COUNCIL DECISION

of 17 March 1997

authorizing the Federal Republic of Germany and the French Republic to apply a measure derogating from Article 3 of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(97/189/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 27 thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 27 (1) of the Sixth Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion and avoidance;

Whereas, by letters officially received by the Commission on 13 August and 11 September 1996, the Federal Republic of Germany and the French Republic have requested authorization to introduce a special measure concerning the construction and maintenance of a cross-frontier road bridge over the Rhine between Altenheim, situated on French territory, and Eschau, situated on German territory;

Whereas, in accordance with Article 27 (3) of the Sixth Directive, the other Member States were informed on 10 October 1996 of the requests for authorization received from the Federal Republic of Germany and the French Republic;

Whereas, for supplies of goods and services, for intra-Community acquisitions and for imports of goods intended for the construction or maintenance of the bridge, the purpose of the special measure is to regard the entire site until acceptance of the bridge and the frontier bridge as from its acceptance and for ten years thereafter as being on French territory;

Whereas, in the absence of a special measure, for each supply of goods and services used for the construction and maintenance of the bridge in question, it would be necessary to ascertain whether the place of taxation was the Federal Republic of Germany or the French Republic; whereas, therefore, such taxation arrangements would in practice be very complicated for the contractors in charge of the works concerned;

Whereas the purpose of this derogation is to simplify the procedure for charging the tax on the construction and maintenance of the bridge in question;

Whereas this derogation will not affect the amount of tax due at the final consumption state and will not therefore have an adverse effect on the European Communities' own resources arising from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 3 of Directive 77/388/EEC, the Federal Republic of Germany and the French Republic are hereby authorized, in respect of the supplies of goods or services, intra-Community acquisitions and imports of goods intended for the construction or maintenance of the road bridge over the Rhine, between Altenheim, situated on French territory, and Eschau, situated on German territory, to regard:

— the whole of the construction site as being on French territory until acceptance of the bridge,

— the frontier bridge as being on French territory as from its acceptance and for 10 years thereafter.

Article 2

This Decision is addressed to the Federal Republic of Germany and the French Republic.

Done at Brussels, 17 March 1997.

For the Council

The President

G. ZALM

[1] OJ No L 145, 13. 6. 1977, p. 1. Directive as last amended by Directive 96/95/EC (OJ No L 338, 20. 12. 1996, p. 89).