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INFORMATION NOTE

From: General Secretariat of the Council

To: Council

Subject: Cultural policy aspects of the negotiations on the Commission proposal for a reform of the VAT Directive (Council Directive 2006/112/EC), in particular as regards taxation of art trade
- Information from the German delegation

Delegations will find attached an information note from the German delegation on the above subject, which has been put on the agenda under 'Any other business' for the next Education, Youth, Culture and Sport Council meeting on 17-18 May 2021.

Cultural policy aspects of the negotiations on the Commission's proposal for a reform of the VAT Directive (Council Directive 2006/112/EC), in particular as regards taxation of art trade

As early as 2018, at the Council meeting of ministers for culture and the media, Germany asked for support for favourable treatment of works of art and musical instruments, in view of the reform of the VAT Directive. Germany would now like to reiterate this request and to draw attention in this context to another point relevant to cultural policy.

On 18 January 2018, the Commission submitted a proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax. The aim of the proposed Directive is to introduce rules on the setting of VAT rates across the EU, which would apply from the entry into force of the definitive arrangements for the taxation of trade between Member States. The proposal provides for a widening of the scope of reduced rates to include, in principle, all types of service, thus reversing the relationship between rule and exception: reduced rates are, as a general rule, to be allowed, wherever they are not explicitly prohibited (negative list). The proposal explicitly precludes favourable treatment of works of art and musical instruments.

In the course of the technical discussions, there emerged a tendency to move away from a system based on a negative list and towards one based on a positive list of goods and services benefiting from favourable treatment. Germany has sought to ensure that the reduced rates can be fully applied to transactions involving works of art and therefore also in commercial trade. The Commission, however, maintains its reservations as to any favourable treatment. It claims that it is not clear why those acquiring works of art require favourable treatment, and, furthermore, that applying the margin scheme and the reduced rate simultaneously would create a risk of distortion of competition. In making these statements, the Commission fails to recognise the importance of including works of art in the scope of the reduced rates in terms of developing cultural policy for a thriving art market. There is no risk of distortion of competition if the reduction is precluded in cases where the margin scheme applies. Moreover, it would allow the rules on works of art, which are complex and difficult to apply, to be considerably simplified. Germany is of the opinion that further consideration should also be given to extending the scope of the reduced rate to other comparable goods, in particular musical instruments. In the Council working party responsible, several Member States already welcomed the proposal to include works of art.

The other point concerns the VAT treatment of the streaming of events benefiting from favourable treatment, such as theatre performances and concerts. The Portuguese Presidency proposes that streamed events be treated in the same way as their live counterparts. Germany supports this approach.

In the interest of strong cultural mainstreaming, Germany would like to call on colleagues in the field of culture – both ministers and EU commissioners – to actively approach their finance ministries and work towards rules that will be beneficial to culture.