

COUNCIL DECISION

of 21 December 1989

authorizing the French Republic to apply a measure derogating from Article 2 of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(89/683/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⁾, as last amended by Directive 89/465/EEC ⁽²⁾, 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 the Eighteenth Council Directive 89/465/EEC repeals, as from 1 January 1990, the transitional derogation provided for in Article 28 (3) (b) of the Sixth Directive 77/388/EEC, read in conjunction with point 20 of Annex F thereto, which permits Member States to continue to exempt supplies of recuperable material and fresh industrial waste; whereas the arrangements for taxing such supplies pose problems in France because some waste recovery operators have been accustomed in the past to issuing false invoices designed to transfer an entitlement to tax deduction with the taxes invoiced not being repaid to the Treasury; whereas, by registered letter to the Commission dated 29 September 1989, the French Republic requested authorization to introduce a special measure derogating from Article 2 of the Sixth Directive 77/388/EEC;

Whereas that special measure consists of:

- exempting transactions carried out by taxable persons whose annual turnover in respect of such products is below a given amount and restricting taxation to transactions carried out by firms which, by their very

structure, show themselves to be reliable and of good repute in tax matters; whereas the authorities are to check these conditions under an authorization procedure which may involve the provision of a guarantee,

- suspending payment of the tax relating to non-exempt supplies of fresh industrial waste and recuperable material where these consist of non-ferrous metals and their alloys, such supplies, however, being considered taxable transactions, for the application of deductions,
- exempting imports;

Whereas this measure constitutes a derogation from Articles 2 and 10 (2) of the Sixth Directive 77/388/EEC, according to which:

- all supplies of goods effected for consideration within the territory of a country by a taxable person acting as such and all imports of goods are subject to value added tax,
- the chargeable event shall occur and the tax shall become chargeable when the goods are delivered;

Whereas the request for authorization can be accepted under certain conditions;

Whereas the derogation will be temporary, in accordance with the request for authorization made by the Republic of France, which will permit an assessment of the effects of the authorization granted by this Decision after a certain period of application;

Whereas the Commission will submit a report to the Council, before 1 January 1993, on the application of this authorization, accompanied, where appropriate, by a proposal for a Decision to extend the said authorization; whereas the Council will decide before that date on the extension of the authorization;

Whereas this derogation will not have a negative effect on the European Communities' own resources accruing from value added tax;

Whereas the other Member States were informed of the French Republic's request on 27 October 1989,

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽²⁾ OJ No L 226, 3. 8. 1989, p. 21.

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 2 of the Sixth Directive 77/388/EEC, the French Republic is hereby authorized, until 31 December 1992 and in respect of fresh industrial waste and recuperable material, to exempt from value added tax (hereinafter referred to as 'VAT'):

- on the one hand, supplies made by:
 - undertakings whose annual turnover is less than FF 500 000,
 - undertakings which do not have a permanent establishment or which, although they have a permanent establishment, have achieved in the previous year a turnover figure in respect of such products of less than FF 6 million, unless they are authorized to subject such transactions to VAT,
- on the other hand, imports.

Article 2

By way of derogation from Article 10 (2) of the Sixth Directive 77/388/EEC, the French Republic is hereby authorized to introduce in respect of supplies to taxable persons of fresh industrial waste and recuperable material in the form of non-ferrous metals and their alloys, where these supplies are not exempt from VAT on the basis of Article 1,

arrangements suspending payment of the tax relating to these transactions.

The taxable persons receiving these supplies shall pay the tax on them where these products are intended neither for the export as such nor for the manufacture or resale as such of products liable to VAT.

Article 3

In the light of a report from the Commission on the application of the authorization referred to in Articles 1 and 2, accompanied, where appropriate, by a proposal for a Decision extending the said authorization, the Council, acting on the basis of that proposal, shall decide, before 1 January 1993, whether the said authorization is to be extended.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 21 December 1989.

For the Council
The President
E. CRESSON