

# COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 28 July 1993

Proposals for  
COUNCIL DECISIONS

authorizing the Kingdom of Belgium, the Kingdom of Denmark, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, and the United Kingdom to apply a measure derogating from Articles 2(1) and 17 of the Sixth Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes

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(presented by the Commission)

**COMMISSION OF THE EUROPEAN COMMUNITIES****Proposal for a  
COUNCIL DECISION****AUTHORIZING THE KINGDOM OF BELGIUM TO APPLY A  
MEASURE DEROGATING FROM ARTICLES 2(1) AND 17 OF THE SIXTH  
DIRECTIVE (77/388/EEC) ON THE HARMONIZATION OF THE LAWS OF  
THE MEMBER STATES RELATING TO TURNOVER TAXES**

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EXPLANATORY MEMORANDUM

The present proposal for a Council Decision authorizes the Kingdom of Belgium to introduce a special measure in accordance with Article 27 of the Sixth VAT Directive 77/388/EEC of 17 May 1977 on the common system of value added tax<sup>1</sup>, as last amended by Council Directive 92/111/EEC of 14 December 1992<sup>2</sup>.

With the completion of the Single Market, the arrangements for the taxation of services supplied within the European Community have been modified. The exemptions related to the exportation of goods and to the placing of certain goods under a customs procedure have been discontinued, as have the arrangements for including the value of services in the taxable amount in the case of imported goods.

Under these circumstances, the territoriality principle as applied to a number of services, with these services being taxed in the place where they are physically carried out, has the effect of obliging taxable persons who are not established within the Member State of performance of the services to pay VAT in the Member State where the services are carried out, and subsequently to apply for refund under the Eighth<sup>3</sup> or Thirteenth<sup>4</sup> Directives. This concerns above all services supplied in respect of work on movable tangible property and the supply of transport services which are of a purely domestic nature but which are directly linked to intra-Community goods transport services (the national leg of an intra-Community movement of goods).

The resulting proliferation of cases in which a refund is applied for under the Eighth and Thirteenth Directives is hindering the freedom to supply services within the Single Market.

Moreover, prior systematic vetting of applications, coupled with an increase in the number of cases, could well cause delay of VAT refunds under the Eighth and Thirteenth Directives.

It is, therefore, most important in this context to consider measures which can rapidly simplify matters for traders but which will not undermine the principles of taxation associated with the Single Market.

To that end, the Kingdom of Belgium has submitted a request for authorization on the basis of Article 27 of the Sixth VAT Directive, to introduce special measures derogating from Article 2(1) and 17. The purpose of such measures would be to exempt the services rendered in the third and fourth indents of Article 9(2)(c) and the supply of domestic goods transport services directly linked to intra-Community goods

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<sup>1</sup> OJ No. L 145/1, 13.6.1977  
<sup>2</sup> OJ No. L 384/47, 30.12.1992  
<sup>3</sup> Council Directive 79/1072/EEC OJ No. L 331 of 27.12.1979, p. 11  
<sup>4</sup> Council Directive 86/560/EEC OJ No. L 326 of 21.11.1986, p. 40

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transport services, provided that those services are supplied to taxable persons not established within the Member State of performance of the services and who in any case qualify for a refund of VAT on those services by means of the procedures laid down in the Eighth and Thirteenth Directives. Given this proviso, such a derogation would in no way affect the amount of tax payable at the final consumption stage.

In order to qualify for the exemption, a person to whom these services are supplied, but who is not established in the Member State of performance of the services, would have to establish his status as a taxable person in the manner laid down in the Eighth and Thirteenth Directives, and would, in addition, have to undertake to repay the VAT payable on any supply of services which might have been exempted in error. It would also be necessary for the supplier who is liable to pay tax within the territory of the country to state the actual grounds for exemption on the invoice and the number by which his customer is identified for VAT purposes within the Community.

However, given that the possibility of using customs procedures remains for work carried out on movable tangible property temporarily imported into the Community from third countries, the scope of the present derogation does not extend to cover supplies of such services when supplied to persons not established within the Community.

As a result of this derogation, the growth of intra-Community activity in the service sectors concerned would not be hindered by the tax charges resulting from difficulties in applying refund procedures, and sufficient time would be given to consider other more permanent solutions.

The Commission notes that the special measure proposed shall not alter the fundamental principles of the Sixth VAT Directive, in particular concerning the place of supply, but simplifies the arrangements for refunding the tax which would in any case be refundable under the Eighth and Thirteenth Directives. Consequently, the derogation in question does not have a negative effect on the own resources of the European Communities accruing from VAT.

The Commission is convinced that the measure in question is intended to simplify the procedures for charging the tax. The Commission, therefore, considers it appropriate for the Kingdom of Belgium to be authorized to apply the planned special measure, but that such an authorization should be limited in time, for a duration lasting until 31 December 1995.

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**COUNCIL DECISION**

of .....

**authorizing the Kingdom of Belgium to apply a measure derogating from  
Article 2(1) and Article 17 of the sixth Directive (77/388/EEC)  
on the harmonization of the laws of the Member States  
relating to turnover taxes**

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, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under 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, by letter dated 2 June 1993 and received by the Commission on 30 June 1993, the Kingdom of Belgium requested authorization to introduce a measure for derogation from Article 17 of Directive 77/388/EEC;

Whereas the other Member States were informed on 14 July 1993 of the request made by the Kingdom of Belgium;

Whereas implementation of the transitional VAT arrangements leads to VAT being charged on certain work on movable tangible property and certain services relating to the transport of goods at the place where these services are supplied, irrespective of the place where the taxable person to whom these services are supplied is able to exercise his rights of deduction, and whereas this results in growing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC;

Whereas the increasing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC may impede the development of intra-Community trade in certain services;

Whereas the measure for derogation in question aims to introduce a simplification consisting in the exemption of certain services supplied to taxable persons not established in the territory of the country but identified in the Community, for which these taxable persons would in any event be entitled to a refund;

Whereas certain requirements should be imposed on taxable persons with a view to preventing tax evasion or avoidance;

Whereas it is desirable for this derogation to be limited to the time necessary to enable the Council, acting on a proposal from the Commission, to adopt a definitive solution;

Whereas the measure for derogation in question has no effect on the European Communities' own resources accruing from value added tax,

**HAS ADOPTED THIS DECISION:**

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#### Article 1

By way of derogation from Article 2(1) of Directive 77/388/EEC, the Kingdom of Belgium is hereby authorized to exempt the supply of services referred to in Article 3(1) and (2) rendered to taxable persons identified in a Member State other than Belgium in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 79/1072/EEC if these services had been taxed.

#### Article 2

By way of derogation from Article 2(1) of Directive 77/388/EEC, the Kingdom of Belgium is hereby authorized to exempt the supply of services referred to in Article 3(2) and rendered to taxable persons identified in a Member State other than Belgium in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 86/560/EEC if these services had been taxed.

#### Article 3

In the circumstances provided for in Articles 1 and 2, the Kingdom of Belgium is authorized to exempt:

1. the supply of services referred to in the third and fourth indents of Article 9(2)(c) of Directive 77/388/EEC;
2. the transport services located in the territory of the country, directly linked to the intra-Community transport of goods as defined in Article 28b(1) of Directive 77/388/EEC.

