



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.8.2004
COM(2004) 561 final

Proposal for a

COUNCIL DECISION

authorising Austria to apply a measure derogating from Article 17 of the Sixth Council Directive (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes

(presented by the Commission)

EXPLANATORY MEMORANDUM

By letter registered at the Commission's Secretariat-General on 12 December 2003, the Austrian authorities requested authorisation, under Article 27 of Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - common system of value added tax: uniform basis of assessment¹ (hereafter referred to as the Sixth Directive), to apply a special measure derogating from Article 17 of the Sixth Directive.

As required under Article 27 of Directive 77/388/EEC, the other Member States were informed of Austria's request in a letter dated 26 March 2004.

The measure involves completely excluding expenditure on goods and services from the right to deduct VAT when less than 10% of those goods and services are used for business purposes.

Article 27 allows the introduction of special measures derogating from the Sixth Directive which either simplify the procedure for charging tax or prevent certain types of tax evasion or avoidance. The measure in question, which is designed to prevent "tax-free consumption", is justified under the terms of this provision since it simplifies administration by relieving the tax administration of the need to supervise the exercise of the right to deduct VAT on expenditure on goods and services where non-business use of those goods and services accounts for over 90% of total use.

The Commission has already responded favourably to comparable requests from other Member States by presenting proposals for decisions that were subsequently adopted by the Council,² thereby authorising those Member States to apply the same measures.

However, the validity of the authorisation should be limited to the period ending on 31 December 2008. This will allow an evaluation of whether it is appropriate to maintain the derogation in the light of Austria's experience over this period.

¹ OJ L 145, 13. 6.1997, p.1. Directive last amended by Directive 2004/15/EC (OJ L 52, 21.2.2004, p.61).
² Council Decision 93/109/EEC of 15.2.1993 (OJ L 43, 20.2.1993, p. 42) and Council Decision 2000/186/EC of 28.2.2000 (OJ L 59, 4.2.2000, p. 12), extended by Council Decision 2003/354/EC of 13.5.2003 (OJ L 123, 17.5.2003 p. 47).

Proposal for a
COUNCIL DECISION

authorising Austria to apply a measure derogating from Article 17 of the Sixth Council Directive (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes

THE COUNCIL OF THE EUROPEAN UNION,

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,³ and in particular Article 27 (1) thereof,

Having regard to the proposal from the Commission,⁴

Whereas:

- (1) By letter registered at the Commission's Secretariat-General on 12 December 2003, the Austrian authorities requested authorisation to apply a special measure derogating from Article 17 of the Sixth Directive.
- (2) The other Member States were informed of this request on 26 March 2004.
- (3) The derogation is intended completely to exclude VAT charged on expenditure on goods and services from the right to deduct when over 90% of the goods and services are used for the private purposes of the taxable person, or of his employees, or for non-business purposes in general. The measure represents a derogation from Article 17 and is justified by the need to simplify value added tax.
- (4) The duration of the authorisation should be limited to 31 December 2008. This maximum period will allow the derogation to be evaluated in the light of Austria's experience over this period.
- (5) The derogation will not adversely affect the Communities' own resources from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 17(2) of Directive 77/388/EEC, Austria is authorised to exclude expenditure on goods and services from the right to deduct VAT when over 90% of

³ OJ L 145, 13. 6.1997, p.1. Directive last amended by Directive 2004/15/EC (OJ L 52, 21.2.2004, p.61).

⁴ OJ C , , p. .

the goods and services are used for the private purposes of a taxable person or of his employees, or, more generally, for non-business purposes.

Article 2

This Decision shall apply until 31 December 2008.

Article 3

This Decision is addressed to the Republic of Austria.

Done at Brussels,

*For the Council
The President*