

COUNCIL DECISION

of 14 March 2005

authorising Denmark to apply a measure derogating from Article 14(1)(d) of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2005/258/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⁽¹⁾, and in particular Article 27(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) In a letter registered by the Commission's Secretariat-General on 17 May 2004, the Danish authorities informed the Commission of their wish to introduce special measures for derogation from the Directive in order to prevent certain types of tax evasion or avoidance. They provided the Commission with all the relevant information to that effect. The other Member States were informed of the request on 15 October 2004.
- (2) The derogating measure is intended to exclude certain magazines and periodicals imported into Denmark from the exemption under Article 14(1)(d) of the Directive and to apply VAT on them. That Article was implemented by Directive 83/181/EEC⁽²⁾, which stipulates that goods of a total value not exceeding EU-10 shall be exempt from VAT on admission. Member States may grant exemption for imported goods of a total value of more than EU-10, but not exceeding EUR 22. Denmark currently exempts from VAT imports from third countries of all small consignments with a commercial nature. The Danish limit for VAT exemption is DKK 80 (EU-10).
- (3) The Danish authorities have discovered that some publishing companies re-route the distribution of their publications to subscribers in Denmark via territories not covered by the Sixth Directive, with a loss in revenue for Denmark and consequently with a negative

impact on the Community's own resources. There is the risk that the loss of revenue will increase unless Denmark is authorised to prevent this type of tax avoidance.

- (4) The request for derogation only targets the consignments and situations connected with the avoidance scheme and does not intend to exclude all mail order consignments from the exemption on the basis of Article 22 of Directive 83/181/EEC. It therefore appears that the proposed derogation from Article 14(1)(d) of Directive 77/388/EEC is in fact the most appropriate solution in this specific case.
- (5) The derogation avoids the loss of VAT and will therefore not adversely affect the Communities' own resources,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 14(1)(d) of Directive 77/388/EEC, Denmark is authorised to apply VAT on the importation into Denmark of magazines, periodicals or the like, printed in the territory of the Community, as defined in Article 3 of the said Directive and sent to private individuals in Denmark.

Article 2

This Decision shall apply until 31 December 2010.

Article 3

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 14 March 2005.

For the Council

The President

F. BODEN

⁽¹⁾ 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).

⁽²⁾ OJ L 105, 23.4.1983, p. 38. Directive as last amended by the Act of Accession of 2003.