#### Article 4

By way of derogation from Article 17 of Directive 77/388/EEC, the services referred to in Article 3 and supplied in the circumstances laid down in Articles 1 and 2 shall be eligible for deduction of input tax.

#### Article 5

In order to be eligible for exemption from tax in accordance with Articles 1 and 2, a taxable person shall in particular:

1. In the case of the supplies of services referred to in Article 3(1):
  - be in possession of a certificate establishing that the person to whom the services have been supplied is a taxable person and issued in the form laid down by Directives 79/1072/EEC and 86/560/EEC;
  - be in possession of a declaration in which the person to whom the services have been supplied acknowledges that he is jointly and

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severally liable for payment of the tax due on any operation which may have been exempted in error and undertakes to repay this tax to the supplier of the service;

- mention, on his invoice, the grounds for exemption and the identification number of the person to whom the services have been supplied.

2. In the case of the supplies of services referred to in Article 3(2):

- satisfy the requirements referred to in point 1;
- provide proof that the transport service is directly linked to an intra-Community transport within the meaning of Article 28bC(1) of Directive 77/388/EEC.

#### Article 6

The Kingdom of Belgium is hereby authorized to apply this simplification measure until 31 December 1995.

#### Article 7

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels

For the Council  
The President



**COMMISSION OF THE EUROPEAN COMMUNITIES****Proposal for a  
COUNCIL DECISION****AUTHORIZING THE KINGDOM OF DENMARK TO APPLY A  
MEASURE DEROGATING FROM ARTICLES 2(1) AND 17 OF THE SIXTH  
DIRECTIVE (77/388/EEC) ON THE HARMONIZATION OF THE LAWS OF  
THE MEMBER STATES RELATING TO TURNOVER TAXES**

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EXPLANATORY MEMORANDUM

The present proposal for a Council Decision authorizes the Kingdom of Denmark to introduce a special measure in accordance with Article 27 of the Sixth VAT Directive 77/388/EEC of 17 May 1977 on the common system of value added tax<sup>1</sup>, as last amended by Council Directive 92/111/EEC of 14 December 1992<sup>2</sup>.

With the completion of the Single Market, the arrangements for the taxation of services supplied within the European Community have been modified. The exemptions related to the exportation of goods and to the placing of certain goods under a customs procedure have been discontinued, as have the arrangements for including the value of services in the taxable amount in the case of imported goods.

Under these circumstances, the territoriality principle as applied to a number of services, with these services being taxed in the place where they are physically carried out, has the effect of obliging taxable persons who are not established within the Member State of performance of the services to pay VAT in the Member State where the services<sup>3</sup> are carried out, and subsequently to apply for refund under the Eighth<sup>3</sup> or Thirteenth<sup>4</sup> Directives. This concerns above all services supplied in respect of work on movable tangible property and the supply of transport services which are of a purely domestic nature but which are directly linked to intra-Community goods transport services (the national leg of an intra-Community movement of goods).

The resulting proliferation of cases in which a refund is applied for under the Eighth and Thirteenth Directives is hindering the freedom to supply services within the Single Market.

Moreover, prior systematic vetting of applications, coupled with an increase in the number of cases, could well cause delay of VAT refunds under the Eighth and Thirteenth Directives.

It is, therefore, most important in this context to consider measures which can rapidly simplify matters for traders but which will not undermine the principles of taxation associated with the Single Market.

To that end, the Kingdom of Denmark has submitted a request for authorization on the basis of Article 27 of the Sixth VAT Directive, to introduce special measures derogating from Article 2(1) and 17. The purpose of such measures would be to exempt the services rendered in the third and fourth indents of Article 9(2)(c) and the supply of domestic

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<sup>1</sup> OJ No. L 145/1, 13.6.1977  
<sup>2</sup> OJ No. L 384/47, 30.12.1992  
<sup>3</sup> Council Directive 79/1072/EEC OJ No. L 331 of 27.12.1979, p. 11  
<sup>4</sup> Council Directive 86/560/EEC OJ No. L 326 of 21.11.1986, p. 40

goods transport services directly linked to intra-Community goods transport services, provided that those services are supplied to taxable persons not established within the Member State of performance of the services and who in any case qualify for a refund of VAT on those services by means of the procedures laid down in the Eighth and Thirteenth Directives. Given this proviso, such a derogation would in no way affect the amount of tax payable at the final consumption stage.

In order to qualify for the exemption, a person to whom these services are supplied, but who is not established in the Member State of performance of the services, would have to establish his status as a taxable person in the manner laid down in the Eighth and Thirteenth Directives, and would, in addition, have to undertake to repay the VAT payable on any supply of services which might have been exempted in error. It would also be necessary for the supplier who is liable to pay tax within the territory of the country to state the actual grounds for exemption on the invoice and the number by which his customer is identified for VAT purposes within the Community.

However, given that the possibility of using customs procedures remains for work carried out on movable tangible property temporarily imported into the Community from third countries, the scope of the present derogation does not extend to cover supplies of such services when supplied to persons not established within the Community.

As a result of this derogation, the growth of intra-Community activity in the service sectors concerned would not be hindered by the tax charges resulting from difficulties in applying refund procedures, and sufficient time would be given to consider other more permanent solutions.

The Commission notes that the special measure proposed shall not alter the fundamental principles of the Sixth VAT Directive, in particular concerning the place of supply, but simplifies the arrangements for refunding the tax which would in any case be refundable under the Eighth and Thirteenth Directives. Consequently, the derogation in question does not have a negative effect on the own resources of the European Communities accruing from VAT.

The Commission is convinced that the measure in question is intended to simplify the procedures for charging the tax. The Commission, therefore, considers it appropriate for the Kingdom of Denmark to be authorized to apply the planned special measure, but that such an authorization should be limited in time, for a duration lasting until 31 December 1995.

**COUNCIL DECISION**

of .....

**authorizing the Kingdom of Denmark to apply a measure derogating from Article 2(1) and Article 17 of the sixth Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes**

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, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under 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, by letter dated 19 May 1993 and received by the Commission on 30 June 1993, the Kingdom of Denmark requested authorization to introduce a measure for derogation from Article 17 of Directive 77/388/EEC;

Whereas the other Member States were informed on 14 July 1993 of the request made by the Kingdom of Denmark;

Whereas implementation of the transitional VAT arrangements leads to VAT being charged on certain work on movable tangible property and certain services relating to the transport of goods at the place where these services are supplied, irrespective of the place where the taxable person to whom these services are supplied is able to exercise his rights of deduction, and whereas this results in growing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC;

Whereas the increasing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC may impede the development of intra-Community trade in certain services;

Whereas the measure for derogation in question aims to introduce a simplification consisting in the exemption of certain services supplied to taxable persons not established in the territory of the country but identified in the Community, for which these taxable persons would in any event be entitled to a refund;

Whereas certain requirements should be imposed on taxable persons with a view to preventing tax evasion or avoidance;

Whereas it is desirable for this derogation to be limited to the time necessary to enable the Council, acting on a proposal from the Commission, to adopt a definitive solution;

Whereas the measure for derogation in question has no effect on the European Communities' own resources accruing from value added tax,

**HAS ADOPTED THIS DECISION:**

#### Article 1

By way of derogation from Article 2(1) of Directive 77/388/EEC, the Kingdom of Denmark is hereby authorized to exempt the supply of services referred to in Article 3(1) and (2) rendered to taxable persons identified in a Member State other than Denmark in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 79/1072/EEC if these services had been taxed.

