



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.11.2006
COM(2006) 736 final

Proposal for a

COUNCIL DECISION

authorising Romania to apply a reduced rate of VAT to certain labour-intensive services referred to in Article 28(6) of Directive 77/388/EEC

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) BACKGROUND

- **Grounds for and objectives of the proposal**

This proposal for a Decision is intended to implement, as far as Romania is concerned, the provisions of Directive 2006/18/EC, which was adopted on 14 February 2006 (OJ L 51, 22.02.2006, p. 12), from Romania's date of accession to the European Union. The Directive extends until 31 December 2010 the experiment of reduced rates for labour-intensive services and makes it possible for all Member States to take part in it under the same conditions. The purpose of this proposal is therefore to extend this possibility to Romania and authorise it to apply such a reduced rate once it joins the European Union, so as to ensure equal treatment for all Member States.

- **General context**

1. On 14 February 2006, the Council adopted Directive 2006/18/EC amending Directive 77/388/EEC with regard to reduced rates of value added tax, and in particular Article 28(6) thereof. Paragraph 6 was added by Council Directive 1999/85/EC of 22 October 1999 (OJ L 277, 28.10.1999, p.34) and applied initially until 31 December 2002. The provisions were then extended by Directive 2002/92/EC of 3 December 2002 (OJ L 331, 7.12.2002, p.27) until 31 December 2003 and by Directive 2004/15/EC of 10 February 2004 (OJ L 52, 21.2.2004, p.61) until 31 December 2005. To achieve a better understanding of the impact of reduced rates, the Council asked the Commission to prepare an assessment report on the impact of reduced rates applied to locally supplied services, notably in terms of job creation, economic growth and the proper functioning of the internal market.

2. Pending the outcome of that assessment, Directive 2006/18/EC extends the experiment of reduced rates for labour-intensive services until 31 December 2010. It also allows all Member States to take part in the experiment under the same conditions.

3. Member States wishing to avail themselves for the first time of the facility provided for in Article 28(6) of Directive 77/388/EEC and those wishing to amend the list of services to which they had applied that provision in the past had to submit a request to the Commission, together with the relevant particulars for the purpose of assessment, by 31 March 2006 and comply with the procedure and conditions laid down in Article 1(2) of Directive 2006/18/EC. On this basis, the Commission has presented the Council with a proposal for a Decision authorising 17 Member States to apply a reduced rate to certain labour-intensive services¹.

4. By letter dated 31 March 2006, Romania also submitted a request to apply a reduced rate for certain services, referred to in points 1 and 4 of Annex K to Directive 77/388/EEC, supplying the information necessary for an assessment.

5. Since all the Member States may temporarily apply a reduced rate to certain categories of labour-intensive services, the same possibility should be offered to the

¹ COM(2006) 410 final.

accession countries, authorising them to apply the reduced rate from their accession to the European Union, if they so request under the same procedure and conditions as the present Member States. Recital (3) of Directive 2006/18/EC states that one of the objectives of that Directive is to apply the same conditions to all Member States which wish to take part in the experiment of reduced rates for labour-intensive services. It is therefore appropriate to apply the fourth subparagraph of Article 28(6) of Directive 77/388/EEC by analogy and mutatis mutandis to the accession countries, taking account of the specific legal situation of those States in the period leading up to accession.

6. Under Article 55 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded (OJ L 157, 21.06.2005, p. 203), at the duly substantiated request of Bulgaria or Romania submitted to the Commission no later than the date of accession, the Council, acting on a proposal from the Commission, may take measures consisting of temporary derogations from acts of the institutions adopted between 1 October 2004 and the date of accession. Under the same Article, moreover, the measures shall be adopted according to the voting rules governing the adoption of the act from which a temporary derogation is sought.

7. As Directive 2006/18/EC was adopted after 1 October 2004, the Council, acting on a proposal from the Commission, may take a decision on Romania's request according to the voting rules governing the adoption of the act from which a temporary derogation is sought. In the present case, the voting rules require a unanimous decision by the Council. Unanimity is required both by Article 93 of the Treaty establishing the European Community (the legal basis for the adoption of Directive 2006/18/EC) and by the first subparagraph of Article 28(6) of Directive 77/388/EEC.

