



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.3.2003
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Proposal for a

COUNCIL DECISION

authorising Germany to apply a measure derogating from Article 17 of the Sixth Directive (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes

(presented by the Commission)

EXPLANATORY MEMORANDUM

By letter registered at the Commission's Secretariat-General on 17 December 2002, the German authorities requested authorisation, under Article 27 of Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment¹ (hereafter referred to as the Sixth Directive), to continue to apply a special measure, which the Council had initially authorised by Article 1 of its Decision 2000/186/EC of 28 February 2000.²

As required under Article 27 of Directive 77/388/EEC, the Commission, in a letter dated 17 January 2003, informed the other Member States of Germany's request.

Decision 2000/186/EC contains two special measures.

The first measure, provided for in Article 1, consists in completely excluding expenditure on goods and services from the right to deduct VAT when less than 10% of those goods and services are used for business purposes.

The second measure, provided for in Article 2, aims to limit to 50% the right to deduct the VAT charged on all expenditure relating to vehicles (purchase, hire, running expenses). However, it is not intended to include vehicles used by taxable persons solely for business purposes, particularly vehicles which taxable persons put at the disposal of employees for a consideration as part of an employment contract. The German authorities have indicated that the flat-rate ceiling on the right to deduct VAT will replace the VAT charged on the use of a vehicle for non-business (mainly private) purposes.

Article 3 of the Decision provides that the authorisation will expire on 31 December 2002 at the latest. That Article also provides for retroactive application of the Decision.

The Bundesfinanzhof has asked for a preliminary ruling (case C-17/01) on the validity of Articles 2 and 3 of Decision 2000/186/EC. The question concerning Article 3 concerns the retroactive effect of the Decision. The Court has not yet given its ruling.

Germany is now requesting authorisation to continue to apply only the measure provided for in Article 1 of the Decision.

The Commission considers that the legal proceedings before the Court do not directly affect the current request to extend the measure in question, on which the Commission and then the Council must rule. The question as to the validity of the retroactive effect provided for in Article 3 of the Decision should not influence a decision concerning extension of the measure provided for in Article 1.

The Commission already stated in its proposal³ prior to Decision 2000/186/EEC that it considers the measure in question to be compatible with Article 27 of the Sixth VAT Directive.

¹ OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2002/92/EC (OJ L 331, 7.12.2002, p. 27).

² OJ L 59, 4.3.2000, p. 12.

³ COM(1999)690 final.

However, the Court's ruling in Case C-17/01 may affect the Commission's present interpretation of Article 27 of the Sixth Directive.

The validity of the authorisation should therefore be limited to 31 December 2003. This will allow time to evaluate the derogation in the light of the ruling on Case C-17/01, which the Court will probably deliver in the course of 2003.

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(only the German text is authentic)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Sixth Council Directive 77/388/CEE of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment,⁴ and in particular Article 27(1) thereof,

Having regard to the proposal by the Commission,⁵

Whereas:

- (1) In a letter registered by the Commission's Secretariat-General on 17 December 2002 the German authorities requested authorisation to continue to apply a derogation which had been granted to it by Article 1 of Council Decision 2000/186/EC.⁶
- (2) The other Member States were informed of the request on 17 January 2003.
- (3) The derogating measure is intended to exclude expenditure on goods and services completely from the right to deduct VAT when over 90% of the goods and services are used for the private purposes of the taxable person, or of his employees, or for non-business purposes in general. This measure is a derogation from Article 17 and is justified by the need to simplify the procedure for charging VAT.
- (4) The authorisation expires on 31 December 2002, although the legal situation and the facts which justified application of the simplification measure in question have not changed.
- (5) The duration of the authorisation should therefore be limited to 31 December 2003. This maximum period will allow the derogation to be evaluated in the light of the ruling on Case C-17/01, which the Court will probably deliver in the course of 2003.
- (6) The derogation will not adversely affect the Communities' own resources from VAT,

⁴ OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2002/92/EC (OJ L 331, 7.12.2002, p. 27).

⁵ OJ C , , p. .

⁶ OJ L 59, 4.3.2000, p. 12.

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 17(2) of Directive 77/388/EEC, as amended by Article 28f of that Directive, the Federal Republic of Germany is authorised up to 31 December 2003 to exclude expenditure on goods and services from the right to deduct VAT when over 90% of the goods and services are used for the private purposes of a taxable person or of his employees, or, more generally, for non-business purposes.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels,

*For the Council
The President*