#### Article 2

By way of derogation from Article 2(1) of Directive 77/388/EEC, the Kingdom of Denmark is hereby authorized to exempt the supply of services referred to in Article 3(2) and rendered to taxable persons identified in a Member State other than Denmark in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 86/560/EEC if these services had been taxed.

#### Article 3

In the circumstances provided for in Articles 1 and 2, the Kingdom of Denmark is authorized to exempt:

1. the supply of services referred to in the third and fourth indents of Article 9(2)(c) of Directive 77/388/EEC;
2. the transport services located in the territory of the country, directly linked to the intra-Community transport of goods as defined in Article 28bC(1) of Directive 77/388/EEC.

#### Article 4

By way of derogation from Article 17 of Directive 77/388/EEC, the services referred to in Article 3 and supplied in the circumstances laid down in Articles 1 and 2 shall be eligible for deduction of input tax.

#### Article 5

In order to be eligible for exemption from tax in accordance with Articles 1 and 2, a taxable person shall in particular:

1. In the case of the supplies of services referred to in Article 3(1):
  - be in possession of a certificate establishing that the person to whom the services have been supplied is a taxable person and issued in the form laid down by Directives 79/1072/EEC and 86/560/EEC;
  - be in possession of a declaration in which the person to whom the services have been supplied acknowledges that he is jointly and

severally liable for payment of the tax due on any operation which may have been exempted in error and undertakes to repay this tax to the supplier of the service;

- mention, on his invoice, the grounds for exemption and the identification number of the person to whom the services have been supplied.

2. In the case of the supplies of services referred to in Article 3(2):

- satisfy the requirements referred to in point 1;
- provide proof that the transport service is directly linked to an intra-Community transport within the meaning of Article 28bC(1) of Directive 77/388/EEC.

#### Article 6

The Kingdom of Denmark is hereby authorized to apply this simplification measure until 31 December 1995.

#### Article 7

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels

For the Council  
The President

**COMMISSION OF THE EUROPEAN COMMUNITIES****Proposal for a****COUNCIL DECISION****AUTHORIZING IRELAND TO APPLY A MEASURE  
DEROGATING FROM ARTICLES 2(1) AND 17 OF THE SIXTH  
DIRECTIVE (77/388/EEC) ON THE HARMONIZATION OF THE LAWS OF  
THE MEMBER STATES RELATING TO TURNOVER TAXES**  

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## EXPLANATORY MEMORANDUM

The present proposal for a Council Decision authorizes Ireland to introduce a special measure in accordance with Article 27 of the Sixth VAT Directive 77/388/EEC of 17 May 1977 on the common system of value added tax<sup>1</sup>, as last amended by Council Directive 92/111/EEC of 14 December 1992<sup>2</sup>.

With the completion of the Single Market, the arrangements for the taxation of services supplied within the European Community have been modified. The exemptions related to the exportation of goods and to the placing of certain goods under a customs procedure have been discontinued, as have the arrangements for including the value of services in the taxable amount in the case of imported goods.

Under these circumstances, the territoriality principle as applied to a number of services, with these services being taxed in the place where they are physically carried out, has the effect of obliging taxable persons who are not established within the Member State of performance of the services to pay VAT in the Member State where the services<sup>3</sup> are carried out, and subsequently to apply for refund under the Eighth<sup>3</sup> or Thirteenth<sup>4</sup> Directives. This concerns above all services supplied in respect of work on movable tangible property and the supply of transport services which are of a purely domestic nature but which are directly linked to intra-Community goods transport services (the national leg of an intra-Community movement of goods).

The resulting proliferation of cases in which a refund is applied for under the Eighth and Thirteenth Directives is hindering the freedom to supply services within the Single Market.

Moreover, prior systematic vetting of applications, coupled with an increase in the number of cases, could well cause delay of VAT refunds under the Eighth and Thirteenth Directives.

It is, therefore, most important in this context to consider measures which can rapidly simplify matters for traders but which will not undermine the principles of taxation associated with the Single Market.

To that end, Ireland has submitted a request for authorization on the basis of Article 27 of the Sixth VAT Directive, to introduce special measures derogating from Article 2(1) and 17. The purpose of such measures would be to exempt the services rendered in the third and fourth indents of Article 9(2)(c) and the supply of domestic goods transport

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<sup>1</sup> OJ No. L 145/1, 13.6.1977

<sup>2</sup> OJ No. L 384/47, 30.12.1992

<sup>3</sup> Council Directive 79/1072/EEC OJ No. L 331 of 27.12.1979, p. 11

<sup>4</sup> Council Directive 86/560/EEC OJ No. L 326 of 21.11.1986, p. 40

services directly linked to intra-Community goods transport services, provided that those services are supplied to taxable persons not established within the Member State of performance of the services and who in any case qualify for a refund of VAT on those services by means of the procedures laid down in the Eighth and Thirteenth Directives. Given this proviso, such a derogation would in no way affect the amount of tax payable at the final consumption stage.

In order to qualify for the exemption, a person to whom these services are supplied, but who is not established in the Member State of performance of the services, would have to establish his status as a taxable person in the manner laid down in the Eighth and Thirteenth Directives, and would, in addition, have to undertake to repay the VAT payable on any supply of services which might have been exempted in error. It would also be necessary for the supplier who is liable to pay tax within the territory of the country to state the actual grounds for exemption on the invoice and the number by which his customer is identified for VAT purposes within the Community.

However, given that the possibility of using customs procedures remains for work carried out on movable tangible property temporarily imported into the Community from third countries, the scope of the present derogation does not extend to cover supplies of such services when supplied to persons not established within the Community.

As a result of this derogation, the growth of intra-Community activity in the service sectors concerned would not be hindered by the tax charges resulting from difficulties in applying refund procedures, and sufficient time would be given to consider other more permanent solutions.

The Commission notes that the special measure proposed shall not alter the fundamental principles of the Sixth VAT Directive, in particular concerning the place of supply, but simplifies the arrangements for refunding the tax which would in any case be refundable under the Eighth and Thirteenth Directives. Consequently, the derogation in question does not have a negative effect on the own resources of the European Communities accruing from VAT.

The Commission is convinced that the measure in question is intended to simplify the procedures for charging the tax. The Commission, therefore, considers it appropriate for Ireland to be authorized to apply the planned special measure, but that such an authorization should be limited in time, for a duration lasting until 31 December 1995.

**COUNCIL DECISION**

of .....

