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2013/0270 (NLE)

Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Union, of the agreement between the European Union and the French Republic concerning the application to the collectivity of Saint-Barthélemy of Union legislation on the taxation of savings and administrative cooperation in the field of taxation

EXPLANATORY MEMORANDUM

1. BACKGROUND TO THE PROPOSAL

Under European Council Decision 2010/718/EU of 29 October 2010, the territorial collectivity of Saint-Barthélemy ceased to be an outermost region of the Union and gained the status of overseas territory on 1 January 2012.

Decision 2010/718/EU noted that France had undertaken to conclude the agreements necessary to ensure that the interests of the Union were preserved when the change took place.

To further progress on such agreements, a Council decision of 20 October 2011, which was sent to the European Commission on 24 October 2011, authorised the Commission to negotiate the terms. Specifically, the authorisation concerned an agreement between France, acting for Saint-Barthélemy, and the Union that provided, for that territory, for the application of the Union legislation on taxation of savings and administrative cooperation in the field of taxation.

The negotiating directives annexed to the Council's decision laid down, in particular, that:

- the objective was to conclude an agreement providing for the application to Saint-Barthélemy of the mechanisms of Council Directive 77/799/EEC[1] and Council Directive 2011/16/EU[2] on administrative cooperation in the field of taxation and of Council Directive 2003/48/EC[3] on taxation of savings income. To do this, further legislative developments in these areas should be taken into account so that the arrangements applicable to Saint-Barthélemy would be equivalent to those applicable in mainland France;

- the agreement had to cover the arrangements provided for in the Directives referred to above. On the question of the taxation of savings, it had to cover interest payments, as defined in Article 6 of Council Directive 2003/48/EC and any amendments, made by paying agents established in Saint-Barthélemy to beneficial owners resident in the EU;

- the agreement was to be concluded for an indefinite period of time.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES

Acting on this authorisation, the European Commission drew up a draft agreement, on which negotiations were conducted with France in 2012 and early 2013.

The draft agreement was also discussed in the EU Council's Working Party on Tax Questions and no Member State entered any reservation.

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1 Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums, OJ L 336, 27.12.1977, p. 15.

2 Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64, 11.3.2011, p. 1.

3 Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, OJ L 157, 26.6.2003, p. 38.

3. LEGAL ELEMENTS OF THE PROPOSAL

The legal basis for this proposal is provided by Articles 113 and 115 of the Treaty on the Functioning of the European Union, in conjunction with Article 218(5) and (8) second subparagraph. The substantive legal basis is provided by Articles 113 and 115 TFEU. In fact, the measure is designed to extend the mechanisms of Directives 2011/16/EU and 2003/48/EC, which are based on these two articles, to relations between the Member States and Saint-Barthélemy.

According to **Article 1** of the agreement, its purpose is to ensure the application to Saint-Barthélemy of the tax provisions of:

- Council Directive 2011/16/EU, which repealed Directive 77/799/EEC from 1 January 2013,

- Council Directive 2003/48/EC,

- and any related acts.

The provisions of **Article 1(3)** and **Article 2** render the agreement dynamic. It covers not only future amendments to the two Directives but also any current or future delegated and implementing acts[4]. This is needed to ensure identical treatment at all times in situations within the European Union and between the Member States and Saint-Barthélemy.

Article 3 provides that the competent authorities are central liaison offices, liaison departments and competent officials so as to ensure consistency with any national measures transposing Council Directives 2011/16/EU and 2003/48/EC which have been taken, or will be taken, by Member States.

Statistics and information concerning the application of the agreement to the collectivity of Saint-Barthélemy will be submitted to the Commission by France (**Article 4**).

Provision is made for the settlement of disputes as follows:

- a mutual agreement procedure between the competent authorities of only the Member States concerned where implementation or interpretation of the agreement leads to problems or raises issues between these competent authorities (**Article 5**). The European Commission will be informed of the results of this conciliation procedure, after which it must inform the other Member States. Where there are issues of interpretation, the European Commission may take part in the consultations at the request of any of the competent authorities;

- in the event of a dispute between the parties on the interpretation or application of the agreement, they must meet with the Commission before any referral to the Court of Justice (**Article 6**). The Court has sole jurisdiction to judge such disputes.

The formalities for the agreement's entry into force are set out in **Article 7**.

In keeping with the negotiating directives, **Article 8** provides that the agreement is concluded for an indefinite period, offering the parties the possibility of termination through diplomatic channels.

[4] This does not prejudge in any way the position of the Member States in the Council when deciding whether delegated or implementing powers should be conferred on the Commission.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the functioning of the European Union, and in particular Articles 113 and 115, in conjunction with Article 218(5) and (8), second paragraph thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) According to the terms of European Council Decision 2010/718/EU of 29 October 2010 amending the status of the island of Saint-Barthélemy with regard to the European Union[5], the island of Saint-Barthélemy ceased to be an outermost region of the Union with effect from 1 January 2012 and gained the status of overseas country or territory referred to in Part Four of the Treaty on the Functioning of the European Union. The French Republic had undertaken to conclude the agreements necessary to ensure that the interests of the Union were preserved when the change took place, to ensure, *inter alia*, that the mechanisms of Directive 2011/16/EU[6] and of Directive 2003/48/EC[7] would also apply to Saint-Barthélemy following its change of status.

