



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.7.2004  
COM(2004) 468 final

2003/0091 (CNS)

Amended 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 pursuant to Article 250 (2) of the EC Treaty)

## **EXPLANATORY MEMORANDUM**

### **1. PURPOSE OF THE PROPOSAL**

The Sixth VAT Directive contains provisions exempting certain supplies of services effected by the public postal services and the supply of goods incidental thereto. It also exempts the supply of stamps valid for use for postal services. Those provisions were adopted in 1977 and have not been updated since. In the meantime however, postal services in Europe are now increasingly open to competition and since current rules provide for different taxation of similar services depending on the nature of the provider, they are no longer compatible with the neutrality principle.

### **2. BACKGROUND**

- The Commission adopted its initial proposal [COM (2003) 234 final] on 5 May 2003.
- In the course of the consultation procedure mandated in article 93 of the Treaty, the European Parliament delivered its opinion on 11 March 2004. In the opinion, it requested that the Commission adopt 12 amendments.

### **3. THE COMMISSION'S OPINION ON THE EUROPEAN PARLIAMENT'S AMENDMENTS**

#### **3.1 General assessment**

Some of the amendments approved by the European Parliament in its plenary session on March 11<sup>th</sup> are consistent with the Commission's objectives of re-establishing a level playing field in the European postal market while protecting certain postal users from higher postal prices. The Commission therefore accepts those amendments and modifies its proposal accordingly.

#### **3.2 Examination of the relevant amendments**

##### - Scope of the new place of supply rule [Article 1 point 1]

Parliament proposes to widen the scope of the special place of supply rule contained in the Commission's proposal so as to make it applicable to standard postal services relating to any addressed envelopes of packages, of ordinary correspondence, direct mail, books, catalogues and newspapers, which individually weigh no more than 10 kg. This amendment would align the weight in question with that mentioned in article 3 paragraph 4 of Directive 97/67, and is a natural borderline in the sector. The amendment is acceptable to the Commission.

##### - Supplies of services which are exempt due to their connection with the export of goods [Article 1 point 3]

The current text of article 15.13 of the Sixth VAT Directive excludes from the exemption provided for services connected with the export of goods, those which are exempted in accordance with article 13. The Commission's proposal amends article 15.13 so as to also

exclude from the exemption the services covered by the new place of supply rule in Article 1 point 1. Given the amendments to Article 1 point 1, Article 1 point 3 must also be amended.

- List of goods and services which may be subject to reduced rates of VAT [Article 1 point 6]

The Commission's original proposal, allowed Member States to apply a reduced rate to certain postal services, namely those covered by the provisions contained in points 1 and 3 of Article 1. The amendments introduced to those two articles require a corresponding amendment to Article 1 point 6.

- Deadline for the implementation of the proposed Directive [New Recital 10 and Article 2 paragraph 1]

Both public and private postal operators may require some time in order to adapt their systems to the new tax liabilities resulting from this Directive. Parliament has shown its concern in this respect and has requested that Member States and operators be given enough time to prepare for the changes. It has proposed that the deadline for the implementation of the Directive be set on 1 January 2007. This amendment to Article 2 is acceptable to the Commission.

#### **4. CONCLUSION**

In accordance with Article 250(2) of the EC Treaty the Commission amends its proposal as set out above.

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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<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

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 assessment<sup>4</sup>, 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 market<sup>5</sup>.
- (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

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<sup>1</sup> OJ C ..., ..., p.

<sup>2</sup> OJ C ..., ..., p. ...

<sup>3</sup> OJ C 80, 30.3.2004, p.135

<sup>4</sup> OJ L 145, 13.6.1977, p.1. Directive as last amended by Directive 2004/7/EC (OJ L 27. 30.1.2004. p. 44).

<sup>5</sup> COM(2000) 348 final.

would be unlikely to be equal to the standard rate percentage applying in each Member State.

- (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.<sup>6</sup> 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 service<sup>7</sup>, in respect of the distribution of incoming cross-border mail from third countries.
- (10) In order to allow postal operators to adapt their systems, Member States shall be given sufficient time to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive.**
- (11)** 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.
- (12)** Directive 77/388/EEC should therefore be amended accordingly,

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<sup>6</sup> OJ L 326, 21.11.1986, p. 40

<sup>7</sup> OJ L 15, 21.1.1998, p. 14.

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, books, catalogues and newspapers, which individually weigh no more than **10** 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 Council<sup>8</sup>. 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 **10** 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

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<sup>8</sup> OJ L 15, 21.1.1998, p. 14.

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.”

- (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 **10** 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 **1 January 2007** 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*