ASSESSMENT BY THE COMMISSION

The Commission considers that Romania's request was presented according to a similar procedure to, and under the same conditions as, those laid down in Article 1 of Directive 2006/18/EC, which applies to the current Member States.

Article 55 of the Act of Accession of Bulgaria and Romania enables the Council, referring to Article 28(6) of Directive 77/388/EEC, to ensure equal treatment for all the Member States, from the date of accession of Bulgaria and Romania, as regards the experiment of reduced rates for labour-intensive services.

- **Existing provisions on the subject covered by the proposal**

The exercise involves the implementation of Article 28(6) of Directive 77/388/EEC, as last amended by Directive 2006/18/EC with regard to reduced rates of VAT for labour-intensive services. The legal basis for this implementation is Article 55 of the Act of Accession of Bulgaria and Romania.

- **Consistency with the other policies and objectives of the Union**

Directive 1999/85/EC formed part of EU employment policy and was intended, in particular, to promote an increase in employment and reduce the level of undeclared labour. The problem of unemployment was so serious that those Member States

wishing to do so were allowed to experiment with the operation and impact, in terms of job creation, of a reduction in the VAT rate on labour-intensive services not currently listed in Annex H to Directive 77/388/EEC.

However, the introduction of such a targeted reduction in the VAT rate entails some risk to the proper operation of the internal market and tax neutrality; it was therefore necessary to adopt an experimental measure which Member States could opt to apply. Provision was also made for a specific authorisation procedure and for the scope of the Decision to be made subject to strict conditions so that it remained verifiable and limited. This is the background against which Directive 2006/18/EC, which extended this experiment for the third time, was adopted and this Decision is being proposed.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Directive 2006/18/EC is the result of negotiations in the Council on Commission proposal COM(2003) 397 final on the review of reduced rates of VAT. This proposal for a Decision is intended to apply the Directive to Romania, following its formal request to take part in the experiment. Interested parties have not therefore been consulted again.

- **Collection and use of expertise**

Outside expertise has not been required.

- **Impact assessment**

This proposal for a Decision is intended to implement, as far as Romania is concerned, from the date of accession until 31 December 2010, the provisions of Directive 2006/18/EC, which provides in particular for the extension of an existing provision.

To achieve a better understanding of the impact of reduced rates, the Directive also lays down that the Commission must prepare an assessment report by 30 June 2007, on the basis of a study carried out by an independent economic think-tank, on the impact of reduced rates applied to locally supplied services, notably in terms of job creation, economic growth and the proper functioning of the internal market. At this stage, there is therefore no reason to examine other options.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

To enable Romania, which has made a request to this effect, to apply, from the date of accession, a reduced rate to certain labour-intensive services, pursuant to Article 28(6) of Directive 77/388/EEC.

- **Legal basis**

Article 55 of the Act of Accession of Bulgaria and Romania, with reference to Article 28(6) of Directive 77/388/EEC, as amended by Directive 2006/18/EC of 14 February

2006.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

The Decision authorises Romania, which has specifically so requested, to apply a reduced rate of VAT for certain labour-intensive services. It therefore imposes no obligation.

Given the limited scope of the derogations provided for in the Decision, the special measure is proportionate to the aim pursued. The Decision involves no financial cost to the Community. Although the reduction in the rates of VAT may involve a reduction in revenue for States, those that have submitted requests expect that the effectiveness of the measure in increasing employment and reducing the scale of the shadow economy will offset this loss. VAT places no financial burden on economic operators, and consumers should, in principle, benefit from the reduction in rates, in so far as this will be reflected in final prices.

- **Choice of instruments**

Proposed instrument(s): other.

Other means would not be appropriate for the following reasons.

Under Article 55 of the Act of Accession of Bulgaria and Romania, with reference to Article 28(6) of Directive 77/388/EEC, as amended by Directive 2006/18/EC of 14 February 2006, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. A Council Decision is the only suitable instrument.

