COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.04.2001
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Proposal for a

COUNCIL DECISION

authorising the Federal Republic of Germany to conclude with the Republic of Poland an agreement containing measures derogating from Articles 2 and 3 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

By letter registered by the Secretariat-General of the Commission on 16 October 2000, the Federal Republic of Germany requested authorisation, on the basis of Article 30 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 - Common system of value added tax: uniform basis of assessment[1], to conclude an agreement with the Republic of Poland containing tax provisions derogating from Articles 2 and 3 of the Sixth Directive.

In accordance with Article 30, the other Member States were informed of the request of the Federal Republic of Germany by letter dated 7 February 2001.

This agreement concerns the construction and maintenance of six border bridges and the maintenance of two other border bridges, all of which are partly on the territory of the Federal Republic of Germany and partly on the territory of the Republic of Poland. These bridges form part of the public road system along the frontier between the two countries.

The agreement provides that German value added tax law will apply to supplies relating to the construction and maintenance of the border bridges where the authority responsible for making such supplies is established in the Federal Republic of Germany. However, Polish value added tax law will apply to supplies relating to the construction and maintenance of the border bridges where the authority responsible for making such supplies is established in the Republic of Poland.

Under the agreement, the Federal Republic of Germany will be responsible for the construction and maintenance of three border bridges and the maintenance of one other border bridge. Similarly, the Republic of Poland will be responsible for the construction and maintenance of three border bridges and the maintenance of one other border bridge.

The agreement also stipulates that, with the exception of customs duties, no import tax is to be charged on goods imported from the sovereign territory of one Contracting State into the sovereign territory of the other Contracting State, provided that those goods are used for the construction or maintenance of the border bridges in question. This provision does not apply to goods imported for the same purpose by public authorities.

In accordance with the principle of territorial application laid down by the Sixth Directive, the bridge construction, repair and renewal work carried out on German sovereign territory would be subject to value added tax in the Federal Republic of Germany, while such work carried out on Polish sovereign territory would lie outside the scope of the Sixth VAT Directive. If these provisions were applied, it would be necessary to break down transactions on the basis of the territory on which they were carried out. In addition, each importation into the Federal Republic of Germany from the Republic of Poland of goods used for the construction or maintenance of a border bridge would be subject to value added tax in the Federal Republic of Germany.

The Contracting States are of the opinion that application of these rules would involve onerous tax complications for the contractors responsible for the work in question. They therefore take the view that the tax provisions of the draft agreement are justified in order to simplify the contractors' tax obligations.

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[1] OJ L 145, 13.6.1977, p. 1, as last amended by Directive 2001/4/EC (OJ L 22 24/01/2001 p. 17).

It should also be noted that, pursuant to Article 30 of the Sixth VAT Directive, the Council has already authorised the Federal Republic of Germany to conclude a number of agreements[2] with the Czech Republic and the Republic of Poland concerning construction work in the frontier areas which contain tax provisions similar to those set out in the present agreement.

The Commission agrees that the uniform taxation of construction, repair and renewal work, and the waiving of the collection of value added tax on imports of goods intended for use in such work, would simplify matters for the contractors compared with application of the normal rules of taxation.

The Commission considers that the agreement in question could have either a minor positive or a minor negative effect on the European Communities' own resources accruing from value added tax. However in the light of the arrangement in the agreement aimed at an overall balance and in the light of previous agreements where an overall compensating balance has been sought and of the negligible amounts involved, the Commission considers that this should not be an obstacle to granting the Federal Republic of the Federal Republic of Germany the requested authorisation.

Accordingly, the Commission takes the view that the Federal Republic of Germany should be authorised to conclude the proposed agreement.

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[2] The Council approved these measures which derogate from the 6th Directive under Article 30 by Decision 95/115/EC of 30 March 1995 (OJ L 80 of 8 April 1995 p. 47); Decision 96/402/EC of 25 June 1996 (OJ L 165 of 4 July 1996 p. 35); Decision 95/435/EC of 23 October 1995 (OJ L 257 of 27 October 1995 p. 34); Decision 97/188/EC of 17 March 1997 (OJ L 80 21 of March 1997 p. 18) and Decision 97/511/EC of 24 July 1997 (OJ L 214 6 August 1997 p. 39).

