

COUNCIL IMPLEMENTING DECISION (EU) 2017/320**of 21 February 2017****authorising France to conclude an agreement with the Swiss Confederation concerning Basel-Mulhouse Airport that includes provisions derogating from Article 5 of Directive 2006/112/EC**

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 396(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In accordance with Article 5 of Directive 2006/112/EC concerning the territorial scope of that Directive, the value added tax ('VAT') system is, as a rule, applicable in the territory of a Member State.
- (2) By letter registered with the Commission on 24 September 2015, France requested authorisation to conclude an agreement with the Swiss Confederation ('Switzerland') concerning Basel-Mulhouse Airport ('the Airport') that includes provisions derogating from Directive 2006/112/EC.
- (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 is situated entirely within the Union. However, the French-Swiss Convention of 4 July 1949 regarding the construction and operation of the Airport, in Blotzheim ('the Convention'), provides for a special Swiss customs sector in a delimited zone of the airport where the Swiss authorities are allowed to exercise control over goods and passengers leaving or entering Switzerland. It was also foreseen in the Convention that a separate agreement between the respective countries would be concluded on, inter alia, the fiscal rules governing that sector.
- (5) Problems have arisen regarding the Swiss customs sector, in particular as regards control over the application of the Union VAT rules by businesses established within that sector.
- (6) In 2015 France and Switzerland agreed to conclude an international agreement under which the Swiss customs sector would be considered to be Swiss territory for VAT purposes. Since that would derogate from Directive 2006/112/EC, an authorisation under Article 396 of that Directive is required.
- (7) France will ensure that the 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 concerning Basel-Mulhouse Airport that provides, by way of derogation from Directive 2006/112/EC, that the Swiss customs sector in the Airport, established pursuant to Article 8 of the French-Swiss Convention of 4 July 1949 regarding the construction and operation of Basel-Mulhouse Airport, in Blotzheim, is not to be treated as forming part of the territory of a Member State within the meaning of Article 5 of that Directive.

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 21 February 2017.

For the Council
The President
E. SCICLUNA
