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Proposal for a

COUNCIL DECISION

**authorising the Czech Republic and Poland to apply special measures derogating from
Article 5 of Directive 2006/112/EC on the common system of value added tax**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Pursuant to Article 395(1) 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 to derogate 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 Commission on, respectively, 26 September 2011 and 8 June 2012, the Czech Republic and Poland requested authorisation to apply measures derogating from Article 5 of the VAT Directive. By letter registered on 5 November 2012 the Czech Republic completed its initial request by agreeing to certain additions mentioned in the Polish request. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 5 December 2012 of the requests made by the Czech Republic and Poland. By letter dated 10 December 2012, the Commission notified the Czech Republic and Poland that it had all the information necessary to consider the request.

General context

With a view to facilitate road transport between the Czech Republic and Poland, and to regulate the construction and maintenance of road infrastructure on the Czech-Polish state border, both states have agreed to enter into an Agreement on the construction and maintenance of bridges and the maintenance of common road sections on the Czech-Polish State border. This draft agreement contains simplification measures which derogate from the VAT Directive as regards the principle of territoriality.

According to the draft agreement, the Czech Republic and Poland would each become responsible for the maintenance of the border bridges and common road sections in accordance with the division of responsibilities set out in Annex A of the agreement.

The Czech Republic and Poland would each become responsible for the construction and subsequent maintenance of the border bridges in accordance with the division of responsibilities set out in Annex B of the agreement.

For VAT purposes, in respect of the supply of goods or services and intra-Community acquisitions of goods intended for the construction or maintenance of the border bridges and common road sections under Annexes A and B of the agreement, the bridges and common road sections in question as well as their construction sites shall be considered as being on the territory of the state which is responsible for their construction or maintenance as laid down under Annexes A and B of the agreement.

Under the normal rules, the principle of territoriality laid down in the VAT Directive would require supplies of goods and services, as well as intra-Community acquisitions of goods carried out in the Czech Republic to be subject to Czech VAT. Likewise, supplies of goods and services as well as intra-Community acquisitions of goods carried out in Poland would be subject to Polish VAT. Applying these provisions would imply breaking down operations according to the territory in which each part of the works was carried out.

The Czech Republic and Poland 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 draft agreement which is subject to the present request for derogation as justified in order to ease the administrative burden on those businesses. The Commission

agrees that, in this case, uniform taxation of the construction and maintenance 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.

Existing provisions in the area of the proposal

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

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Not relevant.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

The proposed Decision aims at simplifying the procedure for charging VAT in relation to the construction and maintenance of bridges and common road sections between the Czech Republic and Poland and has therefore a potential positive economic impact.

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

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for the Czech Republic and Poland to derogate from the territorial application of VAT as regards to the construction and maintenance of border bridges and common road sections.

Legal basis

Article 395 of the VAT Directive.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union's budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

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 European Commission,

Whereas:

- (1) By letters registered with the Commission on 26 September 2011 and 5 November 2012 the Czech Republic and on 8 June 2012 Poland requested authorisation to apply special measures for derogation from the provisions of Directive 2006/112/EC in relation to the construction and maintenance of border bridges and common road sections between the two Member States.
- (2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 5 December 2012 of the requests made by the Czech Republic and by Poland. By letter dated 10 December 2012, the Commission notified the Czech Republic and Poland that it had all the information necessary to consider the requests.
- (3) The purpose of the special measures is that with respect to the supply of goods or services and intra-Community acquisition of goods intended for the maintenance of border bridges and common road sections listed in Annex I and for the construction and subsequent maintenance of border bridges listed in Annex II, the bridges and common road sections, as well as their construction sites, should be regarded as being entirely within the territory either of the Czech Republic or of Poland in accordance with an Agreement to be concluded between them on the construction and maintenance of bridges and maintenance of common road sections on the Czech – Polish State border.
- (4) In the absence of special measures, it would be necessary, for each supply of goods or services and intra-Community acquisition of goods, to ascertain whether the place of taxation was the Czech Republic or Poland. Work at a border bridge and common road section carried out within the territory of the Czech Republic would be subject to value added tax in the Czech Republic while that carried out within Poland's territory would be subject to value added tax in Poland.
- (5) The purpose of the derogation is therefore to simplify the procedure for collecting the tax with respect to the construction and maintenance of the border bridges and common road sections in question.

¹ OJ L 347, 11.12.2006, p. 1.

- (6) The derogation has no adverse impact on the Union's own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

Subject to the entry into force of an Agreement to be concluded between the Czech Republic and Poland on the maintenance of bridges and common road sections on the Czech – Polish State border, as referred to in Annex I to this Decision, and on the construction and subsequent maintenance of bridges on the Czech – Polish State border, as referred to in Annex II to this Decision, the Czech Republic and Poland are hereby authorised to apply, in accordance with Articles 2 and 3, measures derogating from Directive 2006/112/EC in relation to the construction and maintenance of those border bridges and common road sections, all of which are partly within the territory of the Czech Republic and partly within the territory of Poland.

