

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.4.2005
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Proposal for a

COUNCIL DECISION

Authorising the Federal Republic of Germany and the Kingdom of the Netherlands to apply a measure derogating from article 3 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(presented by the Commission)

EXPLANATORY MEMORANDUM

Pursuant to Article 27(1) of the Sixth Council Directive 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] -, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from that Directive in order to simplify the procedure for charging the tax.

By letters registered with the Secretariat-General of the Commission on 14 October 2004 and 27 October 2004, the Federal Republic of Germany and the Kingdom of the Netherlands have requested authorisation to introduce such a special measure. In accordance with Article 27(2) of the Sixth Council Directive, the Commission informed the other Member States by letter on 11 January 2005 of the request made and by letters dated 14 January 2005, the Commission notified the Federal Republic of Germany and the Kingdom of the Netherlands that it had all the information it considered necessary for appraisal of the request.

The special measure requested concerns the arrangements for taxing the construction, repair and renovation work of a cross-border bridge over the Rodebach between Selfkant (north of Millen, Germany) and Echt-Susteren (north of Sittard, the Netherlands).

In this respect, the German and the Dutch authorities have agreed, concerning VAT, to regard the cross-border bridge and its construction site as being on the territory of Germany.

In accordance with the common system of VAT, taxable transactions are subject to VAT in Germany when effected within the territory of Germany and subject to VAT in the Netherlands when effected within the territory of the Netherlands. This would mean that for every transaction in connection with the construction, repair or renovation of the bridge, it would have to be established whether it had been effected in Germany or the Netherlands. For transactions covering both countries, an apportionment would have to be made.

The requesting States consider that application of these rules would make the procedure for charging the tax very complicated.

The Commission agrees that the uniform taxation of the works, instead of the application of the normal rules, would simplify matters for the contractors in charge of the works concerned.

Furthermore, the proposed measure would not have an adverse impact on the Community's VAT own resources.

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

[1] OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to 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[2], and in particular Article 27(1) thereof,

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

Whereas:

(1) Under article 27(1) of the Sixth Directive, the Council, acting unanimously on proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of that Directive, in order to simplify the procedure for charging the tax.

(2) By letters registered with the Secretariat-General of the Commission on 14 October 2004 and 27 October 2004, the Federal Republic of Germany and the Kingdom of the Netherlands have requested authorisation to introduce a special measure concerning the construction, repair and renovation of a cross-border bridge over the Rodebach between Selfkant (north of Millen, Germany) and Echt-Susteren (north of Sittard, the Netherlands).

(3) In accordance with article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States by letter dated 11 January 2005 of the request made by the Federal Republic of Germany and the Kingdom of the Netherlands. By letters dated 14 January 2005, the Commission notified the Federal Republic of Germany and the Kingdom of the Netherlands that it had all the information it considered necessary for appraisal of the request.

(4) For supplies of goods and services, for intra-Community acquisitions and for imports of goods intended for the construction, repair and renovation of the bridge, the purpose of the special measure is to regard the entire construction site of the cross-border

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2 OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

3 OJ C , , p. .

bridge and, after its completion, the cross-border bridge itself as being on the territory of Germany.

(5) In absence of a special measure, for each supply of goods and services used for the construction, repair or renovation of the bridge in question, it would be necessary to ascertain whether the place of taxation was the Federal Republic of Germany or the Kingdom of the Netherlands, which would in practice be very complicated for the contractors in charge of the works concerned.

(6) The purpose of this derogation is to simplify the procedure for charging the tax on the construction, repair or renovation of the bridge in question.

(7) The derogation will have no negative impact on the Community's own resources provided from VAT.

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 Kingdom of the Netherlands are hereby authorised, in respect of supplies of goods or services, intra-Community acquisitions and imports of goods intended for the construction, repair or renovation of the cross-border bridge over the Rodebach between Selfkant (north of Millen, Germany) and Echt-Susteren (north of Sittard, the Netherlands), to regard the entire construction site of the cross-border bridge and, after its completion, the cross-border bridge itself as being on German territory.

Article 2

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

Done at Brussels,

For the Council
The President