(2) Acting on the authorisation conferred on it by the Council on 20 October 2011, the Commission negotiated an agreement between the French Republic, acting for Saint-Barthélemy, and the Union that provided, for that territory, for the application of the Union legislation on taxation of savings and administrative cooperation in the field of taxation.

(3) The purpose of this Agreement is to ensure that the mechanisms of the two Directives, designed in particular to combat fraud and cross-border tax evasion, continue to apply to Saint-Barthélemy despite its changed status.

(4) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date,

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5 OJ L 325, 9.12.2010, p. 4.

6 Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64, 11.3.2011, p. 1.

7 Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, OJ L 157, 26.6.2003, p. 38.

HAS ADOPTED THIS DECISION:

Article 1

The signature of the Agreement between the European Union and the French Republic concerning the application to the collectivity of Saint-Barthélemy of the Union legislation on the taxation of savings and administrative cooperation in the field of taxation is hereby approved on behalf of the European Union, subject to conclusion of that Agreement.

The text of the Agreement to be signed is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President

ANNEX

Agreement between the European Union and the French Republic concerning the application to the collectivity of Saint-Barthélemy of Union legislation on the taxation of savings and administrative cooperation in the field of taxation

The EUROPEAN UNION, represented by the European Commission,

and

the FRENCH REPUBLIC, on behalf of the collectivity of Saint-Barthélemy,

Whereas:

(1) The collectivity of Saint-Barthélemy is an integral part of the French Republic but, in accordance with European Council Decision 2010/718/EU of 29 October 2010 amending the status of the collectivity of Saint-Barthélemy with regard to the European Union, it is no longer part of the European Union from 1 January 2012[8].

(2) In order to continue to protect the interests of the European Union, and in particular, to combat fraud and cross-border tax evasion, it is necessary to ensure that Union legislation on administrative cooperation in the field of taxation and on taxation of savings income in the form of interest payments continues to apply to the collectivity of Saint-Barthélemy. It is equally necessary to ensure that any acts amending this legislation will also apply to the collectivity of Saint-Barthélemy,

HAVE AGREED AS FOLLOWS:

Article 1

Application of Council Directives 2011/16/EU and 2003/48/EC and related acts

1. The French Republic and the other Member States shall apply to the collectivity of Saint-Barthélemy Council Directive 2011/16/EU and any measures that they have adopted to implement this Directive.

2. The French Republic and the other Member States shall apply to the collectivity of Saint-Barthélemy Council Directive 2003/48/EC and any measures that they have adopted to implement this Directive.

3. The French Republic and the other Member States shall apply to the collectivity of Saint-Barthélemy any applicable acts of the European Union adopted on the basis of the Directives referred to in paragraphs 1 and 2.

4. The Parties to this Agreement declare that the European Commission has, with respect to the collectivity of Saint-Barthélemy, the same tasks as those provided for in Council Directives 2011/16/EU and 2033/48/EC and by any other related legal instruments adopted by the Council with a view to facilitating administrative cooperation between the competent authorities of the Member States.

Article 2

Applicable versions of Union acts referred to in this Agreement

The references in this Agreement to Directives 2011/16/EU and 2003/48/EC, and to other acts and instruments of the European Union referred to in Article 1(3) and (4), shall be understood

[8] OJ L 325, 9.12.2010, p. 4.

as being made to the Directives and related acts and instruments in the version in force at any given time, amended where appropriate by any subsequent amending acts.

Article 3

Competent authorities, central liaison offices, liaison departments and competent officials

The Parties to this Agreement declare that the competent authorities designated under Directive 2003/48/EC, and the competent authorities, central liaison offices, liaison departments and competent officials designated under Directive 2011/16/EU by Member States, shall be invested with the same functions and powers for the purpose of implementing these Directives with respect to the collectivity of Saint-Barthélemy, in accordance with Article 1 of this Agreement.

Article 4

Monitoring

The French Republic shall submit statistics and information to the European Commission concerning the application of this Agreement to the collectivity of Saint-Barthélemy. This data shall have the same scope, and be reported in the same manner and within the same time limits, as the information that must be provided on the functioning of Directives 2011/16/EU and 2003/48/EC with respect to the French territories to which these Directives apply.

Article 5

Mutual agreement procedure between the competent authorities

1. Where implementation or interpretation of this Agreement leads to problems or raises issues between the competent authority for the collectivity of Saint-Barthélemy and one or more competent authorities of the Member States, they shall endeavour to resolve the matter by mutual agreement. They shall inform the European Commission of the results of this conciliation procedure, after which the Commission shall inform the other Member States.

2. Where there are issues of interpretation, the European Commission may take part in consultations at the request of any of the competent authorities referred to in paragraph 1.

Article 6

Settlement of disputes between Parties to this Agreement

1. In the event of a dispute between the Parties on the interpretation or application of this Agreement, the Parties shall meet before any referral to the Court of Justice of the European Union in accordance with paragraph 2.

2. The Court of Justice of the European Union shall have exclusive jurisdiction for settling disputes between the Parties to this Agreement about its application or interpretation. Referral may be made by any of the Parties.

Article 7

Entry into force

Each Contracting Party shall notify the other of the completion of the procedures required for entry into force of this Agreement. The Agreement shall take effect on the day following the day of receipt of the second notification.

Article 8

Duration and termination

This Agreement is concluded for an indefinite period, subject to termination by one of the Contracting Parties after written notice to the other Party through diplomatic channels. This Agreement shall expire twelve months after the receipt of such notice.

Article 9

Languages

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

Done at … , on …

For the European Union For the French Republic