Procedure file

Basic information

CNS - Consultation procedure Directive	2007/0267(CNS)	Procedure lapsed or withdrawn

Value added tax VAT: common system, treatment of insurance and financial services

Amending Directive 2006/112/EC, VAT Directive 2004/0079(CNS)

Subject
2.70.02 Indirect taxation, VAT, excise duties

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs		
Council of the European Union	Council configuration	Meeting	Date
	Environment	3139	19/12/2011
	Economic and Financial Affairs ECOFIN	3100	20/06/2011
	Economic and Financial Affairs ECOFIN	2948	09/06/2009
	Economic and Financial Affairs ECOFIN	2911	02/12/2008
	Economic and Financial Affairs ECOFIN	2872	03/06/2008
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	ŠEMETA Algirdas	

Key events

27/11/2007	Legislative proposal published	COM(2007)0747	Summary
15/01/2008	Committee referral announced in Parliament		
03/06/2008	Debate in Council	2872	
10/09/2008	Vote in committee		Summary
15/09/2008	Committee report tabled for plenary, 1st reading/single reading	A6-0344/2008	
24/09/2008	Debate in Parliament		
25/09/2008	Results of vote in Parliament		
25/09/2008	Decision by Parliament	T6-0457/2008	Summary

02/12/2008	Debate in Council	2911	
09/06/2009	Debate in Council	2948	Summary
20/06/2011	Debate in Council	3100	Summary
19/12/2011	Debate in Council	3139	Summary
30/04/2016	Proposal withdrawn by Commission		
30/04/2016	End of procedure in Parliament		

Technical information

Procedure reference	2007/0267(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2006/112/EC, VAT Directive 2004/0079(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 113
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	ECON/6/56997

Documentation gateway

Legislative proposal		COM(2007)0747	28/11/2007	EC	Summary
Document attached to the procedure		SEC(2007)1554	28/11/2007	EC	
Document attached to the procedure		SEC(2007)1555	28/11/2007	EC	
Committee draft report		PE402.842	16/04/2008	EP	
Economic and Social Committee: opinion, report		CES1002/2008	28/05/2008	ESC	
Amendments tabled in committee		PE407.856	17/06/2008	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0344/2008	15/09/2008	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0457/2008	25/09/2008	EP	Summary
Commission response to text adopted in plenary		SP(2008)6073	17/10/2008	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Value added tax VAT: common system, treatment of insurance and financial services

PURPOSE: to amend Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services.

PROPOSED ACT: Council Directive.

CONTENT: the Commission states that the definitions of exempt insurance and financial services in this Directive are out of date and have led to an uneven interpretation and application of these exemptions by Member States. Stakeholders are confronted with considerable legal complexity and varying administrative practices generating legal uncertainty for economic operators and fiscal authorities. This legal uncertainty has led to an increasing number of court cases and increased the administrative charges of operators and administrations for applying these exemptions. It is therefore necessary to clarify the rules governing the exemption from VAT for insurance and financial services with the aim of creating more legal certainty and reducing administrative charges for operators and administrations.

A second problem is that of hidden VAT in the cost structure of insurance and financial services. In financial services and insurance services all economic operators are striving to improve their competitiveness since they are increasingly exposed to competition both between themselves on account of the trend towards a single pan-European market place, and from economic operators established outside the EU. Consolidation within the sector has been driven to a great extent by the need for efficiency but cost reduction strategies manifest themselves in various ways. These developments are accelerated by the emergence of a wider regulatory framework for an integrated European financial services market as set out in the Financial Services Action Plan. This regulatory framework increases the competition between suppliers of insurance and financial services through the steady move towards a level playing field. In this environment, economic operators have developed various techniques for improving their own competitiveness but some of the more common basic techniques include

the following:

-outsourcing of activities (with the intention of lowering administrative and labour costs,

e.g.: depository of shares, administrative tasks etc.);

-pooling of activities (with a cost-sharing intention, e.g.: the common development of

computer systems and software for several banks, the creation of credit factories which

may either be associated with consolidation or be undertaken on the basis of);

-sub-contracting (insertion of a supplementary distribution level for the financial products or insurances).

These techniques involve less value in created in-house but supplied as services by independent third parties to the suppliers of insurance and financial products. This generates the problem that such services may no longer come under the exemption for financial and insurance services and are therefore invoiced with VAT. This VAT is often not deductible for the client because he has no right of deduction since he supplies himself exempt insurance and financial services. Such non-deductible VAT becomes part of the costs. The proposal contains elements which will reduce that impact on the costs.

Accordingly, the **objectives of this proposal** are twofold:

-increasing legal certainty for economic operators and national tax administrations, reducing their administrative burden for correctly applying the rules for the VAT exemption of insurance and financial services;

-reducing the impact of hidden VAT in costs of insurance and financial services providers.

