II

(Acts whose publication is not obligatory)

COUNCIL

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)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas completing the internal market, which is one of the fundamental objectives of the Community, requires as a first step that fiscal controls at the frontiers be abolished;

Whereas, if distortions are to be avoided, such abolition implies in the case of value added tax, not only a uniform tax base but also a number of rates and rate levels which are sufficiently close as between Member States; whereas it is therefore necessary to amend Directive 77/388/EEC (4);

Whereas, during the transitional period, certain derogations concerning number and level of rates should be possible,

(1) OJ No C 176, 17. 7. 1990, p. 8.
(2) OJ No C 324, 24. 12. 1990, p. 104.
(3) OJ No C 332, 31. 12. 1990, p. 1.
(4) OJ No L 145, 13. 6. 1977, p. 1. Last amended by Directive 91/680/EEC (OJ No L 376, 31. 12. 1991, p. 1).

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/388/EEC is hereby amended as follows:

1. Article 12 (3) is replaced by the following:

'3. (a) From 1 January 1993 Member States shall apply a standard rate which, until 31 December 1996, may not be less than 15 %.

On the basis of the report on the operation of the transitional arrangements and proposals on the definitive arrangements to be submitted by the Commission pursuant to Article 281 the Council shall decide unanimously before 31 December 1995 on the level of the minimum rate to be applied after 31 December 1996 with regard to the standard rate.

Member States may also apply either one or two reduced rates. The reduced rates may not be less than 5 % and shall only apply to supplies of the categories of goods and services specified in Annex H.

(b) Member States may apply a reduced rate to supplies of natural gas and electricity provided that no risk of distortion of competition exists. A Member State intending to apply such a rate must, before doing so, inform the Commission. The Commission shall give a decision on the existence of a risk of distortion of competition. If the Commission has not taken that decision within three months of the receipt of the information a risk of distortion of competition is deemed not to exist.

(c) The rules concerning the rates applied to works of art, antiques and collector's items, shall be

determined by the directive relating to the special arrangements applicable to second-hand goods, works of art, antiques and collector's items. The Council shall adopt this Directive before 31 December 1992.

(d) The rules concerning the taxation of agricultural outputs other than those falling within category 1 of Annex H shall be decided unanimously by the Council before 31 December 1994 on the basis of a Commission proposal.

Until 31 December 1994, those Member States currently applying a reduced rate may continue to do so; those currently applying a standard rate may not apply a reduced rate. This will allow a two-year postponement of the application of the standard rate.

(e) The rules concerning the regime and the rates applied to gold shall be determined by a directive relating to special arrangements applicable to gold. The Commission shall make such a proposal in time for its adoption by the Council, acting unanimously, before 31 December 1992.

Member States will take all necessary measures to combat fraud in this area from 1 January 1993. These measures may include the introduction of a system of accounting for VAT on supplies of gold between taxable persons in the same Member State which provides for the payment of tax by the buyer on behalf of the seller and a simultaneous right for the buyer to a deduction of the same amount of tax as input tax.';

2. the first sentence of Article 12 (4) shall be deleted;

3. the following subparagraph is added to Article 12 (4):

'On the basis of a report from the Commission, the Council shall, starting in 1994, review the scope of the reduced rates every two years. The Council, acting unanimously on a proposal from the Commission, may decide to alter the list of goods and services in Annex H.';

4. Article 28 (2) is replaced by the following:

'2. Notwithstanding Article 12 (3), the following provisions shall apply during the transitional period referred to in Article 281.

(a) Exemptions with refund of the tax paid at the preceding stage and reduced rates lower than the minimum rate laid down in Article 12 (3) in respect of the reduced rates, which were in force on 1 January 1991 and which are in accordance with Community law, and satisfy the conditions stated in the last indent of Article 17 of the second Council Directive of 11 April 1967, may be maintained.

Member States shall adopt the measures necessary to ensure the determination of own resources relating to these operations.

In the event that the provisions of this paragraph create for Ireland distortions of competition in the supply of energy products for heating and lighting, Ireland may, on specific request, be authorized by the Commission to apply a reduced rate to such supplies, in accordance with Article 12 (3). In that case, Ireland shall submit its request to the Commission together with all necessary information. If the Commission has not taken a decision within three months of receiving the request, Ireland shall be deemed to be authorized to apply the proposed reduced rates.

(b) Member States which, at 1 January 1991 in accordance with Community law, applied exemptions with refund of tax paid at the preceding stage, or reduced rates lower than the minimum laid down in Article 12 (3) in respect of the reduced rates, to goods and services other than those specified in Annex H, may apply the reduced rate or one of the two reduced rates provided for in Article 12 (3) to any such supplies.

(c) Member States which under the terms of Article 12 (3) will be obliged to increase their standard rate as applied at 1 January 1991 by more than 2 %, may apply a reduced rate lower than the minimum laid down in Article 12 (3) in respect of the reduced rate to supplies of categories of goods and services specified in Annex H. Furthermore, those Member States may apply such a rate to restaurant services, children's clothing, children's footwear and housing. Member States may not introduce exemptions with refund of the tax at the preceding stage on the bais of this paragraph.

(d) Member States which at 1 January 1991 applied a reduced rate to restaurant services, children's clothing, children's footwear and housing, may continue to apply such a rate to such supplies.

(e) Member States which at 1 January 1991 applied a reduced rate to supplies of goods and services other