COUNCIL IMPLEMENTING DECISION (EU) 2017/1769

of 25 September 2017

authorising the Republic of Poland to conclude with Ukraine an agreement that includes provisions derogating from point (d) of Article 2(1) and Article 5 of Directive 2006/112/EC on the common system of value added tax, as regards the maintenance of road bridges on the Poland-Ukraine border

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

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 396(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In accordance with Article 5 of Directive 2006/112/EC concerning the territorial scope of that Directive, the value added tax ('VAT') system is, as a rule, applicable in the territory of a Member State.

(2) By a letter registered with the Commission on 7 October 2016, Poland requested authorisation to conclude an agreement with Ukraine in relation to the maintenance of three road bridges crossing the River Bug on the Poland-Ukraine border ('the Agreement'). The Agreement includes provisions derogating from point (d) of Article 2(1) and Article 5 of Directive 2006/112/EC.

(3) In accordance with the second subparagraph of Article 396(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 24 January 2017 of the request made by Poland. By letter dated 25 January 2017, the Commission notified Poland that it had all the information necessary to consider the request.

(4) The maintenance work carried out on Polish territory is subject to VAT in Poland while that carried out on Ukrainian territory falls outside the scope of Directive 2006/112/EC. In addition, each importation from Ukraine into Poland of goods used for the maintenance of the border bridges is subject to VAT in Poland.

(5) In order to ensure the achievement of the purposes of the Agreement, and in particular to improve the traffic between Poland and Ukraine, it is appropriate that the Agreement include provisions simplifying the VAT rules applicable to maintenance works and the related importation of goods.

(6) The derogation will have no impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

Poland is authorised to conclude an agreement with Ukraine that includes provisions derogating from point (d) of Article 2(1) and Article 5 of Directive 2006/112/EC regarding the VAT treatment of transactions and the territorial scope of the VAT system, as regards the maintenance of the three road bridges on the Poland-Ukraine border referred to in the Annex to this Decision.

Article 2

By way of derogation from Article 5 of Directive 2006/112/EC, with regard to the bridges referred to in the Annex to this Decision which Poland has the responsibility to maintain, in so far as those bridges extend onto the sovereign territory of Ukraine, the border bridges shall be treated as forming part of the sovereign territory of Poland, as regards supplies of goods or services intended for their maintenance.

([1]) OJ L 347, 11.12.2006, p. 1.

Article 3

By way of derogation from Article 5 of Directive 2006/112/EC, with regard to the bridges referred to in the Annex to this Decision which Ukraine has the responsibility to maintain, in so far as those bridges extend onto the sovereign territory of Poland, the border bridges shall be treated as forming part of the sovereign territory of Ukraine, as regards supplies of goods or services intended for their maintenance.

Article 4

By way of derogation from point (d) of Article 2(1) of Directive 2006/112/EC, goods imported by taxable persons with a full right of deduction from Ukraine into Poland shall not be subject to VAT in so far as those goods are used for the maintenance of the bridges referred to in the Annex to this Decision.

Article 5

This Decision shall take effect on the day of its notification.

This Decision is addressed to the Republic of Poland.

Done at Brussels, 25 September 2017.

For the Council
The President
M. MAASIKAS

ANNEX

List of the bridges referred to in Article 1

1. Ukraine shall maintain the following border road bridge, built at Poland's expense and owned by Poland, on the Poland-Ukraine border:

   A 186,68-metre long steel bridge over the River Bug, between Dorohusk and Jagodzin, along Polish national road No 12 and Ukrainian public motor road of state importance No M-07.

2. Poland shall maintain the following border road bridge, built at Poland's expense and owned by Poland, on the Poland-Ukraine border:

   A 160,38-metre long reinforced-concrete and steel bridge over the River Bug, between Zosin and Ustyluh, along Polish national road No 74 and Ukrainian public motor road of state importance No N-22.

3. The border road bridge over the River Bug, with steel girders, a reinforced-concrete deck and a total length of 189,43 m, built at the expense of both Parties and equally owned by them, located between Dorohusk and Jagodzin, along Polish national road No 12 and Ukrainian public motor road of state importance No M-07, shall be maintained by both Parties in such a way that each Party shall maintain the part of the bridge it owns, excluding winter maintenance.

   The following parties shall be responsible for the winter maintenance of the border road bridge, along its entire length:

   (a) Poland: from 1 October of every odd-numbered year until 30 September of the following year;

   (b) Ukraine: from 1 October of every even-numbered year until 30 September of the following year.