COUNCIL DECISION

of 28 July 1989

authorizing the French Republic to apply a measure derogating from the second subparagraph of Article 17 (6) of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(89/487/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], hereafter referred to as the 'Sixth Directive', as last amended by the 1985 Act of Accession, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

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 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, receipt of which was recorded by the Commission on 17 April 1989, the French Republic requested authorization to introduce a special measure derogating from the second subparagraph of Article 17 (6) of the Sixth Directive;

Whereas certain supplies made to a taxable person concerning in particular his representational expenditure are excluded in France from the right of deduction, in accordance with Article 17 (6), second subparagraph, of the Sixth Directive; whereas this measure is aimed at excluding other expenditure in respect of accommodation, restaurants, hospitality and entertainment from the right to deduct VAT previously charged, in order to prevent tax evasion and avoidance; whereas the exclusion does not concern expenditure incurred by a taxable person in respect of the supply by him of accommodation, meals, food or drink for consideration, expenditure on accommodation provided free of charge for security, caretaking or supervisory staff on works, sites or business premises, or expenditure incurred by a taxable person in carrying out his contractual or legal responsibility towards his customers;

Whereas the authorization requested by the French Republic can be granted only on a temporary basis and until such time as Community rules determining expenditure not eligible for a deduction of value added tax pursuant to the first subparagraph of Article 17 (6) of the Sixth Directive come into force;

Whereas the said derogation does not have a negative effect on the European Communities' own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

1. By way of derogation from the second subparagraph of Article 17 (6) of the Sixth Directive, the French Republic is hereby authorized, on a temporary basis and until such time as Community rules determining the treatment of expenditure referred to in the first subparagraph of that paragraph come into force, to exclude expenditure in respect of accommodation, food, hospitality and entertainment from the right to deduct value added tax previously charged.

2. The exclusion referred to in paragraph 1 shall not apply to:

— expenditure incurred by a taxable person in respect of the supply by him of accommodation, meals, food or drink for consideration,

— expenditure on accommodation provided free of charge for security caretaking or supervisory staff on works, sites or business premises,

— expenditure incurred by a taxable person in carrying out his contractual or legal responsibility towards customers.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 28 July 1989.

For the Council

The President

M. CHARASSE

[1] OJ No L 145, 13. 6. 1977, p. 1.