


# Procedure file

| Basic information   |                                |                     |
|---|--------------------------------|---------------------|
| CNS - Consultation procedure<br>Decision  | <a href="#">2005/0019(CNS)</a> | Procedure completed |
| Value added tax VAT: simplify the procedure, assist in countering tax evasion and avoidance, repealing decisions granting derogations (amend. Directive 77/388/EEC) |                                |                     |
| Subject<br>2.70.02 Indirect taxation, VAT, excise duties  |                                |                     |

| Key players                   |  |   |            |
|-------------------------------|--|---|------------|
| European Parliament           | Committee responsible                          | Rapporteur                              | Appointed  |
|                               | <b>ECON</b> Economic and Monetary Affairs      |   | 11/04/2005 |
|                               |  | PPE-DE <a href="#">KONRAD Christoph</a> |            |
|                               | Committee for opinion                          | Rapporteur for opinion                  | Appointed  |
|                               | <b>CONT</b> Budgetary Control                  |   | 20/04/2005 |
|                               |  | PSE <a href="#">BÖSCH Herbert</a>       |            |
| Council of the European Union | Council configuration                          | Meeting                                 | Date       |
|                               | <a href="#">Justice and Home Affairs (JHA)</a> | <a href="#">2746</a>                    | 24/07/2006 |
| European Commission           | Commission DG                                  | Commissioner                            |            |
|                               | <a href="#">Taxation and Customs Union</a>     |   |            |

| Key events |   |   |         |
|------------|---|---|---------|
| 16/03/2005 | Legislative proposal published                                  | <a href="#">COM(2005)0089</a>   | Summary |
| 27/04/2005 | Committee referral announced in Parliament                      |   |         |
| 30/05/2006 | Vote in committee   |   | Summary |
| 09/06/2006 | Committee report tabled for plenary, 1st reading/single reading | <a href="#">A6-0209/2006</a>  |         |
| 06/07/2006 | Results of vote in Parliament                                   |  |         |
| 06/07/2006 | Decision by Parliament  | <a href="#">T6-0303/2006</a>  | Summary |
| 24/07/2006 | Act adopted by Council after consultation of Parliament         |   |         |
| 24/07/2006 | End of procedure in Parliament                                  |   |         |
| 12/08/2006 | Final act published in Official Journal                         |   |         |

| Technical information |                              |
|-----------------------|------------------------------|
| Procedure reference   | 2005/0019(CNS)               |
| Procedure type        | CNS - Consultation procedure |
| Procedure subtype     | Legislation                  |

|                            |                                    |
|----------------------------|------------------------------------|
| Legislative instrument     | Decision                           |
| Legal basis                | EC Treaty (after Amsterdam) EC 093 |
| Stage reached in procedure | Procedure completed                |
| Committee dossier          | ECON/6/27258                       |

### Documentation gateway

|   |      |   |            |     |         |
|---|------|---|------------|-----|---------|
| Legislative proposal  |      | <a href="#">COM(2005)0089</a>   | 16/03/2005 | EC  | Summary |
| Economic and Social Committee: opinion, report                  |      | <a href="#">CES1501/2005</a><br><a href="#">OJ C 065 17.03.2006, p. 0103-0105</a> | 15/12/2005 | ESC |         |
| Committee draft report  |      | <a href="#">PE370.299</a>   | 08/03/2006 | EP  |         |
| Amendments tabled in committee                                  |      | <a href="#">PE371.926</a>   | 03/04/2006 | EP  |         |
| Committee opinion   | CONT | PE371.852   | 04/05/2006 | EP  |         |
| Committee report tabled for plenary, 1st reading/single reading |      | <a href="#">A6-0209/2006</a>  | 09/06/2006 | EP  |         |
| Text adopted by Parliament, 1st reading/single reading          |      | <a href="#">T6-0303/2006</a>  | 06/07/2006 | EP  | Summary |
| Commission response to text adopted in plenary                  |      | <a href="#">SP(2006)3801</a>  | 28/08/2006 | EC  |         |

### Additional information

|                     |                         |
|---------------------|-------------------------|
| European Commission | <a href="#">EUR-Lex</a> |
|---------------------|-------------------------|

### Final act

|  |
|--|
| <a href="#">Directive 2006/69</a><br><a href="#">OJ L 221 12.08.2006, p. 0009-0014</a> Summary |
|--|

## Value added tax VAT: simplify the procedure, assist in countering tax evasion and avoidance, repealing decisions granting derogations (amend. Directive 77/388/EEC)

**PURPOSE** : proposal to amend the 6th VAT Directive (Directive 77/388/EEC) to provide Member States with the option of quickly adopting measures in order to counter avoidance and evasion in certain specific and targeted areas and rationalisation proposal aimed at simplifying the application of the tax in certain circumstances where those liable to pay the tax are in financial difficulties.

