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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.11.2008
COM(2008) 753 final

Proposal for a

COUNCIL DECISION

**Authorising the Czech Republic and the Federal Republic of Germany to apply
measures derogating from Article 5 of Council Directive 2006/112/EC on the common
system of value added tax**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

Pursuant to Article 395 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereafter: 'VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogation from the provisions of that Directive, in order to simplify the procedure for collecting value added tax (VAT) or to prevent certain forms of tax evasion or avoidance.

By letters registered with the Secretariat-General of the Commission on 19 May 2008, the Czech Republic and the Federal Republic of Germany requested authorisation to apply derogating measures in relation to the construction and the maintenance of border bridges forming part of the respective road networks of the two countries.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 2 October 2008 of the requests made by the Czech Republic and the Federal Republic of Germany. By letter dated 7 October 2008, the Commission notified the Czech Republic and the Federal Republic of Germany that it had all the information necessary to consider the requests.

1.2. General context

With a view to facilitate road traffic between their two countries, the Czech Republic and the Federal Republic of Germany decided to adopt an agreement on the construction (and subsequent maintenance) of one border bridge and the maintenance of twenty-two other existing border bridges. This agreement would contain measures which derogate from the VAT Directive as regards the principle of territoriality.

According to the agreement, the Czech Republic or the Federal Republic of Germany would become responsible for the construction or the maintenance of a number of individual bridges. The agreement provides that the VAT of that Member State shall apply in relation to the supplies of goods and services and intra-Community acquisitions of goods for the construction or maintenance of a border bridge, when that Member State is responsible for the construction or maintenance of that bridge.

This implies that for VAT purposes, as regards the supply of goods and services and intra-Community acquisitions of goods for the construction or maintenance of these border bridges, the Czech part of the border bridge will be considered as being on German territory when Germany is responsible for the construction or maintenance of this bridge and vice versa.

Under the agreement, the Federal Republic of Germany will be responsible for the construction and maintenance of one new bridge and the maintenance of fourteen existing bridges. The Czech Republic will be responsible for the maintenance of eight existing bridges.

Under the normal rules, the principle of territoriality laid down in the VAT Directive would require supplies of goods and services and intra-Community acquisitions of goods in the Federal Republic of Germany to be subject to German VAT. Likewise, supplies of goods and services and intra-Community acquisitions of goods in the

Czech Republic would be subject to Czech VAT. Applying the normal rules would imply establishing the exact place of taxable transactions according to the territory in which each part of the works was carried out.

The Czech Republic and the Federal Republic of Germany consider that applying these rules would involve major tax complications for the businesses responsible for the work in question. They consider the tax provisions in the agreement are justified in order to simplify the business' tax responsibilities. The Commission accepts that in these cases, uniform taxation of the construction and maintenance works will represent a simplification which will make it easier for the businesses concerned to apply the tax rules than would be the case if the normal tax rules were applied.

1.3. Existing provisions in the area of the proposal

The Council has on several previous occasions authorised Member States to derogate from the territoriality principle with regard to projects in frontier areas.

1.4. Consistency with other policies and objectives of the Union

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Consultation of interested parties

Not relevant.

2.2. Collection and use of expertise

There was no need for external expertise.

2.3. Impact assessment

The Decision proposal aims at simplifying the procedure for charging the tax in relation to the construction and maintenance of frontier bridges and has therefore a potential positive economic impact.

The impact will in any case be limited because of the narrow scope of the derogation.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

Authorisation for the Czech Republic and the Federal Republic of Germany to derogate from the territorial application of VAT as regards the construction and maintenance of border bridges between the two countries.

3.2. Legal basis

Article 395 of the VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

3.3. Subsidiarity principle

In accordance with Article 395 of the VAT Directive, a Member State wishing to introduce measures derogating from the said Directive must obtain an authorisation from the Council, which will take the form of a Council Decision. Therefore, the proposal complies with the subsidiarity principle.

3.4. Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

- The Decision concerns an authorisation granted to Member States upon their own request and does not constitute any obligation.
- Given the very limited scope of the derogation, the special measure is proportionate to the aim pursued.

3.5. Choice of instruments

Other means would not be adequate for the following reason :

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. A Council Decision is therefore the most suitable instrument since it can be addressed to individual Member States.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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COUNCIL DECISION

Authorising the Czech Republic and the Federal Republic of Germany to apply measures derogating from Article 5 of Council Directive 2006/112/EC on the common system of value added tax

(only the Czech and the German versions are authentic)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹, and in particular Article 395(1) thereof,

Having regard to the proposal from the Commission²,

Whereas:

- (1) By letters registered with the Secretariat-General of the Commission on 19 May 2008, the Czech Republic and the Federal Republic of Germany requested authorisation to apply special tax measures in relation to the construction and maintenance of certain border bridges between the two countries.
- (2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 2 October 2008 of the requests made by the Czech Republic and the Federal Republic of Germany. By letter dated 7 October 2008, the Commission notified the Czech Republic and the Federal Republic of Germany that it had all the information necessary to consider the requests.
- (3) The purpose of the special measure is, for supplies of goods and services and intra-Community acquisitions of goods intended for the construction and maintenance of the cross-border bridges, and which according to the VAT rules are to be located in the Member State where the bridge stands, to apply the value added tax of the Member State that is responsible for its construction or maintenance in accordance with an agreement concluded between them on the division of responsibility.
- (4) In the absence of a special measure it would be necessary, according to the principle of territoriality, for each supply of goods and services and intra-Community acquisition of goods, to ascertain whether the place of taxation was the Czech Republic or the Federal Republic of Germany. Work at a border bridge carried out on Czech territory would be subject to value added tax in the Czech Republic while that carried out on German territory would be subject to German value added tax.

