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COM(2020) 201 final

2020/0084 (CNS)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2017/2454 as regards the dates of application due to the outbreak of the COVID-19 crisis

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 5 December 2017, the Council adopted Council Regulation (EU) 2017/2454[1], which is part of the package of legislation on modernising VAT for cross-border B2C e-commerce ('VAT e-commerce package'). It amends Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax[2], which provides the basis for the underlying IT infrastructure and the necessary cooperation by Member States to ensure the success of the extension of the Mini One Stop Shop (MOSS).

The date of application of the amendments laid down in Regulation (EU) 2017/2454 was fixed to be 1 January 2021.

The Commission presented a state of play of the readiness of Member States on 14 February 2020, whereby most Member States confirmed that they would be in a position to apply the rules by due date. Two Member States raised concerns and requested a postponement for the entry into application by one year or more. The Commission offered assistance to those Member States encountering difficulties in order to help them overcome these hurdles and remained confident that Member States would be ready by 1 January 2021.

However, due to the unforeseen outbreak of the COVID-19 crisis and its major impact, Member States had to shift priorities and re-allocate resources from the implementation of the VAT e-commerce package to fighting this pandemic. Therefore, other Member States cannot guarantee anymore to be able to finalise the preparatory work to apply the new rules by 1 January 2021, including the rules on administrative cooperation. The IT system at national level required to implement the new VAT e-commerce rules, including those laid down in Regulation (EU) 2017/2454, seriously risks to be delayed and thus jeopardises several Member States to be ready to apply the new rules as of 1 January 2021. Similar concerns were raised by key economic operators, especially postal and courier operators, who urged the Commission to postpone the date of application of the VAT e-commerce package by 6 months due to the COVID-19 crisis.

The Commission held a meeting with Member States on 24 April 2020 to assess their readiness to apply the new rules as of 1 January 2021. The majority of Member States still confirmed to be ready to apply them on time, but stressed that the provisions on the functioning of the VAT e-commerce package are based on the principle that all Member States should be in a position to apply them correctly and would therefore be ready to support a postponement not exceeding 6 months.

The objective of this proposal is to postpone the date of application of the amendments of the VAT e-commerce package set out in Regulation (EU) 2017/2454 originally foreseen for 1 January 2021 by six months. The new date of application shall thus be 1 July 2021. A postponement of six months is suggested, because the delay should be kept as short as possible to minimise additional budgetary losses for Member States.

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[1] Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 348, 29.12.2017, p. 1–6.

[2] OJ L 268, 12.10.2010, p. 1.

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

The general objective of this proposal is the smooth functioning of the internal market, the competitiveness of EU business and the need to ensure effective taxation of the digital economy. The VAT e-commerce package is consistent with the future application of the destination principle for VAT as set out in the recent VAT Action plan supported by Council[3].

In addition to the VAT Action Plan, the VAT e-commerce package has been identified as a key initiative in the Digital Single Market Strategy[4] ('DSM Strategy') as well as the Single Market strategy[5] and the E-Government Action Plan[6].

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU). This article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

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

This proposal changes the date of application of the VAT e-commerce package concerning administrative cooperation and combating fraud in the field of value added tax that has been adopted by Council in December 2017. This goes hand in hand with the proposal to postpone the 1 January 2021 date of application of the VAT e-commerce package, including thus all the legal acts affected. This proposal is made as a consequence of and reaction to the outbreak of the COVID-19 crisis, which confronts Member States with challenges at national level to tackle the current emergency situation and which causes some of them difficulties in guaranteeing a timely implementation of the required changes in their domestic IT systems. The provisions on the functioning of the VAT e-commerce package are based on the principle that all Member States should be in a position to apply them correctly.

Given that VAT is a tax harmonised at EU level, Member States cannot by themselves set different rules. Therefore, any initiative to amend the VAT rules for e-commerce, including a change of the date of application, requires a proposal by the Commission and cannot be achieved by unilateral actions at national level.

The proposal is therefore consistent with the subsidiarity principle.

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3 http://www.consilium.europa.eu/en/press/press-releases/2016/05/25-conclusions-vat-action-plan
4 COM(2015) 192 final.
5 COM(2015) 550 final.
6 COM(2016) 179 final.

- **Proportionality**

The proposal is consistent with the principle of proportionality, i.e. it does not go beyond what is necessary to meet the objectives of the TFEU in particular the smooth functioning of the single market. As to the subsidiarity test, it is not possible for Member States to address the issues without a proposal to amend the Council Regulation on administrative cooperation.

- **Choice of the instrument**

This proposal amends Council Regulation (EU) 2017/2454. The only amendment made is the postponement of the date of application.

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

- **Stakeholder consultations**

This proposal reflects the strong concerns some Member States, postal and courier operators have expressed and addressed to the Commission not to be able to finalise the preparatory works of the VAT e-commerce package at national level and apply the rules by 1 January 2021 due to the outbreak of the COVID-19 crisis.

