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2023/0309 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union
within the Trade Specialised Committee on Administrative Cooperation in VAT and
Recovery of Taxes and Duties established by
the Trade and Cooperation Agreement between the European Union and the European
Atomic Energy Community, of the one part,
and the United Kingdom of Great Britain and Northern Ireland, of the other part**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the European Union's behalf in the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties in connection with the envisaged adoption of the decisions for the implementation of the Protocol on administrative cooperation and combating fraud in the field of value added tax and on mutual assistance for the recovery of claims relating to taxes and duties ('the VAT Protocol'), as laid down in Article PVAT.39(2) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('the Agreement' or TCA).

2. CONTEXT OF THE PROPOSAL

2.1. The EU-UK Trade and Cooperation Agreement

According to Article 120 TCA Agreement, the competent authorities of the Parties shall cooperate with each other to ensure compliance with VAT legislation and in recovering claims relating to taxes and duties in accordance with the VAT Protocol.

The objective of this Protocol is to establish the framework for administrative cooperation between the Member States and the United Kingdom, in order to enable their authorities to assist each other in ensuring compliance with VAT legislation and in protecting VAT revenue and in recovering claims relating to taxes and duties.

2.2. The Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties

According to Article 8(1)(k) TCA, the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties is established to address matters covered by the VAT Protocol.

According to Article PVAT.39(1), this Trade Specialised Committee shall hold regular consultations and review the operation and effectiveness of the VAT Protocol at least every 5 years. It shall also, according to Article PVAT.39(2), adopt decisions or recommendations to implement all aspects of the VAT Protocol.

2.3. The envisaged acts of the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties

The purpose of the envisaged acts is to adopt measures that are necessary to implement the VAT Protocol, as laid down in Article PVAT.39(2).

The envisaged acts will become binding on the Parties in accordance with Article 10 TCA.

In substance, the four decisions will cover:

A decision establishing the electronic forms to be used for the communication for administrative cooperation and tax recovery assistance requests, information and feedback between the UK and the Member States, the competent authorities designated for the exchange of information, the content and the format of the statistical data to be communicated.

A decision establishing the rules for the execution of tax recovery requests, including precautionary measures concerning recovery assistance.

A decision for concluding a Service Level Agreement, which will establish the technical quality and quantity of the services for the functioning of the communication and information exchange systems between the UK and the Commission, and between the UK and the Member States for the exchange of forms.

A decision determining the UK financial contributions to the EU budget for the one-off adaption of the electronic forms for VAT administrative cooperation and tax recovery, and an annual contribution covering the expenditures related to the development, maintenance and upgrade of the IT solutions used (CCN, e-forms, etc).

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The position to be taken by the European Union within the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties should be established by the Council. The position refers to the adoption of the decisions for the full implementation of the VAT Protocol as provided for in Article PVAT.39(2). The initiative will result in improved VAT administrative cooperation and recovery of claims related to taxes and duties.

The proposed procedure does not affect the substance as such of the TCA. Therefore, it does not require an impact assessment.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’

4.1.2. Application to the present case

The Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties is a body set up by an agreement, namely the TCA.

The acts which this Trade Specialised Committee is called upon to adopt constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article 10 TCA.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely

incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged acts relate to the full implementation of the VAT Protocol, as laid down in Article PVAT.39(2). Since the provisions concern harmonisation of indirect taxation, Article 113 TFEU is also applicable as legal basis.

4.3. Conclusion

The legal basis of the proposed decision should be Article 113 TFEU, in conjunction with Article 218(9) thereof.

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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, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, ¹ ('the Trade and Cooperation Agreement') was concluded by the Union and the European Atomic Energy Community on 30 December 2020 and entered into force on 1 May 2021.
- (2) The Trade and Cooperation Agreement and in particular its Protocol on administrative cooperation and combating fraud in the field of value added tax and on mutual assistance for recovery of claims relating to taxes and duties ('the Protocol') provides for a solid legal framework for cooperation with regard to the fight against fraud and the recovery of claims. Such cooperation will benefit from most of the tools currently used by the Member States for administrative cooperation and the recovery of claims.
- (3) The Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties ('the Trade Specialised Committee') set up by the Trade and Cooperation Agreement is to make recommendations and adopt decisions, in order to ensure the proper functioning and implementation of the Protocol.
- (4) During its third meeting, the Trade Specialised Committee is to adopt the procedure for the conclusion of service level agreements and other decisions concerning the proper implementation and functioning of the Protocol.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the Trade Specialised Committee, as the service level agreements and other decisions will be binding on the Union.

¹ OJ L 149, 30.04.2021, p. 10.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the third meeting of the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, shall be based on the draft decisions of the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties attached to this Decision.

The text of the decisions is attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council

The President