



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.04.1997
COM(97) 181 final

Proposal for a
COUNCIL DECISION

**AUTHORIZING 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 HARMONIZATION 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 5 February 1997, the Federal Republic of Germany requested authorization, on the basis of Article 30 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 - 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 3 March 1997.

This agreement concerns constructing in the Spitzberg area a frontier bridge, which partly is on the territory of the Federal Republic of Germany and partly on the territory of the Czech Republic, linking the German A17 motorway heading east with the Czech D8 motorway heading west.

The agreement provides that for the application of the German turnover 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 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.

¹ OJ No L 145, 13.6.1977, p. 1, as last amended by Directive 96/95/EC (OJ No L 338, 28.12.1996, p. 89).

The German government is aware that the tax provisions of the agreement affect in a negative way the total amount of VAT chargeable on construction, repair and renewal of the frontier bridge.

However, the German government indicates that by the Council Decision of 17 March 1997² the Federal Republic of Germany has been authorized to conclude two agreements with the Czech Republic concerning construction of frontier bridges, whereby application of the tax provisions will have only a negligible - but, in any event, positive - effects for the collection of European Communities' own resources accruing from VAT.

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 agreement.

Furthermore, the German authorities make known that until now, as regards application of the tax provisions of all the agreements which Germany has concluded with its Eastern European neighbour countries, and whereby the construction work extends on the sovereign territory of both Contracting parties, the overall balance is positive from the point of view of the European Communities' own resources accruing from VAT.

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.

The Commission considers that the effect of the agreement in question on the European Communities' own resources accruing from value added tax, should not be an obstacle for granting the Federal Republic of Germany the requested authorization, given its minor importance, and moreover, the compensating effect of the several similar agreements which the Federal Republic of Germany has already concluded in the past.

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

² OJ No L 80, 21.3.1997, p. 18

Proposal for a

COUNCIL DECISION

AUTHORIZING 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 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 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 registered by the Secretariat-General of the Commission on 5 February 1997, the German government requested authorization to conclude an agreement with the Czech Republic relating to the construction of a frontier bridge between the Contracting States in question;

Whereas, the agreement contains provisions in the field of value added taxation which derogate from the Articles 2 and 3 of the Sixth 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;

¹ OJ No L 145, 13.6.1977, p. 1, as last amended by Directive 96/95/EC (OJ No L 338, 28.12.1996, p. 89).

Whereas the other Member States were informed on 3 March 1997 of the German request;

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 and the maintenance of the frontier bridge 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 an agreement with the Czech Republic concerning the construction of a frontier bridge in the Spitzberg area, which partly is on the territory of the Federal Republic of Germany and partly on the territory of the Czech Republic, linking the German A17 motorway heading east with the Czech D8 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 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 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 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,1997

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.

ISSN 0254-1475

COM(97) 181 final

DOCUMENTS

EN

09 07

Catalogue number : CB-CO-97-175-EN-C

ISBN 92-78-19025-X

Office for Official Publications of the European Communities

L-2985 Luxembourg

8