These objectives are achieved by the **three measures** contained in the proposal:

-clarification of the rules governing the exemption from VAT for insurance and financial

services;

-broadening of the existing option for taxation by transferring the right to opt from the

Member States to the economic operators;

-introduction of a cost-sharing group which allows economic operators to pool investments and re-distribute the costs for these investments exempt from VAT from the group to its members.

Clarification of rules: clarification consists of the following elements:

-the conditions for applying the VAT exemption are based on objective economic criteria

decoupling them from an interpretation based on national private law concepts which is one of the main reasons for different interpretations in the Member States (e.g. an insurance must address a risk and provide for an indemnity or a benefit). These objective economic criteria ensure also that new services which will be developed in the future will be covered by the VAT exemption if they fulfil these criteria;

-the new rules introduce the concept that the exemption shall cover the supply of any

constituent element of an insurance or financial service, which constitutes a distinct whole

and has the specific and essential character of the exempt service concerned;

-a common harmonised concept of intermediation is introduced for insurance and financial

services;

-where possible, the new definitions also create more consistency with internal market rules (e.g. investment funds). The proposal for a Directive is accompanied by a proposal for a Regulation which enumerates in a non-exhaustive way cases which are covered by or excluded from the VAT exemption for insurance and financial services.

The option for taxation: under the broadened option for taxation, it will be the economic operator who decides if he wants to be fully taxable. Where he exercises this right, he will be able to deduct input VAT on his investments like any other economic operator. In this way a level playing field for the financial industry is created that had previously not been achieved.

At the same time Member States are given the necessary flexibility to specify the rules for applying the option, adapting it to their national tax supervision structures. Where the need arises implementing provisions could also be envisaged at Community level on the basis of Article 397 of the Directive.

Cost-sharing: under the proposed cost-sharing model, economic operators can pool

their investments (e.g.: computer technology of specialised staff) in groups which could buy these investments at better market conditions and re-distribute them exempt from VAT to the members of the group.

Value added tax VAT: common system, treatment of insurance and financial services

The Committee on Economic and Monetary Affairs adopted a report drafted by Joseph MUSCAT (PES, MT) and made some amendments to the proposal for a Council directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services.

The main amendments were as follows :

Principle of neutrality: Members stressed the need for a framework which provides neutral conditions in regard to the value added tax (VAT) treatment of financial products and their marketing and management.

They also stressed the aim of having a level playing field in the European Union between economic operators and Member States.

Exemptions: amongst the transactions to be exempted by Member States are exchange of currency, provision of cash and cash claims transactions and derivatives of all kinds. Members stated that derivatives should be exempted from turnover tax, irrespective of the underlying assets. Turnover tax liability can only arise if the performance of a transaction leads to a taxable sale.

Definitions: the committee broadened the definition of 'investment funds'. The definition of 'transactions concerning trading in securities' has been extended to include title to cash-settled financial, credit, and commodity derivatives and related options. The definition encompasses all cash-settled derivatives, whatever the nature of the assets underlying them (commodities and/or financial instruments). Members also broadened the definition of 'investment fund', believing the Commission's proposal to be too restrictive on this point. They state that by including in the definition pension funds and vehicles used to implement and execute collective pension schemes, a level playing field is created and a distortion eliminated. The 'management of investment funds' includes advisory services.

Groups: with regard to the conditions to be fulfilled for Member States to exempt services supplied by a group of taxable persons to members of the group, the committee notes that the group itself must be established in the Community. However, it should be possible for undertakings that are not resident in the EU to become members of such a group, and these groups should be able to provide services to third parties in accordance with general turnover tax principles without this affecting the principle of their tax exemption.

Report: the Commission will report to the European Parliament and the Council on the operation of the right of option 3 years after entry into force. If appropriate, the Commission shall present a legislative proposal concerning detailed rules governing the exercise of that right of option and any other amendments of Directive .../.../EC in this respect.

Transposition: Member States' transposition must ensure that end-consumers benefit from the restructuring of the present VAT arrangement. Members noted that The facilitation of procedures for businesses should not come at the cost of increased prices for consumers.

Value added tax VAT: common system, treatment of insurance and financial services

The European Parliament adopted, by 493 votes to 90 with 10 abstentions, a legislative resolution amending the proposal for a Council directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services. The report had been tabled for consideration in plenary by Joseph MUSCAT (PES, MT) on behalf of the Committee on Economic and Monetary Affairs.

The main amendment ? adopted under the consultation procedure ? were as follows:

Principle of neutrality: Members stressed the need for a framework which provides neutral conditions in regard to the value added tax (VAT) treatment of financial products and their marketing and management.

They also stressed the aim of having a level playing field in the European Union between economic operators and Member States.