Article 2

By way of derogation from Article 5 of Directive 2006/112/EC, the border bridges and common road sections for the construction or maintenance of which the Czech Republic is responsible, and, where appropriate, the corresponding construction site, insofar as they are within Poland's territory, shall be deemed to be part of the territory of the Czech Republic for the purposes of the supply of goods and services and intra-Community acquisition of goods intended for the construction or maintenance of those bridges and common road sections.

Article 3

By way of derogation from Article 5 of Directive 2006/112/EC, the border bridges and common road sections for the construction or maintenance of which Poland is responsible, and, where appropriate, the corresponding construction site, insofar as they are within the territory of the Czech Republic, shall be deemed to be part of Poland's territory for the purposes of the supply of goods and services and intra-Community acquisition of goods intended for the construction or maintenance of those bridges and common road sections.

Article 4

This Decision is addressed to the Czech Republic and the Republic of Poland.

Done at Brussels,

*For the Council
The President*

ANNEX I

The Czech Republic shall be responsible for the maintenance of the following bridge structures and common road sections on the Czech – Polish State border:

- (1) the bridge structure over the Olecka Potok stream (Oleška) between Jasnowice and Bukovec, on border section I between boundary markers 12/6 and I/13,
- (2) the bridge structure (Wolności/Svobody) over the Olza (Olše) River between Cieszyn and Český Těšín, on border section I between boundary markers I/86 and 86/1,
- (3) the bridge structure (Przyjaźni/Družby) over the Olza (Olše) River between Cieszyn and Český Těšín, on border section I between boundary markers 87/2 and I/88,
- (4) the bridge structure over the Piotrówka Potok stream (Petrůvka) between Gołkowice and Závada, on border section I between boundary markers I/156 and 156/1,
- (5) the bridge structure over the Odra (Oder) River between Chałupki and Bohumín (concrete section of an old bridge), on border section II between boundary markers 7/4 and 7/5,
- (6) the bridge structure over the Odra (Oder) River between Chałupki and Bohumín (a new bridge), on border section II between boundary markers 8/1 and 8/2,
- (7) the bridge structure over the Opawa (Opava) River between Wiechowice and Vávrovice, on border section II between boundary markers 71/4 and II/72,
- (8) the bridge structure over the Opawa (Opava) River between Dzierzkowice and Držkovce, on border section II between boundary markers 74/1 and 74/2,
- (9) the bridge structure over the Opawa (Opava) River between Branice and Úvalno, on border section II between boundary markers 85/4 and 85/5,
- (10) the bridge structure over the Opawica (Opavice) River between Krasne Pole and the Krásné Loučky district of the town of Krnov, on border section II between boundary markers 97/11 and II/98,
- (11) the bridge structure over the Opawica (Opavice) River between Lenarcice and Linhartovy, on border section II between boundary markers 99/8 and 99/9,
- (12) the bridge structure over the Oleśnica Potok stream (Olešnice) between Podlesie and Ondřejovice (by the sports field), on border section II between boundary markers 155/3a and 155/3b,
- (13) the bridge structure over the Oleśnica Potok stream (Olešnice) between Podlesie and Ondřejovice (at the junction with the road to Rejvíz), on border section II between boundary markers 155/9 and 155/10,
- (14) the bridge structure over the Oleśnica Potok stream (Olešnice) between Podlesie and Ondřejovice (by the Ondřejovice machinery plant), on border section II between boundary markers 157/8 and II/158a,
- (15) the bridge structure over the Orlica (Divoká Orlice) River between Niemojów and Bartošovice v Orlických horách, on border section III between boundary markers III/102 and III/103,
- (16) the bridge structure over the Orlica (Divoká Orlice) River between Mostowice and Orlické Záhoří, on border section III between boundary markers III/113 and III/114,

- (17) the bridge structure over the Orlica (Divoká Orlice) River between Lasówka and Orlické Záhoří, cadastral district Bedřichovka, on border section III between boundary markers 117/8 and III/118,
- (18) the bridge structure over the Lubota Potok stream (Oldřichovský potok) between Kopaczów and Oldřichov na Hranicích, on border section IV between boundary markers IV/144 and 144/1,
- (19) the bridge structure over the Lubota Potok stream (Oldřichovský potok) between Porajów and Hrádek nad Nisou, on border section IV between boundary markers 145/16 and IV/146,
- (20) the road between Leszna Górna and Horní Lištná, on border section I between boundary markers I/60 and 60/3a, 60/3b, with the length of 0.333 km,
- (21) the road between Chałupki and Šilheřovice, on border section II between boundary markers 11/4a, 11/4b and II/12, with the length of 0.671 km,
- (22) the road between Kopaczów and Oldřichov na Hranicích, on border section IV between boundary markers IV/142 and 142/14a, 142/14b, with the length of 0.867 km.

