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EUROPEAN COMMISSION

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Proposal for a

COUNCIL IMPLEMENTING DECISION

**authorising France and Italy 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

Pursuant to Article 395 of Council 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 letters registered with the Secretariat-General of the Commission on 19 November 2009 and 19 June 2009 respectively, the Republic of France and the Italian Republic requested authorisation to introduce a measure derogating from Article 5 of the VAT Directive.

With a view to facilitating road traffic between their two countries, the Republic of France and the Italian Republic reached an agreement on 12 March 2007 on implementing a unified management structure for the Col de Tende Road Tunnel, a permanent road link between the two Member States. In particular, the agreement allocates to Italy the task of the operation, maintenance and safety of the existing tunnel, as well as the construction, and subsequent operation, maintenance and safety of a new tunnel to run alongside the existing tunnel. The new tunnel will carry traffic in one direction, with the existing tunnel carrying traffic in the other direction.

As the old and the new tunnels lie within both the territory of the Republic of France and the Italian Republic, without a simplification measure it would be necessary to establish the exact place of each taxable transaction according to the territory in which each part of the operation, maintenance and safety of both tunnels, as well as in the construction of the new tunnel, is carried out.

Therefore the Republic of France and the Italian Republic request authorisation to consider the entire perimeter of the site of current tunnel, along with the construction site of the new tunnel, as being within the territory of the Italian Republic for the purposes of supplies of goods, services, intra-Community acquisitions and imports intended for the relevant construction, operation, maintenance and safety of the two tunnels.

Similar derogations have been granted to other Member States.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

There was no need for consultation or external expertise.

¹ OJ L 347, 11.12.2006, p. 1

3. LEGAL ELEMENTS OF THE PROPOSAL

The Decision authorises the Republic of France and the Italian Republic to introduce a special measure derogating from Article 5 of the VAT Directive as regards the construction, operation, maintenance and safety of the Col de Tende Road Tunnel.

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

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

Given the limited scope of the derogation, 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 negative implications for the Union's 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 with the Secretariat-General of the Commission on 19 November 2009 and 19 June 2009 respectively, France and Italy requested authorisation to introduce a special tax measure in relation to the operation, maintenance and safety of the existing Col de Tende Road Tunnel, as well as the construction, operation, maintenance and safety of a new tunnel to run alongside the existing one.
- (2) The Commission informed the other Member States by letters dated 14 December 2009 of the requests made by France and Italy. By letters dated 17 December 2009 the Commission notified France and Italy that it had all the information necessary to consider the requests.
- (3) The Col de Tende Road Tunnel is a permanent road link between France and Italy. An agreement of 12 March 2007 between those two Member States has designated Italy as being responsible for the operation, maintenance and safety of the existing tunnel, as well as for the construction, operation, maintenance and safety of the new tunnel which, when completed, will carry traffic in the opposite direction to the existing tunnel.
- (4) Through the measure, the entire site of the existing tunnel, and the perimeter and construction site of the new tunnel, will be deemed to be on the territory of Italy for the purposes of supplies of goods, services, intra-Community acquisitions and imports intended for the relevant construction, operation, maintenance and safety of the two tunnels. In the absence of such a measure, it would be necessary, according to the principle of territoriality, to ascertain for each supply whether the place of taxation was within France or Italy.

² OJ L 347, 11.12.2006, p. 1

- (5) The purpose of the measure is therefore to simplify the procedure for charging value added tax on the operation, maintenance and safety of the existing tunnel, as well as the construction, operation, maintenance and safety of the new tunnel.
- (6) 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, France and Italy are authorised to consider the entire site of the existing Col de Tende Road Tunnel, along with the construction site of the new Col de Tende Road Tunnel which will run alongside the existing tunnel, as being on the territory of Italy for the purposes of supplies of goods, services, intra-Community acquisitions of goods and imports intended for the construction and subsequent operation, maintenance and safety of the new tunnel, as well as the operation, maintenance and safety of the existing tunnel.

Article 2

This Decision is addressed to the French Republic and the Italian Republic.

Done at Brussels,

For the Council
The President