COUNCIL DECISION

of 23 October 1984

authorizing the French Republic to apply in respect of automatic gaming machines a measure derogating from Article 18 of the Sixth Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes

(84/517/EEC)

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), hereinafter referred to as 'the Sixth Directive', and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under the terms of Article 27 (1) of the Sixth Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from the provisions of that Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance ;

Whereas the French Republic, by means of a letter to the Commission dated 24 July 1984 from its Permanent Representation to the Communities, requested authorization to introduce a specific measure designed to combat fraud in connection with automatic gaming machines ; whereas the aim of this measure is to derogate from Article 18 (4) of the Sixth Directive which states that where for a given tax period the amount of authorized deductions exceeds the amount of tax due, the Member States may either make a refund, or carry the excess forward to the following period according to conditions which they shall determine ;

Whereas under certain conditions this request is acceptable ; whereas the measure in question should be applied only in clear-cut cases of fraud where the receipts from automatic gaming machines cannot be determined with certainty ; whereas the measure in question should be temporary, with a limit of four years, until a way is found of fitting all such machines with meters which are proof against tampering and which make it possible to establish actual receipts or until other means of combating fraud which do not derogate from the Sixth Directive can be put into practice ;

Whereas provision should be made for a re-examination of the situation after a certain period in the light of any developments in equipment permitting fraud to be avoided in the sector in question ;

Whereas the said specific measure does not affect the own resources of the European Communities accruing from value added tax,

HAS ADOPTED THIS DECISION :

Article 1

By way of derogation from the provisions of Article 18 (4) of the Sixth Directive, the French Republic is hereby authorized, for a limited period of four years, not to refund in respect of automatic gaming machines any deductible tax credit but to provide for it to be set against tax due in subsequent tax periods.

This measure shall not be applied to automatic gaming machines the receipts of which can be established with certainty.

Article 2

The French Republic shall, before 31 March of each year following the year of introduction of the measure provided for in Article 1, provide the Commission with the following information :

(a) the amount of deductible tax credit which has not been refunded in respect of automatic gaming machines during the preceding year ;

(b) the number of meters which are proof against tampering which have been installed ;

(c) other anti-fraud measures taken in this sector.

Article 3

This Decision is addressed to the French Republic.

Done at Luxembourg, 23 October 1984.

For the Council

The President

P. BARRY

(1) OJ No L 145, 13. 6. 1977, p. 1.