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COM(2018) 20 final

2018/0005 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**amending Directive 2006/112/EC as regards rates of value added tax**

{SWD(2018) 7 final} - {SWD(2018) 8 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

The current initiative is part of the Fair Taxation package for the creation of a single EU value added tax area (VAT) announced by President Juncker's letter of intent accompanying the State of the Union Address 2017<sup>1</sup>. The package includes two proposals to modify the VAT Directive<sup>2</sup>, one as regards the definitive VAT system for cross-border trade<sup>3</sup> and one adopted together with this initiative as regards small enterprises, and a proposal for a Council Regulation on combating fraud in the field of VAT<sup>4</sup>.

VAT is Europe's longest-standing consumption tax. In 1967, the commitment was made to establish a definitive VAT system operating within the European Community in the same way as it would within a single country<sup>5</sup> without agreeing specific rules on VAT rates apart from the application of a standard VAT rate. Member States were allowed to apply an unlimited number of reduced and increased VAT rates and no lower or upper rate limits were imposed<sup>6</sup>.

The abolition of fiscal frontiers between Member States by the end of 1992 made it necessary to reconsider the way in which trade in goods was taxed within the Community. The goal was that goods would be taxed in the country of origin, perfectly reflecting the idea of a genuine internal market. Since the political and technical conditions were not ripe for such a system, transitional VAT arrangements were adopted<sup>7</sup>.

The transitional system required rules on VAT rates to avoid distortion in cross-border shopping and trade following the abolition of fiscal frontiers. In October 1992 the Council agreed on rules limiting the discretion of Member States to set VAT rates<sup>8</sup>. Member States were required to apply a standard VAT rate of 15% or more, and could apply one or two reduced rates, no lower than 5% to certain specified goods and services (Annex III to the

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<sup>1</sup> State of the Union 2017. Letter of intent to President Antonio Tajani and to Prime Minister Jüri Ratas, 13 September 2017, accessible at [https://ec.europa.eu/commission/sites/beta-political/files/state-union-2017-brochure\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/state-union-2017-brochure_en.pdf). See also Annex I to the Commission Work Programme 2017, COM(2016) 710 final, Strasbourg, 25.10.2016, p. 3, accessible at [https://ec.europa.eu/info/sites/info/files/cwp\\_2017\\_annex\\_i\\_en.pdf](https://ec.europa.eu/info/sites/info/files/cwp_2017_annex_i_en.pdf).

<sup>2</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1)

<sup>3</sup> Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States (COM(2017) 569 final)

<sup>4</sup> Amended proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax (COM(2017) 706 final)

<sup>5</sup> First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes

<sup>6</sup> Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes – Structure and procedures for application of the common system of value added tax

<sup>7</sup> Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ L 376 of 31.12.1991, p. 1)

<sup>8</sup> Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates)

VAT Directive). Member States were allowed, by way of derogation, to continue to apply any lower rates, including zero rates and also to apply a reduced rate to any goods or services not included in the list, if such rates were already in place on 1 January 1991.

The objective of these derogations was to allow, during a transitional period, for national laws in specified fields to be gradually adapted to the common rules<sup>9</sup>, seeing that harmonised rules were required to fully establish a definitive VAT system based on taxation in the country of origin. Therefore, these derogations had to expire at the time the transitional arrangements for the taxation of trade between Member States would be replaced by such a definitive VAT system.

In July 2003 the Commission proposed to simplify the rules on reduced VAT rates<sup>10</sup> by abolishing all reduced rates applied to goods and services outside the scope of Annex III, but the Council could not agree on this partial abolition of derogations<sup>11</sup> and until today all derogations remain in place.

The abolition or expiry of derogations was justified as long as the definitive VAT system was envisaged to be based on the principle of taxation in the Member State of origin, which requires an approximation of VAT rates.

In 2012, however, given the lack of meaningful progress on rate convergence, the Commission, with the agreement of the Council and the European Parliament, decided to abandon the objective of an origin-based definitive VAT system in favour of one based on the destination principle<sup>12</sup>.

