II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 22 January 2008

authorising the Federal Republic of Germany and the Republic of Poland to apply measures derogating from Article 5 of Council Directive 2006/112/EC on the common system of value added tax

(Only the German and the Polish texts are authentic)

(2008/84/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1], and in particular Article 395(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) By letters registered with the General Secretariat of the Commission on 22 October 2007 and 27 July 2007, the Federal Republic of Germany and the Republic of Poland requested authorisation to apply special tax measures in relation to the construction and maintenance of certain border bridges between the two countries.

(2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 24 October 2007 of the requests made by the Federal Republic of Germany and the Republic of Poland. By letter dated 25 October 2007, the Commission notified the Federal Republic of Germany and the Republic of Poland that it had all the information necessary to consider the requests.

(3) The purpose of the special measure is, for supplies of goods or services and intra-Community acquisitions of goods intended for the construction and maintenance of the cross-border bridges, the bridges, and its construction site in case of building, should be regarded as being entirely within the territory of one of the Member States in accordance with an agreement concluded between them on the division of responsibility for the construction or maintenance of those cross-border bridges.

(4) In the absence of a special measure, it would be necessary, for each supply of goods or services or intra-Community acquisition of goods, to ascertain whether the place of taxation was the Federal Republic of Germany or the Republic of Poland. Work at a border bridge carried out within Germany's territory would be subject to value added tax in Germany while that carried out within Poland's territory would be subject to Polish value added tax.

(5) The purpose of the derogation is therefore to simplify the procedure for charging the tax on the construction and maintenance of the bridges in question.

(6) The derogation will have no negative impact on the Community's own resources provided from value added tax,

[1] OJ L 347, 11.12.2006, p. 1. Directive as last amended by Directive 2005/75/EC (OJ L 346, 29.12.2007, p. 13).

HAS ADOPTED THIS DECISION:

Article 1

The Federal Republic of Germany and the Republic of Poland are hereby authorised, under the conditions laid down in Articles 2 and 3, to apply measures derogating from Directive 2006/112/EC in relation to the construction and subsequent maintenance of one border bridge crossing the Oder (Odra) and one border bridge crossing the Lausitzer Neiße (Nysa Łużycka), and the maintenance of two existing border bridges over the Oder (Odra) and nine existing border bridges over the Lausitzer Neiße (Nysa Łużycka), all of which are partly within the territory of the Federal Republic of Germany and partly within the territory of the Republic of Poland. Details of the bridges in question are given in the Annex to this Decision. This authorisation shall also apply to any additional bridges which are brought into the scope of the Agreement concluded between the Federal Republic of Germany and the Republic of Poland on the responsibility for the construction or maintenance of trans-border bridges by an exchange of diplomatic notes.

Article 2

By way of derogation from Article 5 of Directive 2006/112/EC, with regard to the border bridges for which the Federal Republic of Germany is responsible for the construction and maintenance and with regard to the border bridges for which the Federal Republic of Germany is solely responsible for maintenance, those bridges and, where appropriate, the construction site insofar as it is within Polish territory, shall be deemed to be part of Germany's territory for the purposes of supplies of goods and services and intra-Community acquisitions of goods intended for the construction or maintenance of those bridges.

Article 3

By way of derogation from Article 5 of Directive 2006/112/EC, with regard to the border bridges for which the Republic of Poland is responsible for the construction and maintenance and with regard to the border bridges for which the Republic of Poland is solely responsible for maintenance, those bridges and, where appropriate, the construction site insofar as it is within Germany's territory, shall be deemed to be part of Poland's territory for the purposes of supplies of goods and services and intra-Community acquisitions of goods intended for the construction or maintenance of those bridges.

Article 4

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

Done at Brussels, 22 January 2008.

For the Council
The President
A. BAJUK

ANNEX

Bridges referred to in Article 1:

1. The Federal Republic of Germany shall be responsible for the construction of the following border bridge:

   (a) the border bridge over the Oder (Odra) between Frankfurt (Oder) and Kunowice at marker 580,640.

2. The Republic of Poland shall be responsible for the construction of the following border bridge:

   (a) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Horka and Węgliniec at marker 130,470.

3. The Federal Republic of Germany shall be responsible for maintaining the following border bridges:

   (a) the border bridge over the Oder (Odra) between Neurüdnitz and Siekierki at marker 653,903;

   (b) the border bridge over the Oder (Odra) between Küstrin Kietz and Küstrin Kostrzyn at marker 615,102;

   (c) the border bridge over the Oder (Odra) between Frankfurt (Oder) and Kunowice at marker 580,640;

   (d) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Hagenwerder and Ręczyn at marker 169,611;

   (e) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Hirschfelde and Trzciniec Zgorzelecki at marker 186,281.

4. The Republic of Poland shall be responsible for maintaining the following border bridges:

   (a) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Guben and Gubin at marker 13,375;

   (b) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Guben and Gubinek at marker 17,625;

   (c) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Forst and Tuplice at marker 51,935;

   (d) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Bad Muskau und Łęknica at marker 80,530;

   (e) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Horka and Wegliniec at marker 130,470;

   (f) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Görlitz and Zgorzelec at marker 153,885;

   (g) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Krzewina Zgorzelecka and Trzciniec Zgorzelecki at marker 184,220;

   (h) the border bridge over the Lausitzer Neiße (Nysa Łużycka) between Krzewina Zgorzelecka and Trzciniec Zgorzelecki at marker 184,780.