

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 346 final

Brussels, 10 July 1989

Proposal for a

COUNCIL DECISION

authorizing France to apply a measure derogating from the
second subparagraph of Article 17(6) of the Sixth
Directive 77/388/EEC on the harmonization of
the laws of the Member States relating to
turnover taxes

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By letter received on 17 April 1989, the French Government submitted to the Commission a request for a derogation under Article 27 of the Sixth VAT Directive¹ in respect of a special measure to counter tax evasion and avoidance. This measure, which derogates from the second subparagraph of Article 17(6) of the Sixth Directive, is intended to exclude expenditure in respect of accomodation, food, hospitality and entertainment, from the right to deduct value added tax previously charged regardless of the beneficiary. However, it does not concern expenditure incurred by a taxable person in certain circumstances spelt out in the proposal for a decision.
2. In support of its request, the French Government stresses the risks of tax evasion and avoidance stemming from the deduction of tax charged on expenditure that intrinsically constitutes final consumption.
3. In line with the French Government's request, the proposal for a decision authorizes it to apply the derogation on a temporary basis and until such time as Community rules determining expenditure not eligible for a deduction of value added tax pursuant to the first subparagraph of Article 17(6) of the Sixth Directive come into force.
4. The Commission informed the other Member States of the request by letter dated 17 May 1989.

¹OJ No L 145, 13.6.1977.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax : uniform basis of assessment¹, as last amended by the Act of Accession of Spain and Portugal, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27(1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

¹OJ No L 145, 13.6.1977, p. 1.

Whereas, by letter recorded received by the Commission on 17 April 1989, France requested authorization to introduce a special measure derogating from the second subparagraph of Article 17(6) of the Sixth Directive;

Whereas this measure, described as being designed to prevent tax evasion and avoidance, is aimed at excluding expenditure in respect of accommodation, restaurants, hospitality and entertainment from the right to deduct value added tax previously charged;

Whereas the exclusion would not concern expenditure incurred by a taxable person in respect of the supply by him of accommodation, meals, food or drink for consideration, expenditure on accommodation provided free of charge for security or caretaking staff on works, sites or business premises, or expenditure incurred by a taxable person in carrying out his contractual or legal responsibility towards customers;

Whereas the authorization requested by France can be granted only on a temporary basis and until such time as Community rules determining expenditure not eligible for a deduction pursuant to the first subparagraph of Article 17(6) of the Sixth Directive come into force;

Whereas this derogation does not have a negative effect on the European Communities' own resources accruing from value added tax;

Whereas the other Member States were informed of the French request on 17 May 1989,

HAS ADOPTED THIS DECISION :

Article 1

1. Notwithstanding the second subparagraph of Article 17(6) of the Sixth Directive 77/388/EEC, France is hereby authorized, on a temporary basis and until such time as Community rules determining the treatment of expenditure referred to in those provisions come into force, to exclude expenditure in respect of accommodation, food, hospitality and entertainment from the right to deduct value added tax previously charged.

2. The exclusion referred to in paragraph 1 shall not apply to :
 - expenditure incurred by a taxable person in respect of the supply by him of accommodation, meals, food or drink for consideration;

 - expenditure on accommodation provided free of charge for security or caretaking staff on works, sites or business premises;

 - expenditure incurred by a taxable person in carrying out his contractual or legal responsibility towards customers.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels,

For the Council
The President

Commission of the European Communities

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