

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 12 December 2005

authorising the Federal Republic of Germany to conclude an agreement with the Swiss Confederation that includes provisions derogating from Articles 2(2) and 3 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2005/910/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to 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⁾, and in particular Article 30 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Under Article 30(1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to conclude with a third country an agreement which may contain derogations from that Directive.

(2) By a letter registered with the Secretariat-General of the Commission on 21 October 2004, the Federal Republic of Germany (hereinafter 'Germany') requested authorisation (hereinafter 'Switzerland') on the renewal and further maintenance of an existing frontier bridge across the Wutach between Stühlingen (Baden-Württemberg, Germany) and Oberwiesen (Schaffhausen, Switzerland).

(3) In accordance with Article 30(2) of Directive 77/388/EEC, the Commission informed the other Member States by letter dated 1 December 2004 of the request made by Germany. By letter dated 2 December 2004, the Commission notified Germany that it had all the information it deemed necessary to consider the request.

(4) The agreement is to contain provisions on VAT derogating from Articles 2(2) and 3 of Directive 77/388/EEC in respect of goods and services supplied for the renewal and further maintenance of the frontier bridge and of goods imported for the same purposes.

(5) If the derogations from Directive 77/388/EEC were not granted, renewal and further maintenance carried out in Germany would be subject to German VAT whereas those carried out in Switzerland would not be subject to the provisions of Directive 77/388/EEC. Goods imported from Switzerland into Germany for the renewal or further maintenance of the frontier bridge would also be subject to German VAT.

(6) Application of the normal rules would mean serious tax complications for the businesses responsible for carrying out the works.

(7) The purpose of the derogations is to simplify the collection of taxes on the works involved in the renewal and further maintenance of the bridge in question.

(8) The derogations will have a totally insignificant effect on the Community's own resources accruing from VAT,

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

HAS DECIDED AS FOLLOWS:

Article 1

Germany is hereby authorised to conclude an Agreement with Switzerland that includes provisions derogating from Directive 77/388/EEC and that covers the renewal and the further maintenance of a frontier bridge across the Wutach between Stühlingen (Baden-Württemberg, Germany) and Oberwiesen (Schaffhausen, Switzerland).

The derogating tax provisions in respect of the Agreement are set out in Articles 2 and 3.

Article 2

By way of derogation from Article 2(2) of Directive 77/388/EEC, goods imported from Switzerland into Germany shall not be subject to value added tax, provided that they are used for the renewal or further maintenance of the bridge referred to in Article 1 of this Decision. However, this derogation shall not apply to goods imported for the same purposes by a public authority.

Article 3

By way of derogation from Article 3 of Directive 77/388/EEC, the part of the bridge that is situated in Swiss territory shall be deemed to be part of German territory for the purposes of the supplies of goods and services for the renewal and the further maintenance of the bridge.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 12 December 2005.

For the Council
The President
J. STRAW