**PROPOSED ACT** : Council Directive.

**CONTENT** : under Article 27 of the Sixth VAT Directive, the Council may authorise any Member State to introduce special measures for derogation from the provisions of the Sixth VAT Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance. Currently, Member States have been allowed to apply over 140 derogations. This number will grow in the near future, since Member States which joined the EU on the 1st of May 2004 are now introducing requests for derogations.

The Commission has undertaken in previous communications to rationalise some of the large number of derogations currently in force. It was envisaged that such a rationalisation would involve making certain individual derogations available to all Member States through an amendment to the Sixth VAT Directive. These derogations would be those which had already proved themselves effective and which tackled problems which were shared by more than one Member State.

The number of derogations and the similar problems they tackle is indicative of the fact that in recent years VAT avoidance and fraud has become a very real issue. Both the national authorities of the Member States as well as business federations have pointed out that evading VAT has become so widespread in certain sectors that it puts honest traders under a competitive disadvantage. Charging VAT but not paying it over to the State results in not only a loss of revenue for the State but also enables dishonest traders to offer goods or services at lower prices than their compliant competitors. In addition, Member States are more frequently confronted with artificial constructions ? often involving a series of transactions - set up with the sole purpose of obtaining a VAT advantage either by lowering the final VAT charge or by increasing the recovery of VAT. While the artificial character of the chain of transactions is usually obvious, counter measures or court action inevitably take a long time. In the meantime, experience in Member States demonstrates that VAT avoidance schemes are worked out by specialists and

successful ones subsequently marketed as a product to businesses. It is therefore questionable whether a piecemeal approach to tackling this problem where there is evidence of common problems is still appropriate.

The Commission is therefore of the opinion that specific known schemes could be more effectively tackled through an amendment to the Directive to provide a permanent viable alternative to the standard treatment where it can be justified through evidence of avoidance or evasion activity. The proposal, therefore, introduces changes in some areas where there are proven difficulties with the operation of the sixth Directive and a demonstrable need to allow some limited flexibility more generally. In common with the derogations from which they spring, these measures represent an alternative to the normal rules and are only being made available to all Member States to help counter avoidance and evasion or to simplify the operation of the tax.

The measures provide Member States with the option of using the alternative rule, rather than making their application mandatory. In addition, given the variety of mutations through which avoidance schemes pass in response to counter-measures, the proposal allows Member States some room to adapt the measures to their specific national situations. Thus, once having opted to apply the rule, Member States are authorised to limit their application of the new rules in order to target their specific avoidance or evasion problem.

The following specific points are to be noted:

- the Commission is taking the opportunity to propose changes to strengthen areas which Member States find can be exploited to avoid VAT. In both the area of "grouping" in Article 4(4) of the Sixth Directive and in "transfers of going concerns" (Article 5(8)) the proposal allows for Member States to take steps to ensure that the operation of the rules does not allow an unfair result which would unjustifiably benefit or prejudice those concerned. Member States already have the discretion to set the circumstances in which the both of these rules can apply. The new rule, already applied to capital goods through Article 20(6), would help Member States prevent unfair results arising from the operation of the rules;
- there is the deletion of the current definition of "open market value";
- several Member States already apply a special measure on the basis of Article 27 to counter an arrangement which avoids the payment of VAT on untaxed investment gold used as a raw material for making consumer goods. It is now proposed to provide within the Sixth VAT Directive the means for all Member States to apply this measure;
- one of the vulnerable areas for avoidance relates to the valuation of supplies since that directly affects the amount of tax which is charged. The new paragraph (6) to Article 11(A) of the 6th Directive, to be found in Article 1(3)(b), introduces an optional rule which enables Member States to revalue certain supplies.
- the proposed amendment in Article 1(6) is intended to clarify that adjustment of deductions relating to capital items under Article 20 of the Sixth Directive may apply equally to services - provided that they are of a capital nature and are treated as such;
- Article 1(7) extends the use of an optional reverse charge mechanism for specified supplies made to taxable persons. These are in sectors of the economy which have proved particularly difficult for Member States to police, for example because of the nature of the industry or its structure. The areas covered are services relating to buildings (including any, or all, of the services of construction, repair, cleaning and demolition); supplies of staff relating to building services; land and buildings on which the option to tax has been exercised; and supplies of waste, scrap and recyclable material together with some products resulting from their treatment and some treatment services.
- the proposal covers details of the repeal of certain legislation as well as implementation and notification by Member States.

