



EUROPEAN COMMISSION

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2012/0200 (NLE)

Proposal for a

COUNCIL DECISION

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

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

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

By letter registered with the Commission on 8 February 2012, the Republic of Lithuania (hereafter 'Lithuania') requested authorisation to continue to apply a measure derogating from Article 193 of the VAT Directive.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 4 April 2012 of the request made by Lithuania. By letter dated 11 April 2012, the Commission notified Lithuania that it had all the information it considered necessary for appraisal of the request.

General context

The Lithuanian government asks to extend the current application of a reverse charge mechanism in relation to supplies of timber and supplies by taxable persons under judicial insolvency or restructuring procedures.

As regards the supplies of timber, Lithuania was confronted with a considerable number of traders that failed to comply with their obligations. Businesses in this sector are frequently small resellers and intermediaries, which often disappear without paying to the tax authorities the tax they charged on their supplies but leaving their customers in receipt of a valid invoice for VAT deduction.

Taxable persons under judicial insolvency or restructuring procedures often did not pay the VAT they had received from their customers to the tax authorities. However, the purchaser could, as a compliant trader, still deduct the VAT incurred.

Under the reverse charge mechanism, by derogating from a general rule provided in Article 193 of the VAT Directive, the customer (in case he is a taxable person) becomes liable for the payment of the VAT on domestic transactions.

This derogating measure had initially been granted by Council Decision 2006/388/EC of 15 May 2006 ⁽²⁾ (it also included supplies of ferrous waste and scrap and construction work, which are now covered by Article 199 of the VAT Directive). The application of the derogating measure for supplies of timber and supplies by taxable persons under judicial

¹ OJ L 347, 11.12.2006, p. 1.

² OJ L 150, 3.6.2006, p. 13–14

insolvency or restructuring procedures was extended by Council Implementing Decision 2010/99/EU of 16 February 2010⁽³⁾.

The Commission understands that the situation, on which the initial derogation was based, continues to exist. Lithuania claims that, based on the results of tax investigations, the derogation proved to be effective both for supplies of timber and supplies by taxable persons under judicial insolvency or restructuring procedures. The derogation should therefore be granted for another limited period.

In case Lithuania would consider another extension of the derogating measure beyond 2015, an evaluation report should be submitted to the Commission together with that extension request no later than 1 April 2015.

Existing provisions in the area of the proposal

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

Consistency with the other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Not relevant.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

The proposal for a Council Decision aims at simplifying the procedure for charging the tax and at combating possible VAT evasion or avoidance and has therefore a potential positive economic impact.

The impact will in any case be limited because of the narrow scope of the derogation.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The Decision authorises Lithuania to continue to apply a measure derogating from Article 193 of the VAT Directive as regards the use of a reverse charge mechanism in case of supplies of

³ OJ L 45, 20.2.2010, p. 10–11

timber and in case of supplies of goods and services by businesses under an insolvency or restructuring procedure subject to judicial oversight.

Legal basis

Article 395 of the VAT Directive.

Subsidiarity principle

In accordance with Article 395 of the VAT Directive, a Member State wishing to introduce measures derogating from the said Directive must obtain an authorisation from the Council, which will take the form of a Council Decision. Therefore, the proposal complies with the subsidiarity principle.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons.

This 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 instruments

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. Moreover, a Council Decision is the most suitable instrument since it can be addressed to individual Member States.

4. BUDGETARY IMPLICATION

The proposal has no implication for the EU budget.

5. OPTIONAL ELEMENTS

Review/revision/sunset clause

The proposal includes a sunset clause.

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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 291(2) thereof,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽⁴⁾, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Commission on 8 February 2012, the Republic of Lithuania (hereafter 'Lithuania') requested authorisation to continue to apply a measure derogating from the provisions of Directive 2006/112/EC governing the person liable for the payment of the value added tax (VAT) to tax authorities.
- (2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Lithuania in a letter dated 4 April 2012. By a letter dated 11 April 2012, the Commission notified Lithuania that it had all the information that it considered necessary to consider the request.
- (3) 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 ⁽⁵⁾ authorized Lithuania inter alia to make the recipient liable for the VAT due on the supply of goods and services in the case of insolvency procedures or restructuring procedures subject to judicial oversight and supply of timber.
- (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 ⁽⁶⁾ extended the application of the mentioned derogating measure.

⁴ OJ L 347, 11.12.2006, p. 1.

⁵ OJ L 150, 3.6.2006, p. 13–14

⁶ OJ L 45, 20.2.2010, p. 10–11

- (5) The tax investigations and the analysis carried out by the Lithuanian tax authorities revealed the effectiveness of the derogating measure in question.
- (6) The Commission understands that the legal and factual situation which justified the current application of the derogating measure in question has not changed and continues to exist. Lithuania should therefore be authorised to apply the measure during a further limited period.
- (7) In case Lithuania would consider another extension of the derogating measure beyond 2015, an evaluation report should be submitted to the Commission together with that extension request no later than 1 April 2015.
- (8) The derogation will not adversely affect the European Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

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

'Article 2

This Decision shall take effect on the day of its notification.

It shall apply from 1 January 2013 until 31 December 2015. Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission no later than 1 April 2015 and shall be accompanied by a report which includes a review of the application of this measure.'

Article 2

This Decision is addressed to the Republic of Lithuania.

Done at Brussels,

*For the Council
The President*