Meanwhile, the place of taxation of services had also progressively changed to the country of destination since 2010. The decision was taken in 2008, when the Council adopted a proposal with a view to prevent distortions of competition between Member States operating different VAT rates<sup>13</sup>. As a result, today supplies of services are nearly all taxed according to the destination principle. The final implementation of destination-based taxation for services took place in 2015. Since then, all B2C (business-to-consumer) supplies of telecommunications, broadcasting and electronic services have been taxable at the place where the customer resides and no longer where the supplier is located.

This all led the Commission in its 2016 VAT Action Plan<sup>14</sup> to propose replacing the current transitional arrangements for the taxation of trade between Member States by definitive arrangements based on the principle of taxation in the Member State of destination in order to create a robust single European VAT area. At the same time the Commission announced that

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<sup>9</sup> Judgment of 12 June 2008, C-462/05, *Commission v Portugal*, EU:C:2008:337

<sup>10</sup> Proposal for a Council Directive amending Directive 77/388/EEC as regards reduced rates of value added tax (COM(2003) 397 final)

<sup>11</sup> Directive 2006/18/EC of 14 February 2006 amending Directive 77/388/EEC with regard to reduced rates of value added tax (OJ L 51, 22.2.2006, p. 12)

<sup>12</sup> See Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the single market (COM(2011) 851 final), section 4.1. Its conclusions on the destination system were endorsed by the Council conclusions of 15 May 2012.

<sup>13</sup> Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services (OJ L 44, 20.2.2008, p. 11)

<sup>14</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT – Towards a single EU VAT area – Time to decide (COM(2016) 148 final)

taxation at destination would allow to grant Member States more flexibility in setting VAT rates and that all currently existing reduced rates, including derogations, legally applied in Member States should be maintained and could be made available to all Member States, ensuring equal treatment. A legislative proposal with regard to VAT rates was included in the Commission's Work Programme for 2017<sup>15</sup>.

The Council in its conclusions<sup>16</sup> took note of the direction of action set out by the Commission in the VAT Action Plan with regard to the VAT rate system and its intention to submit a legislative proposal in 2017, proposing a reform to give more freedom to Member States in setting rates. The Council welcomed the intention of the Commission to present a proposal for increased flexibility, so that Member States could benefit from reduced and zero rates as they existed in other Member States. It however stressed that a sufficient level of harmonisation in the EU remains required and that the adopted solution has to be carefully balanced to avoid distortion of competition, rise in business costs and negative impact on the functioning of the single market.

On 4 October 2017 the Commission adopted the first proposal introducing the definitive system for the taxation of trade between Member States<sup>17</sup> and outlined successive steps and sub-steps for introducing this system in its communication on the follow-up to the Action Plan on VAT<sup>18</sup>. The Commission confirmed in its communication that it would propose a reform of VAT rates, which would be consistent with the definitive arrangements based on the destination principle that would gradually replace the current transitional arrangements. With goods and services being taxed in the Member State of destination, suppliers derive no significant benefit from being established in a lower-rate Member State and diversity in VAT rates therefore no longer disrupts the functioning of the single market, provided it is accompanied by safeguards to avoid potential risks like revenue erosion, distortion of competition, complexity and legal uncertainty.

In line with the VAT Action Plan and taking into account the mandate by the Council, amendments to the VAT Directive are proposed. These should coincide with the entry into force of the definitive VAT system so as to avoid that the expiry of derogations would prevent Member States to maintain around 250 existing reduced rates and exemptions with deductibility of the VAT paid at the preceding stage.

In a definitive VAT system all Member States would be restricted by the same rules and be granted equal freedom in setting VAT rates. The harmonised and less restrictive rules would enable all Member States, in addition to the two reduced rates of a minimum of five percent and an exemption with deductibility of the VAT paid at the preceding stage currently allowed, to apply another reduced rate between five and zero percent. Instead of extending the already extensive list of goods and services to which reduced rates can be applied, Annex III would be replaced by a negative list to which reduced rates cannot be applied.

