure rules for intra-community transport of goods under Article 28B(C)(2).

However, where the recipient of the mail is also the recipient of the service (eg Business Reply Mail), the place of supply becomes the place of delivery of the item in question, even in cases where that item is transported through different countries.

These rules only apply to standard postal services, which can be provided by any operator. They apply only to items of correspondence, direct mail, books, catalogues, newspapers and small packages where the items are addressed to a named person. They do not therefore cover direct mail addressed “To the Occupier”. These rules cover the basic standard service, sometime referred to as the “second-class” service. Also included would be the accelerated delivery service sometimes referred to as “first-class” or “courrier prioritaire”. Standard postal services in this context do not, however, include express services. This is to focus them as far as possible to the services mostly used by final consumers. Having a high weight limit sets one rule for the majority of standard post and aligns the place-of-supply-rule demarcation line to the reduced rate option borderline, making the overall package simpler.

Point 2

Taxation of postal services

It is proposed, in order to provide for taxation of postal services, that those provisions of Article 13 providing for exemption be deleted.

Point 3

Removal of zero-rating

In addition to the amendment to the place-of-supply-rule, it is proposed that there be exception to the principle of exemption under Article 15(13) (supply of services linked to export). This provision in effect, limits the exemption of any postal services in relation to addressed items destined to third countries, to non-standard postal services and to goods heavier than 2 KG.

Point 4

Special scheme for postal operators

In order to further simplify the postal system in relation to VAT, this provision makes a further option available to those Member States that take up the reduced rate option, to allow operators to account for VAT under a special scheme. Because postal systems and their degree of technology vary greatly from Member State to Member State, the exact nature of the scheme may vary. However the broad principle remains the same: Stamp prices are set for each product according to the VAT liability but no VAT is shown on the actual stamp. This allows one set of stamps to be used for all products. The correct amount of VAT due is calculated by the operator during processing, on the basis of counting the numbers of each product sold at the given price.

To enable taxable businesses to deduct VAT on postal services, the system would have to incorporate an agreed document for evidence.

Point 5

Changes to Annex F

At the same time it is proposed that the exemption for telecommunications services in Annex F will be abolished.

This provision stems from the transitional provisions set out in Article 28(3)(b) of the Sixth VAT Directive which permitted Member States to continue to exempt certain activities listed in Annex F. Category 5 of that annex covered the provision by public postal services of telecommunications services. However no Member State currently makes use of this provision and, given the construction of the transitional provisions in Article 28, they will not be able to use this provision in the future.

Point 6

Optional reduced rate

This provision provides for a new optional limited reduced rate to be introduced for standard postal services relating to correspondence, direct mail, books, catalogues, newspapers and small packages, which is addressed to a named person. Standard postal services here means the basic standard service, sometimes referred to as the “second-class” service. Also included would be the accelerated delivery service sometimes referred to as “first-class” or “courrier prioritaire”. Standard postal services in this context do not, however, include express services. The services in question can be provided by any operator. This reduced rate is aimed at minimising the impact of the move from exemption to taxation for the majority of services enjoyed by the private consumer. In principle the reduced rate set by Member States for these postal services should mirror the effect of the current exemption and obviate the need for price increases. Given that the standard rate percentages vary between Member States, the reduced rate percentage will also vary. This would be one of the existing two reduced rates permissible under Article 12(3)(a).

The borderline for the reduced rate is set at 2 Kg to reduce the need for different sets of stamps in practice and to reduce the possibility of error or abuse through the use of incorrect stamps. The high weight limit means that it is virtually impossible to put mail for which a standard rate stamp would be required, in a letterbox.

Further simplicity is achieved by linking the borderline for the reduced rate with that for the place-of-supply-rule, making it easier for operators and customers alike. There is one borderline, 2 Kg for VAT issues, below which special rules apply. Above 2 Kg, normal VAT rules for transport apply.

Proposal for a

COUNCIL DIRECTIVE

**amending Directive 77/388/EEC
as regards value added tax on services provided in the postal sector**

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 Commission⁴,

Having regard to the opinion of the European Parliament⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Whereas:

- (1) The existing value added tax (VAT) exemption of postal services under the Sixth Directive 77/388/EEC of the Council 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 assessment⁷, is limited solely to public postal operators, and the resulting discrepancy, whereby those services are exempt if they are supplied by public operators but taxed if supplied by private operators, gives rise to distortions of competition.
- (2) The proper functioning of the internal market requires that wherever possible, such distortions be eliminated.
- (3) The Commission is committed to a strategy of modernising and simplifying the operation of the VAT system within the context of the internal market⁸.
- (4) As regards to the application of VAT to postal services all such services should be made taxable by treating them as goods transport services, thereby allowing postal operators to deduct input tax incurred on purchases. In consequence, overall net prices should decrease and any overall price increase arising from the introduction of VAT would be unlikely to be equal to the standard rate percentage applying in each Member State.

