



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.12.2007
COM(2007) 771 final

Proposal for a

COUNCIL DECISION

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

(only the German and the Polish versions are authentic)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **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 of May and July 2007, and registered with the Secretariat-General of the Commission on 22 October and 27 July 2007, the Federal Republic of Germany and the Republic of Poland requested authorisation to apply derogating measures in relation to the construction and the maintenance of border bridges forming part of the respective rail 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 24 October 2007 of the requests made by the Federal Republic of Germany and the Republic of Poland. By letter dated 25 October 2007, the Commission notified the Federal Republic of Germany and the Republic of Poland that it had all the information necessary to consider the requests.

- **General context**

With a view to facilitate rail traffic between their two countries, the Federal Republic of Germany and the Republic of Poland decided to adopt an agreement on the construction (and subsequent maintenance) of two border bridges and the maintenance of eleven other existing border bridges over the Oder river (Odra) and the Lausitzer Neiße river (Nysa Łużycka). This agreement would contain measures which derogate from the VAT Directive as regards the principle of territoriality.

According to the agreement, the Federal Republic of Germany or the Republic of Poland would become responsible for the construction or the maintenance of a number of individual bridges. The agreement provides that the construction sites at border bridges and the bridges themselves, which are (partly) located on the territory of one country, shall be deemed to be on the territory of the other country when that country is responsible for the construction or maintenance. This implies that for VAT purposes, as regards the supply of goods or services or intra-Community acquisitions of goods for the construction or maintenance of these border bridges, the Polish 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 four existing bridges. The Republic of Poland will be responsible for the construction and maintenance of one new bridge and the maintenance of seven 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 Republic of Poland would be subject to Polish 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 Federal Republic of Germany and the Republic of 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 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.

- **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.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Not relevant.

- **Collection and use of expertise**

There was no need for external expertise.

- **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

- **Summary of the proposed action**

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

- **Legal basis**

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

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

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.

- **Choice of instruments**

Proposed instruments: other.

Other means would not be adequate for the following reason(s).

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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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 22 October 2007 and 27 July 2007, the Federal Republic of Germany and the Republic of Poland 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 24 October 2007 of the requests made by the Federal Republic of Germany and the Republic of Poland. By letter dated 25 October 2007, the Commission notified the Federal Republic of Germany and the Republic of Poland that it had all the information necessary to consider the requests.
- (3) The purpose of the special measure is, for supplies of goods or services and intra-Community acquisitions of goods intended for the construction and maintenance of the cross-border bridges, to regard the bridges, and its construction site in case of building, as being entirely on the territory of one of the Member States in accordance with an agreement concluded between them on the division of responsibility for the construction or maintenance of these cross-border bridges.
- (4) In absence of a special measure, it would be necessary, for each supply of goods or services or intra-Community acquisition of goods, to ascertain whether the place of taxation was the Federal Republic of Germany or the Republic of Poland. Work at a border bridge carried out on German territory would be subject to value added tax in

¹ OJ L 347, 11.12.2006, p. 1. Directive amended by Directive 2006/138/EC (OJ L 384, 29.12.2006, p. 92)

² OJ C , , p. .

Germany while that carried out on Polish territory would be subject to Polish value added tax.

- (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.
- (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 Federal Republic of Germany and the Republic of Poland 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 crossing the Oder (Odra) and one border bridge crossing the Lausitzer Neiße (Nysa Łużycka), and the maintenance of two existing border bridges over the Oder (Odra) and nine existing border bridges over the Lausitzer Neiße (Nysa Łużycka), all of which are partly on the territory of the Federal Republic of Germany and partly on the territory of the Republic of Poland. 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 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 and, where appropriate, the construction site in so far as it is on Polish territory, 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 3

By way of derogation from Article 5 of Directive 2006/112/EC, with regard to the border bridge for which the Republic of Poland is responsible for the construction and maintenance and with regard to the border bridges for which the Republic of Poland is solely responsible for maintenance, these bridges and, where appropriate, the construction site in so far as it is on German territory, shall be deemed to be part of the Polish 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 Federal Republic of Germany and the Republic of Poland.

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 of the following border bridge:

(a) the border bridge over the Oder (Odra) between Frankfurt (Oder) und Kunowice at marker 580,640.

2. The Republic of Poland shall be responsible for the construction of the following border bridge:

(a) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Horka and Węgliniec at marker 130,470.

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

(a) the border bridge over the Oder (Odra) between Neurüdnitz and Siekierki at marker 653,903;

(b) the border bridge over the Oder (Odra) between Küstrin Kietz and Küstrin Kostrzyn at marker 615,102;

(c) the border bridge over die Oder (Odra) between Frankfurt (Oder) und Kunowice at marker 580,640;

(d) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Hagenwerder and Ręczyn at marker 169,611;

(e) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Hirschfelde and Trzciniec Zgorzelecki at marker 186,281.

4. The Republic of Poland shall be responsible for maintaining the following border bridges:

(a) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Guben and Gubin at marker 13,375;

(b) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Guben and Gubinek at marker 17,625;

(c) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Forst and Tuplice at marker 51,935;

(d) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Bad Muskau und Łęknica at marker 80,530;

(e) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Horka and Węgliniec at marker 130,470;

(f) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Görlitz and Zgorzelec at marker 153,885;

(g) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Krzewina Zgorzelecka and Trzciniec Zgorzelecki at marker 184,220;

(h) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Krzewina Zgorzelecka and Trzciniec Zgorzelecki at marker 184,780.