COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.04.1997
COM(97) 166 final

COMMISSION REPORT TO THE COUNCIL

presented in accordance with Article 3 of
Council Decision 93/110/EEC of 15 February 1993
(application of a measure derogating from Article 2 and 10
of the Sixth Council Directive (77/388/EEC) on the harmonization
of the laws of the Member States
relating to turnover taxes)

Proposal for a

COUNCIL DECISION

authorizing the French Republic to extend
the application of a measure derogating from Articles 2 and 10
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

(presented by the Commission)

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I. INTRODUCTION

By Decision 89/683/EEC of 21 December 1989,[1] the Council authorized France, on the basis of Article 27 of the Sixth Directive, to take special measures derogating from Articles 2 and 10(2) of that Directive. The authorization was valid until 31 December 1992.

The authorization enabled France to set up special VAT arrangements for taxable transactions concerning fresh industrial waste and recuperable material.

On the basis of a Commission report on the application of this derogation, the authorization was extended until 31 December 1996 by Council Decision 93/110/EEC of 15 February 1993.[2] Under the terms of the authorization, any proposal to extend it has to be accompanied by a report on its application.

The purpose of this report is to give an account of this derogation from the time of its extension to the present date and to examine the application for an extension submitted by France by letter registered by the Secretariat-General on 19 November 1996. However, since the Commission issued a report at the end of 1992[3] which described in detail the background, objectives and operation of the derogation, the present report simply recalls the key elements of the special arrangements and highlights a number of developments which have occurred since the previous report.

II. APPLICATION OF THE DEROGATION

Structure of the special arrangements set up by France

These special arrangements combine the following three provisions:

1. Automatic taxation of fresh industrial waste and recuperable material supplied by companies which simultaneously meet the following two conditions:

   - they have a permanent establishment;

   and

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1 OJ No L 398, 30.12.1989, p. 31.
2 OJ No L 43, 20.2.1993, p. 44.
3 COM(92) 582, 22.12.1992.

- turnover excluding tax in respect of the fresh industrial waste or recuperable material that they processed during the previous calendar year was equal to, or in excess of, FF 6 000 000.

2. A "limited" exemption, applicable in this instance only to supplies of fresh industrial waste and recuperable material supplied by companies which:

   - either do not have a permanent establishment;

   - or which, although they have a permanent establishment, achieved a turnover excluding tax of less than FF 6 000 000 in respect of the fresh industrial waste and recuperable material that they processed during the previous calendar year.

   This exemption is linked to an option for taxation on authorization available only to companies with a total annual turnover in excess of FF 500 000 inclusive of all taxes. In other words, exemption is compulsory only for companies with a total annual turnover of less than the threshold of FF 500 000 inclusive of all taxes.

3. Mandatory suspension of payment of VAT on supplies to taxable persons of fresh industrial waste and recuperable material consisting of non-ferrous metals and their alloys where such supplies are subject to tax either automatically or by authorization, i.e. where they cannot be exempted.

   Companies in the sector which effect supplies under suspension arrangements are not entitled to invoice VAT, but they do retain their right to deduct it, either by imputation if they are subject to tax in another sector or by way of refund if that is not the case.

All imports of fresh industrial waste and recuperable material are exempt from VAT.

In addition, commission transactions concerning fresh industrial waste or recuperable material are treated as supplies of goods, unlike brokerage transactions, which, as a result, are not covered by the derogation.

Viewpoint of the French authorities on the application of the special arrangements

France has indicated that the sector in question is set to expand because waste recycling and upgrading are becoming increasingly systematic as a result of growing concern for the environment.

The French authorities maintain that the derogation for transactions in fresh industrial waste and recuperable material presents undisputed advantages for traders and for the authorities.

In the case of small groups of various types (charities, migrant populations, etc.), the exemption for fresh industrial waste and recuperable material which they supply clearly

reflects a desire to simplify procedures and combat fraud.

In addition, VAT suspension arrangements for fresh industrial waste and recuperable material consisting of non-ferrous metals provide a useful addition to the system in so far as the high value of these metals increases the risk of fraud.

The scope of the arrangements has also become more restrictive over time. Although they cover all waste from non-ferrous metals including precious metals, certain goods which came under the suspension arrangements prior to 1991 (unprocessed products such as lumps, bars, blocks, plate, dust or chippings of certain non-ferrous metals) are automatically subject to VAT at the moment. The scope of the suspension arrangements has thus been reduced.

The French authorities take the view that suspension arrangements specifically for waste consisting of non-ferrous metals are justified on the grounds that the risks of fraud are greater in this sector given the price per tonne of the raw materials (FF 10 000 per tonne for copper as against FF 500 per tonne for metal scrap) and the scale of international trading in such waste.

Furthermore, companies welcome these arrangements. Traders have indicated that they want them to remain in place as a means of protecting them, among other things, against the risks that could result from fraudulent actions by certain companies for which they might be held responsible by the authorities.

III. OPINION OF THE COMMISSION DEPARTMENTS

Article 27 of the Sixth Directive permits special measures derogating from that Directive to be introduced either in order to simplify the procedure for charging the tax or in order to prevent certain types of tax evasion or avoidance.

The Commission departments take the view that the exemption for supplies by small enterprises is both a simplification measure and an anti-fraud measure because it enables a category of taxable persons for which checks and tax recovery would be disproportionate in relation to revenue to be excluded from the VAT system.