## Value added tax VAT: simplify the procedure, assist in countering tax evasion and avoidance, repealing decisions granting derogations (amend. Directive 77/388/EEC)

---

The committee adopted the report by Christoph KONRAD (EPP-ED, DE) broadly approving the proposed directive on simplifying the procedure for charging VAT and helping to counter tax evasion and avoidance. It tabled a few amendments under the consultation procedure:

- it should be expressly stated that the directive should not encroach on the power of the Member States to levy taxes;
- the criteria for consideration in any change in the system for levying VAT should be the effectiveness of tax collection, equality in tax treatment and practicability for businesses;
- the distinction between sectors to which reverse charging will apply and services which require tax to be charged to the provider should be clearly defined so that it is "clearly and indisputably recognisable" to businesses;
- new articles were introduced calling for cooperation between national authorities and OLAF in order to counter "carousel" fraud and for the Commission to draw up a "comprehensive comparative synopsis" assessing the different national schools of thought and spelling out the consequences of any change and the advantages and drawbacks entailed.

## Value added tax VAT: simplify the procedure, assist in countering tax evasion and avoidance, repealing decisions granting derogations (amend. Directive 77/388/EEC)

---

The European Parliament adopted a resolution drafted by Christoph KONRAD (EPP-ED, DE) and made a few amendments. (Please see the summary of 30/05/2006.)

## Value added tax VAT: simplify the procedure, assist in countering tax evasion and avoidance, repealing decisions granting derogations (amend. Directive 77/388/EEC)

---

PURPOSE: to modify the EU's VAT regime in order to combat tax evasion.

LEGISLATIVE ACT: Council Directive 2006/69/EC amending Directive 77/388/EEC as regards certain measures to simplify the procedure for charging value added tax and to assist in countering tax evasion or avoidance, and repealing certain Decision granting derogations.

CONTENT: to combat tax evasion, and in a bid to simplify the procedures for charging VAT, EU legislation has, until now, allowed Member States to apply for derogations. These derogations have been granted, under varying terms, to individual Member States. The purpose of this Directive is to make those derogations available to all Member States ? but to offer them in such a way that Member States may adopt them only as and when the need arises.

The 6<sup>th</sup> VAT Directive has accordingly been amended and includes the following provisions:

- It allows the Member States to take action relating to a taxable person as well as a business transfer so that they can not be exploited for the purpose of avoiding tax. Further, the Directive makes it possible for the Member States to intervene regarding the value of supplies and acquisitions in specific limited circumstances in order to ensure that there is no loss of tax.
- It allows the Member States to include the value of ?exempt investment gold?, in cases where this gold has been worked. It will be valued according to the ?open market value? of the investment gold at the time of it being supplied.
- The term ?open market value? has been redefined.
- It allows the inclusion of certain services with the nature of capital items in the scheme. This allows for the adjustment of deductions for capital items over the lifetime of the asset, according to its actual use.
- It allows the Member States, in certain specific cases, to designate the recipient of supplies as the person responsible for paying and accounting for value added tax. This allows for greater simplification and the countering of tax evasion as well as the identification of sectors depending on the types of transactions.
- Given that Member States will not longer be able to apply for individual derogations, this Directive has repealed 10 derogation Decisions, effective as from 1 January 2008. (A full list of the repealed Decisions can be found in Annex to the Directive). The Directive does not affect measures applied by the Member States pursuant to Article 27(5) of Directive 77/388/EEC, nor does it affect derogations granted according to Article 27 (1) of the Directive and which are not repealed by this Directive.
- The application of certain provisions is optional and allows the Member States a degree of discretion. Member States have the option of sharing information with other Member States through the Advisory Committee on VAT.

ENTRY INTO FORCE: 13/08/2006.

TRANSPOSITION: 01/01/2008.