



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.06.1996
COM(96) 277 final

Proposal for a

COUNCIL DECISION

**AUTHORIZING THE FEDERAL REPUBLIC OF GERMANY
TO CONCLUDE WITH THE CZECH REPUBLIC TWO AGREEMENTS 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 letters officially received by the Secretariat-General of the Commission on 22 August 1995 and 26 March 1996, the German Government requested authorization, on the basis of Article 30 of the Sixth Council Directive, to conclude two agreements with the Czech Republic 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 assessment¹).

In accordance with Article 30, the other Member States were informed of Germany's request by letter dated 25 April 1996.

The first agreement concerns the construction of a frontier bridge across the Rehlingbach between Waidhaus and Rozvadov linking the German A6 motorway, which runs eastwards from Nuremberg, with the Czech D5 motorway, which runs westwards from Plzen.

The agreement provides that, in so far as they extend onto the sovereign territory of the Czech Republic, 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 Federal Republic of Germany as regards supplies of goods or services intended for the construction of the frontier bridge or for its repair and renewal.

The second agreement concerns the construction of a frontier bridge between Schönberg and Vojtanov extending the E49 motorway.

This agreement provides that, in so far as they extend onto the sovereign territory of the Federal Republic of Germany, 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 two agreements also stipulate 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 bridges in question or for their repair and renewal. This provision does not apply to goods imported 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 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 bridges or for their repair or renewal would be subject to value added tax in Germany.

¹ OJ No L 145, 13.6.1977, p. 1, as last amended by Directive 95/7/EC (OJ No L 102, 5.5.1995, p. 18).

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 Directive, the Council has already authorized the Federal Republic of Germany to conclude a number of agreements with the Republic of Poland concerning construction work in the frontier area which contain tax provisions similar to those set out in the present agreements.

The Commission agrees that the uniform taxation of construction, repair and renewal work, and the waiving of collection of value added tax on imports of goods intended for use in such work, simplify matters for the contractors compared with application of the normal rules of taxation.

In addition, given that the tax provisions of the two agreements balance out, their application will have only a negligible - but, in any event, positive - effect on the European Communities' own resources accruing from value added tax. According to information provided by the German authorities, the taxable turnover on work in Germany under the derogations provided for by these agreements is slightly higher than that which would be subject to value added tax in Germany if the normal rules of the common system of value added tax were to be applied.

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

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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 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 letters officially received by the Secretariat-General of the Commission on 22 August 1995 and 26 March 1996, the German Government requested authorization to conclude two agreements with the Czech Republic which contain derogations from Articles 2 and 3 of the Sixth Directive as regards the construction, repair and renewal of two frontier bridges between the Contracting States;

Whereas the other Member States were informed on 25 April 1996 of the German request;

¹ OJ No L 145, 13.6.1977, p. 1, as last amended by Directive 95/7/EC (OJ No L 102, 5.5.1995, p. 18).

Whereas, 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 Directive and whereas, in addition, each importation from the Czech Republic into Germany of goods used for the construction, repair and renewal of the frontier bridges would be subject to value added tax in Germany;

Whereas the purpose of these derogations is to simplify the rules of taxation for the contractors carrying out the work 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 hereby authorized to conclude two agreements with the Czech Republic containing measures derogating from the Sixth Council Directive (77/388/EEC) of 17 May 1977.

The first agreement concerns the construction of a frontier bridge across the Rehlingbach between Waidhaus and Rozvadov linking the German A6 motorway, which runs eastwards from Nuremberg, with the Czech D5 motorway, which runs westwards from Plzen.

The second agreement concerns the construction of a frontier bridge between Schönberg and Vojtanov extending the E49 motorway.

The derogations provided for by these agreements are spelt out in Articles 2, 3 and 4.

Article 2

By way of derogation from Article 3 of the Sixth Directive, in so far as they extend onto the sovereign territory of the Czech Republic, the area of the construction site for the frontier bridge referred to in the second paragraph of Article 1 and, after its completion, the frontier bridge itself shall be treated as forming part of the sovereign territory of the Federal Republic of Germany 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 Article 3 of the Sixth Directive, in so far as they extend onto the sovereign territory of the Federal Republic of Germany, the area of the construction site for the frontier bridge referred to in the third paragraph of Article 1 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 4

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, repair or renewal of one of the bridges referred to in the second and third paragraphs of Article 1. However, this derogation shall not apply to goods imported by a public authority for the same purpose.

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels,1996

**For the Council
The President**

Financial statement

The proposed Decision, when adopted, will have only a negligible effect for the collection of Community own resources.

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