4) BUDGETARY IMPLICATIONS

The proposal has no implication for the Community budget.

5) ADDITIONAL INFORMATION

- **Review/revision/sunset clause**

The proposal includes a sunset clause on all or part of the legislative act if predefined conditions are met.

- **Detailed explanation of the proposal by chapter or by article**

Article 1

Article 1 provides that, under Article 55 of the Act of Accession of Bulgaria and

Romania and with reference to the first and fourth subparagraphs of Article 28(6) of Directive 77/388/EEC, Romania is authorised to apply, from accession to the European Union, a reduced rate of VAT for certain labour-intensive services.

Article 2

The purpose of Article 2 is to authorise Romania to apply the reduced rates laid down in the third subparagraph of Article 12(3)(a) of Directive 77/388/EEC to the services for which it has submitted a request under a similar procedure to that provided for in the fourth subparagraph of Article 28(6) of that Directive and which are mentioned therein.

Articles 3 to 4

These Articles concern the period of application of the provisions under Article 28(6) of Directive 77/388/EEC and the addressee of the Decision.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty of Accession of Bulgaria and Romania², and in particular Article 4(3) thereof,

Having regard to the Act of Accession of Bulgaria and Romania³, and in particular Article 55 thereof,

Having regard to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment⁴, and in particular Article 28(6) thereof,

Having regard to the proposal from the Commission⁵,

Whereas:

- (1) Under Article 28(6) of Directive 77/388/EEC, the Council may authorise a Member State to apply a reduced rate of VAT to certain labour-intensive services.
- (2) The services concerned must meet the conditions provided for in Directive 77/388/EEC and be included in the list given in Annex K thereto.
- (3) Article 28(6) of Directive 77/388/EEC, as amended by Directive 2006/18/EC, extended the period of application of the reduced rates of VAT to 31 December 2010. It also enables Member States wishing to avail themselves for the first time of the facility provided and those which want to change the list of services to which they have applied the said provision in the past to submit their request to the Commission.
- (4) The said Article is intended to make it possible for all Member States to take part under the same conditions in the experiment of reduced rates for labour-intensive services. It is therefore appropriate to grant the acceding States, from their accession to

² OJ L 157, 21.6.2005, p. 11.

³ OJ L 157, 21.6.2005, p. 203.

⁴ OJ L 145, 13.6.1977, p.1. Directive as last amended by Directive No 2006/69/EC (OJ L 221, 12.8.2006, p. 9).

⁵ OJ C [...], [...], p. [...].

the European Union, the same possibility of applying a reduced rate of VAT to certain labour-intensive services.

- (5) By letter dated 31 March 2006, Romania submitted a request to apply a reduced rate of VAT to certain labour-intensive services referred to in the fourth subparagraph of Article 28(6) of Directive 77/388/EEC.
- (6) To ensure equality among the Member States, this Decision should apply from the date of entry into force of the Treaty of Accession of Bulgaria and Romania.
- (7) This Decision will have no impact on the Communities' own resources derived from VAT,

HAS ADOPTED THIS DECISION:

Article 1

Under Article 55 of the Act of Accession of Bulgaria and Romania read in conjunction with the first and fourth subparagraphs of Article 28(6) of Directive 77/388/EEC, Romania is authorised to apply, from the entry into force of the Treaty of Accession of Bulgaria and Romania until 31 December 2010, the reduced rates provided for in the third subparagraph of Article 12(3)(a) to the services mentioned in Article 2.

Article 2

Romania is authorised for the following two services, referred to in points 1 and 4 of Annex K to Directive 77/388/EEC:

- (a) small services of repairing clothing and household linen (including mending and alteration),
- (b) domestic care services.

Article 3

This Decision shall apply subject to, and from the date of entry into force of, the Treaty of Accession of Bulgaria and Romania and shall cease to have effect on 31 December 2010.

Article 4

This Decision is addressed to Romania.

Done at Brussels,

For the Council
The President