**authorizing Ireland to apply a measure derogating from  
Article 2(1) and Article 17 of the sixth Directive (77/388/EEC)  
on the harmonization of the laws of the Member States  
relating to turnover taxes**

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, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under 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, by letter dated 11 May 1993 and received by the Commission on 30 June 1993, Ireland requested authorization to introduce a measure for derogation from Article 17 of Directive 77/388/EEC;

Whereas the other Member States were informed on 14 July 1993 of the request made by Ireland;

Whereas implementation of the transitional VAT arrangements leads to VAT being charged on certain work on movable tangible property and certain services relating to the transport of goods at the place where these services are supplied, irrespective of the place where the taxable person to whom these services are supplied is able to exercise his rights of deduction, and whereas this results in growing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC;

Whereas the increasing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC may impede the development of intra-Community trade in certain services;

Whereas the measure for derogation in question aims to introduce a simplification consisting in the exemption of certain services supplied to taxable persons not established in the territory of the country but identified in the Community, for which these taxable persons would in any event be entitled to a refund;

Whereas certain requirements should be imposed on taxable persons with a view to preventing tax evasion or avoidance;

Whereas it is desirable for this derogation to be limited to the time necessary to enable the Council, acting on a proposal from the Commission, to adopt a definitive solution;

Whereas the measure for derogation in question has no effect on the European Communities' own resources accruing from value added tax,

**HAS ADOPTED THIS DECISION:**

Article 1

By way of derogation from Article 2(1) of Directive 77/388/EEC, Ireland is hereby authorized to exempt the supply of services referred to in Article 3(1) and (2) rendered to taxable persons identified in a Member State other than Ireland in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 79/1072/EEC if these services had been taxed.

Article 2

By way of derogation from Article 2(1) of Directive 77/388/EEC, Ireland is hereby authorized to exempt the supply of services referred to in Article 3(2) and rendered to taxable persons identified in a Member State other than Ireland in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 86/560/EEC if these services had been taxed.

Article 3

In the circumstances provided for in Articles 1 and 2, Ireland is authorized to exempt:

1. the supply of services referred to in the third and fourth indents of Article 9(2)(c) of Directive 77/388/EEC;
2. the transport services located in the territory of the country, directly linked to the intra-Community transport of goods as defined in Article 28bC(1) of Directive 77/388/EEC.

Article 4

By way of derogation from Article 17 of Directive 77/388/EEC, the services referred to in Article 3 and supplied in the circumstances laid down in Articles 1 and 2 shall be eligible for deduction of input tax.

Article 5

In order to be eligible for exemption from tax in accordance with Articles 1 and 2, a taxable person shall in particular:

1. In the case of the supplies of services referred to in Article 3(1):
  - be in possession of a certificate establishing that the person to whom the services have been supplied is a taxable person and issued in the form laid down by Directives 79/1072/EEC and 86/560/EEC;
  - be in possession of a declaration in which the person to whom the services have been supplied acknowledges that he is jointly and severally liable for payment of the tax due on any operation which

may have been exempted in error and undertakes to repay this tax to the supplier of the service;

- mention, on his invoice, the grounds for exemption and the identification number of the person to whom the services have been supplied.

2. In the case of the supplies of services referred to in Article 3(2):

- satisfy the requirements referred to in point 1;
- provide proof that the transport service is directly linked to an intra-Community transport within the meaning of Article 28bC(1) of Directive 77/388/EEC.

Article 6

Ireland is hereby authorized to apply this simplification measure until 31 December 1995.

Article 7

This Decision is addressed to Ireland.

Done at Brussels

For the Council  
The President

**COMMISSION OF THE EUROPEAN COMMUNITIES****Proposal for a****COUNCIL DECISION****AUTHORIZING THE ITALIAN REPUBLIC TO APPLY A  
MEASURE DEROGATING FROM ARTICLES 2(1) AND 17 OF THE SIXTH  
DIRECTIVE (77/388/EEC) ON THE HARMONIZATION OF THE LAWS OF  
THE MEMBER STATES RELATING TO TURNOVER TAXES**  

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## EXPLANATORY MEMORANDUM

The present proposal for a Council Decision authorizes the Italian Republic to introduce a special measure in accordance with Article 27 of the Sixth VAT Directive 77/388/EEC of 17 May 1977 on the common system of value added tax<sup>1</sup>, as last amended by Council Directive 92/111/EEC of 14 December 1992<sup>2</sup>.

With the completion of the Single Market, the arrangements for the taxation of services supplied within the European Community have been modified. The exemptions related to the exportation of goods and to the placing of certain goods under a customs procedure have been discontinued, as have the arrangements for including the value of services in the taxable amount in the case of imported goods.

Under these circumstances, the territoriality principle as applied to a number of services, with these services being taxed in the place where they are physically carried out, has the effect of obliging taxable persons who are not established within the Member State of performance of the services to pay VAT in the Member State where the services<sup>3</sup> are carried out, and subsequently to apply for refund under the Eighth<sup>3</sup> or Thirteenth<sup>4</sup> Directives. This concerns above all services supplied in respect of work on movable tangible property and the supply of transport services which are of a purely domestic nature but which are directly linked to intra-Community goods transport services (the national leg of an intra-Community movement of goods).

The resulting proliferation of cases in which a refund is applied for under the Eighth and Thirteenth Directives is hindering the freedom to supply services within the Single Market.

Moreover, prior systematic vetting of applications, coupled with an increase in the number of cases, could well cause delay of VAT refunds under the Eighth and Thirteenth Directives.

It is, therefore, most important in this context to consider measures which can rapidly simplify matters for traders but which will not undermine the principles of taxation associated with the Single Market.

To that end, the Italian Republic has submitted a request for authorization on the basis of Article 27 of the Sixth VAT Directive, to introduce special measures derogating from Article 2(1) and 17. The purpose of such measures would be to exempt the services rendered in the third and fourth indents of Article 9(2)(c) and the supply of domestic

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<sup>1</sup> OJ No. L 145/1, 13.6.1977

<sup>2</sup> OJ No. L 384/47, 30.12.1992

<sup>3</sup> Council Directive 79/1072/EEC OJ No. L 331 of 27.12.1979, p. 11

<sup>4</sup> Council Directive 86/560/EEC OJ No. L 326 of 21.11.1986, p. 40



goods transport services directly linked to intra-Community goods transport services, provided that those services are supplied to taxable persons not established within the Member State of performance of the services and who in any case qualify for a refund of VAT on those services by means of the procedures laid down in the Eighth and Thirteenth Directives. Given this proviso, such a derogation would in no way affect the amount of tax payable at the final consumption stage.

In order to qualify for the exemption, a person to whom these services are supplied, but who is not established in the Member State of performance of the services, would have to establish his status as a taxable person in the manner laid down in the Eighth and Thirteenth Directives, and would, in addition, have to undertake to repay the VAT payable on any supply of services which might have been exempted in error. It would also be necessary for the supplier who is liable to pay tax within the territory of the country to state the actual grounds for exemption on the invoice and the number by which his customer is identified for VAT purposes within the Community.

However, given that the possibility of using customs procedures remains for work carried out on movable tangible property temporarily imported into the Community from third countries, the scope of the present derogation does not extend to cover supplies of such services when supplied to persons not established within the Community.

As a result of this derogation, the growth of intra-Community activity in the service sectors concerned would not be hindered by the tax charges resulting from difficulties in applying refund procedures, and sufficient time would be given to consider other more permanent solutions.

The Commission notes that the special measure proposed shall not alter the fundamental principles of the Sixth VAT Directive, in particular concerning the place of supply, but simplifies the arrangements for refunding the tax which would in any case be refundable under the Eighth and Thirteenth Directives. Consequently, the derogation in question does not have a negative effect on the own resources of the European Communities accruing from VAT.

