



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**COUNCIL DIRECTIVE**

**amending VAT Directive 2006/112/EC of 28 November 2006  
on the common system of value added tax**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

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

Comments from the business world and the Member States have demonstrated the need to amend several elements of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereinafter the "VAT Directive"). None of the amendments calls into question the guiding principles set out in the VAT Directive or is sufficiently important to justify on its own a separate proposal for a directive.

It has therefore been considered expedient to incorporate into a single proposal the specific improvements that the VAT Directive seems to require. These amendments concern: the VAT scheme applicable to the supply of natural gas, electricity, heat and/or refrigeration; the tax treatment of joint undertakings set up pursuant to Article 171 of the EC Treaty; the taking into account of certain consequences of EU enlargement; and the conditions under which the right to deduct input VAT may be exercised.

- **General context**

The current VAT scheme for gas and electricity is derived primarily from Directive 2003/92/EC of 7 October 2003. However, it has become apparent that the technical terms used in that Directive have unduly limited the scope of the new tax scheme, which does not correspond to economic realities, particularly regarding the place where VAT is levied on the supply of natural gas and the VAT exemption for natural gas imports. It has also become clear that it would be expedient to apply the same rules to the supply of heat and refrigeration via heat and/or refrigeration networks since this sector functions in a manner similar to the natural gas and electricity sector.

Pursuant to Article 171 of the EC Treaty, the Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes. In its decision of 19 December 2006 (2006/971/EC), the Council confirmed that, for the implementation of the framework programme for research, technological development and demonstration activities (2007-2013), it may, in particular, set up joint undertakings and will be very likely do so increasingly in the future. A suitable tax framework should therefore be defined for this type of undertaking.

In the context of their accession Bulgaria and Romania, like other new Member States, have been authorised to apply derogations regarding the tax exemption granted to small and medium-sized enterprises and the VAT scheme applicable to the international transport of passengers. For purposes of transparency and consistency, these exemptions should be incorporated into the VAT Directive.

Regarding the right of deduction, one of the existing basic principles stipulates that a taxable person may deduct VAT on input transactions only in so far as the goods and services are used for his transactions that give rise to the right of deduction. In this context, the Court of Justice of the European Communities has ruled that taxable persons have the right to choose whether to include mixed-use goods, in part or in their

entirety, in the assets relating to their economic activity. When taxable persons choose to include all of the goods in question in their economic activity, they may immediately deduct all input VAT, irrespective of whether the good is used simultaneously for business and non-business purposes. The non-business use of the good will then be subject to VAT in the same way as a supply of services for consideration on the basis of the amount of expenditure incurred.

In theory, each type of choice made by the taxable person should achieve a similar result. However, it should be noted that including all mixed-use goods in the company's assets and liabilities generally offers cash-flow benefits. Consequently, non-business use lowers the tax burden by an amount that could increase in direct proportion to the degree of use for non-business purposes.

This is particularly true for immovable property, given that acquisition costs are often very high, that simultaneous business and non-business use is possible and widespread and that the economic lifetime of immovable property is, in theory, much longer than that of other goods used for business purposes. It therefore seems expedient to adapt the deduction of VAT relating to immovable property in such a way as to ensure that the initial exercise of the right to deduct input VAT more closely reflects the basic principle described above and to prevent certain constructions designed to create an unjustified cash-flow advantage.

- **Existing provisions in the area covered by the proposal**

The common VAT system is currently governed by Council Directive 2006/112/EC of 28 November 2006, which is the result of the recasting of the Sixth VAT Directive (77/388/EEC) of 17 May 1977.

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

Not applicable.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Because the proposal contains primarily technical arrangements, the consultation took place with the Member States only within the VAT Committee and Working Group No 1.

- **Collection and use of expertise**

No recourse to external expertise has been necessary.

- **Impact assessment**

The proposal for a Directive contains primarily technical provisions that do not call into question the important principles on which Community VAT legislation is based.

