



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.4.2001
COM(2001) 185 final

Proposal for a

COUNCIL DECISION

on Authorising the Federal Republic of Germany to conclude with the Czech Republic 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 18 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 assessment¹, to conclude an agreement with the Czech Republic 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 2 February 2001.

This agreement concerns the construction of a frontier bridge at Furth im Wald-Schafbeg / Folmava/Vollmau, which is partly on the territory of the Federal Republic of Germany and partly on the territory of the Czech Republic, linking the German B20 motorway heading east with the Czech I/26 motorway heading west.

The agreement provides that for the application of the German value added tax law and the Czech value added tax law, the area of the construction site for the frontier bridge and, after its completion, the frontier bridge itself are to be treated as forming part of the sovereign territory of the Czech Republic as regards supplies of goods or services intended for the construction of the frontier bridge or for its repair and renewal.

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 of the frontier bridge in question or for its maintenance. 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 Germany, while such work carried out on Czech 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 Germany from the Czech Republic of goods used for the construction of the bridge or for its maintenance would be subject to value added tax in 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.

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 agreements²

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).

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).

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.

Finally, the Commission notes that the agreement in question would have a minor negative effect on the European Communities' own resources accruing from value added tax. However, in the light of similar agreements in the past, the steps taken to ensure an overall compensating balance, and the negligible amounts involved, the Commission considers that this should not be an obstacle for granting the Federal Republic of Germany the requested authorisation in this instance.

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

Proposal for a

COUNCIL DECISION

on Authorising the Federal Republic of Germany to conclude with the Czech Republic 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

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 Commission⁴,

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 18 October 2000, the German Government requested authorisation to conclude an agreement with the Czech Republic relating to the construction of a frontier bridge 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 the frontier bridge, and on the other hand, importation of goods used for the construction work or the maintenance of this bridge;
- (4) The other Member States were informed on 2 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 Germany while that carried out on Czech territory would lie outside the scope of the Sixth VAT Directive and whereas, in addition, each importation from the Czech Republic into Germany of goods used for the construction and the maintenance of the frontier bridge would be subject to value added tax in Germany;

³ OJ L 145, 13.6.1977, p. 1, as last amended by Directive 2001/4/EC (OJ No 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 Czech Republic concerning the construction of a frontier bridge at Furth im Wald-Schafbeg / Folmava/Vollmau, which is partly on the territory of the Federal Republic of Germany and partly on the territory of the Czech Republic, linking the German B 20 motorway heading east with the Czech I/26 motorway heading west, containing measures derogating from the Sixth Council Directive (77/388/EEC) of 17 May 1977.

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

Article 2

By way of derogation from Article 3 of the Sixth Directive, in so far as it extends onto the sovereign territory of the Federal Republic of Germany, the area of the construction site for the frontier bridge referred to in Article 1 of this decision and, after its completion, the frontier bridge itself, shall be treated as forming part of the sovereign territory of the Czech Republic as regards supplies of goods or services intended for the construction of the frontier bridge or for its repair and renewal.

Article 3

By way of derogation from point 2 of Article 2 of the Sixth Directive, the importation of goods into Germany from the Czech Republic shall not be subject to value added tax in so far as those goods are used for the construction and the maintenance of the bridge 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 4

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.