Poland shall be responsible for the maintenance of the following bridge structures and common road sections on the Czech – Polish State border:

- (1) the bridge structure over the Olza (Olše) River between Cieszyn and Chotěbuz, on border section I between boundary markers 91/3 and 91/4,
- (2) the bridge structure over the Odra (Oder) River between Chałupki and Bohumín (steel section of an old bridge), on border section II between boundary markers 7/4 and 7/5,
- (3) the bridge structure over the Strachowicki Potok stream (Strahovický potok) between Krzanowice and Rohov, on border section II between boundary markers 35/12 and 35/13,
- (4) the bridge structure over the Opawa (Opava) River between Boboluszki and Skrochovice, on border section II between boundary markers 81/8 and 81/9,
- (5) the bridge structure over the Opawica (Opavice) River between Chomiąza and Chomýž, on border section II between boundary markers II/96 and 96/1,
- (6) the bridge structure over the Wielki Potok stream (potok Hrozová) between Pielgrzymów and Pelhřimovy, on border section II between boundary markers 108/2 and 108/3,
- (7) the bridge structure over the Cieklec Potok stream (potok Hrozová) between Równe and Slezské Rudoltice, on border section II between boundary markers 110/7 and 110/8,
- (8) the bridge structure (culvert) on the Graniczny Potok stream (Hraniční potok) between Trzebina and Bartultovice, on border section II between boundary markers II/135 and 135/1,
- (9) the bridge structure (culvert) on the Łużyca Potok stream (Lužický potok) between Czerniawa Zdrój and Nove Mesto pod Smrkem, on border section IV between boundary markers 66/23 and IV/67,
- (10) the road between Puńców and Kojkovice u Třince, on border section I between boundary markers I/65a, I/65b and I/67a, I/67b, with the length of 0.968 km.

- (11) the road between Chałupki/Rudyszwałd and Šilheřovice, on border section II between boundary markers II/12 and 12/8, with the length of 0.917 km.

The numbers of boundary markers identifying the location of bridge structures and shared road sections correspond to the border documentation drawn up on the basis of Article 10(4) of the Agreement between the Republic of Poland and the Czech Republic on the common state border, done at Prague on 17 January 1995.

ANNEX II

The Czech Republic shall be responsible for the construction and subsequent maintenance of the following bridge structures on the Czech – Polish State border:

- (1) a bridge structure over the Olza (Olše) River between Cieszyn and Český Těšín (a sports footbridge), on border section I between boundary markers I/85 and 84/4,
- (2) a bridge structure over the Olza (Olše) River between Cieszyn and Český Těšín (a footbridge by a railway bridge), on border section I at the boundary marker 88/7,
- (3) a bridge structure over the Olza (Olše) River between Olza and the Kopytov district of the town of Bohumín (a footbridge), on border section I between boundary markers I/182 and 182/1,
- (4) a bridge structure over the Orlica (Divoká Orlice) River between Niemojów and Bartošovice v Orlických horách, on border section III at the boundary marker 101/32,
- (5) a bridge structure over the Orlica (Divoká Orlice) River between Poniatów and Bartošovice v Orlických horách, cadastral district Neratov (a footbridge), on border section III at the boundary marker III/106,
- (6) a bridge structure over the Orlica (Divoká Orlice) River between Rudawa and Bartošovice v Orlických horách, cadastral district Podlesí (a footbridge) on border section III between boundary markers 107/9 and 107/10.

Poland shall be responsible for the construction and subsequent maintenance of the following bridge structures on the Czech – Polish State border:

- (1) a bridge structure over the Olza (Olše) River between Cieszyn and Český Těšín (European Footbridge), on border section I at the boundary marker I/87,
- (2) a bridge structure over the Olza (Olše) River between Hażlach-Pogwizdów and the Louky nad Olší district of the town of Karviná (a footbridge), on border section I between boundary markers 98/6 and I/99,
- (3) a bridge structure over the Opawica (Opavice) River between Chomiąza and Chomýž (a footbridge), on border section II between boundary markers 95/2 and 95/3,
- (4) a bridge structure over the Orlica (Divoká Orlice) River between Niemojów and Bartošovice v Orlických horách, cadastral district Vrchní Orlice (a footbridge), on border section III between boundary markers III/104 and 104/1,
- (5) a bridge structure over the Orlica (Divoká Orlice) River between Rudawa and Bartošovice v Orlických horách, cadastral district Nová Ves (a footbridge), on border section III between boundary markers 108/2 and 108/3.

The numbers of boundary markers identifying the location of bridge structures correspond to the border documentation drawn up on the basis of Article 10(4) of the Agreement between the Republic of Poland and the Czech Republic on the common State border, done at Prague on 17 January 1995.