

## COUNCIL DECISION

of 13 December 2004

**authorising the Republic of Austria 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**

(2004/866/EC)

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

Having regard to the proposal from the Commission,

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 Directive 77/388/EEC.
- (2) The other Member States were informed of this request on 26 March 2004.
- (3) The derogating measure is intended completely to exclude the value-added tax (VAT) which is 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, more generally, for non-business purposes. This derogating measure represents a derogation from Article 17 and is justified by the need to simplify the levying of VAT.
- (4) The duration of the authorisation should be limited to 31 December 2009. This maximum period will allow an

evaluation to be made of the advisability of maintaining the derogating measure in the light of Austria's experience over this period.

- (5) The derogating measure would have no negative effect on the Community's own resources from VAT,

HAS ADOPTED THIS DECISION:

*Article 1*

By way of derogation from Article 17(2) of Directive 77/388/EEC, the Republic of Austria is hereby authorised to exclude expenditure on goods and services from the right to deduct VAT when over 90 % of 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 2009.

*Article 3*

This Decision is addressed to the Republic of Austria.

Done at Brussels, 13 December 2004.

*For the Council*

*The President*

B. R. BOT

<sup>(1)</sup> OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).