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2025/0003 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision (EU) 2019/310 as regards the extension of the authorisation given to Poland to apply a special measure derogating from Article 226 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 (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 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 letters registered with the Commission on 27 March 2024 and 1 October 2024, Poland requested authorisation to continue to derogate from Article 226 of the VAT Directive, with regard to value added tax (VAT) invoicing requirements, so as to continue to apply the mandatory split payment mechanism for supplies of goods and services susceptible to fraud in Poland. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States, by letter dated 9 October 2024, of the request made by Poland. By letter dated 10 October 2024, the Commission notified Poland that it had all the information necessary to consider the request.

The derogation for which an extension is requested was initially granted by Council Implementing Decision (EU) 2019/310[1] for a period from 1 March 2019 to 28 February 2022 and a first time extended by Council Implementing Decision (EU) 2022/559 of 5 April 2022[2] for a period until 28 February 2025.

In accordance with the second paragraph of Article 2 of Council Implementing Decision (EU) 2019/310, Poland submitted a report to the Commission on the overall impact on the level of fraud and on the taxable persons that was registered with the Commission on 13 November 2023.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

After a period of a voluntary split payment system, Poland introduced, following Council Implementing Decision (EU) 2019/310, the mandatory split payment mechanism in relation to certain supplies of goods and services susceptible to fraud. This means that, if a supply of goods or services takes place within the scope of that mechanism (invoices, for goods and services within the scope, with a total gross amount (including VAT) above PLN 15 000), the supplier has, in addition to his regular bank account, to have a separate and blocked so-called VAT account. The net amount (excluding VAT) is transferred to the supplier's regular bank account and the VAT amount is transferred to that separate VAT account. While the funds on the blocked account remain the property of the supplier, these funds can only be used for specific purposes, such as the payment of VAT due to the tax authority or VAT resulting from invoices received from other suppliers. In case of surplus of input VAT over output VAT, a refund has to take place within 60 days to the taxable person's regular account.

As for the system to function, it is necessary that invoices, for supplies within the scope of the split payment mechanism, include a special statement that VAT shall be paid to the separate VAT bank account of the supplier for payments made by bank transfers. As to enable this, it

[1] Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax (OJ L 51, 22.2.2019, p. 19–27).

[2] Council Implementing Decision (EU) 2022/559 of 5 April 2022 amending Implementing Decision (EU) 2019/310 as regards the authorisation granted to Poland to continue to apply the special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax (OJ L 108, 7.4.2022, p. 51-59).

is necessary to derogate from Article 226 of the VAT Directive that lays down that only details, enumerated in that article, can be required on invoices; details as regards a split payment mechanism are not provided for in that article.

After, as mentioned above, a first extension for a period until the end of February 2025, Poland has now requested another extension as they consider that the derogating measure, necessary for the functioning of the split payment mechanism, had a positive impact.

Apart from the extension, Poland has asked to replace the current annex of goods and services of which the supplies are subject to the split payment mechanism. Currently, the list is based on the Polish Classification of Goods and Services (PKWiU 2015). However, it is planned in national legislation to replace the national classification system by the Combined Nomenclature for the identification of goods. To avoid the need to update the derogation during its application period, Poland has requested to replace the list with 150 individual items by an aggregated and simplified list of 13 categories covering the same subject matter. Poland has confirmed that, by introducing this simplified list, the scope of the derogation will not be extended.

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

The derogation is based on Article 395 of the VAT Directive with a view to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance. Poland requested the derogating measure to fight tax evasion in the sectors in which VAT fraud has been detected for years. The derogation is consistent with the existing policy provisions.

In this context, it is to be noted that, by Council Implementing Decision (EU) 2023/1552[3], Italy was authorised to extend a similar derogation in relation to the application of the split payment mechanism for certain specific supplies.

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 proposal complies with the proportionality principle for the following reasons.

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

The derogation is limited in time and the scope is targeted to supplies of goods and services in specific sectors which raise considerable problems of tax fraud.

