

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 358 final

Brussels, 12 July 1989

Proposal for a
COUNCIL DECISION

authorizing the French Republic
to apply a measure derogating from
Article 17(2) of 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

(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 Directive⁽¹⁾ aimed at introducing a special simplification measure. The measure, which derogates from Article 17(2) of the Sixth Directive, is designed to exclude from the right to deduct VAT previously charged expenditure in respect of the acquisition of goods and services in cases where private use of those goods and services accounts for more than 90% of their total use.
2. In support of its request, the French Government emphasizes that taxation of the private use of goods and services supplied by a taxable person to himself, which will be introduced in France along with the right to deduct the entire amount of input VAT charged on goods and services used for mixed purposes, would be complicated in cases where the goods and services were used primarily for non-business purposes since virtually all the amounts taxable would be represented not by actual turnover but by the value of the self-supply of services.
3. The French Government also points out that, being applicable in exceptional and marginal situations, the derogation will not affect the amount of tax due at the final consumption stage.

⁽¹⁾ O.J. N° L 145 of 13 June 1977

4. The Commission informed the other Member States of the French request by letter dated 17 May 1989.

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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 assessment⁽¹⁾, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27(1) of the aforementioned Directive, 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;

Whereas by letter received by the Commission on 17 April 1989, the French Republic requested authorization to introduce a special measure derogating from Article 17(2) of the Sixth Directive;

Whereas the French Republic intends to introduce an arrangement permitting deduction of the entire amount of tax charged on goods and services used for both business and private purposes while, at the same time, providing for taxation of the private use of such goods and

⁽¹⁾ O.J. N° L 145 of 13 June 1977

services, in accordance with Articles 5(6) and 6(2) of the Sixth Directive;

Whereas, France would like to retain the right to exclude altogether the deduction of input VAT while refraining from taxing self-supplies in cases where private use accounts for more than 90% of the use to which a particular good or service is put; whereas such a measure is necessary and appropriate to avoid certain tax evasion and fraud and whereas it contributes to the simplification of tax collection;

Whereas the latter measure constitutes a derogation from Article 17(2) of the Sixth Directive, whereby a taxable person is entitled to deduct the tax charged on goods and services used by him in so far as those goods and services are used for the purposes of his taxable transactions;
Whereas this request can be accepted subject to certain conditions;

Whereas the measure in question should be temporary in order to allow an evaluation after a certain period of application;

Whereas the authorisation will run until 31 December 1992, with the Commission presenting before that date, a report to the Council on the application of this authorization;

Whereas the Council will determine, on the basis of a proposal for a Decision submitted if appropriate by the Commission and accompanying the above mentioned report, whether to extend the authorization beyond that date;

Whereas the derogation will not affect, except to a negligible degree, the amount of tax due at the final consumption stage; whereas it will not have a negative effect on the European Communities' own resources accruing from value added tax;

Whereas the other Member States were informed on the French Republic's request on 17 May 1989,

HAS ADOPTED THIS DECISION :

Article 1

By way of derogation from Article 17(2) of the Sixth Directive, the French Republic is hereby authorized until 31 December 1992 to exclude from the right to deduct value added tax previously charged expenditure in respect of goods and services in cases where private use of those goods and services accounts for more than 90% of their total use.

Article 2

On the basis of a report by the Commission on the application of the authorization cited in Article 1, accompanied if appropriate by a proposal for a decision, the Council shall determine on the basis of that proposal before 31 December 1992 whether the said authorization shall be extended.

Article 3

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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12.7.1989

Office for Official Publications of the European Communities
L - 2985 Luxembourg

Series : DOCUMENTS

1989 — 6 pp. — Format: 21.0 × 29.7 cm

EN

ISSN 0254-1475

ISBN 92-77-51982-7

Catalogue number: CB-CO-89-308-EN-C

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DOCUMENTS

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