

COUNCIL DECISION

of 23 November 1992

authorizing the Federal Republic of Germany to apply a measure derogating from Article 2 (1), read in conjunction with Article 13 B (d) (1) and (2), of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(92/543/EEC)

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 the Eighteenth Directive 89/465/EEC⁽²⁾ repeals, as from 1 January 1991, the transitional derogation provided for in Article 28 (3) (b) of Directive 77/388/EEC, read in conjunction with point 13 of Annex F thereto, which allowed Member States to continue to exempt the management of credit and credit guarantees by a person or a body other than the one which granted the credits ;

Whereas, pursuant to 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 ;

Whereas the Federal Republic of Germany, by letter received by the Commission on 19 December 1990, requested authorization to retain the tax exemption for the management of credit and credits guarantees by a person or a body other than the one which granted the credit ; whereas this measure constitutes a derogation from Article 2 (1), read in conjunction with Article 13 B (d) (1) and (2), of Directive 77/388/EEC, according to which such services effected for consideration within the territory of a country by a taxable person acting as such shall be subject to value added tax ;

Whereas the other Member States were informed of the Federal Republic of Germany's request on 18 January 1991 ;

Whereas arrangements for taxing such services would pose considerable technical difficulties in the Federal Republic of Germany as regards establishment by the

undertakings concerned of the taxable transactions and the deductible amounts of input tax relating to them and as regards control by the tax administration ;

Whereas the authorization requested may be granted under certain conditions ;

Whereas the derogation is to be temporary, in order to allow an assessment of the effects of the authorization granted by this Decision after a certain period of application ; whereas, before expiration of this authorization, the Federal Republic of Germany shall endeavour to overcome the practical difficulties necessitating this derogation ;

Whereas this derogation will effect the Community's own resources accruing from value added tax only to a negligible extent,

HAS ADOPTED THIS DECISION :

Article 1

By way of derogation from Article 2 (1), read in conjunction with Article 13 B (d) (1) and (2), of Directive 77/388/EEC, the Federal Republic of Germany is hereby authorized, until 31 December 1995, to exempt the supply of services in respect of the management of credit and credit guarantees by a person or a body other than the one which granted the credits.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 23 November 1992.

*For the Council**The President*

N. LAMONT

(1) OJ No L 145, 13. 6. 1977, p. 1, as last amended by Directive 91/680/EEC (OJ No L 376, 31. 12. 1991, p. 1).

(2) OJ No L 226, 3. 8. 1989, p. 21.