COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.04.1995
COM(95) 136 final

Proposal for a

COUNCIL DECISION

AUTHORIZING THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF POLAND TO CONCLUDE AN AGREEMENT CONTAINING MEASURES DEROGATING FROM ARTICLES 2 AND 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 letter officially received by the Secretariat-General of the Commission on 20 January 1995, the German Government requested authorization, on the basis of Article 30 of the Sixth Council Directive, to conclude an agreement with the Republic of Poland containing derogations from Articles 2 and 3 of that Directive (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]).

This agreement concerns the link-up of the German B97 and Polish 274 roads, and the construction of a frontier bridge across the Neisse in the Guben and Gubinek area. However, the tax provisions derogating from the Sixth Directive refer only to the construction of the frontier bridge.

In accordance with Article 30, the other Member States were informed of Germany's request by letter dated 20 February 1995.

The agreement provides that Polish law relating to goods and services tax is to apply to supplies of goods or services effected in connection with the construction of the frontier bridge. It 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 in the construction of the frontier bridge. This does not apply to imports of goods for the public building authorities.

Under the principle of territorial application laid down by the Sixth Directive, construction work carried out on German sovereign territory would be subject to VAT in Germany, but construction work carried out on Polish sovereign territory would lie outside the scope of the Sixth 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 Germany from Poland of goods used for the construction of the bridge would be subject to VAT in Germany.

The Contracting States are of the opinion that the application of these rules would involve substantial tax complications for the contractors responsible for the construction work. 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 No L 145, 13.6.1977, p. 1, as last amended by Directive 94/76/EC (OJ No L 365, 31.12.1994, p.53).

It is clear that the tax provisions in the agreement adversely affect the total amount of VAT to be collected on transactions relating to construction work on the frontier bridge. However, the German Government would point out that earlier agreements between Germany and Poland concerning, first, the motorway link-up and the construction of frontier clearance facilities for the new frontier crossing in the Görlitz and Zgorzelec area and, second, the motorway link-up between Frankfurt/Oder and Schwetig stipulated that all supplies of goods or services effected in connection with the construction of bridges were subject to VAT in Germany, including those effected on Polish territory. The Council authorized Germany to conclude agreements by two decisions deemed to have been adopted in accordance with the second paragraph of Article 30 of the Sixth Directive.

However, in the course of the negotiations on these agreements, a guarantee of reciprocity was given. Thus, the Federal Republic of Germany had agreed that, in future cross-border construction projects of a similar nature, Polish tax law could be applied to transactions carried out on German territory if this facilitated construction. It is therefore in accordance with what was agreed during earlier negotiations that the draft agreement provides that Polish law relating to tax on goods and services is to apply to all the construction work on the bridge.

Under Article 30 of the Sixth Directive, any Member State may be authorized to conclude with a non-member country or an international organization an agreement which may contain derogations from the said Directive.

The Commission agrees that the uniform taxation of construction work and the waiving of collection of VAT on the importation of goods intended for use in such work is a simplification for the contractors compared with the application of the normal rules of taxation.

It also considers that the provisions of the proposed agreement resulting in the non-taxation of transactions relating to construction work that is subject to VAT in Germany are fair, given the tax provisions of the two above-mentioned agreements providing for VAT to be charged in Germany on certain transactions which were, in theory, outside the scope of the Sixth Directive.

In addition, given the compensating effect of the tax provisions of the three agreements, the application of the tax provisions of the present draft agreement will have only a negligible effect on the own resources of the European Communities accruing from value added tax.

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

Proposal for a

COUNCIL DECISION

AUTHORIZING THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF POLAND TO CONCLUDE AN AGREEMENT CONTAINING MEASURES DEROGATING FROM ARTICLES 2 AND 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

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 30 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 30 of the Sixth VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to conclude with a non-member country or an international organization an agreement which may contain derogations from the said Directive;

Whereas, by letter officially received by the Secretariat-General of the Commission on 20 January 1995, the German Government requested authorization to conclude an agreement with Poland concerning the link-up of the German road B97 and the Polish road 274, and the construction of a frontier bridge across the Neisse in the Guben and Gubinek area, which contains derogations from Articles 2 and 3 of the Sixth Directive as regards the construction of the frontier bridge;

Whereas the other Member States were informed on 20 February 1995 of the German request;

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[1] OJ No L 145, 13.6.1977, p.1, as last amended by Directive 94/76/EC (OJ No L 365, 31.12.1994, p.53).

Whereas, in the absence of derogations, the construction work carried out on German territory would be subject to VAT in Germany while that carried out on Polish territory would be outside the scope of the Sixth Directive and whereas, in addition, each importation from Poland into Germany of goods used for the construction of the frontier bridge would be subject to VAT in Germany;

Whereas the purpose of these derogations is to simplify the rules of taxation for the contractors carrying out the construction work on the frontier bridge in question;

Whereas 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 authorized to conclude an agreement with the Republic of Poland relating to the link-up of the German road B97 and the Polish road 274 and to the construction of a frontier bridge across the Neisse in the Guben and Gubinek area and containing measures derogating from the Sixth Council Directive (77/388/EEC) of 17 May 1977. These derogations are defined in Articles 2 and 3.

Article 2

By way of derogation from Article 3 of the Sixth Directive, that part of the territory of the Federal Republic of Germany in the region of Guben in which work to construct a frontier bridge across the Neisse linking German road B97 and Polish national road 274 is carried out is deemed to be part of the territory of the Republic of Poland for the purposes of supplies of goods and services intended for use in the construction of that bridge.

Article 3

By way of derogation from point 2 of Article 2 of the Sixth Directive, the importation of goods into Germany from Poland shall not be subject to value added tax in so far as those goods are used for the construction of a frontier bridge across the Neisse in the Guben and Gubinek area linking German road B97 and Polish road 274. However, this derogation shall not apply to importations of goods effected by a public authority.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, ...1995

For the Council
The President

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