



COMMISSION OF THE EUROPEAN COMMUNITIES

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COM(2007) 746 final/2

Corrigendum. – Deletes and replaces the Proposal for a Council Regulation COM(2007) 746 final of 28.11.2007. The paragraph concerning the subsidiarity principle in the explanatory memorandum has been changed. This corrigendum concerns all linguistic versions.

Proposal for a

COUNCIL REGULATION

laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Grounds for and objectives of the proposal

The proposal for a Regulation consists of provisions implementing Article 135(1)(a) to (g) and (1a) and Article 135a of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. These Articles clarify the rules governing the exemption from value added tax (VAT) for insurance and financial services with the objective to provide a more uniform application of the VAT exemption, creating more legal certainty and reducing the administrative burden for economic operators and administrations. This concept includes the following elements:

- it bases the conditions for applying the VAT exemption on objective economic criteria;
- it clarifies that the exemption covers the supply of any constituent element of an insurance or financial service, which constitutes a distinct whole and has the specific and essential character of the exempt service concerned;
- it introduces a common harmonised concept of intermediation for insurance and financial services.

The objective of this proposal is to take this concept and the elements described above to a deeper level of detail, further increasing legal certainty and reducing the administrative burden for operators and administrations. This is achieved by breaking down the concept and the conditions stipulated in Article 135(1)(a) to (g) and (1a) and in Article 135a of Directive 2006/112/EC to specific economic scenarios. This results in non-exhaustive enumerations of cases for which the Regulation stipulates that they are either covered by the exemption from VAT for insurance and financial services or excluded from it. To give an example: Article 2 of the Regulation stipulates that "insurance and reinsurance" covers life insurance, whether individual or group life policies, and insured pensions and annuities where the insurance, pensions or annuities cover mortality or longevity risks. The Regulation therefore eliminates the potential for litigation because it provides a clear solution in many cases. This increases legal certainty.

The Regulation will also be directly applicable in all Member States and help reduce the administrative burden of economic operators and tax authorities considerably. In fact, in many cases economic operators needed fiscal advice from independent consultants and often had to verify in burdensome and lengthy negotiations with national ministries of finance, whether a specific service supplied was or was not covered by the VAT exemption. Local tax administrations also had to bear high administrative charges for clarifying with the national ministries of finance how they should proceed in specific cases. In those cases where the Regulation provides a clear solution, economic operators and administrations will be able to apply the exemption from VAT for insurance and financial services correctly without this burden being involved.

For intermediation in insurance and financial services the proposal could only provide a clear solution in a limited number of cases. This is due to the fact that the concepts and forms of intermediation are still very much rooted in national civil laws and therefore vary

substantially. To improve legal certainty also in respect of such services, the Regulation additionally specifies objective criteria to be applied in evaluating whether a service represents a distinct act of mediation.

The Regulation has integrated the relevant jurisprudence of the European Court of Justice, thus maintaining well acquired principles of identifying relevant characteristics of insurance and financial services.

- **General context**

The definitions of exempt insurance and financial services are out of date and have led to an uneven interpretation and application of these exemptions by Member States. Stakeholders are confronted with a considerable legal complexity of varying administrative practices generating legal uncertainty for economic operators and fiscal authorities. This legal uncertainty has led to an increasing number of court cases and increased the administrative charges of operators and administrations for applying these exemptions. It is therefore necessary to clarify the rules governing the exemption from VAT for insurance and financial services with the objectives to create more legal certainty and to reduce the administrative charges for operators and administrations. A public consultation of stakeholders carried out in 2006 and an independent "Study to increase the Understanding of the Economic Effects of the VAT Exemption for Financial and Insurance Services" commissioned by the Commission confirmed this conclusion.

- **Existing provisions in the area of the proposal**

Article 135(1)(a) to (g) and (1a) and Article 135a of Council Directive 2006/112/EC, but the current draft proposal for a Regulation based on Article 397 introduces for the first time implementing provisions for applying the exemption from VAT for insurance and financial services.

