

COUNCIL DECISION

of 23 November 1992

authorizing the Kingdom of the Netherlands to apply a measure derogating from Article 21 of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(92/545/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, pursuant to Article 27 (1) of the said 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 the Kingdom of the Netherlands, by letter received by the Commission on 11 February 1992, requested authorization to introduce in the ready-to-wear clothing industry a special measure for derogation from Article 21 (1) (a) of the Sixth Directive ;

Whereas the purpose of the measure is to combat fraud occurring in the relationship between ready-to-wear clothing firms working for large stores on the one hand, and small workshops (subcontractors) to which those firms have put the work out on the other ; whereas this type of fraud, which consists in the subcontractor invoicing VAT to the contractor but not paying it over to the tax authorities, while the contractor deducts the tax, is difficult to combat under the present system of collecting VAT ;

Whereas the scheme planned by the Kingdom of the Netherlands involves, in the ready-to-wear clothing industry, collecting from the contractor the VAT normally due from the subcontractor under Article 21 of Directive 77/388/EEC ;

Whereas the derogation will not have a negative effect on the Community's own resources accruing from value-added tax ;

Whereas the scheme will be temporary, which will permit an assessment of the effects of the derogation after a period of application ;

Whereas the Commission will present a report to the Council before 31 December 1996 on the application of this authorization, accompanied, where appropriate, by a proposal for a Decision to extend the said authorization ;

Whereas the other Member States were informed of the request of the Kingdom of the Netherlands on 10 March 1992,

HAS ADOPTED THIS DECISION :

Article 1

By way of derogation from Article 21 (1) (a) of Directive 77/388/EEC, the Kingdom of the Netherlands is hereby authorized to apply until 31 December 1996 in the ready-to-wear clothing industry a scheme for shifting the obligation to pay over VAT to the tax authorities from the subcontractor to the clothing firm (the contractor).

Article 2

In the light of a report from the Commission on the application of the authorization referred to in Article 1, accompanied, where appropriate, by a proposal for a Decision, the Council, acting on the basis of that proposal, shall decide, by 31 December 1996, whether the said authorization is to be extended.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

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).