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<sup>15</sup> Commission Work programme 2017: Delivering a Europe that protects, empowers and defends (COM(2016) 710 final)

<sup>16</sup> See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1487237841093&uri=CELEX:52016DC0710>

<sup>17</sup> Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States (COM(2017) 569 final)

<sup>18</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – On the follow-up to the Action Plan on VAT – Towards a single EU VAT area – Time to act (COM(2017) 566 final)

While being less restrictive, these new rules would allow a wider application of the fiscal neutrality principle, which in the today's transitional VAT system is overruled by the provisions of Annex III and the temporary derogations, which are restricted in scope. Under the new harmonised rules Member States would also be required to ensure that reduced rates are for the benefit of the final consumer and that the setting of these rates pursue an objective of general interest. Furthermore, Member States would need to ensure that the weighted average VAT rate applied to those transactions for which VAT cannot be deducted always exceeds 12%.

Before the new harmonised rules enter into force the Commission commits according to Article 100 of the VAT Directive to a review of Annex III to take account of specific requests by Member States. The review would take place within the VAT Committee and would be followed by a legislative proposal by the Commission to adapt Annex III.

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

In adjusting the rules on rates to a destination-based system, it is consistent with the proposal for a definitive VAT system for trade between Member States.

- **Consistency with other Union policies**

The proposal is consistent with the objectives of the Regulatory Fitness and Performance programme (REFIT).

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

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

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

According to the principle of subsidiarity, as set out in Article 5(3) of the Treaty on European Union, action at Union level may only be taken if the envisaged aims cannot be achieved sufficiently by the Member States alone and can therefore, by reason of the scale or effects of the proposed actions, be better achieved by the EU.

The current VAT Directive prevents Member States from granting reduced VAT rates to the supply of goods and services other than those included in Annex III of the VAT Directive, even in the cases where the application of reduced VAT rates cannot create distortion of competition or distort the functioning of the internal market.

In addition, existing derogations to the general rules (the possibility to apply reduced rates to the supply of goods and services not included in Annex III or the application of reduced rates lower than 5%) will expire in a definitive VAT regime, restricting Member States even further.

An EU-level legislative initiative to amend the Directive is indispensable in order to prevent the expiry of derogations and to ensure equal treatment of Member States.

- **Proportionality**

The proposal to reform VAT rates is consistent with the principle of proportionality i.e. it does not go beyond what is necessary to meet the objectives of the Treaties. Setting and restricting VAT rates should fall under the responsibility of Member States on condition that the functioning of the internal market is ensured. The initiative would prevent Member States from having to abolish VAT rates currently applied on a temporary basis and would furthermore allow them to fully implement rules that respect the principle of fiscal neutrality.

- **Choice of the instrument**

A Directive is needed to amend the current VAT Directive.

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

- **Ex-post evaluation**

A retrospective evaluation of elements of the EU VAT system<sup>19</sup> was conducted by an external consultant in 2011 and its findings have been used as a starting point to the examination of the current VAT system. The evaluation was complemented by a study on the economic effects of the current VAT rates structure in 2013<sup>20</sup> and on reform of rules on EU VAT rates in 2017<sup>21</sup>.

- **Stakeholder consultations**

An open public consultation was held for 12 weeks from 21 December 2016 until 21 March 2017 resulting in 327 contributions.<sup>22</sup> 42% of respondents supported granting derogations to all Member States, whereas 25% favoured abolishing them. One quarter of respondents had no opinion on the matter and 8% of respondents said that the derogations should not be extended to all Member States but be made permanent for those Member States that currently benefit from them.

Member States were consulted via the Group on the future of VAT (GFV), an informal Commission expert group composed of representatives of national tax administrations that provides the Commission a forum for consulting VAT experts from Member States on pre-legislative initiatives.

- **Impact assessment**

The impact assessment accompanying this proposal was considered by the Regulatory Scrutiny Board. The Board gave first a negative opinion and after resubmission of an amended impact assessment a positive opinion with reservations<sup>23</sup>. The final impact assessment takes into account all recommendations by the Board and a detailed overview on how the recommendations have been taken into account is included in Annex 1 to the Staff Working Document for the impact assessment.

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<sup>19</sup> Final report, London 2011, available at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/common/publications/studies/report\\_evaluation\\_vat.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/common/publications/studies/report_evaluation_vat.pdf)

<sup>20</sup> Final report, Vienna 2013, available at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/common/publications/studies/vat\\_rates\\_structure\\_final\\_report.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/common/publications/studies/vat_rates_structure_final_report.pdf)

<sup>21</sup> Reform of rules on EU VAT rates, final report (forthcoming)

<sup>22</sup> The input received from participants and the full report on the results are available on [CIRCABC](#).