Initially, re-establishing the basic principle at the level of the exercise of the right of deduction will result in the elimination of potential differences between taxable

persons. Thereafter, the rule will be applied in a neutral manner, both for taxable persons and for tax administrations.

Therefore, an impact study was not necessary.

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed measures**

As regards the scope of the VAT scheme applicable to natural gas and electricity, it is proposed to extend its scope to the supply and import of natural gas by all types of pipeline and by vessels transporting natural gas. It is also proposed to apply the same rules to the supply and import of heat or refrigeration via heat and/or refrigeration networks. With regard to the place where VAT is levied on the provision of services, the proposal provides for taxation in the Member State of the customer of all services related to the supply of access to the electricity, natural gas, heat and/or refrigeration networks, and not only those services related to access to the distribution systems. Lastly, the proposal simplifies the procedure whereby Member States may apply a reduced VAT rate to the supply of natural gas, electricity and district heating.

Concerning the joint undertakings set up under Article 171 of the EC Treaty, it is proposed to clarify their tax status in relation to VAT. With regard to undertakings set up at Community level for the purpose of supporting Community research efforts, it would be advisable to take account of their Community nature and of their specific method of financing. The financing of such enterprises by common funds pursuant to Article 185 of the Financial Regulation results in the VAT on input purchases (which, as a general rule, do not give rise to a right of deduction on account of the absence of any taxable transactions) being added to the national budget in certain Member States without any justification. In order to avoid such consequences, these undertakings should be treated like international bodies in as far as they are set up by the European Communities, have legal personality and receive contributions that are charged to their general budget. It should be specified that the exemption would not apply to the supply of goods and provision of services intended for the private use of the members of these undertakings.

In the context of their accession, Bulgaria and Romania were authorised to grant a tax exemption to small enterprises and to continue applying a VAT exemption to the international transport of passengers. These exemptions should therefore be included in the text of the VAT Directive, as is the case for the other Member States.

Regarding the right of deduction, in order to apply more effectively the principle whereby the deduction arises only in so far as the goods and services concerned are used for the transactions giving rise to the right of deduction, it is proposed to restrict the initial exercise of the deduction to the proportion of effective business use when mixed-use immovable property is included in the company's assets and liabilities. At the same time, an adjustment system is proposed in order to reflect the variations between the business and private (or non-business) use of such immovable property.

- **Legal basis**

Article 93 of the EC Treaty.

- **Subsidiarity principle**

The subsidiarity principle applies in so far as the proposal does not fall within the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the reasons below.

The areas affected by this proposal are already covered by Community legislation, namely Council Directive 2006/112/EC of 28 November 2006. Provisions of existing Community legislation can, therefore, be amended only by Community law.

Member States may not adopt national legislation that contradicts harmonised Community legislation unless the latter is amended first.

The objectives of the proposal may be better achieved through Community action for the following reasons.

Only Community legislation can amend existing Community legislation.

Action at Community level is the only effective mechanism for amending already harmonised legislation.

The proposal does no more than amend the current legal provisions that have proved inappropriate.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

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

The proposed measures are contained in a draft directive. VAT, however, may be levied in one place only. Similarly, the rules governing the exercise of the right to deduct VAT should be harmonised.

The proposed measures mainly clarify and simplify current VAT rules, thereby benefiting traders, individuals and public administrations.

- **Choice of instruments**

Proposed instrument(s): Directive.

Other instruments would not have been appropriate for the following reasons.

As the Community VAT legislation to be amended is contained in a directive, a directive constitutes the most suitable tool for amending it.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

## 5) ADDITIONAL INFORMATION

- **Simplification**

The proposal simplifies the legislative framework, the administrative procedures applicable to (national or European) public authorities and the administrative procedures applicable to entities and private individuals.

The proposal contains a provision aimed at clarifying the common system of VAT.

The proposal contains a provision simplifying the procedure to be followed by Member States wishing to apply a reduced VAT rate to the supply of natural gas, electricity or district heating.

The measures regarding the place where VAT is levied on the supply of natural gas simplify matters for undertakings in this sector.

