

## CEEP OPINION ON THE EU VAT ACTION PLAN (APRIL 2016)

### Executive summary

- The VAT Directive foresees a specific and balanced regime for public bodies and activities in the public interest which reflects their key role in the social market economy as recognized by the Treaty and respects the diversity of their forms of organisation across Member States. Existing possibilities to exempt and apply reduced VAT rates are crucial to guarantee quality and affordability of public services, even more in times of fiscal consolidation.
- Hence, CEEP welcomes the gradual and pragmatic approach proposed by the European Commission on reduced VAT rates in the VAT Action Plan and welcomes the status quo regarding existing reduced rates. However, a one-size-fits-all approach, i.e. a single European list, does not seem appropriate considering the diversity of tax policies across Member States.
- CEEP has been following attentively discussions in the European Parliament on the VAT Action Plan, notably concerning VAT exemptions some SGEI providers are granted under existing EU VAT rules. CEEP believes that the current regime is balanced and should be maintained as it benefits citizens as end-users and achieving social policy goals.
- In addition, there is room for clarifying at EU level the non-taxation of goods and services provided through public-public cooperation in order to avoid uncertainty arising from divergent national interpretations. In this regard, VAT rules should be more clearly aligned with EU public procurement rules which exempt certain forms of public-public cooperation.
- Regarding the upcoming SME VAT package, CEEP emphasizes the need to define SMEs according to the fiscal rationale instead of implementing the current competition-based EU definition under recommendation 2003/361. The use of this definition would exclude SMEs with a public ownership of above 25% from benefiting from simplification measures, and thus many local public services enterprises.

Public services' providers gathered within CEEP welcome the VAT action plan published on 7 April 2016 and the European Commission's attempt to enhance the EU VAT system in order to address fraud, take into account technological developments and become simpler for enterprises. The modernisation of rules on VAT rates envisaged by the Commission is of particular relevance to public services' providers. CEEP also took note of the political initiatives in the European Parliament that aim at valuating Services of General Interest (SGIs) in the context of the VAT Action Plan. With this opinion CEEP would like to reiterate the importance of existing VAT rules applicable to public bodies and activities in the public interest, and more generally to comment on relevant priorities of the VAT Action Plan.

## **The Importance of Existing VAT Rules for Affordable Public Services**

SGIs have a fundamental role in the daily life of EU citizens and represent a democratically chosen tool for competent authorities at national, regional and local level to fulfil tasks of general interest. More generally, by enabling business, social and territorial cohesion, economic and social solidarity and a better quality of life for all EU citizens, public services support the fundamental goals of the EU. It is also worth bearing in mind the fact that public services directly contribute by 26.6% to the EU GVA (Gross Value Added), and represent 30% of the total employment within the EU<sup>1</sup>. The importance of SGIs is reflected in primary EU law through Article 14 TFEU and Protocol No.26 TFEU as well as in secondary law, such as in the VAT Directive.

The VAT Directive foresees a specific regime for public bodies (article 13) and certain activities in the public interest (article 132-134) that allows Member States to exempt them from VAT. The VAT Directive also allows to apply reduced VAT rates in areas relevant to public services as listed in Annex III of the VAT Directive. This set of rules is fully in line with the EU Treaty as it recognizes the unique role of public services in the social market economy and respects the diversity of their forms of organisation across Member States. Furthermore, at national level VAT is part of the economic and financial conditions that guarantee a good accomplishment of general interest tasks defined by public authorities. Therefore, the maintenance of existing EU VAT rules is crucial to guarantee quality and affordability of public services, even more in times of fiscal consolidation.

## **Application of Reduced VAT Rates**

CEEP welcomes the gradual and pragmatic approach proposed by the European Commission to define the right policy solutions for EU rules on reduced VAT rates. Public services' operators need fiscal certainty to accomplish their mission in an economically sustainable way and CEEP will therefore closely monitor the political debates in the Council and the European Parliament.

As rightly stressed in the Communication, the room for manoeuvre of Member States to extend reduced rates to new areas and adapt to technological developments is currently constrained. Therefore, CEEP welcomes that the Action Plan proposes through different options to enlarge the possibilities of action of Member States.

At this stage, CEEP would like to stress two main concerns:

Firstly, CEEP welcomes the status quo regarding existing reduced rates applied to public interest activities. Concerning a modernised rates policy, CEEP would not favour any option which would

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<sup>1</sup> Mapping Public Services (2010): <http://www.ceep.eu/mapping-evolution-of-public-services-in-europe/>

change existing possibilities to apply such rates. In this regard, CEEP is concerned about voices within the European Parliament calling for fewer exemptions and also specifically targeting some public services sectors. CEEP insists that any change of EU rules on reduced rates needs sufficient proof concerning its impact on the functioning of the internal market and competition pursuant to article 113 TFEU.

Secondly, CEEP considers further harmonisation of reduced rates difficult considering the diversity of tax policies across Member States. Hence, a one-size-fits-all approach as outlined in option 2 - i.e. a single European list - does not seem an appropriate solution.

