COUNCIL DECISION

of 14 February 2006

amending Decisions 98/161/EC, 2004/228/EC and 2004/295/EC, as regards the extension of measures to prevent evasion of value added tax in the waste sector

(Only the Dutch, Spanish and Italian versions are authentic)

(2006/126/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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 valued 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(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 valued added tax (VAT) or to prevent certain types of tax evasion or avoidance.

(2) By letter registered by the Secretariat-General of the Commission on 25 October 2005, the Kingdom of the Netherlands (hereinafter Netherlands) requested an extension of Council Decision 98/161/EC of 16 February 1998 authorising the Kingdom of the Netherlands to apply a measure derogating from Articles 2 and 28a(1) of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes [2].

(3) By letter registered by the Secretariat-General of the Commission on 3 August 2005, the Kingdom of Spain (hereinafter Spain) requested an extension of Council Decision 2004/228/EC of 26 February 2004 authorising Spain to apply a measure derogating from Article 21 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes [3].

(4) By letter registered by the Secretariat-General of the Commission on 26 September 2005, the Italian Republic (hereinafter Italy) requested an extension of Council Decision 2004/295/EC of 22 March 2004 authorising Italy to apply a measure derogating from Article 21 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes [4].

(5) In accordance with Article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States of the mentioned requests. In letters dated 27 October 2005, 7 September 2005 and 25 October 2005, the Commission respectively notified the Netherlands, Spain and Italy that it had all the information it considered necessary for the appraisal of their individual requests.

(6) Decision 98/161/EC authorised the Netherlands to apply, until 31 December 1999, certain measures to prevent evasion connected with the supply and intra-community acquisition of used and waste materials. Council Decision 2000/435/EC [5] extended the expiry date of Decision 98/161/EC until 31 December 2003. It was subsequently followed by Council Decision 2004/514/EC [6], which further extended the authorisation given under Decision 98/161/EC until the earlier of the date of entry into force of a special scheme for the application of VAT to the recycled waste sector or 31 December 2005.

(7) Decision 2004/228/EC authorised Spain to apply a measure to prevent evasion of VAT in the waste recycling sector. The said Decision expires on the earlier of the date of entry into force of a special scheme for the application of VAT to the recycled waste sector or 31 December 2005.

(8) Decision 2004/295/EC authorised Italy to apply a measure to prevent evasion of VAT in the waste recycling sector. The said Decision expires on the earlier of the date of entry into force of a special scheme for the application of VAT to the recycled waste sector or 31 December 2005.

[1] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2005/92/EC (OJ L 345, 28.12.2005, p. 19).
[2] OJ L 53, 24.2.1998, p. 19. Decision as last amended by Decision 2004/514/EC (OJ L 219, 19.6.2004, p. 11).
[3] OJ L 70, 9.3.2004, p. 37.
[4] OJ L 97, 1.4.2004, p. 63.
[5] OJ L 172, 12.7.2000, p. 24.
[6] OJ L 219, 19.6.2004, p. 11.

(9) The measures are proportionate to the objectives pursued since they are intended to apply to specific supplies which pose considerable risks of tax evasion.

(10) The matters of law and of fact which justified the application of the special measures in question have not been changed and still pertain. However, on 16 March 2005, the Commission submitted a proposal for a Council Directive amending Directive 77/388/EEC as regards certain measures to simplify the procedure for charging value added tax and to assist in countering tax evasion and avoidance, and repealing certain Decisions granting derogations. The proposed Directive would, if adopted, empower Member States to designate the recipient of certain goods and services in the waste sector as the person liable to pay the tax.

(11) Consequently, it is necessary to extend the application of Decisions 98/161/EC, 2004/228/EC and 2004/295/EC, until 31 December 2009 or until the date of entry into force of a special scheme for the application of VAT to the recycled waste sector amending Directive 77/388/EEC, whichever is the earlier.

(12) The extension of the derogation has no adverse impact on the Communities' own resources accruing from VAT, nor does it have any effect on the amount of VAT charged at the final stage of consumption.

(13) In order to ensure legal continuity, this Decision should apply as from 1 January 2006,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1 of Decision 98/161/EC, '31 December 2005' shall be replaced by '31 December 2009'.

Article 2

In Article 3 of Decision 2004/228/EC, '31 December 2005' shall be replaced by '31 December 2009'.

Article 3

In Article 3 of Decision 2004/295/EC, '31 December 2005' shall be replaced by '31 December 2009'.

Article 4

This Decision shall apply as from 1 January 2006.

Article 5

This Decision is addressed to the Kingdom of Spain, the Italian Republic and the Kingdom of the Netherlands.

Done at Brussels, 14 February 2006.

For the Council
The President
K.-H. GRASSER