II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 7 December 2004

authorising the French Republic and the Italian Republic to apply a measure derogating from Article 3(1) of the Sixth Council Directive (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes

(2004/853/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 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Under Article 27 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 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.

(2) In a request submitted to the Commission and registered by the Commission's Secretariat-General on 24 March 2004, the French and the Italian Governments sought authorisation to derogate from Article 3 of Directive 77/388/EEC.

(3) In accordance with Article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States by letter of 1 June 2004 of the request made by the French and the Italian Governments and by letter of 3 June 2004 the Commission notified the French Republic and the Italian Republic that it had all the information it considered necessary for appraisal of the request.

(4) Between France and Italy there are two tunnels: Mont Blanc (Monte Bianco) and Fréjus. The border between the two States is inside the tunnel but it would be impractical to arrange collection of tolls inside. The first indent of Article 3(1) of Directive 77/388/EEC stipulates that the '… "territory of a Member State" shall mean the territory of the country …'. Under the current rules, therefore, the taxable amount of the tolls should be related to the length of the tunnel which belongs to each State. Since it would be expensive and disruptive to have a toll booth at each end of the tunnel for each Member State to collect their share of the toll, tolls are collected as a whole at the entrance of the tunnel. Each journey through the tunnel should be invoiced with two tolls and two different VAT rates: one for the French territory and one for the Italian territory. Moreover the taxable amount and the VAT should afterwards be shared between the two Member States. Thus the VAT is an additional complicating factor in an already complex mechanism of financial compensation resulting from the sharing of the management costs for the tunnel.

(5) The purpose of the derogation requested by France and Italy is to seek authorisation to derogate from Article 3 of Directive 77/388/EEC in relation to the tunnel of Mont Blanc (Monte Bianco) and tunnel of Fréjus.

[1] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

(6) For both tunnels the two States wish to consider the entire length of the carriageway within the tunnel as the territory of the State in which any transit journey through the tunnel using the carriageway starts. Thus the French office will apply French VAT to the entire toll for all journeys starting from the French side. The same mechanism will be applied by the Italian office to all journeys starting from the Italian side.

(7) This derogation only has effect with regard to the charging of tolls and in order to simplify the way in which VAT is calculated and accounted for. It does not affect the VAT territory of Italy or France for the purposes of any other supplies.

(8) The intended measure is designed to solve the problems outlined above by simplifying the arrangements for paying the tax and is essentially of a technical nature. It does not adversely affect the Communities' own resources provided from VAT, nor does it have any effect on the amount of the tax due at the final stage of consumption.

(9) As the matter involved is the territory definition for VAT purposes to which there should be no changes, the requested derogation should be granted for an indefinite period,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 3 of Directive 77/388/EEC, France and Italy are hereby authorised to consider the carriageway within the tunnels of Mont Blanc (Monte Bianco) and Fréjus, for their entire length, as part of the territory of the Member State from which any journey using the carriageway starts.

Article 2

Article 1 shall apply to the tunnels' tolls only.

Article 3

This Decision is addressed to the French Republic and the Italian Republic.

Done at Brussels, 7 December 2004.

For the Council
The President
G. ZALM