Given the broad scope of the derogation, a report on the functioning and the effectiveness of the measure on the level of VAT fraud and on the taxable persons (regarding the refunds of

[3] Council Implementing Decision (EU) 2023/1552 of 25 July 2023 amending Implementing Decision (EU) 2017/784 as regards the period of authorisation for, and the scope of, the special measure derogating from Articles 206 and 226 of Directive 2006/112/EC on the common system of value added tax taken by Italy (OJ L 188, 27.7.2023, p. 45-47)

VAT, the administrative burden, possible costs for taxable persons etc.) is to be submitted in case Poland would request to be authorised to prolong the special measure.

Therefore, the special measure is proportionate to the aim pursued, i.e. to combat tax evasion and simplify tax collection.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 395 of the VAT Directive, derogation from the common VAT rules 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 Poland 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 Poland to continue to derogate from Article 226 of the VAT Directive as to enable the functioning of the mandatory split payment mechanism for the VAT payment on specific supplies of goods and services as set out in a restrictive list.

As mentioned, Poland has submitted a report to the Commission as requested by the previous derogation.

From this report, it appears that, since the last extension, the mandatory split payment mechanism has continued to contribute to the decrease of (carousel) fraud, tax avoidance and tax evasion. Further, this mechanism has provided the security to the customer that he cannot involuntarily be involved in fraudulent practices of the supplier for which he could be held jointly and severally liable.

VAT refunds and the release of funds from the VAT accounts have sped up (from an average of 27,56 days in 2018 to 19,41 days in 2022) and improved the financial liquidity of the taxable persons. Administrative costs have decreased as the mechanism has replaced, in a number of cases, the reverse charge mechanism for which more reporting obligations were required. Further, taxable persons, either established in Poland or in another Member State, do not incur costs for the opening of a VAT account with a bank in Poland. In case a bank would charge fees for keeping a VAT account, these incurred costs are reimbursed by the competent tax authority.

Some other key figures and findings from the report are set out below.

Before the entry into force of the measure, it was established that the overall VAT fraud equalled to PLN 5 168 779 146 in 2018. This decreased to PLN 4 716 202 928 in 2019, PLN 3 533 646 348 in 2020, PLN 2 672 606 551 in 2021 and PLN 1 671 788 122 in 2022.

This represents, at the end of the review period in 2022, a decrease of 52,69% in comparison to 2020 and a decrease of 67,66% since the start of the measure.

Similarly, the number of VAT fraud proceedings has decreased. Before the measure, there were 3 507 proceedings in 2018. This decreased to 3 389 in 2019, to 2 973 in 2020 and to 3 288 in 2021. After a slight increase in 2021, the number decreased further to 2 750 in 2022. This is a decrease of 7,5% in comparison to 2020 and a decrease of 21,59 % since the start of the measure.

The continued application of the mandatory split payment mechanism has further decreased the carousel fraud. The number of initiated proceedings for carousel fraud, before the introduction of the mechanism, was 558 in 2018. This decreased to 277 in 2019 and to 207 in 2020. This decreased further to 167 in 2021 and to 97 in 2022. This constitutes, at the end of 2022, a decrease of 53,14% since 2020 and a decrease of 82,62% since the start of the measure.

Subsequently, it was recorded that the identified budget losses due to VAT carousel fraud decreased. Established at PLN 4 496 602 940 before the introduction of the mechanism in 2018, the losses decreased to PLN 2 468 437 745 in 2019 and to PLN 1 107 992 201 in 2020. In the review period, the losses were PLN 1 229 821 973 in 2021 and PLN 111 103 219 in 2022. This result constitutes a drastic decrease of 89,97% in comparison to 2020 and of 97,53% since the start of the measure.

On that basis, the Commission is of the view that the continuation of the measure, involving a limited derogation from the invoicing requirements as set out in Article 226 of the VAT Directive, is justified since it will allow the positive effects of the mandatory split payment mechanism, for a pre-defined number of goods and services, to be sustained. Therefore, it is proposed to grant the derogation as from 1 March 2025 until 28 February 2028.

4. BUDGETARY IMPLICATIONS

The measure will have no negative impact on the Union's own resources accruing from VAT.

5. OTHER ELEMENTS

The proposal includes a sunset clause; an automatic time limit.

