Council Implementing Decision (EU) 2019/2244 of 16 December 2019 authorising Spain and France to apply a special measure derogating from Article 5 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2019/2244

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authorising Spain and France to apply a special measure derogating from Article 5 of Directive 2006/112/EC on the common system of value added tax

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 the first subparagraph of Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter registered on 23 May 2019 and by letter registered on and 17 June 2019 with the Commission, France and Spain, respectively, requested authorisation to introduce a special measure derogating from Article 5 of Directive 2006/112/EC in relation to the construction of an electricity interconnection between Gatica in Spain and Cubnezais in France ('the special measure').

(2) By letters dated 10 September 2019, the Commission transmitted to the other Member States, pursuant to the second subparagraph of Article 395(2) of Directive 2006/112/EC, the requests made by Spain and France. By letters dated 11 September 2019, the Commission notified Spain and France that it had all the information it considered necessary for appraisal of the requests.

(3) The national electricity market regulator of Spain, the *Comisión Nacional de los Mercados y la Competencia*, and the national electricity market regulator of France, the *Commission de Régulation de l'Energie*, signed an agreement on 22 September 2017 to finance an electricity interconnection between Spain and France across the Bay of Biscay. Construction of the interconnection was entrusted to the electricity transmission system operators in Spain and France, *Red Eléctrica de España* and *Réseau de transport d'Electricité*. That agreement provides for the costs of the project to be borne in equal shares: 50 % by Spain and 50 % by France.

(4) By means of the special measure, the electricity interconnection between Gatica in Spain and Cubnezais in France is to be treated as being situated 50 % in Spain and 50 % in France for the purposes of supplies of goods and services, intra-Community acquisition of goods and importation of goods intended for its construction.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Decision (EU) 2019/2244. (See end of Document for details)*

(5) Without the special measure, it would be necessary to ascertain for each supply whether the place of taxation is within Spain or France in accordance with the principle of territoriality.

(6) Based on the information provided by Spain and France, the special measure will simplify the procedure for collecting VAT and the overall amount of the tax revenue of Spain and France collected at the stage of final consumption will be affected only to a negligible extent. It is therefore appropriate to authorise Spain and France to apply the special measure.

(7) The derogation will have no impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 5 of Directive 2006/112/EC, Spain and France are authorised to consider the electricity interconnection between Gatica in Spain and Cubnezais in France as being situated 50 % on the territory of Spain and 50 % on the territory of France for the purposes of supplies of goods and services, intra-Community acquisitions of goods and importations of goods intended for its construction.

Article 2

This Decision shall take effect on the date of its notification.

Article 3

This Decision is addressed to the Kingdom of Spain and the French Republic.

Done at Brussels, 16 December 2019.

For the Council

The President

J. LEPPÄ