EUROPEAN COMMISSION

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2011/0424 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Spain and France to introduce a special measure derogating from Article 5 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereafter: 'VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures to derogate 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 letters registered with the Commission on, respectively, 5 September 2011 and 13 September 2011, Spain and France requested authorisation to apply a measure derogating from Article 5 of the VAT Directive. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 25 October 2011 of the requests made by these Member States. By letters dated 27 October 2011, the Commission notified Spain and France that it had all the information necessary to consider the request.

General context

Spain and France signed a cooperation agreement on 27 June 2008 for putting an electricity line underground between Baixas (France) and Santa Llogia (Spain). This construction will be approximately 60 km long, of which just under 60% will be located in France and a little more than 40% will be in Spain. Included in the construction is an 8 km long tunnel through the Alberes mountains of which 87% will be located on French territory and 13% in Spain.

Under the normal rules, the principle of territoriality as laid down in Article 5 of the VAT Directive would require that Spanish VAT would be charged on the construction carried out in Spain. Likewise, construction carried out on the French territory would be subject to French 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.

Spain and France consider that applying the normal rules would create tax complications for the businesses responsible for the construction work in question. To simplify the charging of VAT they request that the supplies of goods and services, intra-Community acquisitions and imports are invoiced by the suppliers as 50% being in the territory of Spain and 50% being in the territory of France.

After construction of the underground electricity interconnection the normal VAT rules will apply.

The Commission accepts that in these cases, an equal split between France and Spain of the VAT charged on the construction work will represent a simplification which will make it easier for the businesses concerned to apply the tax rules than would be the case if the normal tax rules were applied.

Existing provisions in the area of the proposal

The Council has on several occasions authorised Member States to derogate from the territoriality principle with regard to projects in frontier areas.

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

Consultation of interested parties

Not relevant.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

The proposed Decision aims at simplifying the procedure for charging VAT in relation to the construction of an underground electricity interconnection between Spain and France and has therefore a potential positive economic impact.

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

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for Spain and France to derogate from the territorial application of VAT as regards the construction of an underground electricity interconnection between their respective territories.

Legal basis

Article 395 of the VAT Directive.

Subsidiarity principle

In accordance with Article 395 of the VAT Directive, a Member State wishing to introduce measures derogating from the said Directive must obtain an authorisation from the Council, which will take the form of a Council Decision. Therefore, the proposal complies with the subsidiarity principle.

Proportionality principle

The proposal complies with the proportionality principle for the following reason(s).

The Decision concerns an authorisation granted to Member States upon its own request and does not constitute any obligation.

Given the very limited scope of the derogation, the special measure is proportionate to the aim pursued.

Choice of instruments

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. Moreover, a Council Decision is the most suitable instrument since it can be addressed to individual Member States.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

The proposal will expire on completion of the construction of the underground electricity interconnection between Santa Llogia in Spain and Baixas in France.

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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 tax[1], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letters registered with the Commission on 5 September 2011 and 13 September 2011 respectively, Spain and France requested authorisation to introduce a special measure derogating from the provisions of Directive 2006/112/EC in relation to the construction of an underground electricity interconnection between their respective electricity networks.

(2) The Commission informed the other Member States by letters dated 25 October 2011 of the requests made by Spain and France. By letters dated 27 October 2011, the Commission informed Spain and France that it had all the information necessary to consider the requests.

(3) On 27 June 2008 an agreement was signed between Spain and France for the construction of an underground electricity interconnection between Santa Llogia in Spain and Baixas in France.

(4) Through the measure, the underground electricity interconnection is to be treated as being situated 50 % in Spain and 50 % in France for the purposes of supplies of goods and services, intra-Community acquisition of goods and importations of goods intended for its construction.

(5) In the absence of such measure, it would be necessary, according to the principle of territoriality, to ascertain for each supply whether the place of taxation was within Spain or France.

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

(6) The purpose of the measure is therefore to simplify the procedure for collecting value added tax on the construction of the underground electricity interconnection.

(7) The derogation has no negative impact on the Union's own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 5 of Directive 2006/112/EC, Spain and France are authorised to consider the underground electricity interconnection between Santa Llogia in Spain and Baixas in France as being situated 50 % on the territory of Spain and 50 % on the territory of France for the purposes of supplies of goods and services, intra-Community acquisitions of goods and importations of goods intended for its construction.

Article 2

This Decision is addressed to the Kingdom of Spain and the French Republic.

Done at Brussels,

For the Council
The President