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

Where this was possible, the new definitions also create more consistency with internal market rules (e.g. investment funds, credit rating, derivatives).

The proposal is part of the Commission's Strategy for the Simplification of the Regulatory Environment (Section 66 of COM(2006) 690). Both economic operators and Member States' tax authorities will benefit from these simplifications. However, it is not possible to quantify these benefits.

The proposal will improve legal certainty and reduce the administrative burden of operators and national tax authorities. As it would have a positive impact on costs, it should not have negative effects on the cost of retail consumer insurance and financial services.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

• Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

The Fiscalis seminar in December 2004 in Dublin analysed the various problem areas for economic operators, in particular the outsourcing phenomenon and led to the conclusion by both, economic operators and Member States that a legislative initiative of the Commission services is required.

In the follow-up to this seminar the Commission commissioned a study with an independent expert to increase the understanding of the economic effects of the VAT exemption for financial and insurance services and undertook a series of bilateral consultations with Member States and within the Commission which resulted in the elaborating of an outline of the basic problems which were identified as well as possible technical measures to address them. These problems were discussed with stakeholders and Member States at the Tax Conference in Brussels in May 2006.

A second Fiscalis seminar was held in March 2007 with the objectives of familiarising concerned officials from the national tax administrations with the policies driving change in the regulatory framework, and the economic drivers for cross-border financial integration. The programme also covered practical implementation issues in the current legislation.

Summary of responses and how they have been taken into account

All responses confirmed that the legal uncertainty and the administrative burden resulting from it were the main problem and should be addressed with priority. The proposal for a Regulation fully reflects that priority.

An open consultation was conducted over the internet from 9 May 2006 to 9 June 2006. The Commission received 82 responses. The results are available on http://ec.europa.eu/taxation_customs/common/consultations/tax/article_2447_en.htm

• Collection and use of expertise

Scientific/expertise domains concerned

Study to increase the understanding of the economic effects of the VAT exemption for Financial and Insurance services (Tender no taxud/2005/AO-006)

Methodology used

Independent outside study

Main organisations/experts consulted

Price Waterhouse Coopers

Summary of advice received and used

The existence of potentially serious risks with irreversible consequences has not been mentioned.

There was broad consistency between the conclusions of the study, the Commission's own analysis and the reactions from stakeholders in the public consultation, allowing the Commission to impose the necessary priorities and focus its work on the most appropriate solutions. The proposal for a Regulation is consistent with these priorities.

Means used to make the expert advice publicly available

http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm

• **Impact assessment**

The options which were considered, are described extensively in the impact assessment:

Zero rating (p. 31); extending the scope of exempted services (p. 32); uniform limited input tax deduction (p. 33); option to tax (p. 34); cross border VAT bodies (p. 37); single legal entities and cross-border transactions (p. 37); VAT grouping (p. 38); cost sharing arrangements (p. 41); reduced VAT rate for bought-in service (p. 44); and other options (p. 44).

The Commission carried out an impact assessment listed in the Work Programme (Report in document Taxud 15570).

3. LEGAL ELEMENTS OF THE PROPOSAL

• **Summary of the proposed action**

This proposal consists of two measures:

- enumerations of cases covered by the VAT exemption for insurance and financial services or excluded from it;
- specification of objective criteria to be applied in evaluating whether a service represents a distinct act of mediation.

• **Legal basis**

Article 397 of Council Directive 2006/112/EC

• **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

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

The proposal complies with the subsidiarity principle for the following reasons.

The rules for the VAT exemption of insurance and financial services are already subject of Community rules in Articles 135 of Council Directive 2006/112/EEC. Under Article 397 of that Directive the introduction of implementing provisions requires action of the Community legislator.

Member States could not themselves adopt new national rules which are inconsistent with existing Community legislation.

Action by Member States alone could not achieve the objective of a harmonised interpretation and application of the definitions of VAT exempt financial and insurance services; the heterogeneous application by Member States is the reason for the problems encountered by economic operators.