Exemptions: amongst the transactions to be exempted by Member States are exchange of currency, provision of cash and cash claims transactions, transactions concerning trading in securities and derivatives of all kinds.

Definitions: Parliament clarified the definition of 'insurance' and broadened the definition of 'investment funds'. The latter means specially constituted investment vehicles created for the sole purpose of gathering assets from investors and investing those assets in a diversified pool of assets, including pension funds and vehicles used to implement and execute collective pension schemes. The 'management of investment funds' includes at least strategic and tactical asset management and asset allocation, including advisory services, as well as currency and risk management.

Groups: with regard to the conditions to be fulfilled for Member States to exempt services supplied by a group of taxable persons to members of the group, Parliament notes that the group itself must be established in the Community. However, it should be possible for undertakings that are not resident in the EU to become members of such a group, and these groups should be able to provide services to third parties in accordance with general turnover tax principles without this affecting the principle of their tax exemption.

Services to third countries: in order to ensure a level-playing field between the banking, insurance and fund industry sector, investment fund management services provided to third countries should also be VAT deductible.

Right of option: from 1 January 2012, Member States shall allow taxable persons in each individual case a right of option for taxation in respect of one of the services referred to in the text, where that service is provided to another taxable person established in the same Member State or elsewhere in the Community. The Commission shall report to the European Parliament and the Council on the operation of the right of option 3 years after entry into force of Directive .../.../EC. If appropriate, the Commission shall present a legislative proposal concerning detailed rules governing the exercise of that right of option and any other amendments of this Directive in this regard.

Transposition: Member States' transposition must ensure that end-consumers benefit from the restructuring of the present VAT arrangement.

Value added tax VAT: common system, treatment of insurance and financial services

The Council took note of a progress report on two related proposals as regards the value added tax treatment of insurance and financial services.

Value added tax VAT: common system, treatment of insurance and financial services

The Council took note of a report on progress on a draft directive and draft regulation on the value-added tax (VAT) treatment of insurance services and other financial services.

The Hungarian Presidency continued the work on the two proposals in line with the orientations received from the Council focusing, as a priority, on the definitions of exempt financial and insurance services. In the context of harmonised and modernised definition of the exemption for the management of investment funds, and as specifically requested by the Council, the Working Party examined the overall effect, as far as VAT is concerned, of the changes in the regulatory climate for these funds.

The report provides an overview of progress achieved since the beginning of the year and identifies the main issues to be addressed.

Progress made: progress has been made and a tentative agreement was reached on a number of issues including the definition of insurance and reinsurance services (except for the transfer of insurance and reinsurance contract portfolios and the processing of insurance and reinsurance claims), currency exchange, and provision of cash.

There is also an emerging agreement among the delegations that the VAT Directive should not provide for separate rules as to the tax treatment of complex supplies with an element of credit or insurance service as these would be too rigid to reflect all possible business scenarios.

Furthermore, the discussions on the positive and negative examples in the draft regulation concerning financial transfer, financial deposit taking, account operation, currency exchange, provision of cash, securities and financial derivatives are essentially drawing to a closure.

Outstanding issues: as a result of detailed discussions, the differences in Member States? interpretation of the current rules were highlighted, but at the same time it was also revealed that delegations wished to achieve well-defined limits for the exemptions, which could pave the way for a future compromise. On the basis of these discussions, at this stage the Hungarian Presidency identified, among others, four major outstanding issues of political importance: 1) transfer of insurance and reinsurance contract portfolios; 2) outsourcing; 3) management of investment funds; 4) derivatives.

Transfer of insurance and reinsurance contract portfolios: according to the jurisprudence of the European Court of Justice the transfer of insurance and reinsurance contract portfolios is a taxed transaction, while under the current VAT Directive the transfer of a portfolio of credit contracts is interpreted by most Member States as being exempt. The majority of delegations are of the view that in order to avoid distortion of competition the transfer of insurance contract portfolios should also be exempt, while others point out that this would entail the widening of the scope of the current exemption, which would not be fully in line with the initial aim of the proposal.

Outsourcing: currently, the VAT Directive does not provide rules for the VAT treatment of services outsourced by suppliers of exempt financial and insurance services. The legal uncertainties are reflected by the fact that the ECJ has ruled on several occasions in this respect, and those rulings are, to a certain extent, interpreted differently. Within the spectrum of views expressed, some delegations assert that the exemption for outsourcing should cover only those services which fulfil in effect all the specific and essential functions of an exempt financial or insurance service; other delegations would, however, exempt a wider range of services, to include those which have at least one of the core functions of financial and insurance services.

