II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 25 June 1996

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

(96/402/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 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 registered letter to the General Secretariat of the Commission dated 21 September 1995, the German Government requested authorization to conclude an agreement with Poland on the extension of the German motorway A 15 to the east and the Polish motorway A 12 to the west and on the construction of one section and the reconstruction of another section of a frontier bridge across the Neisse in the Forst/Erlenholz area and containing derogations from Articles 2 and 3 of the said Directive as far as the work relating to the frontier bridge in question is concerned;

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

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

Whereas the purpose of these derogations is to simplify the rules of taxation for the contractors carrying out the abovementioned work;

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 relating to the extension of the German motorway A 15 and the Polish motorway A 12 and to the construction of a section and the reconstruction of another section of a frontier bridge across the Neisse in the Forst/Erlenholz area and containing derogations from 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 95/7/EC (OJ No L 102, 5. 5. 1995, p. 18).

Article 2

By way of derogation from Article 3 of Directive 77/388/EEC, that part of the territory of the Federal Republic of Germany in the region of Forst, in which work to construct a section and reconstruct another section of a frontier bridge across the Neisse linking German motorway A 15 and Polish motorway A 12 is carried out, is 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 and the reconstruction of that bridge.

Article 3

By way of derogation from Article 2 (2) of Directive 77/388/EEC, 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 section and the reconstruction of another section of a frontier bridge across the Neisse in the Forst/Erlenholz area linking German motorway A 15 and Polish motorway A 12. 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, 25 June 1996.

For the Council

The President

M. PINTO