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Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision 2009/1008/EU authorising the Republic of Latvia 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 20 June 2018, the Republic of Latvia (hereinafter Latvia) 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 17 August 2018, Latvia sent a report on the application of that measure as required by Article 2 of Council Implementing Decision 2009/1008/EC of 7 December 2009² as amended by Council Implementing Decision (EU) 2015/2396 of 10 December 2015³.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 7 September 2018 of the request made by Latvia. By letter dated 10 September 2018, the Commission notified Latvia 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.

Latvia requested to continue to apply the reverse charge mechanism to timber transactions, i.e. to make the person to whom these goods or services are supplied liable for the payment of VAT.

The derogating measure for Latvia had been initially granted by Council Decision 2006/42/EC of 24 January 2006⁴ until 31 December 2009 and by Council Implementing Decision 2009/1008/EU of 7 December 2009⁵ until 31 December 2012. The authorisation to apply the derogation has subsequently been extended by Council Implementing Decision 2013/55/EU of 22 January 2013⁶ until 31 December 2015 and by Council Implementing Decision (EU) 2015/2396 of 10 December 2015⁷ until 31 December 2018.

According to Latvia, the timber market, which is one of the most important sectors of its economy, is particularly sensitive to VAT fraud, because it is dominated by a great number of small local operators and individual suppliers. The nature of the market and of businesses

¹ OJ L 347, 11.12.2006, p. 1.

² OJ L 347, 24.12.2009, p.30.

³ OJ L 332, 18.12.2015, p. 142.

⁴ OJ L 25, 28.1.2006, p. 31.

⁵ OJ L 347, 24.12.2009, p.30.

⁶ OJ L 22, 25.1.2013, p.16.

⁷ OJ L 332, 18.12.2015, p.142.

involved has generated VAT fraud, which the Latvian tax authorities have found difficult to control. In order to combat this abuse, they have introduced the reverse charge mechanism to timber transactions, which has proven to be very effective and has decreased fraud in this sector significantly.

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, according to Latvia.

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 one last time, allowing Latvia to continue to apply this derogating measure until 31 December 2021. Until the expiry of this derogation, Latvia should implement other conventional measures to fight and prevent VAT fraud in the sector of timber. 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 Latvia 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 Latvia to continue to apply the reverse charge mechanism to timber transactions. The situation, on which the initial derogation was based, continues to exist. Latvia claims that despite the fact that there has been a reduction in the number of cases of fraud involving VAT and VAT evasion on the timber market since the introduction of the reverse charge procedure, the risk is not eliminated.

According to Latvia, 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

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 2006/42/EC² authorised Latvia to apply a measure derogating from Article 21(1)(a) of Directive 77/388/EEC³, to designate the recipient as the person liable to pay value added tax (VAT) in the case of timber transactions until 31 December 2009. By Council Implementing Decision 2009/1008/EU⁴ Latvia was, by way of derogation from Article 193 of Directive 2006/112/EC, authorised to continue to designate the recipient as the person liable to pay VAT in the case of timber transactions until 31 December 2012. The authorisation to apply the derogating measure was subsequently extended by Council Implementing Decision 2013/55/EU⁵ until 31 December 2015 and by Council Implementing Decision (EU) 2015/2396⁶ until 31 December 2018.
- (2) By letter registered with the Commission on 20 June 2018, Latvia requested the authorisation to continue to apply a measure derogating from Article 193 of Directive 2006/112/EC to timber transactions. By letter registered with the Commission on 17 August 2018, a report on the application of the measure as required by the second subparagraph of Article 2 of Council Implementing Decision 2009/1008/EC has been submitted by Latvia to the Commission.

¹ OJ L 347, 11.12.2006, p.1.

² OJ L 25, 28.1.2006, p. 31.

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 of 7 December 2009 authorising the Republic of Latvia 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 347, 24.12.2009, p. 30).

⁵ Council Implementing Decision of 22 January 2013 amending Implementing Decision 2009/1008/EU authorising the Republic of Latvia 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 22, 25.1.2013, p. 16).

⁶ Council Implementing Decision (EU) 2015/2396 of 10 December 2015 amending Implementing Decision 2009/1008/EU authorising the Republic of Latvia 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 332, 18.12.2015, p. 142).

- (3) 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 7 September 2018 of the request made by Latvia. By letter dated 10 September 2018, the Commission notified Latvia that it had all the information necessary to consider the request.
- (4) According to Latvia, the timber market, which is one of the most important sectors of its economy, is particularly sensitive to VAT fraud, because it is dominated by a great number of small local operators and individual suppliers. The nature of the market and of businesses involved has generated VAT fraud, which the Latvian tax authorities have found difficult to control. In order to combat this abuse, they have introduced the reverse charge mechanism to timber transactions, which has proven to be very effective and has decreased fraud in this sector significantly.
- (5) Latvia should therefore be authorised to apply the derogating measure for a further limited period of time until 31 December 2021.
- (6) 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. Latvia should therefore implement other conventional measures to fight and prevent VAT fraud in the sector of timber 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.
- (7) The derogating measure will have no adverse impact on the Union's own resources accruing from VAT.
- (8) Implementing Decision 2009/1008/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Implementing Decision 2009/1008/EU is replaced by the following:

'Article 2

This Decision shall apply until 31 December 2021.'

Article 2

This Decision shall apply as from 1 January 2019.

Article 3

This Decision is addressed to the Republic of Latvia.

Done at Brussels,

*For the Council
The President*