



Brussels, 23.10.2012
COM(2012) 611 final

2012/0293 (NLE)

Proposal for a

COUNCIL DECISION

**authorising Bulgaria and Romania to apply measures derogating from Article 5 of
Directive 2006/112/EC on the common system of value added tax**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Pursuant to Article 395 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹ (hereafter: 'VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogation from the provisions of that Directive, in order to simplify the procedure for collecting value added tax (VAT) or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Commission on 25 May 2011, Bulgaria and Romania requested authorisation to derogate from the provisions of Article 5 of the VAT Directive governing the territorial scope of the VAT in relation to a border bridge (road and rail) over the Danube. By letter registered with the Commission on 7 March 2012, this request was partly replaced by Bulgaria and Romania.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 17 July 2012 of the requests made by Bulgaria and Romania (however, Spain was informed by letter dated 18 July 2012). By letter dated 19 July 2012, the Commission notified Bulgaria and Romania that it had all the information it considered necessary for appraisal of the request.

Bulgaria and Romania decided, in order to facilitate road and rail traffic between their territories, to sign an agreement on 5 June 2000 for the construction of a border bridge over the river Danube between Vidin (Bulgaria) and Calafat (Romania).

In this context, Bulgaria and Romanian requested to be authorised to apply derogating measures as regards the VAT rules on territoriality for the maintenance and repair of that bridge and the charging of the toll for the crossing (the construction of the border bridge was explicitly excluded from the derogation request).

Under the normal rules, the principle of territoriality laid down in Article 5 of the VAT Directive would, in combination with the place of supply rules, require that Bulgarian VAT would be charged on the maintenance and repair carried out in Bulgaria. Likewise, maintenance and repair carried out on the Romanian territory would be subject to Romanian VAT. Applying the normal rules would imply establishing the exact place of taxable transactions according to the territory in which each part of the works was carried out. To that end, it would be necessary for businesses, involved in the works, to establish with certainty the territorial border in the river Danube for work carried out above water. Bulgaria and Romania consider that applying these normal rules would create tax complications for these businesses and the aim of this simplification derogation is therefore, as requested, to set the territorial border as the middle of the bridge.

As regards tolls, the taxable amount should, under the current rules, be related to the part of the bridge which belongs to each of the Member States. Apart from the above-mentioned problem of establishing the territorial border, each journey over the

¹ OJ L 347, 11.12.2006, p. 1

bridge should be invoiced according to two tolls and two different VAT rates: one for the Bulgarian territory and one for the Romanian territory; which would be burdensome for the taxable persons concerned. In this respect, the purpose of the derogation as regards tolls is to consider the bridge as being on the territory of the Member State in which any transit journey starts. In practice, Bulgarian VAT will be charged on the entire toll of all journeys starting from the Bulgarian side and crossing the border bridge into Romania. In the same way, Romanian VAT will be charged on the entire toll of all journeys starting in Romania. This will simplify the way the VAT is calculated and accounted for.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

There was no need for consultation or external expertise.

The Decision proposal aims at simplifying the VAT collection as regards certain services related to a border bridge.

Because of the narrow scope of the derogation, the impact will in any case be limited.

3. LEGAL ELEMENTS OF THE PROPOSAL

The Decision authorises Bulgaria and Romania to apply derogating measures from the territorial application of the VAT Directive as regards a border bridge.

This Decision is based on Article 395 of the VAT Directive.

The proposal falls under the exclusive competence of the EU. The subsidiarity principle therefore does not apply.

This Decision concerns an authorisation granted to individual Member States upon their own request and does not constitute any obligation.

Given the strict limitation in scope, the special measure appears to be proportionate to the aim pursued.

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible on the authority of the Council acting unanimously on a proposal from the Commission. A Council Decision is the only suitable instrument since it can be addressed to an individual Member State.

4. BUDGETARY IMPLICATION

The proposal has no implications for the Union budget.

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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 tax², and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letters registered at the Commission on 25 May 2011, Bulgaria and Romania requested authorisation to derogate from the provisions of Article 5 of Directive 2006/112/EC governing the territorial scope of the VAT in relation to a border bridge over the Danube. Bulgaria and Romania partly replaced this request by letter registered at the Commission on 7 March 2012.
- (2) In accordance with Article 395(2) of Directive 2006/12/EC, the Commission informed the other Member States by letter dated 17 July 2012 of the requests made by Bulgaria and Romania; with the exception of Spain which was informed by letter dated 18 July 2012. By letter dated 19 July 2012, the Commission notified Bulgaria and Romania that it had all the information it considered necessary for appraisal of the request.
- (3) With regard to the maintenance and repair of the bridge, the derogation sought by Bulgaria and Romania consists in considering the territorial border between the two Member States as being in the middle of the bridge.
- (4) With regard to the charging of tolls to cross the border bridge, the two Member States wish to consider the entire length of the bridge as part of the territory of the State in which any transit journey starts. Thus only Bulgarian VAT will be charged on the entire toll for all journeys starting from the Bulgarian side. In the same way, only Romanian VAT will be charged on journeys starting from the Romanian side.
- (5) In the absence of derogating measures, the determination of the place of supply for the maintenance, repair and charging of the toll would in the first place be dependent on the precise establishment of the territorial border above water which, in practice, would be very difficult for the taxable persons involved. Secondly, both Bulgarian and

² OJ L 347, 11.12.2006, p. 1.

Romanian VAT would have to be applied on the toll charged for a one-way journey over the border bridge from the one Member State to the other. The derogation measures are therefore intended to simplify the collection of VAT on these services.

- (6) As the matter involved is the definition of the territory for VAT purposes to which there should be no changes, the requested derogation should be granted for an indefinite period.
- (7) The measures will not adversely affect the Union's own resources provided from VAT, nor will they have any effect on the amount of the tax due at the final stage of consumption,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 5 of Directive 2006/112/EC, Bulgaria and Romania are authorised, under the conditions of Articles 2 and 3 of this Decision, to apply measures derogating from Directive 2006/112/EC in relation to the maintenance, repair and the charging of tolls in relation to the border bridge across the Danube between Vidin (Bulgaria) and Calafat (Romania).

Article 2

As to determine the place of taxable transactions regarding the maintenance or the repair of the border bridge, the territorial boundary will be considered as being the middle of that bridge for the supply of goods and services, intra-Community acquisitions and imports of goods intended for that maintenance or repair.

Article 3

As to determine the place of the taxable transactions regarding the charging of the toll, the border bridge will, for its entire length, be considered as being part of the territory of the Member State from which any journey using the bridge begins.

Article 4

This Decision is addressed to the Republic of Bulgaria and to Romania.

Done at Brussels,

*For the Council
The President*