COMMISSION

COMMISSION DECISION

of 26 August 2004

concerning a request from the Republic of Malta to apply a reduced rate of VAT to the supply of electricity

(notified under document number C(2004) 3240)

(2004/673/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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], as last amended by Directive 2004/66/EC [2], and in particular Article 12(3)(b) thereof,

Whereas:

(1) By letter registered at the Commission on 18 June 2004 the Republic of Malta informed the Commission of its intention of applying a reduced rate of VAT to the supply of electricity.

(2) The planned measure is a general one applying a reduced rate of VAT to the supply of electricity under Article 12(3)(b) of the Sixth VAT Directive.

(3) Since Malta's electricity system is small and isolated, there is no risk of distorting competition on the internal market. At present Malta does not use natural gas because it has no gas network or connection.

(4) Moreover, the VAT rules regarding the place of supply of electricity, as laid down in the Sixth VAT Directive, were amended by Directive 2003/92/EC [3]. The supply of electricity in the final stage, from traders and distributors to final consumer, is taxed at the place where the customer has effective use and consumption of the goods, in order to ensure that taxation takes place in the country where actual consumption takes place.

(5) Since the measure is a general one with no provision for exceptions, the risk of distortion of competition must be deemed non-existent. Since the condition laid down by Article 12(3)(b) of the Sixth Directive is thus fulfilled, Malta should be able to apply the measure concerned as soon as this Decision is notified,

HAS ADOPTED THIS DECISION:

Article 1

Malta may apply the measure notified in its letter of 18 June 2004, applying a reduced rate of VAT to the supply of electricity irrespective of the conditions of production and supply.

Article 2

This Decision is addressed to the Republic of Malta.

Done at Brussels, 26 August 2004.

For the Commission
Frederik BOLKESTEIN
Member of the Commission

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[1] OJ L 145, 13.6.1977, p. 1.
[2] OJ L 168, 1.5.2004, p. 35.
[3] OJ L 260, 11.10.2003, p. 8.