COUNCIL DECISION

of 18 January 1999

authorising the Portuguese Republic to apply a measure derogating from Articles 21(1)(a) and 22 of the Sixth Directive (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes

(1999/82/EC)

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 harmonisation of the laws of the Member States relating to turnover taxes — common system of value-added tax: uniform basis for assessment [1], and in particular Article 27(1) thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 27(1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise 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 and avoidance;

Whereas, by letter registered with the Commission on 17 March 1998, the Portuguese Republic requested authorisation to introduce a measure derogating from Articles 21(1)(a) and 22 of Directive 77/388/EEC;

Whereas, in accordance with Article 27(3) of Directive 77/388/EEC, the other Member States were informed on 19 May 1998 of the request submitted by the Portuguese Republic;

Whereas that special measure is designed to allow certain firms engaged in doorstep selling to request the tax administration for authorisation to pay VAT on the products sold in place of their resellers, provided that their total turnover is derived from doorstep sales by resellers acting in their own name and on their own account and all the products sold by the firm are included in a list on which the selling price to the final consumer is mentioned;

Whereas the derogation is restricted to cases in which firms sell products direct to resellers and those resellers sell them directly to final consumers;

Whereas firms which satisfy these conditions and have been authorised to do so by the tax administration would pay VAT to the public revenue department on the basis of a retail price fixed in advance;

Whereas the resellers concerned would therefore no longer required to pay VAT on their sales and would accordingly not be entitled to deduct input tax;

Whereas this measure constitutes a derogation from Article 21(1)(a) in that the wholesaler is deemed to be the person liable for tax payable on goods supplied by resellers to final consumers;

Whereas the obligations in connection with such sales (e.g. declaration, invoicing, payment, etc.) fall upon the wholesaler, who will, therefore, by way of derogation from Article 22 of Directive 77/388/EEC, be exempt from fulfilling such obligations in respect of his supplies to the reseller;

Whereas this sector is characterised by the existence of a very large number of small resellers who do not have the resources or organisational capacity to fulfil their VAT obligations; whereas this measure, therefore, both simplifies matters and helps to combat tax fraud;

Whereas, consequently, the special measure satisfies the conditions laid down in Article 27 of Directive 77/388/EEC;

Whereas the Commission adopted on 10 July 1996 a work programme, together with a timetable for the phased introduction of a common system of VAT for the single market;

Whereas it would, therefore, be appropriate to grant authorisation until 31 December 2000 so that an assessment can then be made of the compatibility of the measure with the overall approach adopted for the new common system of VAT;

Whereas this derogation will have no impact on the European Communities' own resources accruing from VAT,

[1] OJ L 145, 13. 6. 1977, p. 1. Directive as last amended by Directive 96/95/EC, (OJ L 338, 28. 12. 1996, p. 89).

HAS ADOPTED THIS DECISION:

Article 1

The Portuguese Republic is hereby authorised from 1 January 1999 until 31 December 2000 to apply a special measure for the taxation of doorstep sales that contains provisions derogating from Council Directive 77/388/EEC.

Firms whose total turnover is derived from doorstep sales carried out by resellers acting in their own name and for their own account may request the administration for authorisation to apply the provisions of Articles 2 and 3 below on condition that:

— all products sold by the firm are contained in a pre-established price list applicable at the final consumption stage,

— the firm sells its products direct to resellers who, in turn, sell direct to final consumers.

Article 2

By way of derogation from Article 21(1)(a) of the Sixth Directive, firms which have been authorised to apply this special measure shall be liable for the tax payable on goods supplied by their resellers to final consumers.

Article 3

Firms which have been authorised to apply this special measure shall be exempt from the obligations laid down in Article 22 of Directive 77/388/EEC as regards supplies of their products to resellers.

Article 4

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 18 January 1999.

For the Council

The President

O. LAFONTAINE