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular 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,[3] and in particular Article 30 thereof,

Having regard to the proposal from the Commission[4],

Whereas:

(1) Under Article 30 of the Sixth Directive, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to conclude with a non-member country or an international organisation an agreement which may contain derogations from the said Directive;

(2) By letter registered by the Secretariat-General of the Commission on 16 October 2000, the German Government requested authorisation to conclude an agreement with the Republic of Poland relating to the construction and maintenance of border bridges between the Contracting States in question;

(3) The agreement contains provisions in the field of value added taxation which derogate from Articles 2 and 3 of the Sixth VAT Directive as regards, on the one hand, the supplies of goods and services in connection with the construction, repair and renewal of border bridges, and on the other hand, the importation of goods used for the construction work or the maintenance of these bridges;

(4) The other Member States were informed on 7 February 2001 of the German request;

(5) In the absence of derogations, the construction, repair and renewal work carried out on German territory would be subject to value added tax in the Federal Republic of Germany while that carried out on Polish territory would lie outside the scope of the Sixth VAT Directive and, in addition, each importation from the Republic of Poland into the Federal Republic of Germany of goods used for the construction and the maintenance of the border bridges would be subject to value added tax in the Federal Republic of Germany;

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[3] OJ L 145, 13.6.1977, p. 1, as last amended by Directive 2001/4/EC (OJ L 22 24/01/2001 p. 17).

[4] OJ C , , p. .

(6) The purpose of these derogations is to simplify the rules of taxation for the contractors carrying out the work in question;

(7) The derogations will have only a negligible effect on the own resources of the European Communities accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

The Federal Republic of Germany is hereby authorised to conclude an agreement with the Republic of Poland containing measures derogating from the Sixth Council Directive (77/388/EEC) of 17 May 1977. This agreement concerns the construction and subsequent maintenance of five border bridges crossing the Neiße and one border bridge crossing the Torfkanal and the ongoing maintenance of two existing border bridges crossing the Neiße, all of which are partly on the territory of the Federal Republic of Germany and partly on the territory of the Republic of Poland. The details of the bridges in question are listed in Annex A to this decision.

The derogations provided for by this agreement are spelt out in Articles 2, 3 and 4.

Article 2

By way of derogation from Article 3 of the Sixth Directive, with regard to the three bridges for which the Federal Republic of Germany has the responsibility for the construction and subsequent maintenance, and with regard to the one bridge for which the Federal Republic of Germany has the responsibility for ongoing maintenance, in so far as these bridges extend onto the sovereign territory of the Republic of Poland, the border bridges, and where appropriate, the area of the construction sites, shall be treated as forming part of the sovereign territory of the Federal Republic of Germany, as regards supplies of goods or services intended for their construction or maintenance.

Article 3

By way of derogation from Article 3 of the Sixth Directive, with regard to the three bridges for which the Republic of Poland has the responsibility for the construction and subsequent maintenance, and with regard to the one bridge for which the Republic of Poland has the responsibility for ongoing maintenance, in so far as these bridges extend onto the sovereign territory of the Federal Republic of Germany, the border bridges, and where appropriate, the area of the construction sites, shall be treated as forming part of the sovereign territory of the Republic of Poland, as regards supplies of goods or services intended for their construction or maintenance.

Article 4

By way of derogation from point 2 of Article 2 of the Sixth Directive, the importation of goods into the Federal Republic of Germany from the Republic of Poland shall not be subject to value added tax in so far as those goods are used for the construction and the maintenance

of the bridges referred to in Article 1 of this decision. However, this derogation shall not apply to any goods imported for the same purpose by a public authority.

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels,

For the Council
The President

FINANCIAL STATEMENT

The proposed Decision, when adopted, will have only a negligible effect on the own resources of the European Communities accruing from the value added tax.

Annex A

The bridges in question referred to in Article 1 of this decision are listed below:

1. The Federal Republic of Germany shall be responsible for building the following border bridges:

   (a) the bridge over the Neiße between Hagenwerder and Radomierzyce at marker 167+230;

   (b) the bridge over the Neiße between Görlitz and Zgorzelec at marker 151+670;

   (c) the bridge over the Torfkanal between Garz and Swinoujscie.

2. The Republic of Poland shall be responsible for building the following border bridges:

   (a) the bridge over the Neiße between Forst and Zasieki at marker 47+500;

   (b) the bridge over the Neiße between Krauschwitz and Leknica at marker 81+970;

   (c) the bridge over the Neiße between Deschka and Piensk at marker 134+930.

3. The Federal Republic of Germany shall be responsible for maintaining the following border bridge:

   (a) the bridge over the Neiße between Podrosche and Przewoz at marker 100+850.

4. The Republic of Poland shall be responsible for maintaining the following border bridge:

   (a) the bridge over the Neiße between Ostritz and Krzewina Zgorzelecka at marker 176+090.