II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 5 November 2002

authorising Germany and France to apply a measure derogating from Article 3 of Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2002/888/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, and in particular Article 27(1) thereof [1],

Having regard to the proposal from the Commission [2],

Whereas:

(1) By two requests sent to the Commission on 28 December 2001 and 7 January 2002 respectively, Germany and France sought authorisation to apply a measure derogating from Article 3 of Directive 77/388/EEC in respect of the construction and maintenance of certain cross-border bridges on the Rhine.

(2) By letter of 25 February 2002 the Commission asked the German and French authorities to give further information on the scope of the derogation.

(3) The German authorities gave the Commission the supplementary information requested in a letter of 19 June 2002, endorsed by the French authorities, which was registered by the Commission's Secretariat-General on 22 July 2002.

(4) The other Member States were informed of Germany and France's request and the supplementary information by letter dated 31 July 2002.

(5) The cross-border bridges on the Rhine concerned by this measure are bridges which will be built in future to link up with public highways not forming part of the network of motorways and trunk roads in France and with public highways not forming part of the Federal trunk road network in Germany.

(6) The derogation sought by Germany and France consists in deeming that, for the construction and maintenance of cross-border bridges on the Rhine, the territorial boundary between Germany and France lies in the middle of each bridge.

(7) In the absence of a specific measure, the place of taxation of construction and maintenance work on the cross-border bridges would be dictated by the geographical territorial boundary between the two Member States, which runs where the river is deepest. This boundary is difficult in practice to determine and also changes over time. The VAT arrangements applicable to construction and maintenance work on the cross-border bridges would be therefore be extremely complex for the operators carrying it out.

(8) The derogation requested, which fixes the territorial boundary between Germany and France in the middle of the cross-border bridges concerned, will therefore simplify the collection of VAT on the construction and maintenance of these bridges.

(9) The derogation will not reduce the taxable amount for VAT. It therefore does not adversely affect the Communities' own resources from VAT,

[1] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2002/38/EC (OJ L 128, 15.5.2002, p. 41).
[2] Proposal of 11 September 2002 (not yet published in the Official Journal).

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 3 of Directive 77/388/EEC Germany and France are hereby authorised, in the case of the cross-border bridges on the Rhine referred to in Article 2, to set the territorial boundary between the two States in the middle of the bridges concerned as the place of taxation for the supply of goods and services, intra-Community acquisitions and imports of goods for the construction and maintenance of these bridges, including winter maintenance and regular cleaning.

Article 2

The cross-border bridges on the Rhine to which this Decision applies are those to be built in future which will link up with public highways not forming part of the network of motorways and trunk roads in France and with public highways not forming part of the Federal trunk road network in Germany.

Article 3

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

Done at Brussels, 5 November 2002.

For the Council

The President

T. PEDERSEN