



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.1.2004  
COM(2004) 53 final

Proposal for a

**COUNCIL DECISION**

**authorising Italy to apply a measure derogating from Article 21 of 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**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

1. On March 2001, the Council adopted Decision 2001/244/EC<sup>1</sup> amending article 1 of Decision 1999/80/EC<sup>2</sup> in order to extend its validity until 31<sup>st</sup> December 2003. Decision 1999/80/EC authorizes Italy to apply until that date a measure derogating from Articles 2 and 10(2) of the Sixth Council Directive (77/388/EC) 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 for assessment<sup>1</sup>) in order to exempt the supply of certain waste materials but not of non-ferrous scrap, effected by taxable persons who either did not have a fixed establishment or had a fix establishment with a turnover of less than ITL 2 billion. Taxable persons with a fix establishment and a turnover of more than 150 million ITL could however be allowed not to apply these particular arrangements. Decision 1999/80/EC also authorized Italy to apply suspension arrangements to supplies of non-ferrous scrap.
2. In the last few years, the services of the Commission have been contacted repeatedly by both the traders active in this sector and the Italian Administration regarding the persistence of fraud. Both insist that only a solution which assures equal treatment to all operators active in the sector and avoids the risk of non-payment of VAT charged by these operators will be effective in the long run to prevent tax avoidance and the resulting distortion of competition affecting honest traders.
3. By letter registered with the Secretariat-General of the Commission on 31 October 2003, the Italian Government requested authorisation - under Article 27 of the Sixth Directive - to apply special measures to certain supplies of goods relating to waste materials.
4. In accordance with Article 27(3) of the Sixth Directive, the other Member States were informed of the Italian request by letter dated 28 November 2003.
5. The Italian Government would like to apply a "reverse charge" procedure to the following supplies of goods:
  - the supply and associated operations of ferrous waste and scrap, as well as of glass, paper and board, rags, bone and leather, rubber and plastic, including the supplies of those materials after they have undergone certain processing such as cleaning, polishing, selection, cutting or casting into ingots;
  - the supply and associated operations of ferrous and non-ferrous semi-processed products, such as pig iron, refined copper and copper alloys and crude nickel and aluminium.
6. In its request, the Italian government explains that the measure is aimed at countering tax evasion by small operators in the sector, who despite charging VAT, often do not pay the tax to the authorities and hence are able to offer lower prices displacing compliant operators. The number and size of non-compliant operators creates particular difficulties for their effective control by the tax authorities.

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<sup>1</sup> OJ L 88, 28.3.2001, p. 17.

<sup>2</sup> OJ L 27, 2.2.1999, p. 24.

<sup>3</sup> OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2003/92/EC (OJ L 260, 11.10.2003, p. 8).

7. The requested measure would enable Italy to designate the recipient of the goods (and services related to them) as the person liable to pay tax. In accordance with article 17.2.a) of Directive 77/388/EEC, the recipient of the supplies of waste will be able to deduct the tax due for such supplies. The scope of the reverse charge procedure would be determined by the nature of the goods that are being supplied.
8. The requested measure is to be considered first and foremost as a measure to prevent certain types of tax evasion in the waste recycling sector, such as the non-payment of invoiced VAT by traders engaged in the collection, sorting and basic transformation of waste material, who subsequently become untraceable. The measure also has the effect of simplifying the work of the tax authorities, which very frequently have major problems collecting the VAT due by traders in that sector.
9. The measure is proportionate to the objectives pursued, since it is not intended to apply to all taxable operations in the sector concerned but only to specific operations which pose considerable problems of tax evasion.
10. This measure does not adversely effect the VAT Communities' own resources, nor does it have any effect on the amount of tax due at the final stage of consumption.
11. In its communication of 7 June 2000 to the Council and the European Parliament on a strategy to improve the operation of the VAT system within the context of the internal market,<sup>4</sup> the Commission undertook to rationalise the large number of derogations currently in force. In some cases, however, this rationalisation could involve extending certain particularly effective derogations to all Member States.
12. The Commission's recent contacts with certain national administrations and representatives of the sector suggest that special rules specifically adapted to the sector might be necessary to ensure fairer taxation of the traders concerned across the Community. The Commission intends to prepare a proposal for a special scheme applying to the waste recycling sector.
13. The Commission accepts that, pending more permanent changes, this derogation significantly counters abuse of the VAT system. It therefore considers it appropriate to grant the derogation until the date of entry into force of a special scheme for the application of VAT to the recycled waste sector, but not later than 31 December 2005.