The Commission is convinced that the measure in question is intended to simplify the procedures for charging the tax. The Commission, therefore, considers it appropriate for the Italian Republic to be authorized to apply the planned special measure, but that such an authorization should be limited in time, for a duration lasting until 31 December 1995.

**COUNCIL DECISION**

of .....

**authorizing the Italian Republic to apply a measure derogating from  
Article 2(1) and Article 17 of the sixth Directive (77/388/EEC)  
on the harmonization of the laws of the Member States  
relating to turnover taxes**

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, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under 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, by letter dated 22 May 1993 and received by the Commission on 30 June 1993, the Italian Republic requested authorization to introduce a measure for derogation from Article 17 of Directive 77/388/EEC;

Whereas the other Member States were informed on 14 July 1993 of the request made by the Italian Republic;

Whereas implementation of the transitional VAT arrangements leads to VAT being charged on certain work on movable tangible property and certain services relating to the transport of goods at the place where these services are supplied, irrespective of the place where the taxable person to whom these services are supplied is able to exercise his rights of deduction, and whereas this results in growing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC;

Whereas the increasing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC may impede the development of intra-Community trade in certain services;

Whereas the measure for derogation in question aims to introduce a simplification consisting in the exemption of certain services supplied to taxable persons not established in the territory of the country but identified in the Community, for which these taxable persons would in any event be entitled to a refund;

Whereas certain requirements should be imposed on taxable persons with a view to preventing tax evasion or avoidance;

Whereas it is desirable for this derogation to be limited to the time necessary to enable the Council, acting on a proposal from the Commission, to adopt a definitive solution;

Whereas the measure for derogation in question has no effect on the European Communities' own resources accruing from value added tax,

**HAS ADOPTED THIS DECISION:**

#### Article 1

By way of derogation from Article 2(1) of Directive 77/388/EEC, the Italian Republic is hereby authorized to exempt the supply of services referred to in Article 3(1) and (2) rendered to taxable persons identified in a Member State other than Italy in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 79/1072/EEC if these services had been taxed.

#### Article 2

By way of derogation from Article 2(1) of Directive 77/388/EEC, the Italian Republic is hereby authorized to exempt the supply of services referred to in Article 3(2) and rendered to taxable persons identified in a Member State other than Italy in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 86/560/EEC if these services had been taxed.

#### Article 3

In the circumstances provided for in Articles 1 and 2, the Italian Republic is authorized to exempt:

1. the supply of services referred to in the third and fourth indents of Article 9(2)(c) of Directive 77/388/EEC;
2. the transport services located in the territory of the country, directly linked to the intra-Community transport of goods as defined in Article 28bC(1) of Directive 77/388/EEC.

#### Article 4

By way of derogation from Article 17 of Directive 77/388/EEC, the services referred to in Article 3 and supplied in the circumstances laid down in Articles 1 and 2 shall be eligible for deduction of input tax.

#### Article 5

In order to be eligible for exemption from tax in accordance with Articles 1 and 2, a taxable person shall in particular:

1. In the case of the supplies of services referred to in Article 3(1):
  - be in possession of a certificate establishing that the person to whom the services have been supplied is a taxable person and issued in the form laid down by Directives 79/1072/EEC and 86/560/EEC;
  - be in possession of a declaration in which the person to whom the services have been supplied acknowledges that he is jointly and

severally liable for payment of the tax due on any operation which may have been exempted in error and undertakes to repay this tax to the supplier of the service;

- mention, on his invoice, the grounds for exemption and the identification number of the person to whom the services have been supplied.

2. In the case of the supplies of services referred to in Article 3(2):

- satisfy the requirements referred to in point 1;
- provide proof that the transport service is directly linked to an intra-Community transport within the meaning of Article 28bC(1) of Directive 77/388/EEC.

Article 6

The Italian Republic is hereby authorized to apply this simplification measure until 31 December 1995.

Article 7

This Decision is addressed to the Italian Republic.

Done at Brussels

For the Council  
The President

**COMMISSION OF THE EUROPEAN COMMUNITIES****Proposal for a****COUNCIL DECISION****AUTHORIZING THE GRAND DUCHY OF LUXEMBOURG TO APPLY A  
MEASURE DEROGATING FROM ARTICLES 2(1) AND 17 OF  
THE SIXTH DIRECTIVE (77/388/EEC) ON THE HARMONIZATION OF  
THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER  
TAXES**

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## EXPLANATORY MEMORANDUM

The present proposal for a Council Decision authorizes the Grand Duchy of Luxembourg to introduce a special measure in accordance with Article 27 of the Sixth VAT Directive 77/388/EEC of 17 May 1977 on the common system of value added tax<sup>1</sup>, as last amended by Council Directive 92/111/EEC of 14 December 1992<sup>2</sup>.

With the completion of the Single Market, the arrangements for the taxation of services supplied within the European Community have been modified. The exemptions related to the exportation of goods and to the placing of certain goods under a customs procedure have been discontinued, as have the arrangements for including the value of services in the taxable amount in the case of imported goods.

Under these circumstances, the territoriality principle as applied to a number of services, with these services being taxed in the place where they are physically carried out, has the effect of obliging taxable persons who are not established within the Member State of performance of the services to pay VAT in the Member State where the services are carried out, and subsequently to apply for refund under the Eighth<sup>3</sup> or Thirteenth<sup>4</sup> Directives. This concerns above all services supplied in respect of work on movable tangible property and the supply of transport services which are of a purely domestic nature but which are directly linked to intra-Community goods transport services (the national leg of an intra-Community movement of goods).

The resulting proliferation of cases in which a refund is applied for under the Eighth and Thirteenth Directives is hindering the freedom to supply services within the Single Market.

Moreover, prior systematic vetting of applications, coupled with an increase in the number of cases, could well cause delay of VAT refunds under the Eighth and Thirteenth Directives.

It is, therefore, most important in this context to consider measures which can rapidly simplify matters for traders but which will not undermine the principles of taxation associated with the Single Market.

To that end, the Grand Duchy of Luxembourg has submitted a request for authorization on the basis of Article 27 of the Sixth VAT Directive, to introduce special measures derogating from Article 2(1) and 17. The purpose of such measures would be to exempt the services rendered in the third and fourth indents of Article 9(2)(c) and the supply of domestic

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<sup>1</sup> OJ No. L 145/1, 13.6.1977

<sup>2</sup> OJ No. L 384/47, 30.12.1992

<sup>3</sup> Council Directive 79/1072/EEC OJ No. L 331 of 27.12.1979, p. 11

<sup>4</sup> Council Directive 86/560/EEC OJ No. L 326 of 21.11.1986, p. 40

goods transport services directly linked to intra-Community goods transport services, provided that those services are supplied to taxable persons not established within the Member State of performance of the services and who in any case qualify for a refund of VAT on those services by means of the procedures laid down in the Eighth and Thirteenth Directives. Given this proviso, such a derogation would in no way affect the amount of tax payable at the final consumption stage.