Member States cannot themselves amend Community law; the increasing number of litigations between the tax authorities of Member States and economic operators has already increased the administrative charges for these tax authorities considerably and also partly compromised their budgetary security. In this situation national measures taken by Member States would potentially create a downward spiral towards an environment of unfair tax competition.

Community action will better achieve the objectives of the proposal for the following reason(s).

The proposals are contained in a draft Regulation; there can only be one correct interpretation of the definition of exempt insurance and financial services which applies throughout the Community; this objective can only be achieved by introducing implementing provisions for the Articles 135 and 135a of the new proposal for a Directive presented at the same time, amending the old definitions in Directive 2006/112/EC.

There is consensus between Commission services, stakeholders, Member States and independent experts that only Community legislation can achieve the pursued objectives.

The reasons set out above are self-explanatory and demonstrate that the scope of the proposal is limited to what Member States cannot satisfactorily achieve themselves and the Community legislator can achieve better.

The proposals are contained in a draft Regulation; there can only be one correct interpretation of the definition of exempt insurance and financial services which applies throughout the Community; this objective can only be achieved by amending the old definitions in Directive 2006/112/EC and by introducing at the same time implementing provisions which are sufficiently precise.

Clear definitions and economic criteria reduce the substance for possible litigation and therefore generate an environment of legal certainty within which the administrative charges for agreeing possibly with several Member States on how the definitions are to be interpreted and applied are considerably reduced.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

In the complex tax environment of insurance and financial services there can only be one correct interpretation of the exemption of insurance and financial services which applies throughout the Community; this objective can only be achieved by introducing the proposed implementing provisions, because it defines clear cases covered by the VAT exemption for insurance or financial services or excluded from it.

The number of court cases, in particular preliminary proceedings at the ECJ has been increasing considerably over the last decade. The majority of these cases were about the diverging application of definitions for exempt insurance and financial services. Clear definitions and economic criteria reduce the substance for possible litigation and therefore generate an environment of legal certainty within which the administrative charges for agreeing possibly with several Member States on how the rules are to be applied are considerably reduced.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

A regulation is directly applicable and makes it obsolete for economic operator to clarify legal questions on the application of the exemption with the ministries of finance in various Member States; where the regulation resolves the case, the appropriate VAT treatment could directly be applied by local tax offices.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

- **Simplification**

The proposal provides for simplification of legislation, simplification of administrative procedures for public authorities (EU or national), simplification of administrative procedures for private parties.

The Regulation will also be directly applicable in all Member States, it reduces the complexity of applying the VAT exemption for insurance and financial services by enumerating cases which are covered by the exemption or excluded from it.

Local tax administrations bear high administrative charges for clarifying with the national ministries of finance how they should proceed in specific cases. Also the ministries of finance allocate considerable resources to that sort of coordination. In many cases the Regulation provides a clear solution and administrations will be able to apply the exemption from VAT for insurance and financial services correctly without this burden being involved.

In many cases economic operators needed fiscal advice from independent consultants and often had to verify in burdensome and lengthy negotiations with national ministries of finance whether a specific service supplied was or was not covered by the VAT exemption. In many

cases the Regulation provides a clear solution, economic operators will be able to apply the exemption from VAT for insurance and financial services correctly without this burden being involved.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹, and in particular Article 397 thereof,

Having regard to the proposal from the Commission²,

Whereas:

