COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 506 final
Brussels, 18.11.1994

Proposal for a

COUNCIL DECISION

Authorising the Federal Republic of Germany and the Grand Duchy of Luxembourg to apply a measure derogating from Article 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 letters received by the General Secretariat of the Commission on 4 July 1994 and 17 August 1994 respectively, the German and Luxembourg Governments submitted requests for an authorisation based on Article 27(1) of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes[1]. The special measure which is the object of the present Decision derogates from Article 3 of the Sixth VAT Directive, which determines the territorial application of the common VAT system. The justification for this authorisation is in order to simplify the procedures for charging value added tax.

In accordance with Article 27(3) of the Sixth VAT Directive, the Commission informed the other Member States, by letter dated 16 September 1994, of the requests submitted by the German and Luxembourg Governments.

The special measure requested by the Federal Republic of Germany and the Grand Duchy of Luxembourg concerns the building of a motorway bridge over the river Moselle to the north of Perl and Schengen linking the German A8 motorway from Saarbrücken to the west with the Luxembourg A13 motorway from the Dudelange motorway junction to the east.

The bridge is located partly on the sovereign territory of the Federal Republic of Germany and the Grand Duchy of Luxembourg, but also partly over the river Moselle, which, as the frontier between the two countries, is the joint territory of both.

Under the principle of territoriality laid down by Article 3 of the Sixth VAT Directive, German value added tax would be applied to the construction work carried out on German territory, and work carried out on Luxembourg territory would be subject to Luxembourg taxation. However, it would not be clear how the work carried out between the two Member States would be taxed. Without a simplification of the taxation arrangements the firms involved in constructing the bridge would be faced with a considerable problem. For every single supply of goods and services involved in building the bridge it would have to be established whether it occurred on German or Luxembourg territory or on the joint territory. Single transactions covering both sovereign territories and the joint territory would have to be apportioned.

In order to simplify the practical arrangements for the carrying out of the construction project and to ensure that goods and services supplied on the joint territory are taxed, it has been agreed between the German and Luxembourg authorities that, subject to authorisation of the present measure by the Council, taxation of the construction work will be subject to value added tax in the Grand Duchy of Luxembourg alone. The same problem also arises in respect of the maintenance of the bridge once delivery of it has taken place. Consequently, maintenance - unlike construction - will be subject to value added tax in the Federal Republic of Germany.

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[1] OJ N° L 145, 13.6.1977, p. 1. Directive as last amended by Directive 94/5/EC (OJ N° L 60, 3.3.94, p. 16).

Article 27(1) of the Sixth VAT 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. As explained, the proposed arrangements serve the purpose of simplification.

Since, under the proposed arrangements, the entire construction of the bridge would be subject to value added tax in the Grand Duchy of Luxembourg and its maintenance subject to value added tax in the Federal Republic of Germany, 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 by Decision 83/333/EEC of 18 March 1983[2], the Council authorised a similar derogation to Article 3, on the basis of Article 27(1), for the purpose of constructing a bridge over the river Sûre between the same two Member States.

The Commission is convinced that the derogation in question, provided that it is restricted to the construction and maintenance of the frontier bridge over the river Moselle specified above, is intended to be a simplification measure within the meaning of Article 27(1) of the Sixth VAT Directive.

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

[2] Decision deemed to have been adopted, in accordance with Article 27(4) of the Sixth Council Directive 77/388/EEC on turnover taxes (OJ L 181 of 6.7.83, p. 25)

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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 VAT Directive, 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 or to prevent certain types of tax evasion and avoidance;

Whereas, by letters officially received by the Commission on 4 July 1994 and 17 August 1994 respectively, the Governments of the Federal Republic of Germany and the Grand Duchy of Luxembourg have requested authorisation to introduce a special measure concerning the construction and maintenance of a motorway bridge crossing over the river Moselle to the north of Perl and Schengen linking the German A8 motorway from Saarbrücken to the west with the Luxembourg A13 motorway from the Dudelange motorway junction to the east;

Whereas, in accordance with Article 27(3) of the Sixth VAT Directive, the other Member States were informed on 16 September 1994 of the requests for authorisation received from the Federal Republic of Germany and the Grand Duchy of Luxembourg;

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 have to be established whether the place of taxation was within the territory of the Federal Republic of Germany or the Grand Duchy of Luxembourg; whereas such taxation arrangements would give rise to considerable practical difficulties;

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;

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[1] OJ N° L 145, 13.6.1977, p. 1. Directive as last amended by Directive 94/5/EC (OJ N° L 60, 3.3.94, p. 16).

Whereas the derogation will not affect the amount of tax due at the final consumption stage and will not therefore have an adverse affect 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 Grand Duchy of Luxembourg are hereby authorised, in respect of the motorway bridge over the river Moselle to the north of Perl and Schengen linking the German A8 motorway from Saarbrücken to the west with the Luxembourg A13 motorway from the Dudelange motorway junction to the east, to consider, for the duration of the construction of the bridge, the whole of the construction site as being within the territory of the Grand Duchy of Luxembourg, and, with effect from the completion of the bridge, the whole of the bridge to be within the territory of the Federal Republic of Germany.

Article 2

This Decision is addressed to the Federal Republic of Germany and the Grand Duchy of Luxembourg.

Done at Brussels, ... 1994.

For the Council

The President

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5