In order to qualify for the exemption, a person to whom these services are supplied, but who is not established in the Member State of performance of the services, would have to establish his status as a taxable person in the manner laid down in the Eighth and Thirteenth Directives, and would, in addition, have to undertake to repay the VAT payable on any supply of services which might have been exempted in error. It would also be necessary for the supplier who is liable to pay tax within the territory of the country to state the actual grounds for exemption on the invoice and the number by which his customer is identified for VAT purposes within the Community.

However, given that the possibility of using customs procedures remains for work carried out on movable tangible property temporarily imported into the Community from third countries, the scope of the present derogation does not extend to cover supplies of such services when supplied to persons not established within the Community.

As a result of this derogation, the growth of intra-Community activity in the service sectors concerned would not be hindered by the tax charges resulting from difficulties in applying refund procedures, and sufficient time would be given to consider other more permanent solutions.

The Commission notes that the special measure proposed shall not alter the fundamental principles of the Sixth VAT Directive, in particular concerning the place of supply, but simplifies the arrangements for refunding the tax which would in any case be refundable under the Eighth and Thirteenth Directives. Consequently, the derogation in question does not have a negative effect on the own resources of the European Communities accruing from VAT.

The Commission is convinced that the measure in question is intended to simplify the procedures for charging the tax. The Commission, therefore, considers it appropriate for the Grand Duchy of Luxembourg to be authorized to apply the planned special measure, but that such an authorization should be limited in time, for a duration lasting until 31 December 1995.



**COUNCIL DECISION**

**of .....**

**authorizing the Grand Duchy of Luxembourg to apply a measure derogating from**

**Article 2(1) and Article 17 of the sixth Directive (77/388/EEC)  
on the harmonization of the laws of the Member States  
relating to turnover taxes**

**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, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under 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, by letter dated 4 June 1993 and received by the Commission on 30 June 1993, the Grand Duchy of Luxembourg requested authorization to introduce a measure for derogation from Article 17 of Directive 77/388/EEC;

Whereas the other Member States were informed on 14 July 1993 of the request made by the Grand Duchy of Luxembourg;

Whereas implementation of the transitional VAT arrangements leads to VAT being charged on certain work on movable tangible property and certain services relating to the transport of goods at the place where these services are supplied, irrespective of the place where the taxable person to whom these services are supplied is able to exercise his rights of deduction, and whereas this results in growing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC;

Whereas the increasing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC may impede the development of intra-Community trade in certain services;

Whereas the measure for derogation in question aims to introduce a simplification consisting in the exemption of certain services supplied to taxable persons not established in the territory of the country but identified in the Community, for which these taxable persons would in any event be entitled to a refund;

Whereas certain requirements should be imposed on taxable persons with a view to preventing tax evasion or avoidance;

Whereas it is desirable for this derogation to be limited to the time necessary to enable the Council, acting on a proposal from the Commission, to adopt a definitive solution;

Whereas the measure for derogation in question has no effect on the European Communities' own resources accruing from value added tax,

**HAS ADOPTED THIS DECISION:**

#### Article 1

By way of derogation from Article 2(1) of Directive 77/388/EEC, the Grand Duchy of Luxembourg is hereby authorized to exempt the supply of services referred to in Article 3(1) and (2) rendered to taxable persons identified in a Member State other than Luxembourg in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 79/1072/EEC if these services had been taxed.

#### Article 2

By way of derogation from Article 2(1) of Directive 77/388/EEC, the Grand Duchy of Luxembourg is hereby authorized to exempt the supply of services referred to in Article 3(2) and rendered to taxable persons identified in a Member State other than Luxembourg in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 86/560/EEC if these services had been taxed.

#### Article 3

In the circumstances provided for in Articles 1 and 2, the Grand Duchy of Luxembourg is authorized to exempt:

1. the supply of services referred to in the third and fourth indents of Article 9(2)(c) of Directive 77/388/EEC;
2. the transport services located in the territory of the country, directly linked to the intra-Community transport of goods as defined in Article 28bC(1) of Directive 77/388/EEC.

#### Article 4

By way of derogation from Article 17 of Directive 77/388/EEC, the services referred to in Article 3 and supplied in the circumstances laid down in Articles 1 and 2 shall be eligible for deduction of input tax.

#### Article 5

In order to be eligible for exemption from tax in accordance with Articles 1 and 2, a taxable person shall in particular:

1. In the case of the supplies of services referred to in Article 3(1):
  - be in possession of a certificate establishing that the person to whom the services have been supplied is a taxable person and issued in the form laid down by Directives 79/1072/EEC and 86/560/EEC;
  - be in possession of a declaration in which the person to whom the services have been supplied acknowledges that he is jointly and

severally liable for payment of the tax due on any operation which may have been exempted in error and undertakes to repay this tax to the supplier of the service;

- mention, on his invoice, the grounds for exemption and the identification number of the person to whom the services have been supplied.

2. In the case of the supplies of services referred to in Article 3(2):

- satisfy the requirements referred to in point 1;
- provide proof that the transport service is directly linked to an intra-Community transport within the meaning of Article 28bC(1) of Directive 77/388/EEC.

#### Article 6

The Grand Duchy of Luxembourg is hereby authorized to apply this simplification measure until 31 December 1995.

#### Article 7

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels

For the Council  
The President

**COMMISSION OF THE EUROPEAN COMMUNITIES**

**Proposal for a**

**COUNCIL DECISION**

**AUTHORIZING THE KINGDOM OF THE NETHERLANDS TO APPLY A  
MEASURE DEROGATING FROM ARTICLES 2(1) AND 17 OF  
THE SIXTH DIRECTIVE (77/388/EEC) ON THE HARMONIZATION OF  
THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER  
TAXES**

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## EXPLANATORY MEMORANDUM

The present proposal for a Council Decision authorizes the Kingdom of the Netherlands to introduce a special measure in accordance with Article 27 of the Sixth VAT Directive 77/388/EEC of 17 May 1977 on the common system of value added tax<sup>1</sup>, as last amended by Council Directive 92/111/EEC of 14 December 1992<sup>2</sup>.

With the completion of the Single Market, the arrangements for the taxation of services supplied within the European Community have been modified. The exemptions related to the exportation of goods and to the placing of certain goods under a customs procedure have been discontinued, as have the arrangements for including the value of services in the taxable amount in the case of imported goods.

Under these circumstances, the territoriality principle as applied to a number of services, with these services being taxed in the place where they are physically carried out, has the effect of obliging taxable persons who are not established within the Member State of performance of the services to pay VAT in the Member State where the services are carried out, and subsequently to apply for refund under the Eighth<sup>3</sup> or Thirteenth<sup>4</sup> Directives. This concerns above all services supplied in respect of work on movable tangible property and the supply of transport services which are of a purely domestic nature but which are directly linked to intra-Community goods transport services (the national leg of an intra-Community movement of goods).

The resulting proliferation of cases in which a refund is applied for under the Eighth and Thirteenth Directives is hindering the freedom to supply services within the Single Market.

Moreover, prior systematic vetting of applications, coupled with an increase in the number of cases, could well cause delay of VAT refunds under the Eighth and Thirteenth Directives.

It is, therefore, most important in this context to consider measures which can rapidly simplify matters for traders but which will not undermine the principles of taxation associated with the Single Market.