The Commission held a meeting with Member States on 24 April 2020 to assess their readiness to apply the new rules as of 1 January 2021. The majority of Member States still confirmed to be ready to apply them on time, but stressed that the provisions on the functioning of the VAT e-commerce package are based on the principle that all Member States should be in a position to apply them correctly and would therefore be ready to support a postponement not exceeding 6 months.

- **Impact assessment**

An impact assessment was carried out for the proposal which led to the adoption of the VAT e-commerce Directive[7] which is the basis for the amendment of the rules laid down in the Regulation on administrative cooperation. The current proposal only amends the date of application of these amendments.

- **Regulatory fitness and simplification**

The main goal of this proposal is to postpone the date of application of the VAT e-commerce package by six months. The proposal does not change the substance of the rules, but only postpones their date of application.

4. BUDGETARY IMPLICATIONS

This proposal is part of the project to postpone the date of application of the VAT e-commerce package.

The budgetary implications of the already adopted VAT e-commerce package as a whole are set out in detail in the explanatory memorandum of the proposal for Council Directive 2017/2455, document COM(2016)757 final[8].

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[7] COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Proposals for a Council Directive, a Council Implementing Regulation and a Council Regulation on Modernising VAT for cross-border B2C e-Commerce, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2016:0379:FIN

[8] Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods

The budgetary losses for Member States have been estimated at around EUR 5-7 billion yearly if the VAT e-commerce package is not implemented successfully. A delay of 6 months would therefore cause losses of around EUR 2.5-3.5 billion. However, if Member States and businesses are not ready to apply the new VAT e-commerce rules, the risk of the system not working properly could entail almost the same losses.

5. OTHER ELEMENTS

• Detailed explanation of the specific provisions of the proposal

This proposal only concerns the date of application of the already adopted provisions on administrative cooperation of the VAT e-commerce package set out in Regulation (EU) 2017/2454. The date of application of these new rules shall be postponed by six months. This means that the provisions shall be applied as of 1 July 2021 instead of 1 January 2021 and the current rules of the Mini One Stop Shop (Chapter XI, Section 2, Articles 43-47) shall continue to apply until 30 June 2021.

The reason for this proposal is the outbreak of the COVID-19 crisis, which puts Member States under pressure to react immediately and adopt measures urgently at national level to alleviate its consequences for businesses and the population in general. Due to these unprecedented, exceptional circumstances, several Member States will not be able to finalise the preparatory work to apply the new rules of the VAT e-commerce package at national level as of 1 January 2021.

COM/2016/0757 final - 2016/0370 (CNS), https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1586260266830&uri=CELEX:52016PC0757

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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 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Regulation (EU) No 904/2010[3] lays down rules on the exchange and storage of information by Member States in order to establish the special schemes provided for by Chapter 6 of Title XII of Council Directive 2006/112/EC[4].

(2) Council Regulation (EU) 2017/2454[5] amends those provisions in line with the extension of the scope of those special schemes and the introduction of a new scheme. Those amendments are to be applied from 1 January 2021.

(3) On 30 January 2020, the World Health Organisation (WHO) declared the COVID-19 outbreak a public health emergency of international concern. On 11 March 2020, WHO declared the COVID-19 outbreak a pandemic. COVID-19 has provoked infections in all Member States. Due to the alarming increase in the number of cases and the lack of efficient means immediately available to deal with the COVID-19 outbreak, numerous Member States have declared a national state of emergency.

(4) The outbreak of the COVID-19 crisis constitutes an unexpected and unprecedented emergency that deeply affects all Member States and obliges them to take immediate

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1 OJ C , , p. .

2 OJ C , , p. .

3 Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).

4 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

5 Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 348, 29.12.2017, p. 1–6.

action at national level to deal with the ongoing crisis as a priority by reallocating resources to other issues. Due to this crisis, several Member States encounter difficulties in finalising the development of IT systems necessary for the application of the rules laid down in Regulation (EU) 2017/2454 and apply them as of 1 January 2021. Some Member States have therefore asked for the postponement of the dates of application of Regulation (EU) 2017/2454.

(5) Taking into consideration the challenges that Member States are facing to tackle the COVID-19 crisis and the fact that the new provisions are based on the principle that all Member States have to update their IT systems in order to be able to apply the provisions laid down in Regulation (EU) 2017/2454, thus ensuring the collection and transmission of information and payments under the modified schemes, it is necessary to postpone the dates of application of this Regulation by six months. A postponement of six months is appropriate, because the delay should be kept as short as possible to minimise additional budgetary losses for Member States.

(6) Regulation (EU) 2017/2454 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2017/2454 is amended as follows:

(1) in Article 1, point (7) is amended as follows:

(a) in point (a), the heading of Section 2 is replaced by the following:

*'**Provisions applicable from 1 January 2015 until 30 June 2021**';*

(b) point (b) is amended as follows:

(i) the heading of Section 3 is replaced by the following:

'Provisions applicable from 1 July 2021';

(ii) Article 47a is replaced by the following:

'Article 47a

The provisions of this Section shall apply from 1 July 2021.';

(2) in Article 2, the second paragraph is replaced by the following:

'It shall apply from 1 July 2021.'

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President