

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

REQUEST SUBMITTED BY THE GOVERNMENT OF THE HELLENIC REPUBLIC
UNDER ARTICLE 27(1) AND (2) OF THE SIXTH VAT DIRECTIVE
77/388/EEC FOR AUTHORIZATION TO INTRODUCE A SPECIAL MEASURE
DEROGATING FROM THAT DIRECTIVE IN RESPECT OF MARITIME GOODS
TRANSPORT SERVICES.

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(Communication from the Commission to the Council)

1. INTRODUCTION

- (a) Member States are required by the Sixth VAT Directive (77/388/EEC)¹ to apply the common system of value added tax. Under the terms of Article 27(1) of that Directive, the Council may authorize any Member State to introduce special measures for derogation from the provisions of the Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.
- (b) In a letter dated 19 April 1994, received by the Secretariat-General of the Commission on 2 May 1994, the office of the Permanent Representative of the Hellenic Republic notified the Commission of a proposed measure to exempt from value added tax certain maritime goods transport services.
- (c) By letter from the Secretary-General of the Commission dated 1 June 1994, the other Member States were informed, in accordance with Article 27(3) of the Sixth VAT Directive, of the measure envisaged by the Hellenic Republic. Under the terms of paragraph 4 of that Article, the Commission or any Member State may request that the matter be raised by the Council.

2. DESCRIPTION OF THE PROPOSED MEASURE

The Hellenic Republic has requested that supplies of intra-Community transport services by ferry operators identified for VAT purposes in Greece, be exempted from value added tax when the recipient of these services is a taxable person also identified for VAT purposes in Greece, supplying goods transport services by road which give rise to full entitlement to VAT deduction.

According to the Greek authorities, the above measure is designed to improve the cash-flow of eligible road hauliers who, in practice, recover the VAT after payment of the ferry ticket. Without this measure, road hauliers

¹ OJ N° L 145, 13.6.1977, p. 1. Directive as last amended by Directive 94/5/EC (OJ N° L 60, 3.3.94, p. 16).

are inclined to use the overland routes to other Member States, and not to use the ferry services.

Such a measure as has been requested by the Hellenic Republic would constitute a derogation to Article 2(1) of the Sixth VAT Directive.

3. OPINION OF THE COMMISSION

The Hellenic Republic has requested that the proposed measure be authorized on the basis of Article 27 of the Sixth VAT Directive. However the reason for requesting the authorization is said to be in order to facilitate the cash-flow of taxable persons supplying intra-Community goods transport services by road, who use ferry services for the making of these supplies. The justification for such a proposed measure is not primarily to simplify the procedure for charging the tax, or in order to prevent certain types of tax evasion or avoidance, as stipulated in Article 27.

Although the exemption might be said to simplify the arrangements for exercising VAT deduction in respect of the ferry services used by the road hauliers, it is likely that the ferry operators will have the additional obligation of verifying the eligibility of their customers for the exemption. Given that the granting of the exemption would be conditional upon the tax being fully deductible, it is difficult to see how this condition can be verified in practice without increasing the complexity of the procedure for charging the tax.

The Sixth VAT Directive provides that intra-Community goods transport services shall be taxable at the standard rate of VAT. The proposed measure departs from this principle in so far as it would exempt supplies of goods transport services when provided by certain types of carrier, in this case ferry operators identified for VAT purposes in Greece. Such an exemption, in not applying to all modes of goods transport, would result in a fiscal distortion in favour of maritime goods transport at the expense of goods transport by air or land. The creation of such distortion between different modes of transport is not considered appropriate.

Furthermore, a road transporter identified for VAT purposes in another Member State, using ferry services provided by an operator identified for VAT purposes in that same Member State, would have to pay tax at the standard rate of VAT, whereas his Greek competitor, by sailing with a Greek ferry company, would benefit from a more favourable tax treatment, the ferry services being exempted. Such distortions are liable to fragment, rather than enhance, the internal market.

4. CONCLUSION

As the measure in question gives rise to fundamental objections, the Commission requests that the matter be raised by the Council in accordance with Article 27(4) of the Sixth Directive.

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