To that end, the Kingdom of the Netherlands has submitted a request for authorization on the basis of Article 27 of the Sixth VAT Directive, to introduce special measures derogating from Article 2(1) and 17. The purpose of such measures would be to exempt the services rendered in the third and fourth indents of Article 9(2)(c) and the supply of domestic

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<sup>1</sup> OJ No. L 145/1, 13.6.1977

<sup>2</sup> OJ No. L 384/47, 30.12.1992

<sup>3</sup> Council Directive 79/1072/EEC OJ No. L 331 of 27.12.1979, p. 11

<sup>4</sup> Council Directive 86/560/EEC OJ No. L 326 of 21.11.1986, p. 40

goods transport services directly linked to intra-Community goods transport services, provided that those services are supplied to taxable persons not established within the Member State of performance of the services and who in any case qualify for a refund of VAT on those services by means of the procedures laid down in the Eighth and Thirteenth Directives. Given this proviso, such a derogation would in no way affect the amount of tax payable at the final consumption stage.

In order to qualify for the exemption, a person to whom these services are supplied, but who is not established in the Member State of performance of the services, would have to establish his status as a taxable person in the manner laid down in the Eighth and Thirteenth Directives, and would, in addition, have to undertake to repay the VAT payable on any supply of services which might have been exempted in error. It would also be necessary for the supplier who is liable to pay tax within the territory of the country to state the actual grounds for exemption on the invoice and the number by which his customer is identified for VAT purposes within the Community.

However, given that the possibility of using customs procedures remains for work carried out on movable tangible property temporarily imported into the Community from third countries, the scope of the present derogation does not extend to cover supplies of such services when supplied to persons not established within the Community.

As a result of this derogation, the growth of intra-Community activity in the service sectors concerned would not be hindered by the tax charges resulting from difficulties in applying refund procedures, and sufficient time would be given to consider other more permanent solutions.

The Commission notes that the special measure proposed shall not alter the fundamental principles of the Sixth VAT Directive, in particular concerning the place of supply, but simplifies the arrangements for refunding the tax which would in any case be refundable under the Eighth and Thirteenth Directives. Consequently, the derogation in question does not have a negative effect on the own resources of the European Communities accruing from VAT.

The Commission is convinced that the measure in question is intended to simplify the procedures for charging the tax. The Commission, therefore, considers it appropriate for the Kingdom of the Netherlands to be authorized to apply the planned special measure, but that such an authorization should be limited in time, for a duration lasting until 31 December 1995.

**COUNCIL DECISION**

of .....

authorizing the Kingdom of the Netherlands to apply a measure derogating from Article 2(1) and Article 17 of the sixth Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes

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, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under 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, by letter dated 8 June 1993 and received by the Commission on 30 June 1993, the Kingdom of the Netherlands requested authorization to introduce a measure for derogation from Article 17 of Directive 77/388/EEC;

Whereas the other Member States were informed on 14 July 1993 of the request made by the Kingdom of the Netherlands;

Whereas implementation of the transitional VAT arrangements leads to VAT being charged on certain work on movable tangible property and certain services relating to the transport of goods at the place where these services are supplied, irrespective of the place where the taxable person to whom these services are supplied is able to exercise his rights of deduction, and whereas this results in growing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC;

Whereas the increasing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC may impede the development of intra-Community trade in certain services;



Whereas the measure for derogation in question aims to introduce a simplification consisting in the exemption of certain services supplied to taxable persons not established in the territory of the country but identified in the Community, for which these taxable persons would in any event be entitled to a refund;

Whereas certain requirements should be imposed on taxable persons with a view to preventing tax evasion or avoidance;

Whereas it is desirable for this derogation to be limited to the time necessary to enable the Council, acting on a proposal from the Commission, to adopt a definitive solution;

Whereas the measure for derogation in question has no effect on the European Communities' own resources accruing from value added tax,

**HAS ADOPTED THIS DECISION:**

Article 1

By way of derogation from Article 2(1) of Directive 77/388/EEC, the Kingdom of the Netherlands is hereby authorized to exempt the supply of services referred to in Article 3(1) and (2) rendered to taxable persons identified in a Member State other than the Netherlands in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 79/1072/EEC if these services had been taxed.

Article 2

By way of derogation from Article 2(1) of Directive 77/388/EEC, the Kingdom of the Netherlands is hereby authorized to exempt the supply of services referred to in Article 3(2) and rendered to taxable persons identified in a Member State other than the Netherlands in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 86/560/EEC if these services had been taxed.

Article 3

In the circumstances provided for in Articles 1 and 2, the Kingdom of the Netherlands is authorized to exempt:

1. the supply of services referred to in the third and fourth indents of Article 9(2)(c) of Directive 77/388/EEC;
2. the transport services located in the territory of the country, directly linked to the intra-Community transport of goods as defined in Article 28bC(1) of Directive 77/388/EEC.

Article 4

By way of derogation from Article 17 of Directive 77/388/EEC, the services referred to in Article 3 and supplied in the circumstances laid down in Articles 1 and 2 shall be eligible for deduction of input tax.

Article 5

In order to be eligible for exemption from tax in accordance with Articles 1 and 2, a taxable person shall in particular:

1. In the case of the supplies of services referred to in Article 3(1):
  - be in possession of a certificate establishing that the person to whom the services have been supplied is a taxable person and issued in the form laid down by Directives 79/1072/EEC and 86/560/EEC;
  - be in possession of a declaration in which the person to whom the services have been supplied acknowledges that he is jointly and

severally liable for payment of the tax due on any operation which may have been exempted in error and undertakes to repay this tax to the supplier of the service;

- mention, on his invoice, the grounds for exemption and the identification number of the person to whom the services have been supplied.

2. In the case of the supplies of services referred to in Article 3(2):

- satisfy the requirements referred to in point 1;
- provide proof that the transport service is directly linked to an intra-Community transport within the meaning of Article 28bC(1) of Directive 77/388/EEC.

#### Article 6

The Kingdom of the Netherlands is hereby authorized to apply this simplification measure until 31 December 1995.

#### Article 7

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels

For the Council  
The President

**COMMISSION OF THE EUROPEAN COMMUNITIES****Proposal for a  
COUNCIL DECISION****AUTHORIZING THE UNITED KINGDOM TO APPLY A  
MEASURE DEROGATING FROM ARTICLES 2(1) AND 17 OF THE SIXTH  
DIRECTIVE (77/388/EEC) ON THE HARMONIZATION OF THE LAWS OF  
THE MEMBER STATES RELATING TO TURNOVER TAXES**

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## EXPLANATORY MEMORANDUM

The present proposal for a Council Decision authorizes the United Kingdom to introduce a special measure in accordance with Article 27 of the Sixth VAT Directive 77/388/EEC of 17 May 1977 on the common system of value added tax<sup>1</sup>, as last amended by Council Directive 92/111/EEC of 14 December 1992<sup>2</sup>.

With the completion of the Single Market, the arrangements for the taxation of services supplied within the European Community have been modified. The exemptions related to the exportation of goods and to the placing of certain goods under a customs procedure have been discontinued, as have the arrangements for including the value of services in the taxable amount in the case of imported goods.