- (1) The existing rules governing the exemptions from VAT for financial and insurance services laid down in Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax³ are out of date and have led to uneven interpretation and application. The complexity of the rules and the variation in administrative practices generates legal uncertainty for economic operators and fiscal authorities. This uncertainty has led to considerable litigation and has increased the administrative burden. It is therefore necessary to clarify which insurance and financial services are exempt and thereby create greater legal certainty and reduce the administrative burden for operators and authorities.
- (2) Directive 2006/112/EC has been amended by Directive 20XX/XXX/EC as regards the treatment of insurance and financial services in order to reflect developments in the financial services market. In order to ensure a uniform application of Article 135(1)(a) to (g) and Article 135a of Directive 2006/112/EC and to develop a uniform understanding of whether a given supply is exempt under those provisions, it should be made clear which services are covered by, and which services are excluded from, the categories referred to in points (a) to (g) of Article 135(1) of that Directive.
- (3) It is appropriate to lay down rules in response to specific questions of application in order to bring consistency of treatment throughout the Community to those questions. Clarification should be provided in respect of services covered by Article 135(1)(a) to (g) and (1a) of Directive 2006/112/EC. In light of the complexity of the financial services markets and the continued development of new products, the enumeration of cases which are covered by or excluded from the exemptions should not be exhaustive.

¹ OJ L 347, 11.12.2006, p. 1. Directive as last amended by Directive 20XX/XXX/EC (OJ XXX).

² OJ C, p.

³ OJ L 347, 11.12.2006, p. 1.

- (4) There is uncertainty as to the VAT treatment of certain services which form a distinct whole whilst also being a constituent element of an insurance or financial service. It is therefore appropriate to specify certain services which have the specific and essential character of the exempt services concerned and others which do not. In the light of the criteria developed in the case-law of the Court of Justice of the European Communities, regard should be had to whether the services in question change the financial or legal situation of the parties to an exempt transaction or whether by contrast they are mere material or technical supplies.
- (5) In accordance with the principle of proportionality, it is necessary and appropriate in order to achieve the objective of ensuring a more uniform application of the current value added tax system to lay down rules implementing Article 135(1)(a) to (g) and (1a) and Article 135a of Directive 2006/112/EC. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.
- (6) It is appropriate and necessary that Directive 20XX/XXX/EC and this Regulation apply from the same date,

HAS ADOPTED THIS REGULATION:

Chapter I

Subject-matter

Article 1

This Regulation lays down measures for the implementation of Article 135(1)(a) to (g) and (1a) and Article 135a of Directive 2006/112/EC.

Chapter II

Exempt insurance and financial services

Article 2

The definition of "insurance and reinsurance" provided for in point (1) of Article 135a of Directive 2006/112/EC shall cover at least the following:

- (1) life insurance, whether individual or group life policies, and insured pensions and annuities where the insurance, pension or annuity covers mortality or longevity risks, including diagnosis of a terminal illness, diagnosis of a critical illness, disability due to ill health, permanent disability, accidental death, and requirement for long term care;
- (2) sickness disability and unemployment insurance;
- (3) health insurance;

- (4) peril insurance, including coverage against fire, flooding, natural disasters, accidents, breakdown of machinery, crime and terrorism;
- (5) liability insurance;
- (6) insurance against financial loss;
- (7) retrocession, co-insurance and pooling of insurance or reinsurance.

Article 3

1. The definition of the "granting of credit" provided for in point (2) of Article 135a of Directive 2006/112/EC shall cover the provision of at least the following:

- (a) loans, whether syndicated or not, including loans granted as a financing element in conjunction with the supply of goods or services provided the financing element is not an integral part of the consideration;
- (b) loans secured on real property, including mortgage loans;
- (c) loans secured on movable property, including pawn broking;
- (d) credit arrangements under which a person is entitled to dispose of funds up to a fixed amount.

2. The definition of the "granting of credit" provided for in point (2) of Article 135a of Directive 2006/112/EC shall not cover the following:

- (a) agreements under which payment by instalments, or an extended period for payment, is provided for in respect of the supply of goods or services;
- (b) the grant of credit in connection with hire purchase and lease purchase arrangements where the consideration for that credit constitutes an integral part of the consideration for the hire purchase and lease purchase;
- (c) the provision of debit and prepaid card services.

Article 4

1. The definition of the "guaranteeing of debts" provided for in point (3) of Article 135a of Directive 2006/112/EC shall cover the provision of at least the following:

- (a) credit default swaps;
- (b) customs bonds.