Enabling a certain category of taxpayer to charge VAT on their transactions, which in principle are exempt, provided that they are authorized to do so by the authorities and, where appropriate, lodge a surety, permits increased monitoring of this category of taxpayer by the authorities.

The VAT suspension arrangements applicable to supplies of non-ferrous metal waste make it possible to keep track of transactions that present a higher risk of fraud as a result of the value of the goods involved.

Accordingly, the Commission departments consider that an extension of the special measures in question is justified on the basis of Article 27 of the Sixth Directive.

As regards the period of validity of the authorization, the Commission departments would point out that, on 10 July 1996, the Commission adopted a work programme[4] for the introduction of a common VAT system which provides for step-by-step progress towards the new system.

As the final package of proposals is scheduled for presentation in mid-1999, the Commission departments take the view that no derogation should be extended beyond 31 December 1999.

It would seem appropriate to assess whether the derogation was consistent with the approach adopted under the new common system of VAT at that point in time.

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[4] COM(96)328 final, 22.7.1996.

Proposal for a

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authorizing the French Republic to extend
the application of a measure derogating from Articles 2 and 10
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

EXPLANATORY MEMORANDUM

By letter registered by the Commission's Secretariat-General on 19 November 1996, the French Government submitted a request for an extension of the derogation initially authorized up to 31 December 1992 by Council Decision 89/683/EEC of 21 December 1989[1] and extended until 31 December 1996 by Council Decision 93/110/EEC of 15 February 1993.[2]

Article 3 of the Decision 93/110/EEC states that, in the light of a Commission report on France's application of the Decision, the Council may, on the basis of a Commission proposal, authorize extension of its period of validity.

The Commission report, which covers the period 1993-96, concludes that it is appropriate for the application of that Decision to be extended until 31 December 1999.

On 10 July 1996 the Commission adopted a work programme for the introduction of a common VAT system[3] which provides for step-by-step progress towards the new system. As the final package of proposals is scheduled for presentation in mid-1999, it would seem appropriate not to extend the period of validity beyond 31 December 1999, so as to enable an assessment to be made at that time of the derogation's consistency with the overall approach adopted under the new common system of VAT.

In accordance with Article 27(3) of the Sixth Directive, the other Member States have been informed by letter of 18 December 1996 of the French request.

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1 OJ No L 398, 30.12.1989, p. 31.
2 OJ No L 43, 20.2.1993, p. 44.
3 COM(96)328 final, 22.7.1996.

PROPOSAL FOR A COUNCIL DECISION

AUTHORIZING THE FRENCH REPUBLIC TO EXTEND THE APPLICATION OF A MEASURE DEROGATING FROM ARTICLES 2 AND 10 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

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 harmonization 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 thereof,

Having regard to the previous Council Decisions 89/683/EEC of 21 December 1989[2] and 93/110/EEC of 15 February 1993,[3]

Having regard to the Commission report on the application of the above-mentioned Decision over the period 1993-96,

Having regard to the Commission proposal which followed,

Whereas, under Article 27(1) of the Sixth Directive, the Council, acting unanimously on a proposal from the Commission, may authorize 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;

Whereas, by letter registered by the Secretariat-General of the Commission on 19 November 1996, the French Government requested authorization to extend the application of the derogation previously granted to it for limited periods by Council Decisions 89/683/EEC and 93/110/EEC;

Whereas the other Member States were informed on 18 December 1996 of the French Government's request;

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1 OJ No L 145, 13.6.1977, p. 1; Directive as last amended by Directive 96/95/EC (OJ No L 338, 28.12.1996, p. 89).

2 OJ No L 398, 30.12.1989, p. 31.

3 OJ No L 43, 20.2.1993, p. 44.

Whereas the Commission report on the application of the said derogation over the period 1993-96 has demonstrated the latter's usefulness and effectiveness in the waste-recovery sector, which is particularly vulnerable to fraud;

Whereas the Commission adopted on 10 July 1996 a work programme[4] and a timetable of proposals providing for gradual, step-by-step progress towards a common VAT system for the single market;

Whereas, as the final package is scheduled for presentation in mid-1999, the authorization is to be granted until 31 December 1999 so as to enable an assessment to be made at that time of the derogation's consistency with the overall approach of the new common system of VAT;

Whereas this derogation will not have a negative effect on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

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4 COM(96) 328 final, 22.7.1996.

Article 1

By way of derogation from Article 2 of the Sixth Directive (77/388/EEC), the French Republic is hereby authorized, until 31 December 1999 and in respect of fresh industrial waste and recuperable material, to exempt from value added tax, hereinafter referred to as "VAT":

- on the one hand, supplies made by:

- companies whose annual turnover is less than FF 500 000;

- companies which do not have a permanent establishment or which, although they have a permanent establishment, have achieved in the previous year a turnover figure in respect of such products of less than FF 6 000 000, unless they are authorized to subject such transactions to VAT;

- on the other hand, imports and intra-Community acquisitions.

Article 2

By way of derogation from Article 10(2) of the Sixth Directive (77/388/EEC), the French Republic is hereby authorized, until 31 December 1999, to introduce in respect of supplies to taxable persons of fresh industrial waste and recuperable material in the form of non-ferrous metals and their alloys, where these supplies are not exempt from VAT on the basis of Article 1, arrangements suspending payment of the tax relating to those transactions.

The taxable persons receiving these supplies shall pay the tax on them where these products are intended neither for the export as such nor for the manufacture or resale as such of products liable to VAT.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels,

For the Council

The President

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12