COMMISSION DECISION

of 26 November 2009

authorising France to conclude an agreement with Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna respectively for transfers of funds between France and each of these territories to be treated as transfers of funds within France, pursuant to Regulation (EC) No 1781/2006 of the European Parliament and of the Council

(notified under document C(2009) 9254)

(Only the French text is authentic)

(2009/853/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds [1], and in particular Article 17 thereof,

Having regard to the application from France,

Whereas:

(1) On 28 November 2007, France requested a derogation under Article 17 of Regulation (EC) No 1781/2006 for the transfers of funds between Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna respectively and France.

(2) In accordance with Article 17(2) of Regulation (EC) No 1781/2006, transfers of funds between Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna respectively and France have been provisionally treated as transfers of funds within France from 4 December 2007.

(3) Member States were informed at the meeting of the Committee for the Prevention of Money Laundering and Terrorist Financing of 16 June 2009 that the Commission considered that it had received the information necessary for appraising the request made by France.

(4) Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna do not form part of the territory of the Community as determined in accordance with Article 299 of the EC Treaty. However, Saint-Pierre-et-Miquelon and Mayotte through a Council Decision of 31 December 1998 as well as New Caledonia, French Polynesia and Wallis and Futuna through Protocol 27 on France annexed to the Treaty of the European Community form part of the currency area of France. Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna therefore comply with the criterion set out in Article 17(1)(a) of Regulation (EC) No 1781/2006.

(5) Payment services providers in Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna participate directly in payment and settlement systems in France, namely either CORE or Target2-Banque de France. They therefore comply with the criterion set out in Article 17(1)(b) of Regulation (EC) No 1781/2006.

(6) EC regulations to be applicable to Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna require the adoption by France of specific legislation to this effect. The adoption by France of Order No 2009-102 of 30 January 2009 on information on the payer accompanying transfers of funds to and from Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna ensures that those territories have incorporated into their legal order provisions corresponding to those of Regulation (EC) No 1781/2006.

(7) Order No 2009-103 of 30 January 2009 concerning the freezing of assets notably in the fight against terrorism financing ensure that appropriate measures are in place in to Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna to impose financial penalties vis-à-vis entities or persons listed by the United Nations or the European Union.

(8) Order No 2006-60 of 19 January 2006 modernising the financial and economic law applicable to Mayotte, New Caledonia, French Polynesia and Wallis and Futuna, Decree No 2006-736 of 26 June 2006 concerning the fight against money laundering and modifying the financial and monetary code and Law No 2004-130 of 11 February 2004 reforming the statute of some judiciary and legal professions ensure that Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna have in place an anti-money laundering regime equivalent to that in application on the French territory as regards transfers of funds.

[1] OJ L 345, 8.12.2006, p. 1.

(9) Therefore, Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna have adopted the same rules as those established under Regulation (EC) No 1781/2006 and require their respective payment services providers to apply them, thus fulfilling the criterion set out in Article 17(1)(c) of that Regulation.

(10) It is therefore appropriate to grant to France the requested derogation.

(11) The measures provided for in this Decision are in accordance with the opinion of the Committee on the Prevention of Money Laundering and Terrorist Financing,

HAS ADOPTED THIS DECISION:

Article 1

France shall be authorised to conclude an agreement with Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna respectively, to the effect that the transfers of funds between Saint-Pierre-et-Miquelon, Mayotte, New Caledonia, French Polynesia and Wallis and Futuna respectively and France are treated as transfers of funds within France for the purposes of Regulation (EC) No 1781/2006.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 26 November 2009.

For the Commission

Charlie McCREEVY

Member of the Commission