<sup>23</sup> SEC(2017)

Two policy options were considered that address the expiry of derogations to allow the definitive VAT system to enter into force. The first option would grant existing derogations to all Member States by integrating what are the national provisions in the VAT Directive; this would however be complex from a technical legal viewpoint and could create future conflicts with the fiscal neutrality principle. The second option, the preferred option, would address the issue of derogations by removing the constraints that created the need for such derogations, namely the list of goods and services to which reduced VAT rates can be applied (Annex III) and the 5% minimum for additional reduced rates. It would substitute the current principle, whereby reduced rates can be introduced only if specifically allowed, with the principle that a limited number of reduced rates is allowed on any supply of goods or services unless this is specifically excluded.

In order to limit the risk of increased complexity, Member States would be required to restrict reduced rates as far as possible to B2C supplies and they would be obliged to communicate information about applied reduced rates based on the the statistical classification of products by activity, abbreviated as CPA, and the Commission would publish this information via the existing 'Taxes in Europe' database (the TEDB web portal)..

The risk of litigation between Member States cannot be reduced compared to the status quo, because independently of any change to the VAT Directive Member States continue to be required to respect the principle of fiscal neutrality and the provisions of the TFEU, notably Article 107 (state aid), Article 110 (protectionist taxation) and Article 113 (distortion of competition), when applying reduced rates.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no negative impact on the Union budget. The VAT own resources are calculated as a percentage of a harmonised base that is derived by deviding VAT revenues by a weighted average VAT rate and this eliminates all VAT rates differentials.

#### **5. OTHER ELEMENTS**

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

Until the entry into force of the definitive VAT system the Commission will continue to monitor that Member States, when applying reduced rates, respect minimum rates, the scope of Annex III and that of derogations granted to them.

After the entry into force of the definitive VAT system the Commission would monitor the application of the standard rate to products included in the negative list, the application of reduced rates for the benefit of the final consumer and the budgetary safeguard, for which data is calculated by Member States and controlled by the Commission when determining own resources accruing from VAT.

An evaluation report reviewing the negative list and the budgetary safeguard would be prepared by the Commission every five years after the entry into force of the new rules and communicated to the Council.

- **Explanatory documents (for directives)**

The proposal does not require Explanatory Documents on the transposition.

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

### **Amendments to Directive 2006/112/EC with effect from the entry into force of definitive arrangements for the taxation of trade between Member States**

The transitional provisions of Chapter 4 of Title VIII, allowing to temporarily derogate from the general rules and applying until the adoption of definitive arrangements, are repealed.

Article 98 allows Member States to apply a maximum of two reduced rates of a minimum of 5%. In order to enable each Member State to continue applying the rates currently in place whilst ensuring equal treatment, they will also be allowed to apply one reduced rate for which no minimum of 5% is required and an exemption with the right to deduct input VAT.

Member States will have to respect that those reduced rates and the exemption must be for the benefit of the final consumer and must be in the general interest. The ‘final consumer’ is the person who acquires goods or services for personal use, as opposed to an economic activity, and thus bears the tax. It follows that such rates could not be applied to goods and services that can be used only as an intermediate input. That does not exclude the use to goods or services that are used as intermediate input if those are goods or services typically sold to final consumers.

Article 99a ensures that in their setting of rates Member States apply a weighted average VAT that exceeds 12%. The weighted average VAT rate in a Member State takes into account all VAT rates in force and each VAT rate is weighted with the share of the value of the transactions to which that rate applies as a percentage of the total of taxable transactions. The weighted average rate functions as a revenue safeguard, because it should be calculated by only taking into account those transactions for which VAT cannot be deducted. This includes mainly supplies to final consumers, but also those made to exempt sectors of the economy, including public bodies.

Article 100 obliges the Commission to transmit every five years a report to the Council reviewing the scope of the negative list of goods and services to which the standard rate must be applied. The review should start with a consultation of the VAT Committee and include a review of the revenue safeguard outlined in Article 99a.

