



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.6.2006
COM(2006) 263 final

Proposal for a

COUNCIL DECISION

authorising Greece and Portugal to introduce special measures derogating from Article 21(1) of Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(Only the Greek and Portuguese versions are authentic)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Pursuant to Article 27(1) of the Sixth 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 assessment, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply 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.

By letter registered with the Secretariat-General of the Commission on 19 September 2005, Portugal requested an authorisation to introduce measures derogating from Article 21(1) of Directive 77/388/EEC. In accordance with Article 27(2) of Directive 77/388/EEC the Commission informed the other Member States of the request by Portugal on 8 March 2006. The Commission notified Portugal on 9 March 2006 that it had received all the information that it considered necessary for appraisal of the request.

By letter registered at the Commission's Secretariat-General on 15 March 2006, the Greek authorities requested an extension to their existing derogation authorised under Decision 2002/736/EC (as amended by Decision 2004/227/EC). At the same time they requested to move from the exemption to a reverse charge by derogating from Article 21(1) of Council Directive 77/388/EEC. In accordance with Article 27(2) of Directive 77/388/EEC, the Commission, in a letter dated 28 March 2006, informed the other Member States of the request by Greece. By letter dated 31 March 2006, the Commission notified Greece that it had all the information it considered necessary for appraisal of the request.

- **General context**

As a general rule, Article 21(1) of Directive 77/388/EEC, in the version set out in Article 28(g) thereof, stipulates that, under the internal system, the taxable person supplying goods or services is normally liable to pay value added tax (VAT).

Greece and Portugal would like to apply a reverse charge procedure, whereby the taxable person to whom the supplies of goods or services are made becomes liable to account for the VAT on the supply of the following goods:

- (1) the supply of ferrous and non ferrous waste, scrap, and used materials including that of semi-finished products resulting from the processing, manufacturing or melting down of non-ferrous metals;
- (2) the supply of ferrous and non-ferrous semi-processed products and certain associated processing services
- (3) the supply of residues and other recyclable materials consisting of ferrous and non-ferrous metals, their alloys, slag, ash, scale and industrial residues containing metals or their alloys and the supply of selection, cutting, fragmenting and pressing

services for these products;

- (4) the supply of, and certain processing services relating to, ferrous waste as well as parings, scrap, waste and used and recyclable material consisting of cullet, glass, paper, paperboard and board, rags, bone, leather, composition leather, parchment, raw hides and skins, tendons and sinews, twine, cordage, rope, cables, rubber and plastic;
- (5) the supply of the materials referred to in point (4) after processing in the form of cleaning, polishing, selection, cutting or casting into ingots;
- (6) the supply of scrap and waste from the working of base materials.

The reverse charge would only apply to supplies made in Greece and Portugal.

Portugal has highlighted the difficulties it faces in collecting the VAT due in the waste trading sector because of tax evasion. A characteristic form of evasion is that a business within the waste material supply chain does not pay the invoiced VAT to the tax authority after reselling the raw materials yet their customers are able to deduct the tax legitimately. The result is reduced state revenues as well as the supplier obtaining an unfair market advantage, which adversely affects legitimate businesses. Portugal has estimated that in 2005 VAT was not paid in relation to 44% of the VAT returns submitted in the waste sector.

Greece has similarly encountered revenue losses in this sector. By virtue of Council Decision 2004/227/EC, which extended the lifespan of Council Decision 2002/736/EC, Greece was authorised to apply an exemption until the end of 2005 to supplies and intra-Community acquisitions of certain recyclable waste by taxable persons whose sales of such products in the previous year fell below €900,000. Authority was also obtained to exempt supplies and intra-Community acquisitions of non-ferrous metal waste, regardless of the taxable person's turnover.

The Greek authority's assessment is that the exemption has not worked as well as envisaged in preventing avoidance and evasion. Those businesses subject to the exemption have the disadvantage of not being able to deduct value added tax (VAT) incurred in making their supplies and as a result have been rendered less competitive. This in its turn led to an increase in businesses applying for, and being authorised, not to use the exemption. This was an option provided for under Decision 2002/736/EC.

In common with Portugal and a number of other Member States, the Greek Government would like to apply a reverse charge procedure. A reverse charge would not have the disadvantage of removing from the supplier their right to deduct and would ensure a wider coverage of the measure and therefore prevent the leakage of more tax.

The proposal allows for the authorisation of the reverse charge until 31st December 2009. However, it should be taken into account that on 16 March 2005, the Commission presented a proposal for a Directive modifying Directive 77/388/EEC as regards certain measures to simplify the procedure for charging VAT and to assist in countering tax evasion and avoidance, and repealing certain Decisions granting derogations (the rationalisation of Article 27 derogations). This proposal includes, amongst other things, similar legislation to the requested measure. The proposed

derogation will, therefore, and only to the extent that it is covered by the rationalisation Directive, cease to have effect as from the entry into force of measures in this area contained in the Directive resulting from the rationalisation proposal.

