

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(83) 79 final

Brussels, 23 February 1983

## Commission Communication to the Council

concerning the application of Article 27 of the Sixth Council Directive  
of 17 May 1977 on value added tax to a request for derogation  
submitted to the German and Luxembourg Governments

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Commission Communication to the Council concerning the application of Article 27 of the Sixth Council Directive of 17 May 1977 on value added tax (1) to a request for derogation submitted by the German and Luxembourg Governments

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1. On 6 and 17 December 1982, the German and Luxembourg Governments informed the Commission, pursuant to the above provisions, of their intention to introduce a measure derogating from the Sixth Directive.

The purpose of the derogation is, as provided for in the draft agreement between Germany and Luxembourg, to simplify the collection of VAT on the transactions relating to the construction and maintenance of a frontier bridge.

2. Under the derogation, VAT will be collected on one side only for all the work relating to the construction and maintenance of the frontier bridge.

Since the Federal Republic of Germany will assume responsibility for building and maintaining the bridge, VAT will be levied on these operations by the German authorities alone.

3. The Commission informed the other Member States, by letter dated 17 January 1983, of the requests submitted by the German and Luxembourg Governments.

4. In accordance with Article 27(4) of the Sixth Directive, the Council's decision will be deemed to have been adopted if, within two months of the other Member States being informed, as described at 3 above, neither the Commission nor any Member State has requested that the matter be raised by the Council.

5. Provided that the derogation proposed by the German and Luxembourg Governments is restricted to the measures mentioned in paragraphs 1 and 2 of this Communication, the Commission does not intend to ask for the matter to be raised by the Council.

6. The Commission requests the Council to publish the text of paragraphs 1 to 3 of this Communication in the Official Journal together with its decision.

Communication

from the Government of the Federal Republic of Germany

Subject: Sixth Council Directive on the harmonization of turnover taxes; introduction of simplification measures (Article 27(1) to (4)).

I.

As part of the Koblenz-Trier-Luxembourg road link, the Federal Republic of Germany and the Grand Duchy of Luxembourg intend to build a frontier bridge over the Sauer.

Under the provision on territorial application (Sixth Directive, Article 3) each of the two States would have to charge turnover tax (value added tax) for the building and maintenance work carried out on its own territory. This would involve considerable tax complications for the companies concerned. Each supply or other transaction relating to the single operation of building and maintaining the bridge would have to be examined separately for allocation to German or Luxembourg territory. Single transactions concerning both the territories would have to be divided between them. Because exportation was involved, equipment which, for example, was supplied from the Federal Republic of Germany and used for building or maintenance work on Luxembourg territory would have to be exempted from German turnover tax and made liable to Luxembourg value added tax on importation into Luxembourg.

In order to facilitate the practical execution of the project, the treaty is to include the following tax provision, whereby all turnover tax on the

building and maintenance work is to be levied by the Federal Republic of Germany, which will also be responsible for carrying out the building work and maintaining the bridge:

"For the purpose of indirect taxation including import duties and taxes and for the purposes of import and export legislations, the site of the works and the structure itself shall be deemed to be German territory with respect to supplies and imports of goods and other transactions intended for the building of the bridge or for its maintenance."

## II.

The treaty is also to include the following rule, which provides that German turnover tax on imports shall not be charged on imports from Luxembourg:

"On importation into the Federal Republic of Germany, turnover tax shall not be charged on goods which have been in free circulation in the Grand Duchy of Luxembourg, insofar as such goods are used for the building or maintenance of the bridge. This shall apply from the start of the building work. The lodging of securities shall not be required. Sentence 1 shall not apply to the importation of goods for public works departments."

The fact that this tax is not charged will also simplify matters for companies and the authorities. This is merely a technical simplification relating to tax payable on a single project in one particular place (suspension of tax in the business sector), and not a substantive concession. If turnover tax were charged on importation, it could be fully deducted by the building contractors as an input tax. The measure explicitly excludes imports for public works departments (final consumption stage).

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III.

Authorization is requested for the planned rules, which are a derogation from Article 3 and Article 2(2) of the Sixth Directive.

Article 27(1) permits the introduction of special measures for derogation from the Directive in order to simplify the procedure for charging the tax. This provision also applies to agreements between Member States. The suspension of tax is also a possible simplification measure (see the statements written into the minutes on Article 27).

As has been explained, the purpose of the intended rules is to simplify taxation. Since the whole of the building and maintenance work (together with imports for public works departments) is subject to turnover tax in the Federal Republic of Germany, taxation at the final consumption stage is not diminished. The Community's own resources deriving from value added tax will therefore be unaffected.

Communication

From the Government of the Grand Duchy of Luxembourg

Subject: Sixth Council Directive 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. Application for authorization to introduce simplified measures under Articles 27(1) to (4).

As the Federal Republic of Germany and the Grand Duchy of Luxembourg intend to build a frontier bridge over the Sûre as a joint project, the two States have drawn up a draft convention which includes a provision on value added tax.

Under the provision on territorial application (Article 3 of the Sixth Directive), each of the two States would have to collect value added tax on the construction and maintenance work carried out on its own territory. This would involve considerable technical difficulties for the companies concerned.

Every supply of goods or services relating to the building or maintenance of the bridge would have to be examined separately for allocation to the German or Luxembourg VAT system. Supplies concerning both territories would have to be broken down between them. For example, equipment purchased in the Federal Republic of Germany for construction and maintenance work on Luxembourg territory should, because it is being exported, be exempted from German VAT and made subject to Luxembourg VAT upon importation into the Grand Duchy.

In order to simplify the administrative formalities connected with the execution of the project, the draft convention includes a provision whereby VAT will be collected on one side only for all the work.

The Federal Republic of Germany will assume responsibility for building and maintaining the bridge and VAT will be levied on these operations by the German authorities alone.

The provision reads as follows:

"For the purpose of indirect taxation including import duties and taxes and for the purposes of import and export legislation, the site of the works and the structure work shall be deemed to be on German territory with respect to supplies and imports of goods and services intended for the building of the bridge or for its maintenance."

The Government to the Grand Duchy of Luxembourg hereby requests authorization under Article 27(1) of the Sixth Directive to introduce the proposed measure by way of derogation from Article 3 of the Directive. Article 27 provides that the Council may authorize any Member State to introduce special measures for derogation from the provisions of the Directive in order to simplify the procedure for charging the tax.

Reference is also made to the statement in the Minutes concerning Article 27 of the Sixth Directive that the measures referred to in that Article shall also apply to agreements between Member States.

As explained above, the proposed provision is a measure to simplify the charging of the tax. Since all the building and maintenance operations will be subject to value added tax in the Federal Republic of Germany, taxation at the final consumption stage is not diminished.

The proposed provision will have no effect on the Community's own resources accruing from value added tax.