Under these circumstances, the territoriality principle as applied to a number of services, with these services being taxed in the place where they are physically carried out, has the effect of obliging taxable persons who are not established within the Member State of performance of the services to pay VAT in the Member State where the services are carried out<sup>3</sup>, and subsequently to apply for refund under the Eighth<sup>3</sup> or Thirteenth<sup>4</sup> Directives. This concerns above all services supplied in respect of work on movable tangible property and the supply of transport services which are of a purely domestic nature but which are directly linked to intra-Community goods transport services (the national leg of an intra-Community movement of goods).

The resulting proliferation of cases in which a refund is applied for under the Eighth and Thirteenth Directives is hindering the freedom to supply services within the Single Market.

Moreover, prior systematic vetting of applications, coupled with an increase in the number of cases, could well cause delay of VAT refunds under the Eighth and Thirteenth Directives.

It is, therefore, most important in this context to consider measures which can rapidly simplify matters for traders but which will not undermine the principles of taxation associated with the Single Market.

To that end, the United Kingdom has submitted a request for authorization on the basis of Article 27 of the Sixth VAT Directive, to introduce special measures derogating from Article 2(1) and 17. The purpose of such measures would be to exempt the services rendered in the third and fourth indents of Article 9(2)(c) and the supply of domestic

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<sup>1</sup> OJ No. L 145/1, 13.6.1977

<sup>2</sup> OJ No. L 384/47, 30.12.1992

<sup>3</sup> Council Directive 79/1072/EEC OJ No. L 331 of 27.12.1979, p. 11

<sup>4</sup> Council Directive 86/560/EEC OJ No. L 326 of 21.11.1986, p. 40

goods transport services directly linked to intra-Community goods transport services, provided that those services are supplied to taxable persons not established within the Member State of performance of the services and who in any case qualify for a refund of VAT on those services by means of the procedures laid down in the Eighth and Thirteenth Directives. Given this proviso, such a derogation would in no way affect the amount of tax payable at the final consumption stage.

In order to qualify for the exemption, a person to whom these services are supplied, but who is not established in the Member State of performance of the services, would have to establish his status as a taxable person in the manner laid down in the Eighth and Thirteenth Directives, and would, in addition, have to undertake to repay the VAT payable on any supply of services which might have been exempted in error. It would also be necessary for the supplier who is liable to pay tax within the territory of the country to state the actual grounds for exemption on the invoice and the number by which his customer is identified for VAT purposes within the Community.

However, given that the possibility of using customs procedures remains for work carried out on movable tangible property temporarily imported into the Community from third countries, the scope of the present derogation does not extend to cover supplies of such services when supplied to persons not established within the Community.

As a result of this derogation, the growth of intra-Community activity in the service sectors concerned would not be hindered by the tax charges resulting from difficulties in applying refund procedures, and sufficient time would be given to consider other more permanent solutions.

The Commission notes that the special measure proposed shall not alter the fundamental principles of the Sixth VAT Directive, in particular concerning the place of supply, but simplifies the arrangements for refunding the tax which would in any case be refundable under the Eighth and Thirteenth Directives. Consequently, the derogation in question does not have a negative effect on the own resources of the European Communities accruing from VAT.

The Commission is convinced that the measure in question is intended to simplify the procedures for charging the tax. The Commission, therefore, considers it appropriate for the United Kingdom to be authorized to apply the planned special measure, but that such an authorization should be limited in time, for a duration lasting until 31 December 1995.

**COUNCIL DECISION**  
**of .....**  
**authorizing the United Kingdom to apply a measure derogating from**  
**Article 2(1) and Article 17 of the sixth Directive (77/388/EEC)**  
**on the harmonization of the laws of the Member States**  
**relating to turnover taxes**

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, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under 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, by letter dated 10 May 1993 and received by the Commission on 22 June 1993, the United Kingdom requested authorization to introduce a measure for derogation from Article 17 of Directive 77/388/EEC;

Whereas the other Member States were informed on 14 July 1993 of the request made by the United Kingdom;

Whereas implementation of the transitional VAT arrangements leads to VAT being charged on certain work on movable tangible property and certain services relating to the transport of goods at the place where these services are supplied, irrespective of the place where the taxable person to whom these services are supplied is able to exercise his rights of deduction, and whereas this results in growing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC;

Whereas the increasing use of the refund procedures provided for by Directives 79/1072/EEC and 86/560/EEC may impede the development of intra-Community trade in certain services;

Whereas the measure for derogation in question aims to introduce a simplification consisting in the exemption of certain services supplied to taxable persons not established in the territory of the country but identified in the Community, for which these taxable persons would in any event be entitled to a refund;

Whereas certain requirements should be imposed on taxable persons with a view to preventing tax evasion or avoidance;

Whereas it is desirable for this derogation to be limited to the time necessary to enable the Council, acting on a proposal from the Commission, to adopt a definitive solution;

Whereas the measure for derogation in question has no effect on the European Communities' own resources accruing from value added tax,

**HAS ADOPTED THIS DECISION:**



#### Article 1

By way of derogation from Article 2(1) of Directive 77/388/EEC, the United Kingdom is hereby authorized to exempt the supply of services referred to in Article 3(1) and (2) rendered to taxable persons identified in a Member State other than the United Kingdom in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 79/1072/EEC if these services had been taxed.

#### Article 2

By way of derogation from Article 2(1) of Directive 77/388/EEC, the United Kingdom is hereby authorized to exempt the supply of services referred to in Article 3(2) and rendered to taxable persons identified in a Member State other than the United Kingdom in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC who would have qualified for a refund in accordance with Directive 86/560/EEC if these services had been taxed.

#### Article 3

In the circumstances provided for in Articles 1 and 2, the United Kingdom is authorized to exempt:

1. the supply of services referred to in the third and fourth indents of Article 9(2)(c) of Directive 77/388/EEC;
2. the transport services located in the territory of the country, directly linked to the intra-Community transport of goods as defined in Article 28bC(1) of Directive 77/388/EEC.

#### Article 4

By way of derogation from Article 17 of Directive 77/388/EEC, the services referred to in Article 3 and supplied in the circumstances laid down in Articles 1 and 2 shall be eligible for deduction of input tax.

#### Article 5

In order to be eligible for exemption from tax in accordance with Articles 1 and 2, a taxable person shall in particular:

1. In the case of the supplies of services referred to in Article 3(1):
  - be in possession of a certificate establishing that the person to whom the services have been supplied is a taxable person and issued in the form laid down by Directives 79/1072/EEC and 86/560/EEC;
  - be in possession of a declaration in which the person to whom the services have been supplied acknowledges that he is jointly and

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severally liable for payment of the tax due on any operation which may have been exempted in error and undertakes to repay this tax to the supplier of the service;

- mention, on his invoice, the grounds for exemption and the identification number of the person to whom the services have been supplied.

2. In the case of the supplies of services referred to in Article 3(2):

- satisfy the requirements referred to in point 1;
- provide proof that the transport service is directly linked to an intra-Community transport within the meaning of Article 28bC(1) of Directive 77/388/EEC.

Article 6

The United Kingdom is hereby authorized to apply this simplification measure until 31 December 1995.

Article 7

This Decision is addressed to the United Kingdom.

Done at Brussels

For the Council  
The President

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# DOCUMENTS

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