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<sup>4</sup> COM(2000) 348 final.

Proposal for a

## COUNCIL DECISION

### **authorising Italy to apply a measure derogating from Article 21 of 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**

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,<sup>5</sup> and in particular Article 27 thereof,

Having regard to the proposal from the Commission,<sup>6</sup>

Whereas:

- (1) Pursuant to Article 27(1) of the Sixth VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce or extend special measures for derogation from that Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.
- (2) By letter registered with the Secretariat-General of the Commission on 31 October 2003, the Italian Government requested authorisation to apply special tax measures to the waste sector.
- (3) The other Member States were informed of Italy's request on 28 November 2003.
- (4) The derogation in question is intended to allow Italy to designate the recipient of specific types of supplies in the waste sector, as the person liable to pay the tax. In accordance with Article 17.2.a) of Directive 77/388/EEC, the recipient of the supplies of waste will be able to deduct the tax due for such supplies. This should minimise the problems faced by tax authorities in collecting the VAT in that sector, without having any effect on the amount of tax due.
- (5) The requested measure is to be considered first and foremost as a measure to prevent certain types of tax evasion in the waste recycling sector, such as the non-payment of invoiced VAT by traders engaged in the collection, sorting and basic transformation of waste material, who subsequently become untraceable. The measure also has the effect of simplifying the work of the tax authorities..

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<sup>5</sup> OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2003/92/EC (OJ L 260, 11.10.2003, p. 8).

<sup>6</sup> OJ C [...], [...], p. [...].

- (6) The measure is proportionate to the objectives pursued, since it is not intended to apply to all taxable operations in the sector concerned but only to specific operations which pose considerable problems of tax evasion.
- (7) On 7 June 2000 the Commission published a strategy to improve the operation of the VAT system in the short term, in which it undertook to rationalise the large number of derogations currently in force. In some cases, however, this rationalisation could involve extending certain particularly effective derogations to all Member States.
- (8) The Commission's recent contacts with certain national administrations and representatives of the sector suggest that special rules specifically adapted to the sector might be necessary to ensure fairer taxation of the traders concerned across the Community. The Commission intends to prepare a proposal for a special scheme applying to the waste recycling sector.
- (9) Consequently, this derogation should expire on the date of entry into force of a special scheme for the application of VAT to the recycled waste sector, but not later than 31 December 2005.
- (10) The derogation has no adverse impact on the European Communities' own resources accruing from VAT, nor does it have any effect on the amount of VAT charged at the final stage.

HAS ADOPTED THIS DECISION:

#### *Article 1*

By way of derogation from Article 21(1)(a) of Directive 77/388/EEC, as worded in Article 28(g) thereof, Italy is hereby authorised, to designate the recipients of the supplies of goods and services referred to in Article 2 of this Decision as the persons liable to pay VAT.

#### *Article 2*

The recipient of the supply of goods or services may be designated as the person liable to pay VAT in the following instances:

- supplies and associated operations of ferrous waste and scrap, as well as of glass, paper and board, rags, bone and leather, rubber and plastic, including the supplies of those materials after they have undergone certain processing such as cleaning, polishing, selection, cutting or casting into ingots.
- Supplies and associated operations of ferrous and non-ferrous semi-processed products, such as pig iron, refined copper and copper alloys and crude nickel and aluminium.

*Article 3*

This decision shall expire on 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, but not later than 31 December 2005.

*Article 4*

This Decision is addressed to Italy.

Done at Brussels, [...]

*For the Council  
The President*