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NOTE

From:	General Secretariat of the Council
To:	Council
Subject:	Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards rates of value added tax - General approach

I. INTRODUCTION

1. On 18 January 2018, the Commission submitted to the Council its proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards rates of value added tax¹.
2. The proposal aims at creating a level playing field and granting Member States more flexibility in the application of reduced and zero rates of value added tax.
3. The European Parliament delivered its opinion on 3 October 2018². The opinions of the European Economic and Social Committee and the Committee of Regions were adopted respectively on 23 May 2018³ and 10 October 2018⁴.

¹ Doc. 5335/18.

² https://www.europarl.europa.eu/doceo/document/TA-8-2018-0371_EN.html

³ OJ C 283, 10.8.2018, p. 35-38.

⁴ OJ C 283, 21.12.2018, p. 43-51.

II. WORK IN THE COUNCIL

4. The proposal was examined under the Austrian, Romanian, Finnish, Croatian, German and Portuguese Presidencies addressing the main elements of the proposal and also adding a provision to allow Member States to respond swiftly to possible future crises.
5. On 18 June 2021, the Ecofin Council held a policy debate on two aspects of the proposal requiring political guidance: a sunset clause for environmentally harmful goods and the issue of a standstill clause making existing derogations that allow for parking rates (reduced rates higher than 12 %), super-reduced rates and exemptions with deductibility of input VAT available to all other Member States, ensuring equal treatment between them.
6. On the basis of the outcome of the discussions on the standstill clause, the Slovenian Presidency worked on compromise texts accommodating the different views expressed by the ministers. It sought to find a balanced approach that ensured that all Member States could have equal access to Member States' existing derogations, while also preventing a proliferation of reduced rates and exemptions with deductibility of input VAT which could erode tax bases.
7. On the sunset clause, the Slovenian Presidency aligned most sunset clauses with the European Green Deal. The sunset clause for chemical fertilizers and chemical pesticides was slightly adjusted to accommodate the concerns of some Member States with regard to small-scale farmers.
8. The Presidency also took the time to find solutions for the other technical issues in the text and the content of Annex III of the VAT Directive, i.e. the list of goods and services to which reduced rates can be applied.
9. As a result of the technical work carried out at informal videoconferences of the Working Party on Tax Questions on 15 July, 15 September, 30 September, 15 October, 25 October, 18 November, the Presidency tabled a compromise text at the informal videoconference meeting of the Working Party on Tax Questions (High Level) on 25 November 2021.

10. The compromise proposal that was tabled accommodates the diverging views of delegations on the application of VAT rates. It follows the agreed main principles for the application of reduced rates and as far as possible, the principles of equal treatment of and flexibility for Member States, while limiting the proliferation of reduced rates.

III. OUTSTANDING ISSUES

11. In spite of the broad support for the compromise text at technical level, a few delegations were not able yet to lift their reservations on certain elements in the proposal at the meeting of the Committee of Permanent Representatives on 1 December 2021.
12. Based on bilateral meetings held after Coreper, the Presidency is suggesting a compromise date in the first paragraph of Article 105b. The Presidency believes that with this amendment, the compromise text should be acceptable to all delegations.

IV. CONCLUSION

13. Against this background, the Council is invited to:
 - a) resolve the outstanding issues set out in Part III of this note;
 - b) agree on a general approach on the draft Directive on the basis of the Presidency compromise text in doc. 14586/21; and
 - c) in view of the fundamental differences between the text of the Commission on which the European Parliament was initially consulted and the text submitted for a general approach:
 - decide under Article 19(7)(h) of the Council's Rules of Procedure, that the European Parliament be re-consulted on the text;
 - given the need to ensure the urgent alignment of VAT rates with the deadlines envisaged in the European Climate Law⁵, invite the European Parliament to issue its opinion on the Council text as soon as possible and in any event not later than 15 March 2022.

⁵ OJ L 243, 9.7.2021, p. 1.