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Proposal for a

COUNCIL IMPLEMENTING DECISION

**authorising France to conclude an agreement with Switzerland that includes provisions
derogating from Article 5 of Directive 2006/112/EC as regards the airport of Bâle-
Mulhouse**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Pursuant to Article 396 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereafter 'the VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to conclude with a third country or an international body an agreement which may contain derogations from the VAT Directive.

By letter registered with the Commission on 24 September 2015, France requested an authorisation to conclude an agreement with Switzerland as regards the territorial application of the VAT system at the airport of Bâle-Mulhouse. In accordance with Article 396(2) of the VAT Directive, the Commission informed the other Member States by letter dated 24 October 2016. By letter dated 25 October 2016, the Commission notified France that it had all the information necessary to consider the request.

The airport of Bâle-Mulhouse is entirely situated on the territory of France and therefore part of the so-called 'VAT territory' as defined in Article 5 of the VAT Directive.

As regards the construction and exploitation of the airport, France and Switzerland concluded a Convention in 1949¹ (hereafter the 'Convention'). Article 8 of this Convention foresees the creation of a so-called Swiss customs sector, a delimited area within the airport where the Swiss authorities are allowed to control goods and passengers coming from or going to Switzerland. Furthermore, it is stipulated in annex to the Convention that an agreement between the respective governments would be concluded on, inter alia, the tax rules which would be applicable to businesses installed in this sector. However, such an agreement was never concluded.

In 2015, France and Switzerland decided to conclude an international agreement which would exclude the Swiss customs sector from the territorial scope of the VAT Directive by considering this area as part of the Swiss VAT territory. As a result, Switzerland would be allowed to apply its own VAT rules.

Since such an international agreement would contain a measure that derogates from the VAT Directive as regards the principle of territoriality, an authorisation by the Council, upon proposal of the Commission, is therefore required.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 396 of the VAT Directive.

• Subsidiarity (for non-exclusive competence)

Considering the provision of the VAT Directive on which the proposal is based, the subsidiarity principle does not apply.

¹ Original title of the Convention: 'Convention Franco-Suisse du 4 juillet 1949 relative à la construction et à l'exploitation de l'aéroport de Bâle-Mulhouse, à Blotzheim' (as amended)

- **Proportionality**

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

Given the limited scope of the derogation, the special measure is proportionate to the aim pursued, i.e. to regulate the particular situation as regards the so-called Swiss customs sector in the airport of Bâle-Mulhouse where, according to France, the control by French authorities on the application of EU VAT legislation is impractical.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 396 of Council Directive 2006/112/EC, derogation from the common VAT rules is only possible upon authorisation of the Council acting unanimously on a proposal from the Commission. A Council Implementing Decision is the most suitable instrument since it can be addressed to an individual Member State.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

This proposal is based on a request made by France and concerns only this Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for a Council Implementing Decision concerns the situation as regards the 'Swiss control sector' in the airport of Bâle-Mulhouse. By considering this part of the airport - in which the Swiss authorities carry out controls in accordance with a convention between France and Switzerland - as Swiss territory, the situation is settled in practice. Although in relation to this particular zone, a difference is created between the VAT and Customs territory (of which the latter remains unaffected by this proposal), it is to be pointed out that such a situation exists in several cases (e.g. Mount Athos, Canary Islands) and should not lead to particular problems. Given the limited scope of this derogation, the impact will in any case be limited.

4. BUDGETARY IMPLICATIONS

France will ensure that this derogation will have no impact on the Union's own resources accruing from VAT.

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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, and in particular Article 396(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In accordance with Article 5 of the Directive 2006/112/EC as regards its territorial scope, the value added tax system is, as a rule, applicable in the territory of a Member State.
- (2) By letter from France registered with the Commission on 24 September 2015, France requested authorisation to conclude an agreement with Switzerland in relation to the airport of Bâle-Mulhouse which would affect that rule.
- (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 October 2016 of the request made by France. By letter dated 25 October 2016, the Commission notified France that it had all the necessary information to consider the request.
- (4) The airport of Bâle-Mulhouse is entirely situated within the European Union. However, a convention of 1949 between France and Switzerland regarding the construction and exploitation of the airport of Bâle-Mulhouse, stipulated that a special Swiss customs sector would be established in a delimited zone of the airport where the Swiss authorities would be allowed to exercise control over goods and passengers leaving or going to Switzerland. It was further foreseen in this convention that a separate agreement between the respective countries would be concluded on, inter alia, the fiscal rules governing this particular sector.
- (5) Problems have arisen regarding that Swiss customs sector, in particular as regards the control over the application of the Union VAT rules by businesses established within that sector.
- (6) France and Switzerland agreed in 2015 to conclude an international agreement which would consider the Swiss customs sector as Swiss territory for VAT purposes. Since this derogates from the VAT Directive, an authorisation is required.
- (7) France will ensure that this derogation will have no impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

France is hereby authorised to conclude an agreement with Switzerland that includes provisions derogating from Directive 2006/112/EC regarding the territorial scope of the value added tax system as regards the airport of Bâle-Mulhouse.

The derogating provision in respect of the agreement is set out in Article 2.

Article 2

By way of derogation from Article 5 of Directive 2006/112/EC, the Swiss customs sector in the airport of Bâle-Mulhouse, as defined by Article 8 of the French-Swiss Convention of 4 July 1949 as regards the construction and exploitation of the airport of Bâle-Mulhouse in Blotzheim², shall not be treated as forming part of the territory of any Member State within the meaning of this article.

Article 3

This Decision is addressed to the Republic of France.

Done at Brussels,

*For the Council
The President*

² Convention Franco-Suisse du 4 juillet 1949 relative à la construction et à l'exploitation de l'aéroport de Bâle-Mulhouse, à Blotzheim (as amended)