### **VAT Exemption for Public Bodies and Activities in the Public Interest**

CEEP has been following attentively the on-going discussions in the European Parliament concerning VAT exemptions some SGEI providers are granted according to existing EU VAT rules. It is important to note that this issue is not included in the scope of the 2016 VAT Action Plan as proposed by the European Commission.

CEEP strongly believes that the current regime should be maintained, in line with its views expressed in the European Commission public consultation on the review of existing VAT legislation on public bodies and tax exemptions in the public interest<sup>2</sup>. First of all, as a rule, all existing exemptions target the goal of securing more affordable conditions for end-users. Furthermore, providers cannot directly benefit from VAT exemption: VAT taxes final consumers, hence enterprises along the value chain merely act as collectors of the corresponding fiscal revenues. Therefore, it seems legitimate that those exemptions usually cover essential services whose provision at fair prices stand as a social priority.

Furthermore, article 13 of the VAT Directive constitutes a balanced regime. It provides for a general waiver from taxation for authorities at all governmental levels, as far as they perform as public authorities. Distortions of competition are excluded if an activity is reserved by law to public authorities. Nevertheless, it also foresees that activities of public bodies would become taxable if they lead to significant distortions of competition. In addition, the Directive lists some activities under Annex I<sup>3</sup> that do not benefit from exemption unless provided on a negligible scale.

The waiver's scope confines itself to activities that fall outside the market, namely those whose supply or provision remains closed for third enterprises or which stem out of sovereign power. Should for instance a local entity governed by public law engage in an activity under exclusive rights conditions, following an in-house entrustment, the waiver would apply. Thus, what lies at stake is the legitimacy of the exclusive right bestowed on the in-house provider. If it implies no manifest error, the VAT waiver only involves exempting a public authority from paying taxes with no side effect on competition.

The Directive also provides an exemption regime for certain essential public services under articles 132 to 134. These waivers aim at reinforcing the affordability principle in widely used services for social considerations. They mainly cover universal postal services, hospital and medical care, welfare and social security, children and youth protection, education and vocational training and for certain cultural services.

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<sup>2</sup> See CEEP answer to public consultation: <http://www.ceep.eu/wp-content/uploads/2014/04/CEEP-answer-on-the-review-of-existing-VAT-legislation-on-public-bodies-and-tax-exemptions-in-the-public-interest.pdf>

<sup>3</sup> Such as telecom services; water, gas, and electricity supply; thermal energy; passenger and goods transport; port and airport services; warehousing; trade fairs and exhibitions; agricultural goods transactions; ...

## Clear Rules for VAT applied to public-public cooperation

In the light of the arguments presented above, CEEP believes that existing VAT rules applying to public bodies and activities in the public interest are fit for purpose and should be maintained. In addition, there is room for clarifying at EU level the VAT taxation/non-taxation of goods and services provided through public-public cooperation in order to avoid uncertainty arising from divergent national interpretations. In different EU Member States, local authorities are more and more encouraged to cooperate together for the provision of public services in order to achieve economies of scale and enhance quality and efficiency in a context of rising cost pressure. Therefore, the notion of “significant distortions of competition” included in article 13 (1) sub paragraph 2 should be clarified, also in order to align VAT rules with EU public procurement rules exempting certain forms of public-public cooperation from the scope of EU internal market rules.

## An inclusive SME VAT Package

CEEP fully endorses the drive on simplified procedures for SMEs. Nonetheless, it is essential that simplification measures benefit all types of SMEs, including public services’ enterprises. Many public services’ providers are of micro, small or medium-size and might suffer the same regulatory burden in terms of VAT collection. Beyond that CEEP emphasizes the need to define SMEs according to the fiscal rationale instead of implementing the current competition-based EU definition under recommendation 2003/361. This definition considers public ownership above 25% as depriving public enterprises of being an SME.

The EU SME Definition excludes the majority of local public services’ enterprises (LPSEs) from its scope because it does not cover enterprises with a public ownership of more than 25%. In a comprehensive opinion released in June 2016 CEEP evidences the existence of unjustified discriminatory treatment and calls for a more inclusive EU SME policy.<sup>4</sup> This is also particularly valid for the fiscal domain. Depriving systematically partly publicly-owned SMEs seems contrary to the neutrality principle as enshrined in article 345 of the Treaty as well as to EU Corporate Law. Furthermore, the 25% threshold intends to clarify the extent to which an enterprise is autonomous in terms of competitive behaviour. Yet, corporate fiscal rules can only take into consideration whether a taxpayer is a single enterprise or is included in a group of companies, as long as the controlling entity is a company. Individual owners and shareholders of the mother company are never subject to corporate tax, being taxed on their personal income tax. Thus, in applying simplification measures in the fiscal domain, special attention should be paid to avoid any unwarranted discriminatory treatment based on the ownership structure of SMEs. Hence the European Commission should refrain from making use of the EU SME Definition in the the upcoming SME VAT package.

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<sup>4</sup> See CEEP opinion “For an inclusive SME Policy”: [http://www.ceep.eu/wp-content/uploads/2016/06/16opinion06\\_EU-SME-Definition.pdf](http://www.ceep.eu/wp-content/uploads/2016/06/16opinion06_EU-SME-Definition.pdf)