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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 tax[1], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Implementing Decision (EU) 2019/310[2], the Council authorised Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC, to require suppliers to pay, by means of a separate and blocked value added tax (VAT) bank account opened in Poland (‘mandatory split payment mechanism’), the VAT on invoices issued in relation to the supplies, between taxable persons and paid by electronic bank transfers, of the goods and services listed in the Annex to that Implementing Decision. Council Implementing Decision (EU) 2022/559[3] extended that authorisation until 28 February 2025.

(2) By letters registered with the Commission on 27 March 2024 and on 1 October 2024, Poland requested a further extension, from 1 March 2025 to 28 February 2028, of the authorisation to derogate from Article 226 of Directive 2006/112/EC, as regards VAT invoicing requirements, in order to continue to apply the mandatory split payment mechanism to supplies of goods and services susceptible of fraud and generally covered by the procedure whereby the purchaser is designated as liable for the VAT on certain supplies (the so-called ‘reverse charge mechanism’) and by joint and several liability in Poland.

(3) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 9 October 2024 of the request made by Poland. By letter dated 10 October 2024, the Commission notified Poland that it had all the information necessary to consider the request.

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1 OJ L 347, 11.12.2006, p. 1, ELI: http://data.europa.eu/eli/dir/2006/112/oj.

2 Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax (OJ L 51, 22.2.2019, p. 19, ELI: http://data.europa.eu/eli/dec_impl/2019/310/oj).

3 Council Implementing Decision (EU) 2022/559 of 5 April 2022 amending Implementing Decision (EU) 2019/310 as regards the authorisation granted to Poland to continue to apply the special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax (OJ L 108, 7.4.2022, p. 51, ELI: http://data.europa.eu/eli/dec_impl/2022/559/oj).

(4) The mandatory split payment mechanism applies to the goods and services listed in the Annex to Implementing Decision (EU) 2019/310. That Annex consists of an extensive, detailed list of goods and services classified in accordance with the Polish Classification of Goods and Services. As Poland is currently replacing at national level that classification system with the system of the Combined Nomenclature, as laid down in Council Regulation (EEC) No 2658/87[4], to avoid the need to amend the authorisation to derogate from Article 226 of Directive 2006/112/EC, the list in the Annex to Implementing Decision (EU) 2019/310 should be replaced by a simplified list of categories of goods and services. Poland has confirmed that the replacement of the list does not entail the extension of the scope of the mandatory split payment mechanism. To that end, the obligation to notify a national measure to the Commission provided for in Article 2 of Implementing Decision (EU) 2019/310 continues to apply.

(5) The report Poland submitted on 13 November 2023, under Article 2, second paragraph, of Council Implementing Decision (EU) 2019/310, on the overall impact of the extension of the authorisation on the level of VAT fraud and on the taxable persons concerned demonstrates that, since the authorisation was extended, the continued use of the mandatory split payment mechanism for certain supplies of goods and services resulted in the reduction of, in particular, carousel fraud in the sectors that are subject to that mechanism, such as the sector of steel, scrap, precious metals and fuels. Poland further reported that, where a trader is entitled to a VAT refund, Polish authorities have managed to reduce the refund time below twenty days, in order to enhance the trader's cash-flow position.

(6) Derogations are in general granted for a limited period of time to allow an assessment whether the special measure is appropriate and effective. It is therefore appropriate that the derogation is extended until 28 February 2028. The obligation, provided for in Article 2 of Implementing Decision (EU) 2019/310, for Poland to submit a new report on the overall impact of the derogation, in case it requests an extension thereof, should continue to apply.

(7) The special measure will not negatively affect the overall amount of tax revenue collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT.

(8) Implementing Decision (EU) 2019/310 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Council Implementing Decision (EU) 2019/310 is amended as follows:

(1) in Article 3, second paragraph, the date '28 February 2025' is replaced by '28 February 2028'.

(2) the Annex is replaced by the text in the Annex to this Decision.

[4] Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1, ELI: http://data.europa.eu/eli/reg/1987/2658/oj).

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels,

For the Council
The President