



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.5.2007  
COM(2007) 251 final

Proposal for a

**COUNCIL DECISION**

**authorising Austria to conclude an agreement with Switzerland that includes provisions derogating from Article 2(1)(d) of Directive 2006/112/EC on the common system of value added tax**

**(Only the German version is authentic)**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

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

In a letter registered at the Commission's Secretariat-General on 13 September 2005, Austria requested authorisation under Article 30(1) of Directive 77/388/EEC (currently Article 396(1) of Directive 2006/112/EC), to conclude an agreement with Switzerland that includes tax provisions derogating from Article 2(1)(d) of the said Directive.

In accordance with Article 396(2) of Directive 2006/112/EC, the Commission informed the other Member States on 1 March 2007 of the request made and by letter of 6 March 2007, the Commission notified Austria that it had all the information it considered necessary for appraisal of the request.

- **General context**

The agreement between Austria and Switzerland relates to the construction of a cross-border power plant across the river Inn between Prutz (Austria) and Tschlin (Switzerland).

The agreement provides that no value added tax (VAT) will be charged in Switzerland on imports for the construction and related operation of the power plant, which would facilitate border formalities. In the same way, it is stipulated that goods, imported into Austria for use in connection with the power plant, will not be taxed with Austrian VAT.

Under normal circumstances, importation of goods into Austria is a taxable transaction which is subject to VAT. However, in order to obtain similar advantages from his Swiss counterpart, Austria, as a contracting party, agreed not to tax the imports related to the cross-border power plant. Nevertheless, it is to be understood that only taxable persons, with a full right of deduction, would be involved in the importation of such goods, and that, in any case, they would have a right of deduction for their import VAT.

- **Existing provisions in the area of the proposal**

The Council has on several previous occasions authorised Member States to conclude agreements with third countries in frontier areas and these agreements, inter alia, included tax provisions similar to those proposed here.

- **Consistency with the other policies and objectives of the Union**

Not applicable.

### 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Not relevant.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposed Decision proposal aims at authorising Austria to conclude an agreement with Switzerland in order not to tax imports into Austria as regards a cross-border power plant so as to obtain similar advantages from Switzerland for goods imported in Switzerland.

Because of the very narrow scope of the derogation and the fact that the importers, under the normal system, would have a full right of deduction for the VAT paid at import, the impact will be negligible.

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

- **Summary of the proposed action**

Authorisation for Austria to conclude an agreement with Switzerland that includes provisions derogating from the VAT Directive 2006/112/EC as regards the taxation of imports in relation to a cross-border power plant.

- **Legal basis**

Article 396 of the VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

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

Given the very limited scope of the derogation, the special measure is proportionate to the aim pursued.

- **Choice of instruments**

Proposed instruments: other.

Other means would not be adequate for the following reason(s).

Under Article 396 of the VAT Directive 2006/112/EC on the common system of value added tax, derogation from the common VAT rules is only possible with the

authorisation of the Council acting unanimously on a proposal from the Commission. A Council Decision is the only suitable instrument since it can be addressed to individual Member States.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget since the importers would have, in any case, a full right of deduction for the VAT paid at import under the normal system.

Proposal for a

## COUNCIL DECISION

**authorising Austria to conclude an agreement with Switzerland that includes provisions derogating from Article 2(1)(d) of Directive 2006/112/EC on the common system of value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>1</sup>, and in particular Article 396 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Under Article 396(1) of Directive 2006/112/EC, the Council, acting unanimously on a proposal of the Commission, may authorise any Member State to conclude with a third country an agreement which may contain derogations from that Directive.
- (2) By letter registered with the Secretariat-General of the Commission on 13 September 2005, Austria requested authorisation to conclude an agreement with Switzerland in relation to a cross-border power plant across the river Inn between Prutz (Austria) and Tschlin (Switzerland).
- (3) In accordance with Article 396(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 1 March 2007 of the request made by Austria. By letter dated 6 March 2007, the Commission notified Austria that it had all the information it deemed necessary to consider the request.
- (4) The agreement is to contain provisions on VAT derogating from Article 2(1)(d) of Directive 2006/112/EC in respect of goods imported into Austria in relation to the cross-border power plant. These imports of goods from Switzerland into Austria by taxable persons with a full right of deduction will not be subject to VAT in order to obtain a similar arrangement from Switzerland for goods imported from Austria into Switzerland.
- (5) The derogation will therefore not have an adverse effect on the European Communities' own resources accruing from value added tax,

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<sup>1</sup> OJ L 347, 11.12.2006, p. 1. Directive amended by Directive 2006/138/EC (OJ L 384, 29.12.2006, p. 92)

HAS ADOPTED THIS DECISION:

*Article 1*

Austria is hereby authorised to conclude an Agreement with Switzerland that includes provisions derogating from the VAT Directive 2006/112/EC covering the construction, maintenance, renewal and operation of a frontier power plant station across the river Inn between Prutz (Austria) and Tschlin (Switzerland).

The derogating tax provisions in respect of the Agreement are set out in Article 2.

*Article 2*

By way of derogation from Article 2(1)(d) of Directive 2006/112/EC, goods imported by taxable persons with a full right of deduction from Switzerland into Austria shall not be subject to value added tax, provided they are used for the construction, maintenance, renewal and operation of the frontier power plant referred to in Article 1.

*Article 3*

This Decision is addressed to Austria.

Done at Brussels,

*For the Council  
The President*