COMMISSION OF THE EUROPEAN COMMUNITIES

COM(91) 82 final

Brussels, 14 March 1991

Proposal for a
COUNCIL DECISION

authorizing the Federal Republic of Germany to apply a measure derogating from Article 2 (1) of 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

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(presented by the Commission)

EXPLANATORY MEMORANDUM

Subject to Article 1(2)(b) of the Eighteenth Council Directive of 18 July 1989[1], the Federal Republic of Germany was required to abolish, with effect from 1 January 1991, its exemption from tax of the management of credit and credit guarantees by a person or a body other than the one which granted the credits.

By letter received by the Secretariat-General of the Commission on 19 December 1990, the Government of the Federal Republic of Germany submitted a request for a derogation based on Article 27 of the Sixth Council Directive of 17 May 1977 on the common system of value added tax[2], designed to simplify the procedure for charging the tax.

In accordance with Article 27(3) of the Sixth Directive, the other Member States were informed by letter dated 18 January 1991 of the German request.

The measure requested by the Federal Republic of Germany is the retention of the tax exemption for the management of credit and credit guarantees by a person or a body other than the one which granted the credits.

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(1) O.J. n°L 226, 3.8.1989
(2) O.J. n°L 145, 13.6.1977

In support of its request the Government of the Federal Republic of Germany explains the considerable difficulties that would be encountered as regards the establishment by the undertakings concerned of the taxable transactions and the deductible amounts of input tax relating to them and as regards control by the tax administration. Since the amounts of tax are small in very many cases the burden involved in adapting the system would be unjustified in relation to the tax yield.

The Government of the Federal Republic of Germany points out that the derogation would have only a limited effect on the VAT yield, a fact which has been acknowledged by the Commission as regards VAT own resources, most recently in the Commission Decision of 23 March 1990[3], Article 2, point 3.

The Commission is convinced that the measure in question, which derogates from Article 2 (1) of the Sixth Directive, read in conjunction with Article 13 B(d)(1) and (2), is designed to simplify the procedure for the application of VAT within the meaning of Article 27 of that Directive.

The Commission therefore considers it appropriate for the Federal Republic of Germany to be authorized to apply the planned special measure. It nevertheless takes the view that the derogation should be limited as to its duration, and authorized until 31 December 1995, and that before the expiration of this authorization the Federal Republic of Germany should endeavour to overcome the practical difficulties giving rise to this derogation.

(3) O.J. n°L 99, p. 28

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(presented by the Commission)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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 (1), as last amended by the Eighteenth Council Directive 89/465/EEC (2), and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas the Eighteenth Directive 89/465/EEC repeals, as from 1 January 1991, the transitional derogation provided for in Article 28(3)(b) of the Sixth Directive 77/388/EEC read in conjunction with point 13 of Annex F thereto, which permitted Member States to continue to exempt the management of credit and credit guarantees by a person or a body other than the one which granted the credits;

(1) O.J. n°L 145, 13.6.1977, p. 1
(2) O.J. n°L 226, 3.8.1989, p. 21

Whereas, under Article 27(1) of the afore-mentioned Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce 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;

Whereas the Federal Republic of Germany, by letter received by the Commission on 19 December 1990, requested authorization to retain the tax exemption for the management of credit and credit guarantees by a person or a body other than the one which granted the credit; whereas this measure constitutes a derogation from Article 2(1), read in conjunction with Article 13 B (d) (1) and (2), of the Sixth Directive 77/388/EEC, according to which such services effected for consideration within the territory of a country by a taxable person acting as such shall be subject to value added tax;

Whereas the other Member States were informed of the Federal Republic of Germany's request on 18 January 1991;

Whereas arrangements for taxing such supplies would pose considerable technical difficulties in Germany as regards establishment by the undertakings concerned of the taxable transactions and the deductible amounts of input tax relating to them and as regards control by the tax administration;

Whereas the authorization requested can be granted under certain conditions;

Whereas the derogation shall be temporary, in order to allow an assessment of the effects of the authorization granted by this Decision after a certain period of application; whereas before expiration of this authorization the Federal Republic of Germany shall endeavour to overcome the practical difficulties necessitating this derogation;

Whereas this derogation will affect the European Communities own resources accruing from value added tax only to a negligible extent;

HAS ADOPTED THIS DECISION :

Article 1

By way of derogation from Article 2 (1), read in conjunction with Article 13 B(d) (1) and (2), of the Sixth Directive 77/388/EEC, the Federal Republic of Germany is hereby authorized until 31 December 1995 to exempt the supply of services in respect of the management of credit and credit guarantees by a person or a body other than the one which granted the credits.

Article 2

This decision is addressed to the Federal Republic of Germany.

Done at Brussels,

For the Council
President

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