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2013/0280 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**amending Directives 2006/112/EC and 2008/118/EC as regards the French outermost regions and Mayotte in particular**

## EXPLANATORY MEMORANDUM

### 1. **CONTEXT OF THE PROPOSAL**

With Decision 2012/419/EU amending the status of Mayotte with regard to the European Union, the European Council has decided that, from 1 January 2014, the status of Mayotte will be that of outermost region within the meaning of Article 349 of the Treaty on the Functioning of the European Union (TFEU) instead of that of an overseas country or territory (OCT) within the meaning of Article 355(2) of the TFEU. To this end, in the above-mentioned European Council Decision, Mayotte has been added to the list of outermost regions in Articles 349 and 355(1) of the TFEU. Union legislation on VAT (Directive 2006/112/EC<sup>1</sup>) and excise duties (Directive 2008/118/EC<sup>2</sup>) will therefore apply in Mayotte after the change of status. In substance, the objective of this proposal is to bring Mayotte's situation into line with that of other French outermost regions by excluding it from the scope of Directives 2006/112/EC and 2008/118/EC. Furthermore, by referring to Articles 349 and 355(1) of the TFEU, the intention is to make it clearer that all these regions, including Mayotte, are excluded from the scope of these Directives.

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

In substance the only change made by this proposal concerns the region of Mayotte. Given its similar situation to that of other French outermost regions, the objective of the proposal is to ensure that it is subject to the same treatment under the two above-mentioned directives when it becomes an outermost region on 1 January 2014. The proposal will not have any impact on the situation of the other French outermost regions. In order to make it clear that any change in the status of all these regions - including Mayotte - under national law does not have any bearing on their situation under the above-mentioned directives, it is proposed that their designation should be changed and reference made to Articles 349 and 355(1) of the TFEU from now on.

Thus, there are no grounds for an impact assessment and the Commission has therefore not carried one out.

### 3. **LEGAL ELEMENTS OF THE PROPOSAL**

#### **Summary of the proposed measures**

The proposal states that Directives 2006/112/EC and 2008/118/EC do not apply to the French outermost regions listed in Articles 349 and 355(1) of the TFEU.

#### **Legal basis**

Article 113 of the TFEU.

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<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, p. 1.

<sup>2</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, OJ L 9, 14.1.2009, p. 12.

### **Principle of subsidiarity**

Article 113 of the TFEU asks the Council to adopt provisions for the harmonisation of legislation concerning turnover taxes and excise duties.

Only the European Union is competent to define the territory to which harmonised legislation applies.

The proposal therefore complies with the principle of subsidiarity.

### **Principle of proportionality**

The proposal complies with the principle of proportionality for the following reasons.

The objective of the proposal is to give Mayotte the same status as that which has long applied in Guadeloupe, French Guyana, Martinique and Réunion. It clarifies the status of the French part of Saint Martin without modifying it.

### **Choice of instruments**

Proposed instrument: Council Directive on the basis of Article 113 of the Treaty.

Other instruments would not have been appropriate for the following reasons.

As the purpose is to amend two Directives, the same legal form must be used.

## **4. BUDGETARY IMPLICATIONS**

The proposal has no impact on the budget of the European Union.

## **5. OPTIONAL ELEMENTS**

Articles 1 and 2 make the same amendment to two articles of Directives 2006/112/EC and 2008/118/EC, which relate to the territorial scope of these two Directives, replacing 'French overseas departments' by 'the French outermost regions listed in Articles 349 and 355(1) of the Treaty on the Functioning of the European Union'.

This new wording makes it clear that any change in the national law of these territories will not have any bearing on their situation with respect to the two Directives.

The situation of Saint-Barthélemy does not need to be examined as this territory ceased to be an outermost region on 1 January 2012 pursuant to European Council Decision 2010/718/EU of 29 October 2010.

Given the simplicity of the transposition measures to be implemented, the Commission does not require explanatory documents to carry out its task of overseeing the transposition of the Directives. The individual transposition measures to be notified should be sufficiently self-explanatory.

Proposal for a

## COUNCIL DIRECTIVE

### **amending Directives 2006/112/EC and 2008/118/EC as regards the French outermost regions and Mayotte in particular**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament<sup>3</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>4</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) With Decision 2012/419/EU amending the status of Mayotte with regard to the European Union<sup>5</sup>, the European Council has decided that, from 1 January 2014, the status of Mayotte will be that of outermost region within the meaning of Article 349 of the Treaty on the Functioning of the European Union (TFEU) instead of that of an overseas country or territory (OCT) within the meaning of Article 355(2) of the TFEU. To this end, under the above-mentioned European Council Decision, Mayotte has been added to the list of outermost regions in Articles 349 and 355(1) of the TFEU. Community tax law shall therefore apply in Mayotte after this change of status.
- (2) As regards added value tax (VAT) and excise duties, Mayotte is in a situation similar to that of the existing French outermost regions (Guadeloupe, French Guyana, Martinique, Réunion and Saint-Martin), which fall outside the territorial scope of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>6</sup>, and Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC<sup>7</sup>. Although the existing provisions of these two Directives exclude the 'French overseas departments' from their territorial scope and Mayotte enjoys that status under French law, it is necessary to adapt the two Directives as Mayotte was not part of the Union territory when these Directives were adopted. Article 6 of Directive 2006/112/EC and Article 5 of Directive 2008/118/EC must therefore be amended in order to include Mayotte in these provisions.

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<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

<sup>5</sup> OJ L 204, 31.7.2012, p. 131.

<sup>6</sup> OJ L 347, 11.12.2006, p. 1.

<sup>7</sup> OJ L 9, 14.1.2009, p. 12.

- (3) In order to make it clear that Mayotte and the other French outermost regions are excluded from the scope of Directives 2006/112/EC and 2008/118/EC regardless of any change in their status under French law, reference should be made to Articles 349 and 355(1) of the TFEU for all these regions.
- (4) Directives 2006/112/EC and 2008/118/EC should therefore be amended accordingly.

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

Article 6(1)(c) of Directive 2006/112/EC shall be replaced by the following:

'c) the French outermost regions listed in Articles 349 and 355(1) of the Treaty on the Functioning of the European Union;'

#### *Article 2*

Article 5 of Directive 2008/118/EC is amended as follows:

a) Paragraph (2)(b) is replaced by the following:

'b) the French outermost regions listed in Articles 349 and 355(1) of the Treaty on the Functioning of the European Union;'

b) Paragraph (5) is replaced by the following:

'France may give notice, by means of a declaration, that this Directive and the Directives referred to in Article 1 apply to the territories referred to in paragraph (2)(b) — subject to measures to adapt to their extreme remoteness — in respect of all or some of the excise goods referred to in Article 1, as from the first day of the second month following deposit of such declaration.'

#### *Article 3*

1. Member States shall adopt and publish, no later than 31 December 2013, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate to the Commission the text of those provisions.  
They shall apply those provisions from 1 January 2014.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 4*

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

*Article 5*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*