2. The definition of the "guaranteeing of debts" provided for in point (3) of Article 135a of Directive 2006/112/EC shall not cover the following:

- (a) the provision of warranties for the repair and replacement of faulty goods;

- (b) the handing over of assets to be used as collateral for a debt not resulting from the granting of credit;
- (c) the provision of guarantees as security for any outstanding rental payment or payment resulting from defaults on rental payments;
- (d) the provision of export credit guarantees;
- (e) the assumption of obligations of a non-pecuniary nature.

Article 5

1. The definition of "financial deposit" provided for in point (4) of Article 135a of Directive 2006/112/EC shall cover at least the following:

- (a) sight deposits (deposits on call);
- (b) saving deposits;
- (c) time and term deposits;
- (d) deposits in the form of saving certificates;
- (e) saving bonds;
- (f) deposits made in return for a guaranteed annuity or an accumulated cash balance upon retirement, including deposits made under a pension saving plan;
- (g) capital redemption bonds;
- (h) insured pensions and annuities where the mortality or longevity risk covered is merely ancillary.

2. The definition of "financial deposit" provided for in point (4) of Article 135a of Directive 2006/112/EC shall not cover the following:

- (a) the deposit for safekeeping of collectors' items or of instruments evidencing rights, claims or titles;
- (b) hiring of security boxes and securitised space and location.

Article 6

The definition of "account operation" provided for in point (5) of Article 135a of Directive 2006/112/EC shall cover at least the following:

- (1) the operation of deposit accounts;
- (2) the operation of current accounts;
- (3) the deposit, transfer and withdrawal of money to or from a bank account, whether electronic or not;

- (4) cheque services related to a specific account;
- (5) standing orders;
- (6) direct debits;
- (7) the access to and the operation of internet and telephone banking;
- (8) debit and smart card services related to a specific account;
- (9) the clearance and the transfer of funds between financial operators;
- (10) the transfer of funds from a specific account into other money media such as telephone cards, credits for mobile phones and other media which allow payment for goods and services;
- (11) sorting and counting of money related to a specific account;
- (12) the arrangement of credit facilities.

Article 7

The definition of "exchange of currency" provided for in point (6) of Article 135a of Directive 2006/112/EC shall not cover the following:

- (1) transactions involving collectors' items, such as gold, silver or other metal coins or bank notes normally not used as legal tender or coins of numismatic interest;
- (2) the exchange of currencies not of legal tender.

Article 8

1. The "provision of cash" as referred to in point (d) of Article 135(1) of Directive 2006/112/EC shall cover at least the following:

- (a) cash dispensing, whether manual or automatic;
- (b) traveller cheque services;
- (c) cheque services not related to a specific account;
- (d) letters of credit;
- (e) the exchange of bank notes and coins within the same currency.

2. The "provision of cash" as referred to in point (d) of Article 135(1) of Directive 2006/112/EC shall not cover the following:

- (a) transactions involving collectors' items, such as gold, silver or other metal coins or bank notes normally not used as legal tender or coins of numismatic interest;

- (b) dispensing of currencies not of legal tender.

Article 9

The definition of the "supply of securities" provided for in point (8) of Article 135a of Directive 2006/112/EC shall cover the provision of at least the following:

- (1) equity securities, including shares;
- (2) instruments recording the promise of repayment of a debt, including debentures, bonds and corporate bonds, promissory notes, euro debt securities and other tradable commercial papers;
- (3) hybrid securities, including preference shares, equity warrants, convertible instruments in the form of bonds or preferred stock which may be converted into the common stock of the issuing company;
- (4) instruments recording unit ownership in undertakings for collective investment such as open and closed-ended funds, exchange traded funds, mutual and pension funds, hedge funds and real estate investment funds.

