

Proposal for a Council Decision authorising Germany to apply a measure derogating from Article 21 of Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2002/C 151 E/17)

COM(2002) 121 final

(Submitted by the Commission on 8 March 2002)

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 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(1) thereof ⁽¹⁾,

Having regard to the proposal from the Commission,

Whereas:

(1) In a request submitted in the form of two letters addressed to the Commission, registered by the Commission's Secretariat-General on 9 January 2002, Germany sought authorisation to apply a measure derogating from Article 21(1)(a) of Directive 77/388/EEC.

(2) The other Member States were informed of Germany's request by letter of 16 January 2002.

(3) Article 21(1) of Directive 77/388/EEC, as amended by Article 28g thereof, stipulates that, under the internal system, the taxable person supplying taxable goods or services is normally liable to pay value added tax.

(4) The purpose of the derogation requested by Germany is to make the recipient liable for the value added tax due on the supply, outside a judicial liquidation procedure, of goods provided as security by one VAT taxable person to another in execution of that security and the supply of building plots sold at public auction to another VAT taxable person in the course of the judicial liquidation of the enterprise that owned the plots sold.

(5) This derogation is intended to simplify the collection of the tax since, in practice, the person normally liable for the tax is, in the instances for which the derogation is sought, generally prevented by financial difficulties from paying the VAT invoiced.

(6) This state of affairs adversely affects public finances in that the recipient of the goods can deduct the value added tax invoiced to him, even though it has not been paid by the taxable person who supplied the goods.

(7) By designating the recipient of the goods as the person liable for the value added tax, the derogation removes the difficulties encountered without affecting the amount of tax due.

(8) The authorisation should be granted until 31 December 2006, which will enable the derogation to be reviewed in the light of experience.

(9) This derogation does not adversely affect the Communities' own resources from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By derogation from Article 21(1)(a) of Directive 77/388/EEC, as amended by Article 28g thereof, Germany is hereby authorised to designate the recipient of the supplies of goods referred to in Article 2 of this Decision as the person liable to pay value added tax.

Article 2

The recipient of the supply of goods may be designated as the person liable to pay VAT in the following instances:

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2001/115/EC (OJ L 15, 17.1.2002, p. 24).

1. The supply, outside a judicial liquidation procedure, of goods provided as security by one VAT taxable person to another in execution of that security;
2. The supply of building plots sold at public auction to another VAT taxable person in the course of the judicial liquidation of the enterprise that owned the plots sold.

Article 3

This Decision shall expire on 31 December 2006.

Article 4

This Decision is addressed to Germany.
