EUROPEAN COMMISSION

Brussels, 6.4.2010
COM(2010)129 final

2010/0071 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Kingdom of the Netherlands to apply a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

(Only the Dutch version is authentic)

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Pursuant to Article 395 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 letter registered with the Secretariat-General of the Commission on 29 January 2010, the Netherlands requested authorisation to apply a derogating measure in the ready-to-wear clothing industry, as previously granted for limited period by Council Decision 2007/740/EC. In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 25 February 2010 of the request made by the Netherlands. By letter dated 2 March 2010, the Commission notified the Netherlands that it had all the information necessary to consider the request.

General context

The requested measure, i.e. a reverse charge mechanism, is essentially to be considered as a measure to prevent certain types of tax evasion in the ready-to-wear clothing industry. Subcontractors in the ready-to-wear clothing industry are sometimes small companies, which have often proved to be transitory businesses, difficult for the tax administration to control and vehicles for tax evasion. A common form of evasion is the non-payment to the tax authorities of invoiced VAT by subcontractors, who subsequently become untraceable but leaving the customer (contractor) in receipt of a valid invoice for tax deduction. The Decision authorises the Kingdom of the Netherlands to apply, in the ready-to-wear clothing industry, a scheme for shifting the obligation to pay over the VAT to the tax authorities from the subcontractor to the clothing firm (the contractor).

In this context, Council Decision 2007/740/EC authorised the Netherlands to apply this scheme, which derogates from Article 193 of the VAT Directive, until 31 December 2009. As to assess the impact of the derogating measure on the one hand and other factors on the other hand, that Decision included the obligation for the Netherlands to submit a report on the effectiveness of the measure and on possible evidence of relocations of subcontractors in the ready-to-wear clothing industry to other Member States.

It appears from that report that the derogating measure, in combination with developments on the international market, has led to a considerable improvement of the fraud situation in the ready-to-wear clothing industry in the Netherlands. The number of companies qualifying for the derogating measure is constantly declining, the market is stabilising and the level of supervision of the tax authorities is increasing.

According to the Netherlands, a final decision on whether the derogating measure

should be abolished would need to be taken at a later stage, probably in 2011, and after having consulted other stakeholders such as the employment inspectorate and the body responsible for social insurance. It would therefore be necessary to extend the derogating measure until the end of 2012. In case the Netherlands would still consider it necessary to further extend the derogating measure, a new evaluation report should be sent, together with the derogation request, no later than 1 April 2012.

Existing provisions in the area of the proposal

Council Decision of 13 November 2007 authorising the Kingdom of the Netherlands to apply a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (Council Decision 2007/740/EC, OJ L 300, 17.11.2007, p. 71).

Consistency with the other policies and objectives of the Union

Not applicable.

CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Not relevant.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

The implementing Decision proposal aims at combating possible VAT evasion in the ready-to-wear clothing industry and has therefore a potential positive economic impact.

However, because of the narrow scope of the derogation and the limited application in time, the impact will in any case be limited.

LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for the Kingdom of the Netherlands to apply a measure derogating from Article 193 of the VAT Directive as regards the use of a reverse charge mechanism for certain transactions in the ready-to-wear clothing industry.

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 reason(s).

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

Given the very 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.

BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

ADDITIONAL INFORMATION

Review/revision/sunset clause

The proposal includes a sunset clause.

2010/0071 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Kingdom of the Netherlands to apply a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

(Only the Dutch version is authentic)

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 letter registered with the Secretariat-General of the Commission on 29 January 2010, the Netherlands requested authorisation to apply special tax measures in the ready-to-wear clothing industry as previously authorised for a limited period by Decision 2007/740/EC[2].

(2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 25 February 2010 of the request made by the Netherlands. By letter dated 2 March 2010, the Commission notified the Kingdom of the Netherlands that it had all the information necessary to consider the request.

(3) The arrangement would authorise the Netherlands to apply in the ready-to-wear clothing industry a scheme for shifting the subcontractor's obligation to pay over VAT to the tax authorities from the subcontractor to the clothing firm (the contractor).

(4) These arrangements have proven in the past to be an effective prevention measure in a sector in which collecting VAT is made difficult by the problems of identifying and supervising the activities of subcontractors. The requested measure is therefore to be considered as a measure to prevent certain types of tax evasion and avoidance in the ready-to-wear clothing industry.

---

[1] OJ L 347, 11.12.2006, p. 1. Directive amended by Directive 2006/138/EC (OJ L 384, 29.12.2006, p. 92)

[2] Council Decision of 13 November 2007 authorising the Kingdom of the Netherlands to apply a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 300, 17.11.2007, p. 71)

(5) The location for the manufacture of ready-to-wear clothes is influenced by low labour costs and subcontractors relocate easily from one country to another. Therefore, Decision 2007/740/EC requested the Netherlands to monitor and evaluate the impact of these factors on the effectiveness of the derogation and to submit a report to the Commission by 31 July 2009.

(6) This report indicated that the fraud situation has considerably improved and that the number of ready-to-wear clothing firms qualifying for the reverse charge procedure under Decision 2007/740/EC has steadily declined as a result of the derogating measure and international market developments. Consequently, stability is gradually returning to the ready-to-wear clothing sector in the Netherlands.

(7) In order to complete that process, the Kingdom of the Netherlands has requested the measure to be extended again for a limited period and has announced, at the same time, that a final decision on the possible abolishment of the measure would be taken in 2011. It is therefore appropriate that the derogation would be granted until 31 December 2012.

(8) In case the Kingdom of the Netherlands would still consider another extension of the derogating measure beyond 2012, a new evaluation report should be submitted to the Commission together with that extension request no later than 1 April 2012.

(9) The derogation will not have an adverse effect on the European Communities' own resources accruing from value added tax nor does it affect the amount of VAT charged at the final stage of consumption.

HAS ADOPTED THIS IMPLEMENTING DECISION:

Article 1

By way of derogation from Article 193 of Council Directive 2006/112/EC, the Kingdom of the Netherlands is hereby authorised to apply until 31 December 2012 in the ready-to-wear clothing industry a scheme for shifting the subcontractors' obligations to pay over VAT to the tax authorities from the subcontractor to the clothing firm (the contractor).

Article 2

Any possible request for extending the measure beyond 2012 should be accompanied by the submission of a report to the Commission by the Netherlands, in particular as regards the effectiveness of the measure and any other evidence of relocations of subcontractors in the ready-to-wear clothing industry to other countries, and be sent no later than 1 April 2012.

Article 3

This implementing Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels,

For the Council
The President