Chapter III

Exempt intermediation and management services

Article 10

1. For the purposes of point (9) of Article 135a of Directive 2006/112/EC, an activity shall constitute a distinct act of mediation at least where one or more of the following conditions is fulfilled:

- (a) the intermediary has the authority to bind the supplier or the customer of the exempt insurance or financial service;
- (b) the activity may result in the creation, continuation, alteration or extinction of parties' rights and obligations in respect of an exempt insurance or financial service;
- (c) the activity consists in the provision of advice which reflects specialised knowledge regarding an exempt insurance or financial service.

2. Where in situations other than those covered by paragraph 1, a service is standardised in such a way that a person may provide it on the basis of prior instructions, it shall not constitute a distinct act of mediation for the purposes of point (9) of Article 135a of Directive 2006/112/EC.

Article 11

1. The definition of "intermediation in insurance and financial transactions" provided for in point (9) of Article 135a of Directive 2006/112/EC shall cover at least the following:

- (a) the supply of services involving negotiation on the conditions of the product;
- (b) stock and mortgage brokering.

2. The definition of "intermediation in insurance and financial transactions" provided for in point (9) of Article 135a of Directive 2006/112/EC shall not cover the following:

- (a) standardised services provided by call-centres;
- (b) brand hosting, web-hosting, other web-services or hosting service;
- (c) advertising and other information services.

Article 12

1. The definition of "management of investment funds" provided for in point (11) of Article 135a of Directive 2006/112/EC shall cover at least the following:

- (a) strategic and tactical asset management and asset allocation, including currency and risk management;
- (b) operational asset management, including stock selection, decision making and implementation, decisions to buy and sell investments, netting of trades, pre-trade broker liaison, administration and control of trades and post-trade liaison with brokers and custodian;
- (c) guarantee provision, including the operation of a hedging portfolio;
- (d) administration of shares or units, including distribution and trustee liaison;
- (e) arranging and processing loans of stocks and bonds;
- (f) fund order processing, including automated processing;
- (g) market and company analysis;
- (h) performance measurement, including the provision of investment performance reports and attribution analysis of returns;
- (i) the provision of valuations, tax refund claims and management information and the calculation of the net asset value;
- (j) safe custody, security safe-keeping and control;
- (k) oversight of the fund by the depositary;
- (l) payment of income to customers and proxy voting.

2. The definition of "management of investment funds" provided for in point (11) of Article 135a of Directive 2006/112/EC shall not cover the following:

- (a) external audit of the fund, marketing and management of fund overheads;

- (b) development of systems, such as planning and implementation of new technology, major enhancements to existing systems and systems maintenance;
- (c) services relating to regulatory compliance.

Chapter IV

Services which have the specific and essential character of an exempt service

Article 13

1. For the purposes of Article 135(1a) of Directive 2006/112/EC, at least the following shall be considered to have the specific and essential character of an exempt service:

- (a) portfolio management;
- (b) the issuance of contracts and certificates evidencing the title of the customer of an exempt insurance or financial service;
- (c) the cession, renewal, amendment and rescission of contracts relating to an exempt insurance or financial service;
- (d) credit rating services, including the assessment of the credit worthiness of a supplier or customer of insurance or financial services;
- (e) valuation of financial collateral.

2. For the purposes of Article 135(1a) of Directive 2006/112/EC, the following shall not be considered to have the specific and essential character of an exempt service:

- (a) safekeeping;
- (b) administrative tasks;
- (c) debt collection or recovery;
- (d) legal services, accountancy, audit and bookkeeping;
- (e) services relating to regulatory compliance;
- (f) identity verification, money laundering and anti-fraud checks;
- (g) data collection services for the recycling of banknotes and coins;
- (h) marketing, research, identification and development of new products or opportunities;
- (i) the supply and design of software;
- (j) hire of security boxes and other secured spaces;

- (k) services which grant the right or the option of receiving goods or services.

Article 14

1. The following shall be considered to be services having the specific and essential character of "insurance and reinsurance" as defined in point (1) of Article 135a of Directive 2006/112/EC:

- (a) underwriting of risk;
- (b) risk and investment management;
- (c) claims handling;
- (d) the issuance of non-tradable insurance derivatives.

