

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 695 final

Brussels, 6th December 1979

PROPOSAL FOR AN ELEVENTH COUNCIL DIRECTIVE  
ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES  
RELATING TO TURNOVER TAXES - EXCLUSION OF  
THE FRENCH OVERSEAS DEPARTMENTS FROM THE  
SCOPE OF DIRECTIVE 77/388/EEC

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(presented by the Commission to the Council)

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EXPLANATORY MEMORANDUM

Article 227 (2) of the EEC Treaty provided that only some of its provisions were to take effect immediately in the French overseas departments. The Council was to determine before 1 January 1960 the conditions under which the other provisions of the Treaty, including those relating to tax, were to apply. Prior to the judgment of the Court of Justice in case 148/77 (Hansen and Balle v. Hauptzollamt Flensburg) delivered on 10 October 1978, the two-year period referred to in Article 227 (2) was not interpreted as a strict time limit. Accordingly, where no Council decision had been adopted, a Treaty provision could not, by implication, be applied to the overseas departments.

This was the interpretation accepted by the Council when adopting the Sixth VAT Directive (1) on 17 May 1977. In this case such an interpretation is clear from the work carried out within the relevant Council Working Party and is to be found in particular in document T/494/76(JUR)(fin) of 10 June 1976.

Since Article 3 (1) of the Directive, dealing with territorial application, contained a reference to Article 227 of the Treaty for defining the territory of the country of each Member State it was unnecessary therefore to include in Article 3 (2), as requested by the French delegation, the French overseas departments among the national territories excluded from the scope of the VAT.

The Court of Justice, setting aside the earlier interpretation, held in the abovementioned case that after the expiry of the two-year period provided for in Article 227 (2) the provisions of the Treaty and secondary law apply automatically to the overseas territories, while acknowledging, however, that "in order to make due allowance for the special geographic, economic and social situation of those departments", provisions could be

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(1) OJ n° L 145 of 13 June 1977

adopted after the expiry of the two-year period commensurate to "the specific requirements of those parts of the French territories".

The situation referred to by the Court in its judgment of 10 October 1978 was in essence the reason for the Council's decision not to include the overseas departments in the scope of the Sixth Directive.

The Court's interpretation of Article 227 of the Treaty therefore requires, if the Council's wishes expressed when adopting the Sixth Directive are to be observed, an amendment of Article 3 (2) of the directive by adding the French overseas departments to the list of national territories excluded from the scope of the common system of value added tax.

This amendment does not however amount to an amendment of the substance of the directive. Since it is a purely formal one the proposed amendment may therefore take effect on the date of entry into force of the Sixth Directive, which was postponed until 1 January 1979 by the Ninth Council Directive of 26 June 1978 (1).

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(1) OJ n° L 194 of 19 July 1978, p. 16

Proposal for an Eleventh Council Directive on the harmonization of the laws of the Member States relating to turnover taxes - Exclusion of the French overseas departments from the scope of Directive 77/388/EEC

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular paragraph 2 of Article 227 thereof,

Having regard to the proposal from the Commission,

whereas the provisions of the EEG Treaty and secondary legislation apply in the French overseas departments unless a decision is taken by the Community institutions adopting measures particularly suited to the economic and social conditions of those departments ;

whereas for reasons connected with their geographic, economic and social situation, the French overseas departments should be excluded from the scope of the common system of value added tax, as established by Council Directive 77/388/EEC<sup>1</sup>,

HAS ADOPTED THIS DIRECTIVE :

Article 1

A fourth indent as follows is added to Article 3 (2) of Directive 77/388/EEC :

" - Republic of France:  
The overseas departments".

Article 2

This Directive shall apply with effect from 1 January 1979.

Article 3

This Directive is addressed to the Member States.

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<sup>1</sup> OJ n° L 145 of 13 June 1977