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Conformément au règlement (CEE, Euratom) n° 354/83 du Conseil du 1er février 1983 concernant l'ouverture au public des archives historiques de la Communauté économique européenne et de la Communauté européenne de l'énergie atomique (JO L 43 du 15.2.1983, p. 1), tel que modifié par le règlement (CE, Euratom) n° 1700/2003 du 22 septembre 2003 (JO L 243 du 27.9.2003, p. 1), ce dossier est ouvert au public. Le cas échéant, les documents classifiés présents dans ce dossier ont été déclassifiés conformément à l'article 5 dudit règlement.

In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(84) 477 final

Brussels, 6 August 1984

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 by the Governments of the Federal Republic of
Germany and the Netherlands

COM(84) 477 final

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 Governments of the Federal Republic of Germany and the Netherlands

1. On 12 and 21 June 1984, the German and Dutch 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 the two Member States, to simplify the collection of VAT on supplies relating to construction and maintenance work on the diversion of the Ems canal and the extension of the port of Emden. The measure will have no effect on the Community's own resources accruing from value added tax.

2. Under the derogation, all the work relating to the construction and maintenance will be taxed together.

Since the Federal Republic of Germany will assume responsibility for this work, VAT will be levied on these operations by the German authorities alone.

3. The Commission informed the other Member States, by letter dated 9 July 1984, of the request submitted by the German and Dutch 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 Dutch 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 Directive on the harmonization of turnover taxes;
Introduction of simplification procedures (Article 27(1) to
(4))

I.

The Federal Republic of Germany and the Kingdom of the Netherlands disagree on where their common frontier runs in the Ems estuary. In the Ems-Dollart Treaty of 8 April 1960, this matter was expressly left open.

The Federal Republic of Germany intends to shift the Ems shipping channel where it passes through the disputed area and to extend the harbour at Emden. The details are to be laid down in a treaty between the Federal Republic of Germany and the Kingdom of the Netherlands. Under the project, the Federal Republic of Germany will carry out various building works (e.g. shifting of the Ems shipping channel, hydraulic-fill works on the eastern part of the "Geiserücken", construction of a guide bank). It will also be responsible for subsequent maintenance.

Once the essential work to shift the Ems shipping channel and to fill the eastern part of the "Geiserücken" has been completed, a new frontier arrangement is to take effect. The building and maintenance works to be carried out and paid for by the Federal Republic of Germany will be located mainly in the area that is the subject of the territorial dispute although some of them will, after the entry into force of the new frontier arrangement, be carried out on Dutch territory.

The proposed treaty is to include the following provision on turnover tax :

"The building and maintenance works carried out under this Treaty by the German side shall be subject to the Turnover Tax Law of the Federal Republic of Germany".

This provision makes it clear that transactions carried out in the disputed area as part of the building and maintenance works will be liable to German turnover tax. Without such a provision, taxation would not be ensured. In the case of transactions taking place on Dutch territory, the provision, while departing from the principle of territorial application (Article 3 of the Sixth Directive), serves the purpose of simplification. If no such provision were incorporated in the treaty, the contractors concerned would, whenever they supplied goods or services in connection with those works, have to ascertain whether the transactions in question were located on German territory, on Dutch territory or in the disputed area.

All in all, under the proposed provision, the turnover tax chargeable on the building and maintenance works will accrue to the country carrying out and financing those works.

II.

Authorization is sought for the proposed provision in so far as it departs from Article 3 of the Sixth Directive.

Pursuant to Article 27(1) of the Directive, special derogatory measures may be introduced that simplify the procedure for charging tax. This also applies to agreements between Member States (cf. Council and Commission statement concerning Article 27, written into the minutes).

As explained, the proposed provision will help to simplify taxation. Since all the building and maintenance works are liable to turnover tax in the Federal Republic of Germany, taxation of final consumption is not impaired. This means that the Community's own resources accruing from VAT are also unaffected.

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COMMUNICATION

from the Government of the Netherlands

Subject: Sixth Directive on turnover taxes; Introduction of simplification procedures (Article 27(1) to (4))

The Federal Republic of Germany and the Kingdom of the Netherlands disagree on where their common frontier runs in the Ems estuary. In the Ems/Dollart-Treaty of 8 April 1960, this matter was expressly left open.

The Federal Republic of Germany intends to shift the Ems shipping channel where it passes through the disputed area and to extend the harbour at Emden. The details are to be laid down in a treaty between the Federal Republic of Germany and the Kingdom of the Netherlands. Under the project, the Federal Republic of Germany will carry out various building works (e.g. shifting of the Ems shipping channel, hydraulic-fill work on the eastern part of the "Geiserücken", construction of a guide bank). It will also be responsible for subsequent maintenance.

Once the essential work to shift the Ems shipping channel and to fill the eastern part of the "Geiserücken" has been completed, a new frontier arrangement is to take effect. The building and maintenance works to be carried out and paid for by the Federal Republic of Germany will be located mainly in the area that is the subject of the territorial dispute although some of them will, after the entry into force of the new frontier arrangements, be carried out on Dutch territory. The proposed treaty is to include the following provision on turnover tax:

"The building and maintenance works carried out under this Treaty by the German side shall be subject to the Turnover Tax Law of the Federal Republic of Germany."

This provision makes it clear that transactions carried out in the disputed area as part of the building and maintenance works will be liable to German turnover tax. Without such a provision, taxation would not be ensured. In the case of transactions taking place on Dutch territory, the provision, while departing from the principle of territorial application (Article 3 of the Sixth Directive), serves the purpose of

simplification. If no such provision were incorporated in the treaty, the contractors concerned would, whenever they supplied goods or services in connection with those works, have to ascertain whether the transactions in question were located on German territory, on Dutch territory or in the disputed area. All in all, under the proposed provision, the turnover tax chargeable on the building and maintenance works will accrue to the country carrying out and financing those works.

Authorization is sought for the proposed provision in so far as it departs from Article 3 of the Sixth Directive.

Pursuant to Article 27(1) of the Directive, special derogatory measures may be introduced that simplify the procedure for charging tax. This also applies to agreements between Member States (cf. Council and Commission statement concerning Article 27, written into the minutes).

As explained, the proposed provision will help to simplify taxation. Since all the building and maintenance works are liable to turnover tax in the Federal Republic of Germany, taxation of final consumption is not impaired. This means that the Community's own resources accruing from VAT are also unaffected.

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