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2018/0376 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision 2010/99/EU authorising the Republic of Lithuania to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive'¹), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogation from the provisions of that Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Commission on 27 April 2018, the Republic of Lithuania requested the authorisation to continue to apply a measure derogating from Article 193 of the VAT Directive, which determines the person liable for the payment of VAT. By letter registered with the Commission on 23 July 2018, the Republic of Lithuania submitted a report on the application of that measure.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 16 August 2018 of the request made by the Republic of Lithuania, except for Spain and Cyprus who have been informed by letters dated 17 August 2018. By letter dated 20 August 2018, the Commission notified the Republic of Lithuania that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

As a general rule, Article 193 of the VAT Directive stipulates that the taxable person supplying goods or services is normally liable to pay VAT.

Pursuant to Article 395 of the VAT Directive, Member States may apply measures derogating from the provisions of the VAT Directive to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance if they have been authorised by the Council.

The Republic of Lithuania requested to continue to apply the reverse charge mechanism to supplies of timber and to supplies of goods and services by a taxable person under an insolvency or a restructuring procedure subject to judicial oversight, i.e. to make the person to whom these goods or services are supplied liable for the payment of VAT.

The derogating measure for the Republic of Lithuania had initially been granted by Council Decision 2006/388/EC of 15 May 2006² for a period until 31 December 2009 and was again granted by Council Implementing Decision 2010/99/EU of 16 February 2010³ until 31 December 2012 and by Council Implementing Decision 2012/704/EU of 13 November 2012⁴ until 31 December 2015 and by Council Implementing Decision (EU) 2015/2395 of 10 December 2015⁵ until 31 December 2018.

In its current request and its evaluation report, the Republic of Lithuania informed the Commission that the application of the reverse charge mechanism to supplies of timber and to supplies of goods and services by a taxable person under an insolvency or restructuring procedure has proven to be very effective in order to prevent fraud. The reverse charge mechanism is not only a means for controlling and collecting VAT more easily for the tax administration, but also encourages taxpayers to meet their obligations. According to the

¹ OJ L 347, 11.12.2006, p. 1.

² OJ L 150, 3.6.2006, p.13.

³ OJ L 45, 20.2.2010, p. 10.

⁴ OJ L 319, 16.11.2012, p.7.

⁵ OJ L 332, 18.12.2015, p.140.

Republic of Lithuania, the number of infringements in the above-mentioned areas has fallen significantly since the introduction of the reverse charge mechanism. Moreover, this special measure does not have a negative impact on the total amount of VAT revenue collected at the final stage of consumption and thus, does not affect the Union's VAT own resources in a negative way.

Derogations are in general granted for a limited period of time as to allow an assessment whether the special measure is appropriate and effective and in order to grant Member States time to introduce other conventional measures to tackle the respective problem until the expiry of the derogating measure, thus making an extension of the derogation redundant. A derogation allowing making use of the reverse charge mechanism is only granted exceptionally for specific fraudulent areas and constitutes a means of last resort.

Taking into consideration the unchanged legal and factual situation, it is therefore proposed to extend the derogating measure the last time, allowing the Republic of Lithuania to continue to apply this derogating measure until 31 December 2021. Until the expiry of this derogation the Republic of Lithuania should implement other conventional measures to fight and prevent further spreading of VAT fraud in the sector of timber and in the situation of taxable persons under insolvency or restructuring procedures. As a consequence there should be no further need to derogate from Article 193 of Directive 2006/112/EC with regard to these supplies.

- **Consistency with existing policy provisions in the policy area**

Similar derogations in relation to Article 193 of the VAT Directive have been granted to other Member States.

The proposed measure is, therefore, consistent with the existing provisions of the VAT Directive.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 395 of the VAT Directive.

- **Subsidiarity (for non-exclusive competence)**

Considering the provision of the VAT Directive on which the proposal is based, the subsidiarity principle does not apply.

- **Proportionality**

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

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

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 395 of Council Directive 2006/112/EC, a derogation from the common VAT provisions is only possible upon authorisation of the Council acting unanimously on a proposal from the Commission. A Council Implementing Decision is the most suitable instrument since it can be addressed to an individual Member State.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

This proposal is based on a request made by the Republic of Lithuania and concerns only this Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for a Council Implementing Decision authorises the Republic of Lithuania to continue to apply the reverse charge mechanism to supplies of timber and to supplies of goods and services by a taxable person under an insolvency or a restructuring procedure subject to judicial oversight for a limited period of time. This mechanism aims at fighting fraud in the given sectors. It also simplifies the collection and the controls of the correct payments of VAT for the tax administration and encourages taxpayers to meet their obligations.

According to the Republic of Lithuania, the extension of this measure will not have a negative impact on the total amount of VAT revenue collected at the final stage of consumption and thus, does not affect the Union's VAT own resources in a negative way.

