



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.01.2001
COM(2001) 27 final

Proposal for a

COUNCIL DECISION

amending Article 1 of Council Decision 1999/81/EC of 18 January 1999

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By letter registered with the Commission's Secretariat-General on 27 October 2000, the Government of Spain requested authorisation, pursuant to Article 27 of the Sixth Council Directive (77/388/EEC) of 17 May 1977¹ on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, to extend the application of the derogation originally granted to it by Council Decision 1999/81/EC² of 18 January 1999 to apply a special measure in respect of trade in used and waste materials.
2. In accordance with the aforementioned Article 27, the other Member States were informed of Spain's request by letter dated 27 November 2000.
3. Spain was authorised by the above Decision to apply the following special VAT provisions:
 - The exemption (without the right to deduct input tax) of the supply and intra-Community acquisition of used and waste materials, in the case only of taxable persons whose sales of ferrous metals in the previous year were not worth more than PTA 200 million or whose sales of waste paper, board or glass were not worth more than PTA 50 million. In addition the exemption of non-ferrous metals would apply regardless of the quantities involved. If the above limits are exceeded during the current year, the exemption ceases to apply from the time when the limits are exceeded.
 - Taxable persons whose transactions would be exempt under the above rules can request to be authorised to apply the normal rules to their supplies and intra-Community acquisitions of used and waste materials
4. The current authorisation expires on 31 December 2000.
5. The Spanish Government considers that in the absence of a reverse charge mechanism which would effectively counter tax fraud in this sector, the legislation emerging from this derogation is the only effective measure to combat fraud. Previously this sector contained many fictitious companies which charged VAT but failed to pass this on to the Government while at the same time, the purchasers were able to deduct the VAT.
6. The Spanish government has requested an extension of this derogation until 31 December 2003.
7. Recent contacts between the Commission and national administrations, and with representatives of the trade, have indicated that, in order to ensure fairer taxation of all traders involved in this activity across the Community, a special regime adapted to the particular character of the sector might be necessary. Such a regime would require a firm and permanent legal basis far beyond the scope of a derogation under Article 27 of the Sixth VAT Directive.

¹ OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2000/65/EC (OJ L 269, 21.10.2000, p. 44).

² OJ L 27, 2.2.1999, p. 26-27.

As part of the action programme for its new strategy published on 7 June 2000³, the Commission hopes to examine these issues in greater depth and, in due course, make proposals for improvement, simplification and modernisation. In this context the Commission accepts that, pending more permanent change, this measure significantly counters abuse of the VAT system. It therefore considers a renewal of the existing derogation until 31 December 2003 appropriate.

³ COM (2000) 348 final.

Proposal for a

COUNCIL DECISION

amending Article 1 of Council Decision 1999/81/EC of 18 January 1999

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 1977⁴ on the harmonisation 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:

- (1) Pursuant to Article 27(1) of the Sixth VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce or extend 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.
- (2) By letter registered with the Commission's Secretariat-General on 27 October 2000, the Spanish Government requested authorisation to extend the application of the derogation previously granted to it by Council Decision 1999/81/EC of 18 January 1999.
- (3) The other Member States were informed on 27 November 2000 of Spain's request.
- (4) The derogation in question is designed:
 - (a) to exempt the supply and intra-Community acquisition of used and waste materials consisting of glass, paper and board, in the case of taxable persons whose sales of such products in the previous year were not worth more than PTA 50 million;
 - (b) to exempt the supply and intra-Community acquisition of used and waste materials consisting of ferrous metals, in the case of taxable persons whose sales of such products in the previous year were not worth more than PTA 200 million;
 - (c) to exempt the supply and intra-Community acquisition of non-ferrous metals, irrespective of the turnover for sales of such goods.

⁴ OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2000/65/EC (OJ L 269, 21.10.2000, p. 44).

- (5) This measure has proven to be an effective means of combating the evasion or fraud and the legal and factual circumstances which justified granting authorisation to apply a derogation have not changed and still obtain.
- (6) On the 7 June 2000 the Commission published a strategy to improve the operation of the VAT system in the short term, including the modernisation, simplification and the countering of abuse of the current rules while moving towards greater uniform application.
- (7) In the context of this strategy the Commission would expect fewer derogations but pending reflection on this area, the Commission accepts that this measure significantly counters abuse of the VAT system.
- (8) It is appropriate, therefore, to extend the period of the authorisation granted until 31 December 2003 pending an assessment of the compatibility of this measure with the overall approach to the system of VAT.
- (9) The derogation has no adverse impact on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 of Decision 1999/81/EC is replaced by the following:

"The Kingdom of Spain is hereby authorised until 31 December 2003 to apply a special measure for taxation of used and waste materials that contains provisions derogating from the Sixth Council Directive (77/388/EC) of 17 May 1977.

The provisions in question are laid down in Articles 2, 3 and 4 below."

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels,

For the Council
The President