COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.12.1996
COM(96) 687 final

Proposal for a

COUNCIL DECISION

**authorizing the Federal Republic of Germany and the French Republic to apply a measure derogating from Article 3 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)

# EXPLANATORY MEMORANDUM

By letters received by the Secretariat-General of the Commission on 13 August and 11 September 1996, the German and French Governments, acting on the basis of Article 27 of the Sixth Council Directive 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] requested authorization to apply a measure derogating from Article 3 of that Directive.

In accordance with Article 27(3) of the Sixth Directive, the other Member States were informed of the request presented by Germany and France by letter dated 10 October 1996.

The special measure requested by the Federal Republic of Germany and the French Republic concerns the arrangements for taxing the work of constructing and maintaining a frontier bridge over the Rhine between Altenheim, France, and Eschau, Germany.

In this connection, the German and French authorities have agreed, as regards indirect taxes, for supplies of goods and services, for intra-Community acquisitions and for imports of goods intended for the construction or maintenance of the bridge over the Rhine, including winter maintenance and day-to-day cleaning of the bridge, to regard:
- the construction site as being on French territory until acceptance of the bridge;
- the frontier bridge as being on French territory as from its acceptance and for ten years thereafter.

By this agreement, the contracting States are altering the territorial scope of VAT so that transactions on which VAT is chargeable and which are intended for the construction or maintenance of the bridge in question, which under the normal rules would be located in Germany are, for a period running from the beginning of the construction works to ten years after the acceptance of the bridge, regarded as being carried out on French territory and therefore subject to VAT in France.

In accordance with the common system of VAT, and more particularly with the principle of territoriality laid down by Article 3 of the Sixth Directive, taxable transactions connected with the construction or maintenance of the bridge, carried out on German territory, are subject to VAT in Germany, while those carried out on French territory are subject to VAT in France. Application of this provision would mean that for every transaction connected with the construction or maintenance of the bridge it would have to be established whether it had been carried out in France or Germany. For transactions covering both countries, an apportionment would have to be made.

The contracting States consider that application of these rules would make payment of the tax considerably more complicated for the contractors in charge of the works.

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[1] OJ No L 145, 13.6.1977, p. 1. Directive as last amended by Directive 96/42/EC (OJ No L 170, 9.7.1996, p. 34).

Article 27(1) of the Sixth Directive provides for the introduction of special measures derogating from the provisions of the Directive in order to simplify the procedure for charging the tax. However such measures, except to a negligible extent, may not affect the amount of tax due at the final consumption stage.

The Commission agrees that the uniform taxation of the works instead of application of the normal rules of taxation would simplify matters for the contractors. In view of the limited scope of the special measure, which only covers the construction and maintenance of the frontier bridge over the Rhine described above, the Commission feels that its introduction on the basis of Article 27 of the Directive is justified.

Since, under the proposed arrangements, the entire construction and maintenance of the bridge will be subject to value added tax in France, the amount of tax due at the final consumption stage is not affected. Consequently, there is no adverse impact on the Community's VAT own resources.

It should be noted that the Council has on several occasions already authorized a similar derogation from Article 3, on the basis of Article 27, in order to simplify the arrangements for taxing construction works carried out on the frontier territory of two Member States.[2]

The Commission therefore considers it appropriate for the Federal Republic of Germany and the French Republic to be authorized to apply the planned special measure.

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2 Decision 83/333/EEC of 18 March 1983 (OJ No L 181, 6.7.1983, p.25).
Decision 84/468/EEC of 10 September 1984 (OJ No L 264, 5.10.1984, p.26)
Decision 95/114/EC of 30 March 1995 (OJ No L 80, 8.4.1995, p.46).

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(presented by the Commission)

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 proposal from the Commission,

Whereas, under Article 27(1) of the Sixth Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce 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 and avoidance;

Whereas, by letters officially received by the Commission on 13 August and 11 September 1996, the Federal Republic of Germany and the French Republic have requested authorization to introduce a special measure concerning the construction and maintenance of a cross-frontier road bridge over the Rhine between Altenheim, France, and Eschau, Germany.

Whereas, in accordance with Article 27(3) of the Sixth Directive, the other Member States were informed on 10 October 1996 of the requests for authorization received from the Federal Republic of Germany and the French Republic;

Whereas, for supplies of goods and services, for intra-Community acquisitions and for imports of goods intended for the construction or maintenance of the bridge, the purpose of the special measure is to regard the entire site until acceptance of the bridge and the frontier bridge as from its acceptance and for ten years thereafter as being on French territory;

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[1] OJ No L 145, 13.6.1977, p. 1. Directive as last amended by Directive 96/42/EC (OJ No L 170, 9.7.1996, p. 34).

Whereas, in the absence of a special measure, for each supply of goods and services used for the construction and maintenance of the bridge in question, it would be necessary to ascertain whether the place of taxation was the Federal Republic of Germany or the French Republic; whereas, therefore, such taxation arrangements would in practice be very complicated for the contractors in charge of the works concerned;

Whereas the purpose of this derogation is to simplify the procedure for charging the tax on the construction and maintenance of the bridge in question;

Whereas the derogation will not affect the amount of tax due at the final consumption state and will not therefore have an adverse effect on the European Communities' own resources arising from value added tax,

HAS ADOPTED THIS DECISION:

*Article 1*

By way of derogation from Article 3 of Directive 77/388/EEC, the Federal Republic of Germany and the French Republic are hereby authorized, in respect of the supplies of goods or services, intra-Community acquisitions and imports of goods intended for the construction or maintenance of the road bridge over the Rhine, between Altenheim, France, and Eschau, Germany, to regard:

- the whole of the construction site as being on French territory until acceptance of the bridge;
- the frontier bridge as being on French territory as from its acceptance and for ten years thereafter.

*Article 2*

This Decision is addressed to the Federal Republic of Germany and the French Republic.

Done at Brussels, .... 1996

For the Council
The President

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# DOCUMENTS

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