The proposal on the right of deduction aims to establish a system that permits adjustments in order to reflect changes in the level of business and non-business use of immovable property. Consequently, in such cases Article 26 of the VAT Directive will no longer apply during the adjustment period to the non-business use of such property, in so far as this use did not initially give rise to the right of deduction. The fact of not having to tax private (or non-business) use separately and additionally constitutes a simplification.

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a table showing the correlation between those provisions and this Directive.

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

### **VAT scheme applicable to gas, electricity, heat and refrigeration (Article 1(1), (3) to (5), (7) and (9))**

In view of the wording adopted by the Council in 2003, where natural gas is concerned, the special VAT scheme applicable to the supply and import of natural gas and electricity applies to supplies and imports via the distribution system only. As a result, natural gas supplies and imports via the pipelines of the transmission system are excluded from the scheme. Moreover, the special scheme does not currently apply to the supply and import of natural gas by vessels designed for the transport of natural gas, even though such gas is identical to that transported by pipeline and is fed into the pipelines of the transmission system following gasification in the port of arrival. Under the proposal, the supply and import of natural gas via all types of pipeline and vessel would therefore fall within the scope of the special scheme.

In addition, the first cross-border heat and refrigeration networks have recently become operational. The same issues that apply to the supply and import of natural gas or electricity also apply to the supply and import of heat and refrigeration. The proposal for a Directive therefore envisages bringing the VAT scheme for the supply and import

of heat and refrigeration by heat and/or refrigeration networks into line with the scheme applicable to natural gas and electricity.

Moreover, with regard to the place where VAT is levied on the provision of services, the current text of Article 56 of the VAT Directive provides for the application of a reverse-charge mechanism for the supply of access to natural gas and electricity distribution systems only. The proposal envisages extending this reverse-charge mechanism to cover all provisions of services related to the supply of access to electricity, natural gas, heat and/or refrigeration networks, and not only to those services related to access to the distribution systems.

The experience gained during the recent implementation of the Article 102 procedure, whereby the Commission is charged with deciding whether or not there is a risk of distortion of competition created by a reduced rate applicable to the supply of natural gas and electricity, has shown that the procedure is obsolete and superfluous. Since the adoption of Directive 2002/93/EC, Articles 38 and 39 ensure that VAT is levied at the place where the natural gas supplied by the natural gas and electricity distribution system is actually consumed by the customer. These rules take account of the specific nature of this type of transport when determining the place of supply, thereby avoiding any distortion of competition between Member States. This proposal would extend these rules to cover the supply of heat and refrigeration via the heat and/or refrigeration distribution networks. Nevertheless, given the highly sensitive nature of the sector, it is still important to ensure that the Commission and the other Member States are properly informed when a Member State introduces a reduced rate. Consequently, it is proposed that a preliminary consultation procedure involving the VAT Committee take place whenever a Member State wishes to introduce a reduced rate for the supply of natural gas, electricity or district heating.

#### **VAT scheme applicable to joint undertakings (Article 1(10))**

To be eligible for the exemption referred to in Article 151 of the VAT Directive, an international body must have been created by at least two States recognised either by the EU or by an existing international organisation (acting, if applicable, jointly with other international organisations or States) within the context of legitimate objectives that are pursued jointly and are not primarily economic in nature. Joint undertakings may not be regarded as such international bodies. Yet these undertakings are instructed to implement a Community policy not only for which Community funding enters in play but also to which Member States contribute via their national budgets.

As a rule, the activities of joint undertakings are not subject to VAT and, consequently, the input VAT does not entitle them to a deduction. In order to avoid the impact of taxation on their purchases, such undertakings should be treated like international bodies. It is therefore proposed that a new article, Article 151a, treating joint undertakings as international bodies be inserted into the VAT Directive. However, only bodies set up by the European Communities that have legal personality and receive contributions charged to their general budgets are eligible for such treatment. The exemption would not apply to the supply of goods and services intended for the private use of the members of such undertakings.

