ACTS WHOSE PUBLICATION IS NOT OBLIGATORY

COUNCIL IMPLEMENTING DECISION

of 22 December 2009

authorising the Republic of Austria to continue to apply a measure derogating from Article 168 of Directive 2006/112/EC on the common system of value added tax

(2009/1013/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2006/112/EC [1], and in particular Article 395(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) By letter registered with the Secretariat-General of the Commission on 2 June 2009, the Republic of Austria (hereinafter Austria) requested an authorisation to continue to apply a measure derogating from the provisions of Directive 2006/112/EC governing the right of deduction and previously granted by Decision 2004/866/EC [2] under the then applicable Sixth Directive 77/388/EC 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 [3].

(2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Austria in a letter dated 10 September 2009. By a letter dated 21 September 2009, the Commission notified Austria that it had all the information that it deemed necessary to consider the request.

(3) With a view to simplifying the levying of value added tax (VAT), the derogating measure is intended to exclude completely from the right of deduction VAT borne on goods and services when those goods and services are used for more than 90 % for the private purposes of the taxable person or of his employees, or for non-business purposes in general.

(4) The measure derogates from Article 168 of Directive 2006/112/EC establishing the general principle of the right of deduction and is intended to simplify the procedure for charging VAT. The amount of tax due at the final consumption is only affected to a negligible extent.

(5) The legal and factual situation which justified the current application of the simplification measure in question has not changed, and continues to exist. Austria should therefore be authorised to apply the simplification measure during a further period, but limited in time in order to allow an evaluation of the measure.

(6) The derogation will not adversely affect the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 168 of Directive 2006/112/EC, Austria is authorised to exclude VAT borne on goods and services from the right to deduct when the goods and services in question are used more than 90 % for the private purposes of a taxable person or of his employees, or, more generally, for non-business purposes.

Article 2

This Decision shall apply from 1 January 2010 until 31 December 2012.

Article 3

This Decision is addressed to the Republic of Austria.

Done at Brussels, 22 December 2009.

For the Council
The President
A. CARLGREN

[1] OJ L 347, 11.12.2006, p. 1.
[2] OJ L 371, 18.12.2004, p. 47.
[3] OJ L 145, 13.6.1977, p. 1.