COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.4.2003
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Proposal for a

COUNCIL DECISION

authorising Germany to conclude an agreement with Switzerland that includes provisions derogating from Articles 2 and 3 of Council Directive 77/388/CEE on the harmonisation of the laws of the Member States relating to turnover taxes

(presented by the Commission)

EXPLANATORY MEMORANDUM

In a letter registered at the Commission's Secretariat-General on 13 December 2002, Germany requested authorisation, under Article 30 of 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] (hereinafter referred to as the sixth Directive), to conclude an agreement with Switzerland that includes tax provisions derogating from Articles 2 and 3 of the said Directive.

As required by the abovementioned Article 30, the other Member States were informed in writing of Germany's request, the letter being dated 4 February 2003.

The agreement between Germany and Switzerland will be on the building and maintenance of a frontier bridge intended to improve road links between, and facilitate transit through, the two countries. This frontier bridge will carry a motorway, will be built across the Rhine between Rheinfelden (in Baden Württemberg) and Rheinfelden (in Aargau) and will provide access from either end to German motorway No A 861 and Swiss Route National N3.

The agreement provides that the goods and services supplied for the building and maintenance of the bridge will be subject to German VAT laws and that no Swiss VAT will be charged on these supplies.

It also provides that goods imported from the territory of one of the Contracting states to that of the other will be exempt from import tax, provided the goods are used for the building or maintenance of the frontier bridge in question. This does not apply to goods imported for the same purposes by a public administration.

The principle of territoriality laid down in the sixth Directive would require bridge building and maintenance work carried out in German territory to be subject to German value added tax whereas corresponding work carried out in Swiss territory would not be subject to the provisions of the sixth Directive. Applying these provisions would mean breaking down operations according to the territory in which each part of the works was carried out. All goods imported from Switzerland into Germany for use in building or maintaining the bridge would also be subject to VAT in Germany.

The Contracting States consider that applying these rules would mean major tax complications for the entrepreneurs responsible for carrying out the works in question. They therefore consider that the tax provisions in the draft agreement are justified in that they will simplify the entrepreneurs' tax responsibilities.

It should be pointed out that the Council has on several previous occasions authorised Germany to conclude similar agreements with third countries on building projects in frontier areas and that these earlier agreements included tax provisions similar to those proposed here.

The Commission accepts that uniform taxation of the building and maintenance works and waiving VAT on goods imported for use in those works will represent a simplification which will make it easier for the entrepreneurs to apply the tax rules than would be the case if the normal tax rules applied.

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[1] OJ L 145, 13.6.1977, p. 1, as last amended by Directive 2002/92/EC (OJ L 331, 7.12.2002, p. 27).

The Commission also notes that, if authorisation is granted, the project would have a minor but positive incidence on Community own resources obtained from VAT.

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(Only the German text is authentic)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the sixth Council Directive 77/388/CEE 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,[2] and in particular article 30 thereof,

Having regard to the proposal from the Commission,[3]

Whereas:

(1) In a letter registered at the Commission's Secretariat-General on 13 December 2002, Germany requested authorisation to conclude an agreement with Switzerland on the building and maintenance of a frontier bridge across the Rhine between Rheinfelden (in Baden Württemberg, Germany) and Rheinfelden (in Aargau, Switzerland) which will provide access from either end to German motorway No A 861 and Swiss Route National N3.

(2) The other Member States were informed of the German request in a letter dated 4 February 2003.

(3) The agreement contains provisions on VAT derogating from Articles 2(2) and (3) of the sixth Directive in respect of goods and services supplied for the building and maintenance of the frontier bridge and of goods imported for the building or maintenance of the bridge.

(4) If the derogations were not granted, building and maintenance works carried out in German territory would be subject to German VAT whereas those carried out in Swiss territory would not be subject to the provisions of the sixth Directive; also, any goods imported from Switzerland into Germany for use in building and maintaining the frontier bridge would be subject to German VAT.

(5) Application of these normal rules would therefore mean serious tax complications for the entrepreneurs responsible for carrying out the works.

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2 OJ L 145, 13.6.1977, p. 1. as last amended by Directive 2002/92/EC (JO L 331, 7.12.2002, p. 27).

3 OJ C …, …, p. …

(6) This derogation is intended to simplify the collection of taxes on the works involved in building and maintaining the bridge in question.

(7) The derogation will have only a minor, but positive, incidence on Community own resources obtained from VAT,

HAS ADOPTED THIS DECISION:

Article 1

Germany is hereby authorised to conclude an agreement with Switzerland that includes provisions derogating from the sixth Council Directive 77/388/CEE of 17 May 1977 and covers the building and maintenance of a frontier bridge across the Rhine between Rheinfelden (in Baden Württemberg) and Rheinfelden (in Aargau) to provide access from either end to German motorway No A 861 and Swiss Route National N3.

The derogating tax provisions of the agreement are set out in Articles 2 and 3.

Article 2

By derogation from Article 3 of Directive 77/388/CEE, those parts of the construction site of the frontier bridge referred to in Article 1 of this Decision, and of the frontier bridge itself once work has been completed, that are situated in Swiss territory shall be deemed to be part of German territory for the purposes of goods and services supplied for the building and maintenance of the frontier bridge.

Article 3

By derogation from Article 2(2) of Directive 77/388/CEE, goods imported from Switzerland into Germany shall not be subject to value added tax, provided they are used for the building or maintenance of the bridge referred to in Article 1 of this Decision. However, this derogation shall not apply to goods imported for the same purpose by a public administration.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels,

For the Council
The President

FINANCIAL STATEMENT

If adopted, this Decision would have only a minor but positive incidence on Community own resources obtained from VAT.