II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 27 November 2000

authorising the French Republic to apply a measure derogating from Article 11 of the sixth Directive (77/388/EEC) relating to the common system of value added tax

(2000/746/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 Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [1], hereinafter referred to as 'the sixth VAT Directive', and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In a letter registered by the Commission's Secretariat-General on 17 May 2000, the Government of the French Republic requested authorisation on the basis of Article 27 of the Sixth VAT Directive to apply a measure derogating from Article 11(A)(1)(a) of the Directive.

(2) Under Article 27(1) of the sixth VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of the Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

(3) In accordance with the said Article 27, the other Member States were informed of the request from the French Republic by letter dated 14 June 2000.

(4) Article 11(A)(1)(a) of the sixth VAT Directive states that, in principle, the taxable amount in respect of supplies of goods and services shall be everything which constitutes the consideration which has been or is to be obtained by the supplier for such supplies from the purchaser, the customer or a third party.

(5) The French Republic, by way of derogation from these provisions, has requested authorisation to include in the taxable amount for a transaction involving the working of investment gold the value of the raw material provided by the purchaser of the service and used to make the finished product.

(6) The aim of the derogation is to avoid abuse of the exemption for investment gold and thus to prevent certain types of tax evasion or avoidance. It therefore meets the conditions set out in Article 27 of the sixth VAT Directive.

(7) The forms of tax evasion or avoidance in question consist mainly of the initial purchase of VAT-exempt investment gold which is then worked to make jewellery or other goods, without VAT being charged on the value of investment gold included in the transaction concerned.

(8) The derogation is granted until 31 December 2004, so that an assessment can be made as to whether it is appropriate in the light of changes in the practical application of the special system for investment gold established by Directive 98/80/EC [2].

(9) The derogation has no negative impact on the European Communities' own resources derived from value added tax,

[1] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2000/65/EC (OJ L 269, 21.10.2000, p. 44).

[2] OJ L 281, 17.10.1998, p. 31.

HAS ADOPTED THIS DECISION:

Article 1

The French Republic is authorised, by derogation from Article 11(A)(1)(a) of the sixth VAT Directive, to include in the taxable amount in respect of the supply of goods or services comprising the working of tax-exempt investment gold the value of the gold contained in the finished product based on the current market value of the investment gold.

Article 2

The authorisation granted under Article 1 shall expire on 31 December 2004.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 27 November 2000.

For the Council

The President

L. FABIUS