¹ OJ L 347, 11.12.2006, p. 1. Directive last amended by Directive 2008/8/EC (OJ L 44, 20.2.2008, p. 11)

² OJ C , , p. .

- (5) The purpose of the derogation is therefore to simplify the procedure for charging the tax on the construction and maintenance of the bridges in question by considering the bridge as being solely on the territory of the Member State that is responsible for the construction or maintenance.
- (6) The derogation will have no negative impact on the Community's own resources provided from value added tax.

HAS ADOPTED THIS DECISION:

Article 1

The Czech Republic and the Federal Republic of Germany are authorised, under the conditions of Article 2 and 3, to apply measures derogating from Directive 2006/112/EC in relation to the construction and subsequent maintenance of one border bridge, and the maintenance of twenty-two existing border bridges, all of which are partly on the territory of the Czech Republic and partly on the territory of the Federal Republic of Germany. The details of the bridges in question are listed in the Annex to this decision.

Article 2

By way of derogation from Article 5 of Directive 2006/112/EC, with regard to the border bridges for which the Czech Republic is solely responsible for maintenance, these bridges shall be deemed to be part of the Czech territory for the purposes of supplies of goods and services and intra-Community acquisitions of goods intended for the maintenance of these bridges.

Article 3

By way of derogation from Article 5 of Directive 2006/112/EC, with regard to the border bridge for which the Federal Republic of Germany is responsible for the construction and maintenance and with regard to the border bridges for which the Federal Republic of Germany is solely responsible for maintenance, these bridges shall be deemed to be part of the German territory for the purposes of supplies of goods and services and intra-Community acquisitions of goods intended for the construction or maintenance of these bridges.

Article 4

This Decision is addressed to the Czech Republic and the Federal Republic of Germany.

Done at Brussels,

For the Council
The President

ANNEX

Bridges referred to in Article 1:

1. The Federal Republic of Germany shall be responsible for the construction and maintenance of the following border bridge:

(a) the border bridge over the Načetínský potok/Natzschung between Brandov and Olbernhau in border section XIII between boundary stones 10/5 and 10/6.

2. The Federal Republic of Germany shall be responsible for maintaining the following border bridges:

(a) the border bridge over the Zlatý potok/Goldbach between Český Mlýn and Rittersgrün in border section XVII between boundary stones 10 and 10/1;

(b) the border bridge over the Polava/Pöhlbach between Loučná and Oberwiesenthal in border section XVI between boundary stones 9 und 10;

(c) the border bridge over the Polava/Pöhlbach between České Hamry and Hammerunterwiesenthal in border section XVI between boundary stones 5 and 6;

(d) the frontier bridge over the Načetínský potok/Natzschung between Brandov and Olbernhau/Grünthal in border section XIII between boundary stones 9 und 10;

(e) the frontier bridge over the Svídnice/Schweinitz between Hora sv. Kateřiny and Deutschkatharinenberg in border section XIII between boundary stones 2/8 und 3;

(f) the frontier bridge over the Svídnice/Schweinitz between Nová Ves v Horách and Deutschneudorf in border section XII between boundary stones 17 und 18;

(g) the frontier bridge over the Flájský potok/Flöha between Český Jiřetín and Deutschgeorgenthal in border section XII between boundary stones 1 und 1/1;

(h) the frontier bridge over the Mohelnice/Weiße Müglitz between Fojtovice and Fürstenau in border section X between boundary stones 5/29 and 6;

(i) the frontier bridge over the Křínice/Kirnitzsch between Zadní Jetřichovice and Hinterhermsdorf/Raabensteine in border section VII between border stones 1 and 2;

(j) the frontier bridge over the Křínice/Kirnitzsch between Zadní Doubice and Hinterhermsdorf in border section VI between border stones 23/21 and 24;

(k) the frontier bridge over the Čertova voda/Teufelsbach between Bučina and Finsterau in border section XI between boundary stones 9 and 10;

(l) the frontier bridge over the Údolský potok/Ruthenbächle between Stožec-Nové Údolí and Haidmühle in border section XII between boundary stones 9/1 and 9/2;

(m) the frontier bridge over the Černice/Bayerischer Schwarzbach between Rybník-Švarcava and Stadlern in border section VII between border stones 11 and 12;

(n) the frontier bridge over the Lomnička/Helmbach between Zadní Chalupy and Helmhof in border section IX at border stone 17/2.

3. The Czech Republic shall be responsible for maintaining the following border bridges:

(a) the frontier bridge over the Komáří potok/Mückenbach between Český Mlýn and Rittersgrün (Zollstraße) in border section XVII between boundary stones 11 and 12;

(b) the frontier bridge over the Polava/Pöhlbach between Vejprty and Bärenstein in border section XVI between boundary stones 1 and 2;

- (c) the frontier bridge over the Schweinitz/Svídnice between Mníšek and Deutscheinsiedel in border section XII between boundary stones 13 and 14;
- (d) the frontier bridge carrying road II/267 and road S 154 over the Vilémovský potok/Sebnitz between Dolní Poustevna and Sebnitz between boundary stones 19 (in border section V) and 1 (in border section VI);
- (e) the frontier bridge carrying footpaths over the Vilémovský potok/Sebnitz between Dolní Poustevna and Sebnitz between boundary stone 19 (in border section V) and 1 (in border section VI);
- (f) the frontier bridge over the Hraniční potok/Rehlingbach between Rozvadov and Waidhaus in border section VI between boundary stones 1 and 2;
- (g) the frontier bridge over the Prášílský potok/Marchbach between Prášily and Scheuereck in border section X between boundary stones 11/26 and 12;
- (h) the frontier bridge over the Mechový potok/Harlandbach between České Žleby and Bischofsreut/Marchhäuser in border section XII between boundary stones 5/4 and 5/5.