



EUROPEAN COMMISSION

Brussels, 23.6.2011  
SEC(2011) 797 final

Recommendation for a

**COUNCIL DECISION**

**authorising the Commission to negotiate an agreement with the French Republic on behalf of its territory of Saint-Barthélemy providing for the application, as regards this territory, of the Union legislation on administrative cooperation in the field of taxation**

## EXPLANATORY MEMORANDUM

1. The island of Saint-Barthélemy is currently part of the territory of the French Republic and one of the outermost regions of the EU according to Art. 349 TFEU, to which the Treaties apply (Art. 355(1) TFEU). By virtue of European Council Decision 2010/718/EU of 29 October 2010<sup>1</sup>, it will cease being an outermost region and acquire the status of an overseas country or territory. It will thereby be placed outside the territorial scope of the EU Treaties, with effect from 1 January 2012.
2. France has undertaken to conclude the agreements necessary to ensure that the interests of the Union are preserved when this change takes place. As regards more particularly the area of taxation, the recitals of the above mentioned Decision of the European Council recall that France has undertaken to conclude the agreements necessary to guarantee that the mechanisms of 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 and Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, which aim in particular at combating fraud and cross-border tax evasion, will continue to apply in the future to the territory of Saint-Barthélemy.

The aim of the agreement thus envisaged is to ensure that cooperation in tax matters, regarding the territory of Saint-Barthélemy, can take place at the same standards as within the Union. The terms of the agreement need to take account of this aim, by allowing to integrate further evolutions of EU legislation in the area. For the purposes of illustration, it is useful to describe below the developments that are currently on-going.

3. Since the adoption of the above mentioned European Council Decision, Directive 77/799/EEC has been replaced by Directive 2011/16/EU on administrative cooperation in the field of taxation<sup>2</sup>. This directive provides the basis for more efficient cooperation and information exchange between tax authorities in the EU, in line with the current international standards in the area. Member States shall bring into effect the measures provided for by the Directive from 1 January 2013. Since Directive 2011/16/EU, and thus the timetable for its implementation, are already in existence, it appears appropriate to include a reference to this Directive into the negotiating directives.
4. As regards Directive 2003/48/EC, the Commission has presented an amendment proposal<sup>3</sup>, with a view to closing loopholes and increasing the efficiency of the current mechanisms. This proposal is currently under discussion in the Council.

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<sup>1</sup> OJ L 325, 9.12.2010, p. 4.

<sup>2</sup> OJ L 64, 11.3.2011, p. 1.

<sup>3</sup> Proposal for a Council Directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments, COM (2008)727.

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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 218 (3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) By virtue European Council Decision 2010/718/EU of 29 October 2010<sup>4</sup>, Saint-Barthélemy will cease being an outermost region and acquire the status of an overseas country or territory, with effect from 1 January 2012.
- (2) It is appropriate that administrative cooperation on taxation between the authorities of the Member States and those from Saint-Barthélemy would continue after that date on the basis of the Union legislation on that matter.
- (3) To that effect an agreement should be negotiated with the French Republic acting on behalf of its territory of Saint-Barthélemy,

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<sup>4</sup> OJ L 325, 9.12.2010, p. 4.

HAS ADOPTED THIS DECISION:

*Article 1*

The Commission is authorised to negotiate on behalf of the European Union an agreement with the French Republic concerning administrative cooperation in the field of taxation as regards its territory of Saint-Barthélemy.

*Article 2*

The Commission shall conduct the negotiations in accordance with the negotiating directives set out in the Annex, and in consultation with the [*special committee to be designated in accordance with Art. 218(4) TFEU*]

*Article 3*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*

## ANNEX

### NEGOTIATING DIRECTIVES

#### 1. Objective

The objective is to come to an agreement with the French Republic acting on behalf of its territory Saint-Barthélemy providing for the application, as regards this territory, of the regimes foreseen currently,

- on the one hand, by Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member State in the field of direct taxation and taxation of insurance premiums and, as from 1 January 2013, by Council Directive 2011/16/EU on administrative cooperation in the field of taxation and which repeals Directive 77/799/EEC and,

- on the other hand, by Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest.

Further legislative developments in the areas regulated by these Directives should be taken into account, so that the regimes applicable to Saint-Barthélemy would equal the ones applicable to mainland France. This should be ensured through appropriate provisions.

#### 2. Scope of application

The agreement should cover the regimes of the two Directives referred above. As regards Directive 2003/48/EC, the agreement should cover interest payments, as defined by Article 6 of the Directive made by paying agents established in the St. Barthélemy to beneficial owners resident within the Union. If France so desires, it shall also apply to interest payments made by paying agents established in the territory of a Member State to beneficial owners resident in St. Barthélemy.

#### 3. Duration of the agreement

The agreement shall be of indefinite duration.