

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 23 October 1995

authorizing the Federal Republic of Germany to conclude an agreement with the Republic of Poland containing measures derogating from Articles 2 and 3 of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(95/435/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Sixth Council Directive 77/388/EEC 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 ⁽¹⁾, and in particular Article 30 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 30 of the Sixth VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to conclude with a non-member country or an international organization an agreement which may contain derogations from the said Directive ;

Whereas, by letter officially received by the Secretariat-General of the Commission on 20 January 1995, the German Government requested authorization to conclude an agreement with Poland concerning the link-up of the German road B97 and the Polish road 274, and the construction of a frontier bridge across the Neisse in the Guben and Gubinek area, which contains derogations from Articles 2 and 3 of the Sixth Directive as regards the construction of the frontier bridge ;

Whereas the other Member States were informed on 20 February 1995 of the German request ;

Whereas, in the absence of derogations, the construction work carried out on German territory would be subject to VAT in Germany while that carried out on Polish territory would be outside the scope of the Sixth Directive and whereas, in addition, each importation from Poland into Germany of goods used for the construction of the frontier bridge would be subject to VAT in Germany ;

Whereas the purpose of these derogations is to simplify the rules of taxation for the contractors carrying out the construction work on the frontier bridge in question ;

Whereas the derogations will have only a negligible effect on the own resources of the European Communities accruing from value added tax,

HAS ADOPTED THIS DECISION :

Article 1

The Federal Republic of Germany is authorized to conclude an agreement with the Republic of Poland concerning the link-up of the German road B97 and the Polish road 274 and the construction of a frontier bridge across the Neisse in the Guben and Gubinek area and containing measures derogating from the Sixth Directive 77/388/EEC. These derogations are defined in Articles 2 and 3 of this Decision.

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1, Directive as last amended by Directive 94/76/EC (OJ No L 365, 31. 12. 1994, p. 53).

Article 2

By way of derogation from Article 3 of the Sixth Directive, that part of the territory of the Federal Republic of Germany in the region of Guben in which work to construct a frontier bridge across the Neisse linking German road B97 and Polish national road 274 is carried out shall be deemed to be part of the territory of the Republic of Poland for the purposes of supplies of goods and services intended for use in the construction of that bridge.

Article 3

By way of derogation from point 2 of Article 2 of the Sixth Directive, the importation of goods into Germany from Poland shall not be subject to value added tax

insofar as those goods are used for the construction of a frontier bridge across the Neisse in the Guben and Gubinek area linking German road B97 and Polish road 274. However, this derogation shall not apply to importations of goods effected by a public authority.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Luxembourg, 23 October 1995.

For the Council

The President

P. SOLBES MIRA