### **Taking account of certain consequences related to enlargement (Article 1(2), (6), (8) and (12) to (16))**

In the context of their accession, Bulgaria and Romania were authorised to grant a tax exemption for small enterprises. In the interests of clarity and transparency, this exemption has been incorporated into Article 287. Articles 390a and 390b have been inserted into the VAT Directive to take account of the authorisation granted in the same context to these new Member States to continue applying a VAT exemption to the international transport of passengers.

### **Arrangements for exercising the right of deduction for goods and services relating to certain immovable property (Article 1(11))**

In the context of the right of deduction, the basic principle provided for in Article 168 of the VAT Directive stipulates that taxable persons have the right to deduct VAT in so far as the goods and services on which VAT has been paid or is payable are used to carry out transactions that give rise to the right of deduction.

The provision aims to clarify the exercise of the right of deduction when it applies to immovable property intended to be used simultaneously for business and non-business purposes. This is the case in particular for VAT related not only to acquisitions of immovable property but also to services such as construction, renovation or substantial transformations that, in economic terms, can be placed on the same level as the acquisition or construction of immovable property. Simple repairs or improvements are, however, excluded from the scope of the proposed measure.

The provision now stipulates that, in the situations described in the preceding paragraph, the initial deduction is limited to the actual use of the property for transactions that give rise to a right of deduction when the tax becomes chargeable. Consequently, for cases of mixed use, it would no longer be possible to deduct immediately all input VAT.

Given this limitation of the deduction for the taxable person, an adjustment system has been set up to take into account changes between business and non-business use of the immovable property concerned for a duration that corresponds to the current adjustment period for immovable property acquired as capital goods. The new system would apply to both increases and reductions in business use. This system would replace the tax on non-business use (Article 26 of the VAT Directive) during the adjustment period and would set up an adjustment system for taxable persons in the event of an increase in business use relating to transactions giving rise to a right of deduction. The system functions in a manner similar to the existing system for adjusting deductions for capital goods, which adjusts, for the business component, the variation in the percentage of transactions that are taxed (and other transactions giving rise to a right of deduction) and exempted (without a right of deduction) during the adjustment period. Concerning the relationship between business and private (or non-business) transactions, the new adjustment system is applied in parallel to the existing adjustment system, without the latter being modified when the immovable property is a capital good.

It is proposed that Article 168a be inserted into the VAT Directive in order to clarify the manner in which the right of deduction is exercised in the case of immovable property for mixed use.



Proposal for a

## COUNCIL DIRECTIVE

### **amending VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Whereas:

- (1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>4</sup> must be amended in order to incorporate various amendments of a primarily technical nature.
- (2) Regarding the provisions on imports and the place where the supply of natural gas and electricity is taxed, the special scheme set up under Council Directive 2003/92/EC of 7 October 2003 amending Directive 77/388/EEC as regards the rules on the place of supply of gas and electricity<sup>5</sup> does not apply to imports or supplies of natural gas by pipelines that are not part of the distribution system, and in particular pipelines in the transmission system by which almost all cross-border transactions by pipeline are carried out. The scope of the special scheme should therefore be extended to include imports and supplies of natural gas by any pipeline.
- (3) The special scheme does not currently apply to imports and supplies of natural gas by vessels for transporting natural gas either, even though such gas is identical in terms of its characteristics to that imported or supplied by pipeline and intended, following gasification, for transportation by pipeline. The scope of the special scheme should

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

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

<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ L 347, 11.12.2006, p. 1. Directive as amended by Directive 2006/138/EC (OJ L 384, 29.12.2006, p. 92).

<sup>5</sup> OJ L 260, 11.10.2003, p. 8.

therefore be extended to include imports and supplies of natural gas by vessels for transporting natural gas.

