

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 509 final
Brussels, 18.11.1994

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 received by the Secretariat General of the Commission, and registered on 23 August 1994, the German Government requested authorisation, 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 the said Directive. (The Sixth Council Directive 77/388/EEC, of 17 May 1977, on the harmonisation of the laws of the Member States relating to turn-over taxes - the Common system of Value Added Tax: uniform basis of assessment¹.)

In accordance with the provisions of article 30, the other member states were informed of the German request by letter of 23 September 1994.

The agreement designates which of the contracting states is to be responsible for the maintenance of each frontier bridge currently operating. The agreement also regulates the maintenance and other related matters in the event of a new frontier bridge being constructed, or an existing bridge being put back into service; the agreement would have to be amended in such cases. Modification would also be required where a bridge, currently in use, is put out of service.

As far as possible, the division of responsibility between the contracting States for the maintenance of complete bridges is divided between the contracting States in proportion to the surface areas of all the bridges on each respective sovereign territory.

Under the principle of territoriality, German Value Added Tax would be applied only to maintenance work on the bridges carried out on German territory; maintenance work carried out on Polish territory would be outwith the scope of application of the Sixth Directive. Work carried out on both territories would have to be apportioned.

The application of these rules would involve considerable tax difficulties for the firms contracted to carry out this maintenance work. In order to simplify the tax obligations of these firms, the agreement contains tax provisions providing for the uniform taxation of maintenance work, either in accordance with the German turnover tax law, or in accordance with the Polish tax law on goods and services.

In particular, the agreement states that the right to tax in a given case will lie with the respective countries responsible for maintaining the frontier bridges.

Moreover, the agreement provides that, with the exception of customs duties, no import tax shall be charged on goods imported from the territory of one contracting state into that of the other contracting state, provided that the goods are used for maintaining frontier bridges. However, imports for the public authorities (final consumption) are expressly excluded from the measure.

¹ OJ no. L 145 of 13.6.1977, p.1. Directive last modified by Directive 94/5/EC (OJ no. L 60 of 3.3.1994, p. 16)

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

The uniform taxation of maintenance work on the frontier bridges, either in the form of German VAT, or a Polish tax, constitutes an important simplification for those carrying out the maintenance work, when compared to the normal rules of the Sixth Directive. The decision to waive the collection of German VAT on imports of goods into Germany is also aimed at helping firms and the authorities avoid the practical difficulties connected with the VAT refund procedures.

The Commission considers that the application of the proposed measures will have only a negligible effect on the European Community's VAT receipts.

In effect, since the obligation to maintain the frontier bridges (which also determines the applicable tax law) is divided between the two contracting states according to the territorial location of each different part of all the frontier bridges, taxation of maintenance work according to the provisions of the agreement will hardly affect the amount of the German VAT due from these operations. On the other hand, considering the exclusion of the public authorities from this measure, the decision to waive the collection of German VAT on importation will not affect the amount of VAT due at the stage of final consumption, as even if this VAT on importation was collected, it would be recoverable by the operator who carried out the maintenance work.

Consequently, the Commission considers it advisable to authorise the Federal Republic of Germany to conclude the proposed agreement.

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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 harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment¹, 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 of 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 Secretary General of the Commission on 23 August 1994, the German Government requested authorisation to conclude an agreement with Poland, concerning the maintenance of frontier bridges linking German motorways to the main roads in Poland, which contains derogations from Articles 2 and 3 of the Sixth Directive;

Whereas, the other Member States were informed on 23 September 1994 of the request for authorisation received from Germany;

¹ OJ no. L 145 of 13.6.1977, p.1. Directive last modified by Directive 94/5/EC (OJ no. L 60 of 3.3.1994, p. 16)

Whereas in the absence of a special measure, only the maintenance work carried out on German territory would be subject to German VAT, those carried out on Polish territory would be outwith the scope of the Sixth Directive. In addition, each import of goods from Poland into Germany, used for the maintenance of frontier bridges, would be subject to German VAT;

Whereas the purpose of these derogations is to simplify the taxation rules for those responsible for carrying out the maintenance work on the frontier bridges;

Whereas the derogations will only have a negligible effect on the European Community's own resources arising from value added tax;

HAS ADOPTED THIS DECISION:

Article 1

The Federal Republic of Germany is authorised to conclude an agreement with the Republic of Poland containing measures derogating from the Sixth Council Directive 77/388/EEC. These derogations are defined in articles 2 and 3 hereinafter.

Article 2

By way of derogation from Article 3 of the Sixth Directive, the frontier bridges of the contracting States for which, on the basis of the agreement, the Federal Republic of Germany has maintenance responsibility, are considered to be a part of German territory. This is in so far as the deliveries of goods and the supply of services are consistent with the maintenance of these bridges.

By way of derogation from Article 3 of the Sixth Directive, the frontier bridges of the contracting states for which, on the basis of the agreement, the Republic of Poland has maintenance responsibility, are considered to be a part of Polish territory. This is in so far as the deliveries of goods and the supply of services are consistent with the maintenance of these bridges.

Article 3

By way of derogation from Article 2, paragraph 2 of the Sixth Directive, the importation of goods into Germany from Poland is not subject to value added tax, in so far as these goods are used for the maintenance of the frontier bridges for which, on the basis of the agreement, the Republic of Poland is responsible. However, the derogation does 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,1994

**For the Council
The President**

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