



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.1.2004
COM(2003) 853 final

Proposal for a

COUNCIL DECISION

authorising Spain to apply a measure derogating from Article 21 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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. On March 2001, the Council adopted Decision 2001/243/EC amending article 1 of Decision 1999/81/EC in order to extend its validity until 31st December 2003. Decision 1999/81/EC authorizes Spain to apply until that date a measure derogating from Articles 2 and 28a(1) of the Sixth Council Directive (77/388/EC) 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 for assessment¹) in order to exempt the supply and intracommunity acquisition of certain waste materials effected by taxable persons whose sales of such products did not exceed certain amounts. Taxable persons who were in principle covered by the scope of the exemption could however be authorized by the authorities not to apply these particular arrangements.
2. In the last few years, the services of the Commission have been contacted repeatedly by both the traders active in this sector and the Spanish Administration regarding the persistence of fraud. Both insist that only a solution which assures equal treatment to all operators active in the sector and avoids the risk of non-payment of VAT charged by these operators will be effective in the long run to prevent tax avoidance and the resulting distortion of competition affecting honest traders.
3. By letter registered with the Secretariat-General of the Commission on 27 October 2003, the Spanish Government requested authorisation - under Article 27 of the Sixth Directive - to apply special measures to certain supplies of goods and services relating to waste materials.
4. In accordance with Article 27(3) of the Sixth Directive, the other Member States were informed of the Spanish request by letter dated 7 November 2003.
5. The Spanish Government would like to apply a "reverse charge" procedure to the following supplies of goods and services:
 - the supply of waste metallic materials of both ferrous and non ferrous nature as well as to the supplies of services consisting on their selection, cutting and pressing;
 - the supply of waste materials consisting on glass, paper and board;
 - the supply of semi-finished products resulting from the transformation of the metals.
6. In its request, the Spanish government explains that the measure is aimed at countering tax evasion by operators in the sector, especially small dealers, who despite charging VAT, often do not pay the tax to the authorities and hence are able to offer lower prices displacing compliant operators. The number and small size of non-compliant operators, creates particular difficulties for their effective control by the tax authorities.

¹ OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2003/92/EC (OJ L 260, 11.10.2003, p. 8).

7. The requested measure would enable Spain to designate the recipient of the waste materials (and services relating to them) as the person liable to pay tax. In accordance with article 17.2.a) of Directive 77/388/EEC, the recipient of the supplies of waste will be able to deduct the tax due for such supplies. The scope of the reverse charge procedure would be determined by the nature of the goods that are being supplied.
8. The requested measure is to be considered first and foremost as a measure to prevent certain types of tax evasion in the waste recycling sector, such as the non-payment of invoiced VAT by traders engaged in the collection, sorting and basic transformation of waste material, who subsequently become untraceable. The measure also has the effect of simplifying the work of the tax authorities, which very frequently have major problems collecting the VAT due in that sector.
9. The measure is proportionate to the objectives pursued, since it is not intended to apply to all taxable operations in the sector concerned but only to specific operations which pose considerable problems of tax evasion.
10. This measure does not adversely effect the VAT Communities' own resources, nor does it have any effect on the amount of tax due at the final stage of consumption.
11. In its communication of 7 June 2000 to the Council and the European Parliament on a strategy to improve the operation of the VAT system within the context of the internal market,² the Commission undertook to rationalise the large number of derogations currently in force. In some cases, however, this rationalisation could involve extending certain particularly effective derogations to all Member States.
12. The Commission's recent contacts with certain national administrations and representatives of the sector suggest that special rules specifically adapted to the sector might be necessary to ensure fairer taxation of the traders concerned across the Community. The Commission intends to prepare a proposal for a special scheme applying to the waste recycling sector.
13. The Commission accepts that, pending more permanent changes, this derogation significantly counters abuse of the VAT system. It therefore considers it appropriate to grant the derogation until the date of entry into force of a special scheme for the application of VAT to the recycled waste sector, but not later than 31 December 2005.

² COM(2000) 348 final.

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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/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,³ and in particular Article 27 thereof,

Having regard to the proposal from the Commission,⁴

Whereas:

- (1) Pursuant to Article 27(1) of the Sixth VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce or extend 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) By letter registered with the Secretariat-General of the Commission on 27 October 2003, the Spanish Government requested authorisation to apply special tax measures to the waste sector.
- (3) The other Member States were informed of Spain's request on 7 November 2003.
- (4) The derogation in question is intended to allow Spain to designate the recipient of specific types of supplies in the waste sector, as the person liable to pay the tax. In accordance with article 17.2.a) of Directive 77/388/EEC, the recipient of the supplies of waste will be able to deduct the tax due for such supplies. This will minimise the problems faced by tax authorities in collecting the VAT due in that sector.
- (5) The requested measure is to be considered first and foremost as a measure to prevent certain types of tax evasion in the waste recycling sector, such as the non-payment of invoiced VAT by traders engaged in the collection, sorting and basic transformation of waste material, who subsequently become untraceable. The measure also has the effect of simplifying the work of the tax authorities.

³ OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2003/92/EC (OJ L 260, 11.10.2003., p. 8).

⁴ OJ C No ...

- (6) The measure is proportionate to the objectives pursued, since it is not intended to apply to all taxable operations in the sector concerned but only to specific operations which pose considerable problems of tax evasion.
- (7) On 7 June 2000 the Commission published a strategy to improve the operation of the VAT system in the short term, in which it undertook to rationalise the large number of derogations currently in force. In some cases, however, this rationalisation could involve extending certain particularly effective derogations to all Member States.
- (8) The Commission's recent contacts with certain national administrations and representatives of the sector suggest that special rules specifically adapted to the sector might be necessary to ensure fairer taxation of the traders concerned across the Community. The Commission intends to prepare a proposal for a special scheme applying to the waste recycling sector.
- (9) Consequently, this derogation should expire on the date of entry into force of a special scheme for the application of VAT to the recycled waste sector, but not later than 31 December 2005.
- (10) The derogation has no adverse impact on the European Communities' own resources accruing from VAT, nor does it have any effect on the amount of VAT charged at the final stage of consumption.

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 21(1)(a) of Directive 77/388/EEC, as worded in Article 28(g) thereof, Spain is hereby authorised, to designate the recipient of the supplies of goods and services referred to in Article 2 of this Decision as the person liable to pay VAT.

Article 2

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

- supplies of industrial waste, ferrous waste and scrap, residues and other recyclable materials consisting of ferrous and non-ferrous metals, their alloys, slag, ash and industrial residues containing metals or their alloys, and the supply of selection, cutting, fragmenting and pressing services for these products.
- supplies of waste material consisting of paper, paperboard or glass.
- supplies of semi-finished products (e.g. ingots, blocks, sheets, bars, grains, granules, wire rod, etc) resulting from the processing, manufacturing or melting down of non-ferrous metals, except those containing nickel.

Article 3

This decision shall expire on the date of entry into force of a special scheme for the application of VAT to the recycled waste sector amending Directive 77/388/EEC, but not later than 31 December 2005.

Article 4

This Decision is addressed to Spain.

Done at Brussels,

*For the Council
The President*