COUNCIL DECISION

of 28 July 1989

authorizing the French Republic to apply a measure derogating from Article 17 (2) of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(89/488/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 Article 17 (2) of the Sixth Directive;

Whereas the French Republic intends to introduce an arrangement permitting deduction of the entire amount of tax charged on goods and services used for both business and private purpose while, at the same time, providing for taxation of the private use of such goods and services, in accordance with Articles 5 (6) and 6 (2) of the Sixth Directive;

Whereas, the French Republic would like to retain the right to exclude altogether the deduction of input VAT while refraining from taxing self-supplies in cases where private use accounts for more than 90 % of the use to which a particular good or service is put;

Whereas such a measure is necessary and appropriate to avoid certain tax evasion and fraud and whereas it contributes to the simplification of collecting value added tax;

Whereas the said measure constitutes a derogation from Article 17 (2) of the Sixth Directive, whereby a taxable person is entitled to deduct the tax charged on goods and services used by him in so far as those goods and services are used for the purposes of his taxable transactions;

Whereas the said request can be accepted subject to certain conditions;

Whereas the measure in question should be temporary in order to allow an evaluation after a certain period of application;

Whereas the authorization will run until 31 December 1992, with the Commission presenting before that date, a report to the Council on the application of this authorization.

Whereas the Council will determine, on the basis of a proposal for a Decision submitted if appropriate by the Commission and accompanying the abovementioned report, whether to extend the authorization beyond that date;

Whereas the derogation will not affect, except to a negligible degree, the amount of tax due at the final consumption stage; whereas it does not have a negative effect on the European Communities' own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from the provisions of Article 17 (2) of the Sixth Directive, the French Republic is hereby authorized until 31 December 1992 to exclude expenditure in respect of goods and services in cases, where private use of those goods and services accounts for more than 90 % of their total use,

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

from the right to deduct value added tax previously charged.

Article 2

On the basis of a report by the Commission on the application of the authorization cited in Article 1, accompanied if appropriate by a proposal for a Decision, the Council shall determine on the basis of that proposal before 31 December 1992 whether the said authorization shall be extended.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 28 July 1989.

For the Council

The President

M. CHARASSE