- (4) The first cross-border heat and refrigeration networks are already operational. The same issues that apply to the supply and import of natural gas or electricity also apply to the supply and import of heat or refrigeration. Under the current rules, VAT on natural gas and electricity is levied at the place where they are actually consumed by the customer. The rules thus prevent any distortion of competition between Member States. Consequently, the same scheme that applies to natural gas and electricity should be applied to heat and refrigeration.
- (5) Regarding the place where VAT is levied on services, under current legislation a special scheme applies only for the supply of access to the natural gas and electricity distribution systems. However, certain major gas and electricity consumers are connected directly to the transmission system and not to the distribution system. The scope of this special scheme should therefore be extended to include all services related to the supply of access to all electricity and natural gas systems and to heat and refrigeration networks.
- (6) Experience gained during the recent implementation of the current procedure, whereby the Commission is charged with deciding whether a risk of distortion of competition exists as a result of the application of a reduced VAT rate to natural gas, electricity and district heating, has demonstrated that the procedure is obsolete and superfluous. The rules for determining the place of taxation ensure that VAT is levied at the place where the natural gas, electricity, heat and refrigeration are actually consumed by the customer. They thus prevent any distortion of competition between Member States. Nevertheless, it is still important that the Commission and the other Member States be properly informed whenever a Member State introduces a lower rate in this very sensitive sector. Consequently, a prior consultation procedure involving the VAT Committee is needed.
- (7) The joint undertakings and other structures set up under Article 171 of the EC Treaty are responsible for implementing Community policies. In order to avoid taxation benefiting the Member State where the tax is payable, to the detriment of the other Member States and the European Communities, it is necessary to grant the VAT exemption on input purchases to joint undertakings set up by the Communities that have legal personality and receive contributions charged to their general budget under Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>6</sup>.
- (8) In the context of their accession, Bulgaria and Romania were authorised to grant a tax exemption to small enterprises and to continue applying a VAT exemption to the international transport of passengers. For purposes of clarity and consistency, these exemptions must be incorporated into the Directive itself.

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<sup>6</sup> OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

- (9) Regarding the right of deduction, the basic rule is that this right arises only in so far as the goods and services are used by a taxable person for the purposes of his transactions that give rise to a right of deduction. This rule must be clarified and strengthened so that taxable persons are dealt with in an identical manner whenever goods that they use for their economic activity are not used exclusively for purposes related to that activity. Consequently, the initial exercise of the right of deduction should be limited to that use which results in transactions giving rise to a right of deduction when the tax becomes chargeable.
- (10) In this context, this rule should be applied to immovable property that is supplied to the taxable person and important services relating to the property supplied. These situations account for the most significant cases, given the value and economic lifetime of such property and the fact that mixed use of this type of property is a common practice.
- (11) Given the restriction of the initial exercise of the right to deduction and with a view to ensuring an equitable deduction system for taxable persons, an adjustment system should be set up to take into account changes in the business and non-business use of this immovable property for a period corresponding to the existing adjustment period for immovable property acquired as capital goods.
- (12) Directive 2006/112/EC should be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

Directive 2006/112/EC is hereby amended as follows:

- 1) Article 2(3) is replaced by the following:

"3. "Products subject to excise duty" shall mean energy products, alcohol and alcoholic beverages and manufactured tobacco, as defined by current Community legislation, but not natural gas supplied by pipeline or by vessels for transporting natural gas, electricity and heat or refrigeration supplied by heat and refrigeration networks."
- 2) Article 13(2) is replaced by the following:

"2. Member States may regard activities, exempt under Articles 132, 135, 136, 371, 374 to 377, 378(2), 379(2) or 380 to 390b, engaged in by bodies governed by public law as activities in which those bodies engage as public authorities."
- 3) Article 17(2)(d) is replaced by the following:

"d) the supply of natural gas by pipeline or by vessels for transporting natural gas, electricity and heat or refrigeration supplied by heat or refrigeration networks, in accordance with the conditions laid down in Articles 38 and 39;"
- 4) Articles 38 and 39 are replaced by the following:

### *"Article 38*

1. In the case of the supply of gas by pipeline or by vessel for transporting natural gas, electricity and heat or refrigeration supplied by heat or refrigeration networks to a taxable dealer, the place of supply shall be deemed to be the place where that taxable dealer has established his business or has a fixed establishment for which the goods are supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.
2. For the purposes of paragraph 1, "taxable dealer" shall mean a taxable person whose principal activity in respect of purchases of natural gas, electricity and heat or refrigeration is reselling those products and whose own consumption of those products is negligible.

