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2018/0124 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directives 2006/112/EC and 2008/118/EC as regards the inclusion of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the customs territory of the Union and in the territorial application of Directive 2008/118/EC

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

At Italy's request, the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano should be included in the EU customs territory and in the territory of the Union to which Directive 2008/118/EC concerning the general arrangements for excise duty¹ (the 'excise Directive') applies. The geographic location of the two territories as Italian exclaves within the territory of Switzerland has historically justified their exclusion from the EU customs territory but Italy considers this exclusion to be no longer necessary, in particular because otherwise Switzerland now wishes to include them within its customs territory. It therefore requests that these two territories be brought within the scope of the EU customs territory and the territory of the Union to which the excise Directive applies. It is proposed that this amendment should apply from 1 January 2019.

Italy considers that the inclusion of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the EU customs territory and in the scope of the excise Directive is not incompatible with maintaining the application of a special tax system on value added tax and, in particular, with continuing to exclude these territories from the territorial application of Directive 2006/112/EC on the common system of value added tax² (the 'VAT Directive'). This is essential to ensure a level playing field with the surrounding Swiss economic context through the application of local indirect taxation in line with Swiss value added tax. The inclusion of these territories in the EU customs territory and the territory of the Union to which the excise Directive applies therefore only requires a formal change to the VAT Directive, moving them from Article 6(2) (territories not forming part of the EU customs territory excluded from the territorial application of the VAT Directive) to Article 6(1) (territories forming part of the EU customs territory excluded from the territorial application of the VAT Directive).

The proposal to amend the excise Directive and the VAT Directive is strictly linked to the amendment of the Union Customs Code. These amendments should therefore apply as from the same date. To ensure better management and administrative organisation, Italy pointed out that these amendments will have to enter into force on 1 January following their adoption and, in any case, not before 1 January 2019.

- **Consistency with other Union policies**

Changes to the excise Directive and the VAT Directive are a consequence of changes to Regulation (EU) No 952/2013³ laying down the Union Customs Code.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 113 of the Treaty on the Functioning of the European Union. This Article provides for the Council, acting unanimously in accordance with a special legislative procedure and after

¹ 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).

² 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).

³ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

- **Subsidiarity (for non-exclusive competence)**

The geographical scope of application of the excise Directive and of the VAT Directive is harmonised. Member States may not apply a different geographical scope.

- **Proportionality**

The proposed amendment does not go beyond what is necessary to address the issues at stake and, in that way, to achieve the Treaty's objectives of a proper and effective functioning of the internal market.

This proposal complies with the principles of proportionality as set out in Article 5, paragraph 4 of the Treaty on the European Union. This amendment is based on a political decision of the Italian government. It has no impact on other Member States.

- **Choice of the instrument**

Council Directive.

- **Explanatory documents (for directives)**

The notification of transposition measures by Member States should not be accompanied by an explanatory document explaining the relationship between the components of the Directive and the corresponding parts of national transposition instruments as the changes relate to a single provision only in both the excise Directive and VAT Directive.

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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 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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) In its letter of 18 July 2017, Italy requested that the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano be included in the customs territory of the Union as defined in Regulation (EU) No 952/2013 of the European Parliament and of the Council³ as well as in the territorial scope of Council Directive 2008/118/EC⁴ for the purposes of excise duty, whilst leaving these territories outside the territorial scope of Council Directive 2006/112/EC⁵ for the purposes of value added tax.
- (2) The Italian municipality of Campione d'Italia, an Italian exclave in the territory of Switzerland, and the Italian waters of Lake Lugano should be included in the customs territory of the Union because the historical reasons justifying the exclusion of these territories, such as their isolation and economic disadvantages, no longer apply. For the same reasons these territories should be included in the territorial application of Directive 2008/118/EC.
- (3) However, Italy wants to continue the exclusion of these territories from the territorial application of Directive 2006/112/EC on the common system of value added tax, as this is essential to maintain a level playing field between economic operators established in Switzerland and in the Italian municipality of Campione d'Italia through

¹ OJ C , , p. .

² OJ C , , p. .

³ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

⁴ 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).

⁵ 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).

the application of a local indirect taxation regime in line with the Swiss value added tax system.

- (4) The amendments to Directives 2006/112/EC and 2008/118/EC are strictly linked to the amendment to Regulation (EU) No 952/2013⁶ as regards the territorial scope of the customs territory of the Union. Therefore the national transposition measures relating to those amendments should apply from the same date as the amendment to Regulation (EU) No 952/2013.
- (5) Directives 2006/112/EC and 2008/118/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

- (1) In Article 6(1), the following points (f) and (g) are added:
- ‘(f) Campione d’Italia;
 - (g) the Italian waters of Lake Lugano.’
- (2) In Article 6(2), points (f) and (g) are deleted.

Article 2

Directive 2008/118/EC is amended as follows:

- (1) In Article 5(3), points (f) and (g) are deleted.

Article 3

1. Member States shall adopt and publish, by 31 December 2018 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2019.

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*.

⁶ As amended by Regulation (EU) No XXX

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*