Management of investment funds: regarding management of investment funds, the main issue concerns the conditions an investment fund must meet in order for its management to be exempt. In addition, there are outstanding questions as regards which management services are covered by the exemption. The relevant ECJ rulings state that the purpose of the exemption is, particularly, to facilitate investment for small investors by means of investment undertakings, and that VAT should be fiscally neutral as regards the choice between direct investment and investment through undertakings for collective investment. Against this background, a number of Member States are of the opinion that the exemption should be limited to investment funds collecting the savings of small investors. Others argue that fiscal neutrality and competitiveness of the European fund industry would point towards inclusion of other investment funds.

Derivatives: work is still ongoing on the definition of exempt financial derivatives, on how to secure their continued exemption and on the possible introduction of a general optional tax suspension arrangement for commodity derivatives traded on regulated commodity markets.

In the opinion of the Hungarian Presidency, despite these differences there is a common understanding that a level playing field should be achieved through the modernisation of the definitions. Harmonised rules would require a careful balancing of several aspects of a complex situation (level playing field, competitiveness of the sector, budgetary implications), as these cannot always be achieved without some trade-off.

A future agreement should also take into account the ongoing work on identifying the tax base for financial services. The Hungarian Presidency underlines the need to acknowledge the eventual evolution of the VAT Strategy and the initiatives on the taxation of the financial sector.

Value added tax VAT: common system, treatment of insurance and financial services

The Council took note of a progress report from the presidency regarding work on proposals on the value-added tax (VAT) treatment of insurance services and other financial services.

The proposals for a directive and a regulation are intended to clarify the provisions of directive 2006/112/EC as regards financial services, which are exempt from VAT. They are aimed at increasing legal certainty for economic operators and national tax administrations, reducing administrative burdens and lessening the impact of hidden VAT on the costs of service providers.

The existing provisions were established in the 1970s and have led to uneven interpretation by the member states, causing distortions of competition.

The VAT exemption for financial services causes high compliance costs, and inconsistencies in its implementation have resulted in an increasing number of court cases, especially as concerns new types of services.

The proposals date from 2007. In November 2010, the Council endorsed guidelines for work on the dossier. Under Polish presidency (July to December 2011), the working group has focused on definitions of exempt financial services.

The report provides an overview of progress achieved during that time and assesses the prospects for reaching an overall compromise on the dossier. The main conclusions may be summarised as follows:

1. to continue the work on the basis of the package of guidelines that would form a future compromise; or
2. to postpone further work on the dossier until examination of the VAT strategy and proposals on the financial sector taxation, which may lead to a new impulse in this file.

During the discussion in the high level working group, the vast majority of delegations supported continuation of the work and have shown openness towards the efforts to achieve a compromise as soon as possible.

The Presidency took note of the constructive approach by the majority of delegations towards a guideline concerning a transfer of insurance and reinsurance contract portfolios, assuming that transfer of insurance and reinsurance contract portfolios and transfer of credit contract portfolios should be treated equally for VAT purposes, which would mean that both cases should be exempt from VAT. In the Presidencys view visible progress has been achieved in the work on outsourcing, where the majority of delegations supported narrow scope of definition, accepting that exemption within outsourcing should be granted only for services of financial or insurance nature. However, a few delegations supported broader application of exemption for outsourced financial and insurance services to avoid distortions of competition of the sector.

Progress has also been made as regards the work on definition of management of investment and pension funds the majority of Member States supported equal treatment of investment and pension funds, by application of exemption to management of funds, irrespective of their legal form and business structure, in order to avoid possible distortions of competition and not to create artificial burdens in the area of the management of those funds. However, a few Member States argued that certain types of pension funds were by their nature different from investment funds and, in their view, should not be exempt.

Further discussions are needed in this respect and the Commissions services are currently preparing a room document on all of these issues which will be available in 2012. Some Member States again are of the opinion that the exemption should be limited to investment funds collecting savings of small investors.

During the Polish Presidency work has been carried out in relation to transactions in financial derivatives. In the opinion of the majority of Member States exemption should apply to those of a financial nature, while transactions in commodities should be recognized as taxable. Nevertheless, further work should be undertaken to investigate the tax treatment of derivatives and, in this context, the merits of the simplification for exchange traded commodities.

The relationship with the VAT strategy and proposals on the financial sector taxation was discussed. Given that the proposal on FTT was of a different nature and that the new VAT Strategy was still under preparation in the Commission, the Presidency bearing in mind the opinion of the Commission noted, without prejudice to the future discussions, that at this stage it was difficult to assess what impetus from these two files could be expected for further work on VAT treatment of insurance and financial services. This approach also received support during discussion at the HLWP, where the vast majority of Member States was in favour of continuation of the work on financial and insurance services without waiting for the results of the work on FTT and VAT strategy.

In the light of the constructive discussion, the Presidency remains convinced that the work aiming at reaching a compromise in this dossier should be continued.