Article 105 allows Portugal to continue to apply lower regional rates in the autonomous regions of the Azores and Madeira, because this derogation was granted on permanent basis. In a definitive VAT system Portugal will however need to ensure that the minimum of 15% for the standard rate is respected in these regions.

A new Annex IIIa outlines the negative list and includes the supply of excisable goods and supplies of goods or services, where the application of reduced rates or an exemption with deductibility of the VAT paid at the preceding stage could lead to distortion of competition. The list is structured according to statistical classification of products by activity<sup>24</sup> and extended by the supply of certain consumer goods to counterbalance the increase in flexibility for Member States.

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<sup>24</sup> Commission Regulation (EU) No 1209/2014 of 29 October 2014 amending Regulation (EC) No 451/2008 of the European Parliament and of the Council establishing a new statistical classification of products by activity (CPA) and repealing Council Regulation (EEC) No 3696/93



Articles 101, 102, 103, 104a and Annex III are deleted, because the new rules will render obsolete their provisions.

Articles 94, 316(1)(c), 378(2)(b) and 387 are deleted as a result of the inclusion of supplies made under the special scheme for second-hand goods, works of art and collectors' items in Annex IIIa.

Proposal for a

## **COUNCIL DIRECTIVE**

### **amending Directive 2006/112/EC as regards rates of value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Parliament<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Rules on rates of value added tax (VAT) as currently set out in Council Directive 2006/112/EC<sup>3</sup> aim to preserve the functioning of the internal market and avoid distortions of competition. The rules were designed over two decades ago based on the origin principle. In its VAT Action Plan<sup>4</sup> and in the follow-up to this<sup>5</sup>, the Commission announced its intention to adjust those rules for a definitive VAT system for cross-border business-to-business (B2B) trade in goods between Member States that would be based on the taxation in the Member State of destination.
- (2) Under a definitive system where the supply of goods and services would be taxed in the Member State of destination, suppliers derive no significant benefit from being established in a lower-rate Member State. Greater diversity in VAT rates would not, under such a system, disrupt the functioning of the single market nor create distortions of competition. In those circumstances, it would be appropriate to grant more flexibility to Member States in the setting of rates.
- (3) The removal of restrictions in parallel with the entry into force of the definitive arrangements for the taxation of trade between Member States should allow Member States to continue to apply reduced VAT rates that are currently granted as derogations under Chapter 4 of Title VIII of Directive 2006/112/EC and Annex X to Directive

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

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

<sup>3</sup> OJ L 347, 11.12.2006, p. 1.

<sup>4</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT – Towards a single EU VAT area – Time to decide (COM(2016) 148 final of 7 April 2016)

<sup>5</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the follow-up to the Action Plan on VAT – Towards a single EU VAT area – Time to act (COM(2017) 566 final of 4 October 2017)

2006/112/EC and which would otherwise expire with the entry into force of those arrangements.

- (4) In a definitive VAT system all Member States should be treated equally and should therefore have the same restrictions in applying reduced VAT rates, which should remain an exception to the standard rate. Such equal treatment without restricting Member States current flexibility in setting VAT can be achieved by enabling all of them to apply a reduced rate for which the minimum requirement does not apply, as well as an exemption with the right to deduct input VAT, in addition to a maximum of two reduced rates of a minimum of 5%.
- (5) Distortions of competition could arise where the mechanism used for taxation would not be based on the destination principle. That is notably so with travel facilities supplied as a single service under the margin scheme for travel agents and goods supplied under the special arrangements for second-hand goods, works of art, collectors' items and antiques but also in certain cases involving goods or services, such as financial services, that are exempted without right of deduction but for which a right of taxation may be granted. In order to mitigate any such distortions, a list of supplies of goods and services subject to the standard VAT rate ('negative list') should be established based on the statistical classification of products by activity. The list should be reviewed every five years.
- (6) To avoid unnecessary complexity and subsequent rise in business costs, in particular for intra-Community trade, goods and services that can be used only as intermediate input to an economic activity should not be eligible for reduced rates in a definitive VAT system. Such rates should be applied only for the benefit of final consumers and the setting of such rates should ensure equal treatment of similar goods or services supplied by different taxable persons. They should therefore be applied to pursue, in a consistent manner, an objective of general interest.
- (7) For the public finances of Member States to remain sound and in order to prevent excessive macroeconomic imbalances, an appropriate level of revenue should be ensured. Given that VAT is an important source of revenue, it is therefore vital, as a safeguard for national budgets, to set a minimum for the weighted average rate to be respected at any time by the Member States.
- (8) While the application of different rates in certain remote areas continue to be possible, it is necessary to ensure that the standard rate respects the minimum of 15%.
- (9) The objective of this Directive is to ensure that Member States have an equal access to applying reduced rates. Since this objective cannot be sufficiently achieved by the Member States but can rather, by reason of existing limitations, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. 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.
- (10) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>6</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition

