

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DECISION

of 13 May 2003

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

(2003/354/EC)

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 assessment <sup>(1)</sup>, and in particular Article 27(1) thereof,

Having regard to the proposal by the Commission <sup>(2)</sup>,

Whereas:

(1) In a letter registered by the Commission's Secretariat-General on 17 December 2002 the German authorities requested authorisation to continue to apply a derogation which had been granted by Article 1 of Council Decision 2000/186/EC <sup>(3)</sup>.

(2) The other Member States were informed of the request on 17 January 2003.

(3) The derogating measure is intended to exclude expenditure on goods and services completely from the right to deduct VAT when the goods and services are used more than 90 % for the private purposes of the taxable person, or of his employees, or for non-business purposes in general. This measure is a derogation from Article 17 of Directive 77/388/EEC, as amended by Article 28f of that Directive and is justified by the need to simplify the procedure for charging VAT; it affects the amount of tax due at the final consumption stage only to a negligible extent.

(4) The authorisation expired on 31 December 2002, although the legal situation and the facts which justified application of the simplification measure in question have not changed and continue to exist.

(5) The duration of the new authorisation should however be limited to 30 June 2004. This maximum period will allow the derogation to be evaluated in the light of the ruling on Case C-17/01, which the Court will probably deliver in the course of 2003.

(6) 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 Germany is authorised to exclude expenditure on goods and services from the right to deduct VAT when the goods and services in question are used more than 90 % 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 30 June 2004.

<sup>(1)</sup> OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2002/93/EC (OJ L 331, 7.12.2002, p. 27).

<sup>(2)</sup> Proposal of 18 May 2003 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 59, 4.3.2000, p. 12.

*Article 3*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 13 May 2003.

*For the Council*  
*The President*  
M. CHRISOCHOÏDIS

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