



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.12.2000
COM(2000) 851 final

Proposal for a

COUNCIL DECISION

amending Article 1 of Council decision 1999/80/EC of 18 January 1999

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By letter registered with the Commission's Secretariat-General on 19 September 2000, the Government of the Italian Republic requested authorisation, pursuant to Article 27 of the Sixth Council Directive (77/388/EEC) of 17 May 1977¹ on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, to extend the application of the derogation originally granted to it by Council Decision 1999/80/EC² of 18 January 1999 to apply a special measure in respect of trade in used and waste materials.
2. In accordance with the aforementioned Article 27, the other Member States were informed of the Italian Republic's request by letter dated 17 October 2000.
3. The Italian Republic was authorised by the above Decision to apply the following special provisions:
 - The exemption (without the right to deduct input tax) of supplies of scrap metal and other recyclable materials (in particular waste paper, rags etc) made by firms which either:
 - i) have a fixed establishment and a generated turnover net of tax for the preceding year of not more than ITL 2 billion; or
 - ii) do not have a fixed establishment.
 - The possibility of opting for the normal taxation arrangements for firms with a fixed establishment, which generated a turnover net of tax of more than ITL 150 million (but less than ITL 2 billion) during the previous year, subject to the provision of an appropriate guarantee;
 - Mandatory application of the normal taxation arrangements to firms with a fixed establishment, which generated a turnover, excluding tax, of more than ITL 2 billion during the previous year;
 - Suspension of payment of tax, with the right to deduct input tax, on supplies of non-ferrous scrap (including scrap which has undergone rudimentary initial processing reducing it to the primary state with the aid of minimal elementary technical facilities) irrespective of the turnover of the firm concerned.
4. The current authorisation expires on 31 December 2000.

¹ OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2000/17/EC (OJ L 84, 5.4.2000, p. 24).
² OJ L 27, 2.2.1999, p. 24.

5. According to the Italian Government, the legislation emerging from this derogation has been targeted exclusively at combating fraud in the sector concerned. Previously this contained many fictitious companies which charged VAT but failed to pass this on to the Government while at the same time, the purchasers were able to deduct the VAT. The suspension of VAT on these supplies has, they say, eliminated at source the motive for fraud and has proved a suitable and effective method of rooting out the bad practice.
6. The Italian government has requested an extension of this derogation until 31 December 2003.
7. Recent contacts between the Commission and national administrations, and with representatives of the trade, have indicated that, in order to ensure fairer taxation of all traders involved in this activity across the Community, a special regime adapted to the particular character of the sector might be necessary. Such a regime would require a firm and permanent legal basis far beyond the scope of a derogation under Article 27 of the Sixth VAT Directive. As part of the action programme for its new strategy published on 7 June 2000³, the Commission hopes to examine these issues in greater depth and, in due course, make proposals for improvement, simplification and modernisation. In this context the Commission accepts that, pending more permanent change, this measure significantly counters abuse of the VAT system. It therefore considers a renewal of the existing derogation until 31 December 2003 appropriate.

³ COM(2000)348 final.

Proposal for a

COUNCIL DECISION

amending Article 1 of Council decision 1999/80/EC of 18 January 1999

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 1977⁴ on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, and in particular Article 27 thereof,

Having regard to the proposal from the Commission

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 Commission's Secretariat-General on 19 September 2000, the Italian Republic Government requested authorisation to extend the application of the derogation previously granted to it by Council Decision 1999/80/EC of 18 January 1999.
- (3) The other Member States were informed on 17 October 2000 of the Italian Republic's request.
- (4) The derogation in question is designed:
 - (a) to exempt, without granting a right to deduction of input tax, supplies of scrap metal and other recyclable materials made either by firms which have a fixed establishment and a generated turnover excluding tax of not more than ITL 2 billion during the previous year or by firms which do not have a fixed establishment;
 - (b) to grant to firms which have a fixed establishment and a generated turnover excluding tax of between ITL 150 million and ITL 2 billion during the previous year, the right to opt for the normal taxation arrangements;
 - (c) to apply the VAT suspension arrangements with the right to deduct input tax, to supplies of non-ferrous scrap, irrespective of the turnover excluding VAT of the firm making them.

⁴ OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2000/17/EC (OJ L 84, 5.4.2000, p. 24).

- (5) This measure has proven to be an effective means of combating the evasion or fraud and the legal and factual circumstances which justified granting authorisation to apply a derogation have not changed and still obtain.
- (6) On the 7 June 2000 the Commission published a strategy to improve the operation of the VAT system in the short term, including the modernisation, simplification and the countering of abuse of the current rules while moving towards greater uniform application.
- (7) In the context of this strategy the Commission would expect fewer derogations but pending reflection on this area, the Commission accepts that this measure significantly counters abuse of the VAT system.
- (8) It is appropriate, therefore, to extend the period of the authorisation granted until 31 December 2003 pending an assessment of the compatibility of this measure with the overall approach to the system of VAT.
- (9) The derogation has no adverse impact on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 of Decision 1999/80/EC is replaced by the following:

"The Italian Republic is hereby authorised until 31 December 2003 to apply a special measure for taxation of used and waste materials that contains provisions derogating from the Sixth Council Directive (77/388/EEC) of 17 May 1977.

The provisions in question are laid down in Articles 2 and 3 below."

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels,

*For the Council
The President*