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<sup>6</sup> OJ C 369, 17.12.2011, p. 14.

instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

- (11) Derogations under Chapter 4 of Title VIII of Directive 2006/112/EC and Annex X to Directive 2006/112/EC should expire on the date of entry into force of the Directive as regards the introduction of the detailed technical measures for the operation of the definitive VAT system based on the principle of taxation in the Member State of destination. This Directive and the Directive as regards the introduction of the detailed technical measures for the operation of the definitive VAT system based on the principle of taxation in the Member State of destination should therefore be transposed by the same date, and the national provisions necessary to comply with those Directives should be applied from the same date. Until that date, current provisions on rates provided for in Directive 2006/112 EC, including its annexes, should remain applicable.
- (12) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

Directive 2006/112/EC is amended as follows:

- (1) In Article 94, paragraph 2 is deleted;
- (2) Article 98 is replaced by the following:

#### *'Article 98*

1. Member States may apply a maximum of two reduced rates.

The reduced rates shall be fixed as a percentage of the taxable amount, which shall not be less than 5%.

2. By way of derogation from paragraph 1, Member States may in addition to the two reduced rates apply a reduced rate lower than the minimum of 5% and an exemption with deductibility of the VAT paid at the preceding stage.

3. Reduced rates and exemptions applied pursuant to paragraphs 1 and 2 shall only benefit the final consumer and shall be applied to pursue, in a consistent manner, an objective of general interest.

The reduced rates and exemptions referred to in paragraphs 1 and 2 shall not be applied to goods or services in the categories set out in Annex IIIa.');

- (3) Article 99 is deleted;
- (4) the following Article 99a is inserted:

#### *'Article 99a*

While setting the rates referred to in Articles 97 and 98, Member States shall ensure that the weighted average rate, calculated in accordance with Article 4 of Council Regulation (EEC, Euratom) No 1553/89 (\*), exceeds 12% at any given time.

(\*) Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9)';

- (5) Article 100 is replaced by the following:

*Article 100*

By 31 December 2026 and every five years thereafter, the Commission shall submit to the Council a report on the scope of Annex IIIa, accompanied by any proposals to amend that Annex, where necessary.;

- (6) Articles 101, 102, 103 and 104a are deleted;

- (7) Article 105 is amended as follows:

(a) paragraph 1 is deleted,

- (b) paragraph 2 is replaced by the following:

'2. Portugal may, in the case of transactions carried out in the autonomous regions of the Azores and Madeira and of direct importation into those regions, apply rates lower than those applicable on the mainland. However, the standard rate shall not be less than 15%.';

- (8) in Title VIII, Chapter 4 is deleted;

- (9) in Article 316(1), point (c) is deleted;

- (10) in Article 378(2), point (b) is deleted;

- (11) in Article 387, point (c) is deleted;

- (12) Annex III is deleted;

- (13) Annex IIIa, as set out in the Annex to this Directive, is inserted.

*Article 2*

1. Member States shall adopt and publish, by the date corresponding to the date of transposition of the Directive as regards the introduction of the detailed technical measures for the operation of the definitive VAT system based on the principle of taxation in the Member State of destination at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from the date corresponding to the date of the application of the provisions necessary to comply with Directive as regards the introduction of the detailed technical measures for the operation of the definitive VAT system based on the principle of taxation in the Member State of destination.

The Commission shall publish a notice in the Official Journal of the European Union indicating the dates referred to in the first and the second subparagraphs.

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

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

*Article 3*

This Directive shall enter into force on the 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*