### *Article 39*

In the case of the supply of natural gas by pipeline or by vessel for transporting natural gas, electricity and heat or refrigeration, where such a supply is not covered by Article 38, the place of supply shall be deemed to be the place where the customer effectively uses and consumes the goods.

Where all or part of the natural gas, electricity, heat or refrigeration is not effectively consumed by the customer, those non-consumed goods shall be deemed to have been used and consumed at the place where the customer has established his business or has a fixed establishment for which the goods are supplied. In the absence of such a place of business or fixed establishment, the customer shall be deemed to have used and consumed the goods at the place where he has his permanent address or usually resides."

- 5) In Article 56(1), point h) is replaced by the following:  
"h) the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems or of access to heat or refrigeration networks and the provision of other services directly linked thereto";
- 6) In Article 80(1)(b), the expression "Articles 380 to 390" is replaced by "Articles 380 to 390b".
- 7) Article 102 is replaced by the following:

### *"Article 102*

After consultation of the VAT Committee, each Member State may apply a reduced rate to the supply of natural gas, of electricity or of district heating."

- 8) In Article 136(a), the expression "Articles 380 to 390" is replaced by "Articles 380 to 390b".
- 9) Article 143(l) is replaced by the following:

"l) imports of natural gas by pipeline or by vessel for transporting natural gas, electricity, and heat or cold by heat or refrigeration networks."

10) The following Article 151a is added:

*"Article 151a*

For the purposes of point (b) of the first subparagraph of Article 151(1), joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes set up by the Communities under Article 171 of the EC Treaty that have legal personality and receive contributions charged to their general budget under Article 185 of Council Regulation (EC, Euratom) No 1605/2002<sup>7</sup> are treated as international bodies, provided that they do not exercise any economic activity within the meaning of Article 9(1) of this Directive.

However, the exemption provided for in Article 151(1)(b) shall not apply to the supply of goods and provision of services intended for the private use of members of the joint undertakings or of any other structure referred to in the first paragraph."

11) The following Article 168a is added:

*"Article 168a*

In the event of acquisition, construction, renovation or substantial transformation of immovable property, the initial exercise of the right of deduction arising when the tax becomes chargeable shall be limited to the proportion of the property's effective use for transactions giving rise to a right of deduction.

By way of derogation from Article 26, the changes in the proportion of use of immovable property referred to in the first paragraph shall be taken into account under the conditions provided for in Articles 187, 188, 190 and 192 for adjusting the initial exercise of the right of deduction.

The changes referred to in the second paragraph shall be taken into account during the period defined by the Member States under Article 187(1) for immovable property acquired as capital goods."

12) In Article 221(2), the expression "Articles 380 to 390" is replaced by "Articles 380 to 390b".

13) The following points 17 and 18 are added to Article 287:

"(17) Bulgaria: EUR 25 600;

(18) Romania: EUR 35 000".

14) The following Articles 390a and 390b are inserted:

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<sup>7</sup> OJ L 248, 16.9.2002, p. 1.

*"Article 390a*

Bulgaria may, under the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point (10) of Part B of Annex X for as long as the same exemption is applied by any of the Member States which were members of the Community on 1 January 2007.

*Article 390b*

Romania may, under the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point (10) of Part B of Annex X for as long as the same exemption is applied by any of the Member States which were members of the Community on 1 January 2007."

- 15) In Article 391, the expression "Articles 380 to 390" is replaced by "Articles 380 to 390b".
- 16) In Annex X, the title is replaced by the following:

"LIST OF TRANSACTIONS COVERED BY THE DEROGATIONS REFERRED TO IN ARTICLES 370 AND 371 AND ARTICLES 375 TO 390b"

*Article 2*  
*Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2008. They shall forthwith communicate to the Commission the text of those provisions and a table showing the correlation between those provisions and this Directive.  
  
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*