COUNCIL DECISION

of 30 March 1995

authorizing the Federal Republic of Germany to conclude with the Republic of Poland an agreement 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

(95/115/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, pursuant to Article 30 of Directive 77/388/EEC, 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 Secretary General of the Commission on 23 August 1994, the Federal Republic of Germany requested authorization to conclude with the Republic of Poland an agreement concerning the maintenance of frontier bridges linking German motorways to the main roads in Poland, which contains derogations from Articles 2 and 3 of Directive 77/388/EEC ;

Whereas, the other Member States were informed on 23 September 1994 of the request for authorization presented by the Federal Republic of Germany ;

Whereas in the absence of a special measure only the maintenance work carried out on German territory would be subject to German VAT, that carried out on Polish territory would be outside the scope of Directive 77/388/EEC ; whereas, in addition, each importation of goods from Poland into Germany used for the maintenance of frontier bridges would be subject to German VAT ;

Whereas the purpose of the derogations provided for in the said Agreement is to simplify the taxation rules for those responsible for carrying out the maintenance work on the frontier bridges ;

Whereas the derogations will have only a negligible effect on the Community's own resources arising from VAT,

HAS ADOPTED THIS DECISION :

Article 1

The Federal Republic of Germany is authorized to conclude with the Republic of Poland an agreement containing measures derogating from Directive 77/388/EEC, hereinafter referred to as 'the agreement'. These derogations are defined in Articles 2 and 3 of this Decision.

Article 2

By way of derogation from Article 2 (2) of Directive 77/388/EEC, the importation of goods into Germany from Poland is not subject to VAT in so far as these goods are used, under the terms of the agreement, for the maintenance of the frontier bridges. However, the derogation shall not apply to imports of goods undertaken by a public authority.

Article 3

By way of derogation from Article 3 of Directive 77/388/EEC, the frontier bridges of the Contracting States for which Germany has maintenance responsibility under the agreement shall be considered to be part of German territory as regards deliveries of goods and supplies of services for the maintenance of these bridges.

By way of derogation from Article 3 of Directive 77/388/EEC, the frontier bridges of the Contracting States for which Poland has maintenance responsibility under the agreement shall be considered to be part of Polish territory as regards deliveries of goods and supplies of services for the maintenance of these bridges.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 30 March 1995.

For the Council

The President

E. ALPHANDÉRY

[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).