⁴ OJ C ..., ..., p. ...

⁵ OJ C ..., ..., p. ...

⁶ OJ C ..., ..., p. ...

⁷ OJ L 145, 13.6.1977, p.1. Directive as last amended by Directive 2002/92/EC (OJ L 331. 7.12.2002. p. 27).

⁸ COM(2000) 348 final.

- (5) In order to counter gross price increases in certain limited areas, for private consumers, it is appropriate to apply a reduced rate, which produces the same revenue effect as the current exemption. However, a reduced rate across the sector should not be introduced, since it would lead to greater instances of distortion.
- (6) The place-of-supply-rules for letter post should be amended in order to reduce the possibilities for error or fraud, provide simplification and ensure that the Community system is comparable to other similar systems.
- (7) In order to enhance the efficiency of a simplified accounting scheme for postal operators, it should be possible to treat postage stamps as goods but ignore them for tax purposes when they are supplied for the purpose of obtaining postal services.
- (8) Given the differing levels of technology used by national postal operators, it should be left to Member States to design the most appropriate special accounting system.
- (9) In principle, a refund of VAT would be available to postal operators established in third countries, under the Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in the Community Territory.⁹ However, given that the activities of some state owned postal operators might not be considered to be economic activities, thus preventing such refund, exemption with the right of deduction should be provided for any terminal dues within the meaning of Article 2(15) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service¹⁰, in respect of the distribution of incoming cross-border mail from third countries.
- (10) Since the objectives of this Directive cannot be sufficiently achieved by the Member States for the above mentioned reasons 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.
- (11) 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 9 the following paragraph 2a is inserted:

“By way of derogation from paragraph 2(b), the standard postal services relating to any addressed envelopes or packages, of ordinary correspondence, direct mail,

⁹ OJ L 326, 21.11.1986, p. 40.

¹⁰ OJ L 15, 21.1.1998, p. 14.

books, catalogues and newspapers, which individually weigh no more than 2 kg, shall be deemed to be supplied within the country in which transport commences, save where the collection and delivery are paid for by the recipient, in which case any such item shall be deemed to be supplied at the place of delivery.

For the purposes of this Directive, “standard postal services” means the traditional basic service supplied to the sender of the mail, including deliveries in the fastest standard category, where more than one category exists, and the delivery of items registered or recorded, but not any express delivery services or services provided by sub contractors, or any services relating to terminal dues within the meaning of Article 2(15) of Directive 97/67/EC of the European Parliament and of the Council¹¹. An addressed envelope or package is one on which is marked a named person at a given address.”

(2) Article 13 is amended as follows:

a) In Title A, paragraph 1(a) is deleted;

b) In Title B, point (e) is replaced by the following:

“e) the supply at face value of fiscal stamps and other similar stamps other than postage stamps;”

(3) In Article 15, point (13) is replaced by the following:

“13. the supply of services, including transport and ancillary operations, but excluding the supply of services exempted in accordance with Article 13 and standard postal services relating to any addressed envelopes or packages, of ordinary correspondence, direct mail, books, catalogues and newspapers, which individually weigh no more than 2 kg, where they are directly linked to the export of goods or the import of goods covered by Article 7(3) or Article 16(1), Title A.”

(4) In Title XIV the following Article 26d shall be added:

“Article 26d Special Scheme for Postal Operators

Where Member States apply a reduced rate for postal services in accordance with Article 12(3)(a) and Annex H, category 18, they may, without prejudice to other Community provisions and under conditions which they may determine in order to prevent any possible evasion, avoidance or abuse, allow the amount of tax due to be determined on the basis of the numbers of items transported.

In order to avoid double taxation, Member States adopting such a scheme may vary the treatment of postage stamps to such an extent as they see fit in order to ensure that only the postal services are taxed.

Where such a regime is adopted, Member States shall include suitable provision for any taxable person who, as a customer of the postal service provider, has a right of deduction under Article 17.”

¹¹ OJ L 15, 21.1.1998, p. 14.

- (5) In Annex F, Category 5 is deleted.
- (6) In Annex H, the following category is added:

“18. Standard postal services relating to any addressed envelopes or packages, of ordinary correspondence, direct mail, books, catalogues and newspapers, where that item individually weighs no more than 2 Kg, that being a fixed ceiling for the purposes of exercising this option.”

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... at the latest. They shall forthwith inform the Commission thereof.

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.

Article 3

This Directive shall enter into force on the twentieth 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

FINANCIAL STATEMENT

Once adopted, this proposal for a Directive will have a slight positive impact on the Community's VAT own resources base.

This is because taxing public postal services, which have hitherto been exempt, will give rise to an increase in the total VAT revenues collected by the Member States.

It is nevertheless very difficult to make estimation of this increase in own resources given the enormous difficulty of quantifying all the variables influencing the net result and the fact that no reliable statistics are available.