- **Existing provisions in the area of the proposal**

Similar derogations in relation to Article 21(1) of Directive 77/388/EEC have been granted to other Member States.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Not relevant.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The Decision proposal aims at simplifying the procedure for charging the tax and at combating possible VAT evasion or avoidance and has therefore a potential positive economic impact.

Impact will in any case be limited because of the narrow scope of the derogation.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

Authorisation for Greece and Portugal to apply a measure derogating from Article 21(1) of the Sixth Council Directive 77/388/EEC as regards the use of a reverse charge mechanism for domestic supplies of certain waste materials.

- **Legal basis**

Article 27(1) of the Sixth 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 assessment.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s):

This Decision concerns an authorisation granted to two Member States upon their own request and does not constitute any obligation.

Given the limited scope of the derogation, the special measure is proportionate to the aim pursued.

- **Choice of instruments**

Proposed instruments: other.

Other means would not be adequate for the following reason(s):

Under Article 27 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes, derogation from the common VAT rules is only possible on the authority of the Council acting unanimously on a proposal from the Commission. A Council Decision is the only suitable instrument.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5) ADDITIONAL INFORMATION

- **Review/revision/sunset clause**

The proposal includes a sunset clause.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the sixth Council Directive 77/388/CEE 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, and in particular Article 27(1) thereof,

Having regard to the proposal from the Commission²,

Whereas:

- (1) Under Article 27(1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply 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) In a letter registered by the Secretariat-General of the Commission on 19 September 2005 Portugal requested authorisation to introduce a special measure derogating from Article 21(1) of Directive 77/388/EEC.
- (3) In accordance with Article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States of the request made by Portugal in a letter dated 8 March 2006. In a letter dated 9 March 2006, the Commission notified Portugal that it had all the information it considered necessary for appraisal of the request.
- (4) In a letter registered by the Secretariat-General of the Commission on 15 March 2006 Greece requested authorisation to introduce a special measure derogating from Article 21(1) of Directive 77/388/EEC.
- (5) In accordance with Article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States of the request made by Greece in a letter dated 28 March 2006. In a letter dated 31 March 2006, the Commission notified Greece that it had all the information it considered necessary for appraisal of the request.

¹ OJ L 145, 13.6.1977, p.1. Directive last amended by Directive 2006/18/EC (OJ L 51, 22. 2.2006, p. 12).

² OJ C , , p. .

- (6) The derogating measure from Article 21(1) of Directive 77/388/EEC is intended to allow Greece and Portugal to counter tax evasion or avoidance in the waste sector. Typically, the entrepreneurs within the chain of trading waste material, a significant number of whom go missing, do not pay VAT to the tax authorities after reselling the raw materials. Their customers, who are in receipt of a valid invoice, however remain entitled to a tax deduction.
- (7) The measure is proportionate to the objectives pursued since it is not intended to apply generally, but to specific sectors and supplies which pose considerable problems with regard to avoidance or evasion.
- (8) Similar derogations have been granted to other Member States in order to counter tax evasion or avoidance and have been found to be effective.
- (9) The authorisation should be limited to 31 December 2009, so that through experience gained up to that date an assessment may be made whether or not the derogation remains justified. However, on 16 March 2005 the Commission proposed a Directive rationalising some of the derogations pursuant to Article 27 of Directive 77/388/EEC. It is therefore necessary to limit the application period for those parts of this Decision which are covered by the proposal, to the date that the proposed Directive enters into force.
- (10) The derogation has no negative impact on the Community's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 21(1) of Directive 77/388/EEC, in the version set out in Article 28g thereof, Greece and Portugal are authorised to designate the taxable person, to whom the supplies of goods and services referred to in Article 2 of this Decision are made, as the person liable to pay VAT.

Article 2

The recipients of the following supplies of goods and services may be designated as the person liable to pay VAT:

- (1) the supply of ferrous and non ferrous waste, scrap, and used materials including that of semi-finished products resulting from the processing, manufacturing or melting down of non-ferrous metals;
- (2) the supply of ferrous and non-ferrous semi-processed products and certain associated processing services
- (3) the supply of residues and other recyclable materials consisting of ferrous and non-ferrous metals, their alloys, slag, ash, scale and industrial residues containing metals or their alloys and the supply of selection, cutting, fragmenting and pressing services for these products;

- (4) the supply of, and certain processing services relating to, ferrous waste as well as parings, scrap, waste and used and recyclable material consisting of cullet, glass, paper, paperboard and board, rags, bone, leather, composition leather, parchment, raw hides and skins, tendons and sinews, twine, cordage, rope, cables, rubber and plastic;
- (5) the supply of the materials referred to in point (4) after processing in the form of cleaning, polishing, selection, cutting or casting into ingots;
- (6) the supply of scrap and waste from the working of base materials.

Article 3

The authorisation granted under Article 1 of this Decision shall expire on the date of entry into force of a Directive rationalising the derogations pursuant to Article 27 of Directive 77/388/EEC to the extent that supplies in Article 2 of this Decision are contained within that Directive, or on the 31 December 2009, whichever is the earlier.

Article 4

This Decision is addressed the Hellenic Republic and the Portuguese Republic.

Done at Brussels,

For the Council
The President