II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 4 June 2002

authorising Germany to apply a measure derogating from Article 21 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2002/439/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 of assessment [1], and in particular Article 27(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In a request submitted in the form of two letters addressed to the Commission, registered by the Commission's Secretariat-General on 9 January 2002, the German Government sought authorisation to introduce a measure derogating from Article 21(1)(a) of Directive 77/388/EEC.

(2) The other Member States were informed of Germany's request by letter of 16 January 2002.

(3) Article 21(1) of Directive 77/388/EEC, in the version of Article 28g of the said Directive, stipulates that, under the internal system, the taxable person supplying taxable goods or services is normally liable to pay value added tax (VAT).

(4) The purpose of the derogation requested by Germany is to make the recipient liable for the value added tax due firstly on the supply, outside a judicial liquidation procedure, of goods provided as security by one VAT taxable person to another in execution of that security and secondly on the supply of immovable property sold at public auction to another VAT taxable person in the course of the judicial liquidation of the enterprise that owned the immovable property sold.

(5) This derogation is intended to simplify the collection of the tax insofar as, in practice, the person normally liable for the tax is, in the instances for which the derogation is sought, generally prevented by financial difficulties from paying the VAT invoiced.

(6) This state of affairs adversely affects public finances in that the recipient of the goods can nonetheless deduct the value added tax invoiced to him, even though it has not been paid by the taxable person who supplied the goods.

(7) By designating the recipient of the goods as the person liable for the value added tax, the derogation removes the difficulties encountered without affecting the amount of tax due.

(8) The authorisation should be granted until 31 December 2006, which will enable the derogation to be reviewed in the light of experience.

(9) The derogation in question does not adversely affect the Communities' own resources from VAT,

[1] OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2001/115/EC (OJ L 15, 17.1.2002, p. 24).

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 21(1)(a) of Directive 77/388/EEC, in the version of Article 28g thereof, Germany is hereby authorised to designate the recipient of the supplies of goods referred to in Article 2 of this Decision as the person liable to pay value added tax.

Article 2

The recipient of the supply of goods may be designated as the person liable to pay VAT in the following instances:

1. the supply, outside a judicial liquidation procedure, of goods provided as security by one VAT taxable person to another in execution of that security;
2. the supply of immovable property sold at public auction to another VAT taxable person in the course of the judicial liquidation of the enterprise that owned the immovable property thus sold.

Article 3

This Decision shall expire on 31 December 2006.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Luxembourg, 4 June 2002.

For the Council

The President

R. DE RATO Y FIGAREDO