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2010/0070 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Federal Republic of Germany and the Grand Duchy of Luxembourg to apply a measure derogating from Article 5 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereafter: 'VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures to derogate from the provisions of that Directive, in order to simplify the procedure for collecting value added tax (VAT) or to prevent certain forms of tax evasion or avoidance.

By letters registered with the Secretariat-General of the Commission on, respectively, 15 October and 18 November 2009, the Federal Republic of Germany and the Grand Duchy of Luxembourg requested authorisation to apply a measure derogating from Article 5 of the VAT Directive. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 25 February 2010 of the requests made by these Member States. By letter dated 2 March, the Commission notified the Federal Republic of Germany and the Grand Duchy of Luxembourg that it had all the information necessary to consider the request.

General context

The Federal Republic of Germany and the Grand Duchy of Luxembourg decided, in order to facilitate road transport between and transit through their territories, to adopt an agreement to link up German Bundesstrasse B 419 and the Luxembourg N1 highway between Wellen and Grevenmacher and, for this, to renovate an existing border bridge over the Mosel on the German and Luxembourg sides. This border bridge extends from the territory of the Federal Republic of Germany to the exclusive territory of the Grand Duchy of Luxembourg over the Mosel which flows through the jointly managed territory (condominium).

Under the agreement, the border bridge building site and the bridge itself would be considered as the territory of the Grand Duchy of Luxembourg for the purposes of VAT as regards the supplies of goods and services and intra-Community acquisitions of goods in relation to the renovation and the subsequent maintenance of this border bridge.

Under the normal rules, the principle of territoriality laid down in Article 5 of the VAT Directive would require that German VAT would be charged on the renovation and maintenance carried out in Germany. Likewise, renovation and maintenance carried out on the Luxembourg territory would we subject to Luxembourg VAT. Applying the normal rules would imply establishing the exact place of taxable transactions according to the territory in which each part of the works was carried out. In addition, work carried out in relation to the jointly managed territory could not unilaterally be taxed.

The Federal Republic of Germany and the Grand Duchy of Luxembourg consider that applying the normal rules would create tax complications for the businesses responsible for the work in question and that the tax provisions in the agreement are justified in order to simplify the business' tax responsibilities. The Commission accepts that in these cases, uniform taxation of the renovation and the maintenance works will represent a simplification which will make it easier for the businesses concerned to apply the tax rules than would be the case if the normal tax rules were applied.

Existing provisions in the area of the proposal

The Council has on several occasions authorised Member States to derogate from the territoriality principle with regard to projects in frontier areas.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Not relevant.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

The proposed Decision aims at simplifying the procedure for charging the VAT in relation to the renovation and maintenance of a frontier bridge and has therefore a potential positive economic impact.

However, because of the narrow scope of the derogation, the impact will in any case be limited.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for the Federal Republic of Germany and the Grand Duchy of Luxembourg to derogate from the territorial application of VAT as regards the renovation and maintenance of a border bridge between the two countries.

Legal basis

Article 395 of the VAT Directive.

Subsidiarity principle

In accordance with Article 395 of the VAT Directive, a Member State wishing to introduce measures derogating from the said Directive must obtain an authorisation from the Council, which will take the form of a Council Decision. Therefore, the proposal complies with the subsidiarity principle.

Proportionality principle

The proposal complies with the proportionality principle for the following reason(s).

The Decision concerns an authorisation granted to Member States upon its own request and does not constitute any obligation.

Given the very limited scope of the derogation, the special measure is proportionate to the aim pursued.

Choice of instruments

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. Moreover, a Council Decision is the most suitable instrument since it can be addressed to individual Member States.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[1], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letters registered with the Secretariat-General of the Commission on, respectively, 15 October and 18 November 2009, the Federal Republic of Germany and the Grand Duchy of Luxembourg requested authorisation to apply a measure derogating from the provisions of the Directive 2006/112/EC in relation to the renovation and maintenance of a border bridge.

(2) In accordance with Article 395(2) of the Directive 2006/112/EC, the Commission informed the other Member States by letter dated 25 February 2010 of the requests made by the Federal Republic of Germany and the Grand Duchy of Luxembourg. By letter dated 2 March 2010, the Commission informed the Federal Republic of Germany and the Grand Duchy of Luxembourg that it had all the information to consider the requests.

(3) The purpose of the measure is, for supplies of goods and services and intra-Community acquisitions of goods intended for the renovation and subsequent maintenance of a cross-border bridge over the Mosel, to regard the bridge and its building site, as entirely on the territory of the Grand Duchy of Luxembourg in accordance with an agreement between the two countries.

(4) In absence of a special measure, it would be necessary to ascertain whether the place of taxation was the Federal Republic of Germany or the Grand Duchy of Luxembourg. Work at the border bridge carried out on German territory would be subject to value added tax in Germany while that carried out in the Grand Duchy of Luxembourg would be subject to Luxembourg value added tax. In addition, the bridge crosses a

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1 OJ L 347, 11.12.2006, p. 1.

jointly managed territory (condominium) and work in this area could not exclusively be attributed to the territory of one of the two Member States as to determine a single place of supply.

(5) The purpose of the measure is therefore to simplify the procedure for charging the tax on the renovation and the maintenance of the bridge in question.

(6) The derogation will have no negative impact on the Community's own resources accruing from value added tax

HAS ADOPTED THIS IMPLEMENTING DECISION:

Article 1

By way of derogation from Article 5 of Directive 2006/112/EC, the Federal Republic of Germany and the Grand Duchy of Luxembourg are hereby authorised, in respect of the existing border bridge over the river Mosel linking the German B 419 and the Luxembourg N1 motorways between Wellen and Grevenmacher, to consider this bridge and its building site as entirely on the territory of the Grand Duchy of Luxembourg for the purposes of supplies of goods and services and intra-Community acquisitions of goods intended for the renovation or subsequent maintenance of this bridge.

Article 2

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

Done at Brussels,

For the Council
The President