2. Damage assessment shall not be considered to be a service having the specific and essential character of "insurance and reinsurance" as defined in point (1) of Article 135a of Directive 2006/112/EC.

Article 15

The following shall be considered to be services having the specific and essential character of "granting of credit" as defined in point (2) of Article 135a of Directive 2006/112/EC:

- (1) the measurement, the prediction and the control of credit risks and losses due to credit risk, including credit strategy;
- (2) underwriting of credits;
- (3) record keeping, arrangement and monitoring of payments made for a credit;
- (4) the issuance of credit derivatives;
- (5) valuation of non-financial collateral.

Article 16

1. The following shall be considered to be services having the specific and essential character of "guaranteeing of debts" as defined in point (3) of Article 135a of Directive 2006/112/EC:

- (a) arrangement and monitoring of means for guaranteeing a debt;
- (b) credit guaranteeing derivatives.

2. The sale of repossessions after mortgage default shall not be considered to be a service having the specific and essential character of "guaranteeing of debts" as defined in point (3) of Article 135a of Directive 2006/112/EC.

Article 17

The following shall be considered to be services having the specific and essential character of transactions concerning "financial deposit" as defined in point (4) of Article 135a of Directive 2006/112/EC:

- (1) sorting and counting of money for the purpose of making a deposit;
- (2) reporting on the balances of deposits and calculation of interest, production of statements of account and carrying out of commitment overviews;
- (3) calculation of tax and fees with regard to the cancellation of pension saving plans;
- (4) budgeting of accounts, including economic feasibility studies for appraisal of customers' requirements;
- (5) safekeeping of certificates for deposits;
- (6) automated acceptance of money for deposits;
- (7) the issuance of deposit derivatives.

Article 18

1. The following shall be considered to be services having the specific and essential character of "account operation" as defined in point (5) of Article 135a of Directive 2006/112/EC:

- (a) services between operators for the transfer of funds between monetary accounts and clearing of the transfer;
- (b) membership, joining or subscription services for payment cards or systems for an account;
- (c) control services with safety features for the proper processing of transfers of funds between monetary accounts;
- (d) the issuance of customer and merchant statements;
- (e) verification of payments;
- (f) the issuance of cheque books for a specific account.

2. The following shall not be considered to be services having the specific and essential character of "account operation" as defined in point (5) of Article 135a of Directive 2006/112/EC:

- (a) general printing of cheque books;
- (b) the supply of blank cards;
- (c) internet hosting;

- (d) the rental of terminals and other machinery for the processing of card payments.

Article 19

1. The following shall be considered to be services having the specific and essential character of "exchange of currency" or "provision of cash" as referred to in point (d) of Article 135(1) of Directive 2006/112/EC:

- (a) the issuance of customer and merchant statements for the exchange and the distribution of bank notes and coins;
- (b) operating services for cash machines supplied between financial institutions;
- (c) the issuance of spots, forward transactions, futures, currency swaps, foreign exchange options and forex swaps;
- (d) the issuance of exchange derivatives.

2. The following shall not be considered to be services having the specific and essential character of "exchange of currency" or "provision of cash" as referred to in point (d) of Article 135(1) of Directive 2006/112/EC:

- (a) safekeeping and storage of money;
- (b) courier and security transport services;
- (c) the publication of information on exchange rates;
- (d) the installation of cash machines.

Article 20

The following shall be considered to be services having the specific and essential character of the "supply of securities" as defined in point (8) of Article 135a of Directive 2006/112/EC:

- (1) the issuance of options, futures and forward contracts for securities;
- (2) the issuance of equity swaps and other total return swaps in securities;
- (3) the issuance of tradable debt derivatives, including interest rate swaps;
- (4) performance measurement, rating, prediction and control of securities;
- (5) arrangement and monitoring of transactions under the security agreement, including possible voting rights.

Chapter V

Final provisions

Article 21

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [date when Directive transposed + 1]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President