



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.06.1997
COM(97) 286 final

REPORT FROM THE COMMISSION TO THE COUNCIL

presented in accordance with Article 2 of
Council Decision 92/545/EEC of 23 November 1992
(application of a measure derogating from Article 21 of
the Sixth Directive 77/388/EEC on the harmonization
of the laws of the Member States relating
to turnover taxes)

Proposal for a

COUNCIL DECISION

authorizing the Kingdom of the Netherlands to extend the
application of a measure derogating from Article 21
of the Sixth Council Directive (77/388/EEC) of 17 May 1977
on the harmonization of the laws of the
Member States relating to turnover taxes

(presented by the Commission)

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I. INTRODUCTION

By Decision 92/545/EEC of 23 November 1992,¹ the Council authorized the Netherlands, on the basis of Article 27 of the Sixth Directive, to take special measures derogating from Article 21 of that Directive. The authorization was valid until 31 December 1996.

The derogation enabled the Netherlands to apply in the ready-to-wear clothing industry a scheme for shifting the obligation to pay over VAT to the tax authorities from the subcontractor to the clothing firm (the contractor).

Article 2 of the Decision provides that the Commission is to present to the Council a report on the application of the derogation, accompanied, where appropriate, by a proposal for a decision extending it.

The purpose of this report is to give an account of the application of this derogation and to examine the request for an extension submitted by the Netherlands by letter registered by the Secretariat-General on 15 November 1996.

II. APPLICATION OF THE DEROGATION

1. Reasons for and nature of the scheme

When it submitted its request for a derogation in 1992, the Dutch Government pointed out that it is common in the ready-to-wear clothing industry for retail chains to obtain supplies of clothes from ready-to-wear clothing firms, which take responsibility for manufacture. These firms often in turn put the work out to small workshops (subcontractors).

Tax evasion occurred in the relationship between the ready-to-wear clothing firms and the subcontractors: the subcontractor invoiced VAT to the ready-to-wear clothing firm but omitted to pay it over to the tax authorities, while the clothing firm deducted the tax.

It was difficult to combat this type of evasion by applying the normal rules of the common system of VAT since the ready-to-wear clothing workshops are very often small firms which barely have their own means of production and are established in rented industrial premises or in dwellings. These workshops do not comply with the applicable legislation on social insurance, taxation and working conditions; many of them frequently change hands. In these circumstances, the tax authorities had little chance of recovering the tax when they discovered instances of evasion.

The Dutch Government therefore requested and obtained authorization to introduce a special measure which involves collecting from the contractor the VAT normally due from the subcontractor under Article 21 of the Sixth Directive.

¹ OJ No L 351, 2.12.1992, p. 33.

The measure forms part of an overall strategy which the Dutch tax authorities have developed in order to combat evasion more effectively in sensitive sectors such as the ready-to-wear clothing industry.

2. Views of the Dutch administration on the application of the scheme

The Dutch authorities state that the scheme for shifting the obligation to pay over VAT has proved very effective in the fight against VAT evasion in the ready-to-wear clothing industry.

A survey carried out in the Dutch tax administration has shown that, since the scheme was introduced, there is no longer any evidence of large-scale evasion in the industry.

Two tax offices which are responsible for some 45% of all businesses in the ready-to-wear clothing industry have found that VAT evasion has disappeared in the industry since the special measure was introduced. Although the resources assigned to tax monitoring have not been increased, evasion, which amounted to some HFL 3.4 million over the period 1989-93, has no longer been detected since 1994. This finding is confirmed by other tax offices.

III. OPINION OF THE COMMISSION

Article 27 of the Sixth Directive permits special measures derogating from the Directive to be introduced either to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

The Commission takes the view that the effectiveness of the scheme in combating evasion is beyond doubt and that the special measure therefore satisfies the conditions laid down in Article 27.

The scope of the measure is furthermore limited to those transactions where there is a genuine risk of evasion.

The Commission therefore considers that there is good reason for extending the special measure under Article 27 of the Sixth Directive.

As regards the period of validity of the authorization, the Commission would point out that on 10 July 1996 it adopted a work programme² for the introduction of a common VAT system which provides for step-by-step progress towards the new system.

As the final package of proposals is scheduled for presentation in mid-1999, the Commission takes the view that no derogation should be extended beyond 31 December 1999.

It would seem appropriate to determine at that time whether the derogation is consistent with the approach adopted under the new common system of VAT.

² COM(96) 328 final, 22.07.1996.

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EXPLANATORY MEMORANDUM

By letter registered by the Commission's Secretariat-General on 15 November 1996, the Dutch Government submitted a request for an extension of the derogation it was granted by Council Decision 92/545/EEC of 23 November 1992.¹

Article 2 of the Decision states that, in the light of a Commission report on the application of the derogation by the Netherlands, the Council may, on the basis of a Commission proposal, authorize the extension of that Decision.

The Commission's report on the application of the Decision concludes that it is appropriate for the application of its provisions to be extended until 31 December 1999.

On 10 July 1996 the Commission adopted a work programme for the introduction of a common VAT system² which provides for step-by-step progress towards the new system. As the final package of proposals is scheduled for presentation in mid-1999, it would seem appropriate not to extend the period of validity beyond 31 December 1999 so as to enable an assessment then to be made of the derogation's consistency with the overall approach adopted under the new common system of VAT.

In accordance with Article 27(3) of the Sixth VAT Directive, the other Member States have been informed of the Dutch request by letter dated 21 April 1997.

¹ OJ No L 351, 2.12.1992, p. 33.

² COM(96) 328 final, 22.07.1996.

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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 harmonization 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 previous Council Decision 92/545/EEC of 23 November 1992,²

Having regard to the Commission report on the application of the above-mentioned Decision,

Having regard to the Commission proposal arising from that report,

Whereas, under Article 27(1) of the Sixth VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce or extend special measures derogating from that Directive in order to simplify the procedure for charging tax or to prevent certain types of tax evasion or avoidance;

Whereas, by letter registered by the Secretariat-General of the Commission on 15 November 1996, the Dutch Government requested authorization to extend the application of the derogation previously granted to it for a limited period by Council Decision 92/545/EEC;

Whereas the other Member States were informed on 21 April 1997 of the Dutch Government's request;

¹ OJ No L 145, 13.6.1977, p. 1; Directive last amended by Directive 96/95/EC (OJ No L 338, 28.12.1996, p. 89).

² OJ No L 351, 2.12.1992, p. 33.

Whereas the derogation involves collecting from the ready-to-wear clothing firm the VAT normally due from the subcontractor under Article 21(1)(a) of the Sixth Directive;

Whereas the Commission report on the application of the derogation has shown that the special measure satisfies the conditions for the application of Article 27 of the Directive;

Whereas the Commission adopted on 10 July 1996 a work programme³ and a timetable of proposals providing for gradual, step-by-step progress towards a common VAT system for the single market;

Whereas, as the final package of proposals is scheduled for mid-1999, the authorization is to be granted until 31 December 1999 so as to enable an assessment then to be made of the derogation's consistency with the overall approach of the new common system of VAT;

Whereas this derogation will not have a negative effect on the European Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 21(1)(a) of Directive 77/388/EEC, the Kingdom of the Netherlands is hereby authorized to apply until 31 December 1999 in the ready-to-wear clothing industry a scheme for shifting the obligation to pay over VAT to the tax authorities from the subcontractor to the clothing firm (the contractor).

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels,

For the Council

The President

³ COM(96) 328 final, 22.07.1996.

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DOCUMENTS

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