4. BUDGETARY IMPLICATIONS

The proposal has no implication on the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal is limited in time.

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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 tax¹, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Decision 2006/388/EC² authorised Lithuania to apply a measure derogating from Article 21 of Directive 77/388/EEC³ to designate the taxable person to whom the supplies of goods and services in the case of insolvency procedures or restructuring procedures subject to judicial oversight and supplies of timber are made as the person liable to pay value added tax (VAT) due on the supplies of those goods and services.
- (2) By Council Implementing Decision 2010/99/EU⁴ Lithuania was, by way of derogation from Article 193 of Directive 2006/112/EC, authorised until 31 December 2012 to continue to designate the taxable person to whom the following supplies of goods and services are made as the person liable for the payment of VAT: supplies of goods and services by a taxable person while under an insolvency procedure or a restructuring procedure subject to judicial oversight and supplies of timber. The authorisation to apply the derogating measure was subsequently extended by Council Implementing Decision 2012/704/EU⁵ until 31 December 2015 and by Council Implementing Decision (EU) 2015/2395⁶ until 31 December 2018.

¹ OJ L 347, 11.12.2006, p. 1.

² Council Decision 2006/388/EC of 15 May 2006 authorising the Republic of Lithuania to apply a measure derogating from Article 21 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 150, 3.6.2006, p. 13).

³ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1).

⁴ Council Implementing Decision 2010/99/EU of 16 February 2010 authorising the Republic of Lithuania to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 45, 20.2.2010, p. 10).

⁵ Council Implementing Decision 2012/704/EU of 13 November 2012 amending Implementing Decision 2010/99/EU authorising the Republic of Lithuania to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 319, 16.11.2012, p. 7).

⁶ Council Implementing Decision (EU) 2015/2395 of 10 December 2015 amending Implementing Decision 2010/99/EU authorising the Republic of Lithuania to extend the application of a measure

- (3) By letter registered with the Commission on 27 April 2018, Lithuania requested the authorisation to continue to apply a measure derogating from Article 193 of Directive 2006/112/EC to supplies of timber and supplies of goods and services by a taxable person under an insolvency procedure or a restructuring procedure subject to judicial oversight. By letter registered with the Commission on 23 July 2018, a report on the application of that measure as required by the third paragraph of Article 2 of Implementing Decision 2010/99/EU has been submitted to the Commission by Lithuania.
- (4) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letters, dated 16 August 2018, of the request made by Lithuania, with the exception of Spain and Cyprus informed by letters dated 17 August 2018. By letter dated 20 August 2018, the Commission notified Lithuania that it had all the information necessary to consider the request.
- (5) Taxable persons under insolvency procedures or restructuring procedures are often prevented from paying VAT invoiced on their supplies of goods and services by financial difficulties. Lithuania also faces problems in the timber market, because of the nature of the market and the businesses involved. The market is dominated by small local companies, often resellers and intermediaries, which the tax authorities have found difficult to control. The most common form of evasion involves the invoicing of supplies followed by the disappearance of the business without paying tax but leaving the customer in receipt of a valid invoice for tax deduction. According to Lithuania this situation, which has justified the application of the derogating measure has not changed, but continues to exist. The investigations and the analysis of the application of the derogating measure carried out by the Lithuanian tax authorities have revealed its effectiveness to prevent VAT fraud in respect of taxable persons under insolvency or restructuring procedures as well as of timber transactions.
- (6) Lithuania should therefore be authorised to apply the derogating measure for a further limited period until 31 December 2021.
- (7) Derogations are in general granted for a limited period of time to allow an assessment whether the derogating measure is appropriate and effective. Derogations grant Member States time to introduce other conventional measures to tackle the respective problem until the expiry of the derogating measure, thus making an extension of the derogation redundant. A derogation allowing making use of the reverse charge mechanism is only granted exceptionally for specific fraudulent areas and constitutes a means of last resort. Lithuania should therefore implement other conventional measures to fight and prevent further spreading of VAT fraud in the sector of timber and in the situation of taxable persons under insolvency or restructuring procedures until the expiry of this derogation and consequently should no longer need to derogate from Article 193 of Directive 2006/112/EC with regard to these supplies.
- (8) The derogating measure will have no adverse impact on the Union's own resources accruing from VAT.
- (9) Implementing Decision 2010/99/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 332, 18.12.2015, p. 140).

Article 1

Article 2 of Implementing Decision 2010/99/EU is replaced by the following:

'Article 2

This Decision shall apply until 31 December 2021.'

Article 2

This Decision shall apply from 1 January 2019.

Article 3

This Decision is addressed to the Republic of Lithuania.

Done at Brussels,

*For the Council
The President*