

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 657 final

Brussels, 13 December 1993

Proposal for a

COUNCIL DECISION

**AUTHORIZING THE FEDERAL REPUBLIC OF GERMANY TO APPLY A SPECIAL
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**

(presented by the Commission)

EXPLANATORY MEMORANDUM

The present proposal for a Council Decision authorizes the Federal Republic of Germany 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⁽¹⁾, as last amended by Council Directive 92/111/EEC of 14 December 1992⁽²⁾.

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⁽³⁾ or Thirteenth⁽⁴⁾ Directives. This concerns above all services supplied in respect of work on movable tangible property and the supply of transport services (and ancillary activities thereto) 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 Federal Republic of Germany has submitted a request for authorization on the basis of Article 27 of the Sixth VAT Directive, to introduce special measures derogating from Articles 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 (and ancillary activities thereto) 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

(1) OJ No. L 145/1, 13.6.1977.

(2) OJ No. L 384/47, 30.12.1992.

(3) Council Directive 79/1072/EEC - OJ No. L 331 of 27.12.1979, p. 11.

(4) Council Directive 86/560/EEC - OJ No. L 326 of 21.11.1986, p. 40.

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. 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.

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 there would be sufficient time to consider other 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 Federal Republic of Germany to be authorized to apply the planned special measure, but that such an authorization should be limited in time, lasting no later than 31 December 1994.

With the exception of the Member State to which it is addressed, the present proposal for a Council Decision is identical to the proposals adopted by the Council on 25 October 1993 for 9 other Member States (OJ No. L 273, 5.11.1993, p. 33-50).

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European 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, 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;

⁽¹⁾ OJ No. L 145, 13.6.1977, p. 1. Directive as last amended by Directive 92/111/EEC (OJ No. L 384, 30.12.1992, p. 47).

Whereas, by letter dated 27 October 1993 and received by the Commission on 10 November 1993, the Federal Republic of Germany requested the authorization to introduce a measure for derogation from Article 17 of Directive 77/388/EEC;

Whereas, the other Member States were informed on 22 November 1993 of the request made by the Federal Republic of Germany;

Whereas implementation of the transitional VAT arrangements leads to VAT being charged on certain work on movable tangible and certain services relating to the transport of goods and ancillary transport activities 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⁽²⁾ and 86/560/EEC⁽³⁾;

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:

⁽²⁾ OJ No. L 331, 27.12.1979, p. 11.

⁽³⁾ OJ No. L 326, 21.11.1986, p. 40.

Article 1

By way of derogation from Article 2(1) of Directive 77/388/EEC, the Federal Republic of Germany is hereby authorized to exempt the supply of services referred to in Article 2 rendered to taxable persons identified in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC and in a Member State other than the Federal Republic of Germany who would have qualified in accordance with Directives 79/1072/EEC and 86/560/EEC for a refund of the tax which would have been due had these services been taxed.

Article 2

In the circumstances provided for in Article 1, the Federal Republic of Germany 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 but excluding the supply of services exempted in accordance with Articles 14, 15 and 16 of Directive 77/388/EEC;
- 2) the transport services located in the territory of the country in accordance with Article 9(2)(b) of Directive 77/388/EEC, directly linked to the intra-Community transport of goods as defined in Article 28b(C)(1) of Directive 77/388/EEC;
- 3) ancillary transport activities within the meaning of the second indent of Article 9(2)(c) of Directive 77/388/EEC effected within the territory of the country related to the transport services covered by paragraph 2 above.

Article 3

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

Article 4

To apply the exemption provided for in Article 1, the supplier of the services shall in particular:

1) in the case of the supplies of services referred to in Article 2(1):

- be in possession of a certificate establishing that the person to whom the services have been supplied is a taxable person and issued, as appropriate, in the form laid down by Directives 79/1072/EEC or 86/560/EEC;
- mention, on his invoice, the grounds for exemption and the identification number by which the customer is identified in accordance with Article 22(1)(c), (d) and (e) of Directive 77/388/EEC, and under which the service has been rendered to him;

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

- satisfy the requirements referred to in the second indent of point 1 and be in possession of a declaration in which the person to whom the services have been supplied acknowledges that he fulfils the conditions referred to in Article 1;
- provide proof that the transport services are directly linked to an intra-Community transport within the meaning of Article 28b(C)(1) of Directive 77/388/EEC;

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

- satisfy the requirements referred to in the second indent of point 1 and be in possession of a declaration in which the person to whom the services have been supplied acknowledges that he fulfils the conditions referred to in Article 1;
- provide proof that the ancillary transport activities are directly linked to the transport services which are referred to in Article 2(2).

Article 5

The Council, acting unanimously on a proposal that the Commission will make as soon as feasible, shall adopt, after consultation of the European Parliament, before 31 December 1994, a modification to Directive 77/388/EEC which covers the services mentioned in this Decision.

The derogations provided for in this Decision shall cease to have effect on the date which the Council determines when it adopts the modification to Directive 77/388/EEC but not later than 31 December 1994.

Article 6

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels,

For the Council
The President

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DOCUMENTS

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