COUNCIL DECISION

of 16 October 2001

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

(2001/742/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 harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [1] (hereinafter referred to as the 'Sixth VAT Directive'), and in particular Article 30 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Under Article 30 of the Sixth VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to conclude with a non-member country or an international organisation an agreement which may contain derogations from the said Directive.

(2) By letter registered at the Secretariat-General of the Commission on 18 October 2000, the German Government requested authorisation to conclude an agreement with the Czech Republic relating to the construction of a frontier bridge between the States in question.

(3) The agreement contains provisions in the field of value added tax (VAT) which derogate from Articles 2 and 3 of the Sixth VAT Directive as regards, on the one hand, the supplies of goods and services in connection with the construction, repair and renewal of the frontier bridge and, on the other hand, importation of goods used for the construction work or the maintenance of this bridge.

(4) The other Member States were informed of the German request on 2 February 2001.

(5) In the absence of derogations, the construction, repair and renewal work carried out on German territory would be subject to VAT in Germany while that carried out on Czech territory would lie outside the scope of the Sixth VAT Directive. Further, each importation from the Czech Republic into Germany of goods used for the construction and the maintenance of the frontier bridge would be subject to VAT in Germany.

(6) The purpose of these derogations is to simplify the rules of taxation for the contractors carrying out the work in question.

(7) 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 hereby authorised to conclude an agreement, containing measures derogating from the Sixth VAT Directive, with the Czech Republic concerning the construction of a frontier bridge at Furth im Wald-Schafberg/Folmava/Vollmau, which is partly on the territory of the Federal Republic of Germany and partly on the territory of the Czech Republic, linking the German Federal B20 road heading east with the Czech national I/26 road heading west.

The tax derogations provided for by the agreement are set out in Articles 2 and 3.

Article 2

By way of derogation from Article 3 of the Sixth VAT Directive, insofar as it extends on to the territory of the Federal Republic of Germany, the area of the construction site for the frontier bridge referred to in Article 1 of this Decision and, after its completion, the frontier bridge itself, shall be treated as forming part of the territory of the Czech Republic as regards supplies of goods or services intended for the construction of the frontier bridge or for its repair and renewal.

Article 3

By way of derogation from Article 2(2) of the Sixth VAT Directive, the importation of goods into Germany from the Czech Republic shall not be subject to VAT insofar as those goods are used for the construction or maintenance of the bridge referred to in Article 1 of this Decision. However, this derogation shall not apply to any goods imported for the same purpose by a public authority.

[1] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2001/4/EC (OJ L 22, 24.1.2001, p. 17).

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Luxembourg, 16 October 2001.

For the Council
The President
D. REYNDERS