EUROPEAN
COMMISSION

Brussels, 10.11.2015
COM(2015) 560 final

2015/0260 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Republic of Latvia to extend the application of a measure derogating from Article 193 of Council Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons 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 charging the tax or to prevent certain types of tax evasion or avoidance.

By letter registered with the Commission on 30 March of 2015, the Republic of Latvia (hereafter 'Latvia') requested authorization 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 18 May 2015 of the request made by Latvia. By letter dated 20 May 2015, the Commission notified Latvia that it had all the information it considered necessary for appraisal of the request.

The Latvian government asks to extend the validity of the current application of a reverse charge mechanism in relation to supplies of timber.

As regards the supplies of timber, Latvia was confronted with a considerable number of traders that failed to comply with their obligations. Businesses in this sector are frequently small resellers, 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.

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

This derogating measure had initially been granted by Council Decision 2006/42/EC of 24 January 2006[2]. The application of the derogating measure for supply of timber was extended by Council Implementing Decision 2009/1008/EU of 7 December 2009[3] . A last extension of the derogating measure has been granted by Council Implementing Decision 2013/55/EU of 22 January 2013[4] .

From the report submitted by the Latvian Tax Authorities together with the request to continue to apply the derogating measure, the Commission understands that 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 payments into the national budget and VAT evasion on the timber market since the introduction of the reverse charge procedure, the risk is not eliminated. One of the indicators which shows that the risk level is still high is the number of registered traders which the State Revenue Service (SRS) has designated as shell companies in this sector of the economy. These traders enter into artificial transaction schemes in order to reduce the amount of VAT payable into the national budget or increase the amount of VAT repayable from the national budget to other

1 OJ L 347, 11.12.2006, p. 1.
2 OJ L 25, 28.1.2006, p. 31.
3 OJ L 347, 24.12.2009, p.30.
4 OJ L 22, 25.1.2013, p.16.

registered traders involved in these schemes. In the opinion of Latvia, it is therefore important to continue using the reverse charge procedure for the payment of VAT in Latvia on timber transactions.

On this basis, the derogation should be granted for another limited period.

- **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.

- **Consistency with other Union policies**

Not applicable.

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 proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

- **Proportionality**

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.

Furthermore, the measure is targeted and restricted to a very limited number of taxable suppliers in relation to which the VAT collection has proven to be problematic. Given the limited scope of the derogation, the special measure is proportionate to the aim pursued.

- **Choice of the instrument**

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 Implementing Decision is the most suitable instrument since it can be addressed to individual Member States.

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

- **Stakeholder consultations**

Not relevant.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The Decision proposal 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.

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

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal includes a sunset clause; an automatic time limit which is set at 31 December 2018.

However, in case Latvia would consider another extension of the derogating measure beyond 2018, an evaluation report should be submitted to the Commission together with the extension request no later than 1 April 2018.

2015/0260 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Republic of Latvia to extend the application of a measure derogating from Article 193 of Council Directive 2006/112/EC on the common system of value added tax

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[5], 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 30 March 2015, the Republic of Latvia (hereafter 'Latvia') requested authorisation to continue to apply a measure derogating from the provisions of Directive 2006/112/EC which govern 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 Latvia in a letter dated 18 May 2015. By a letter dated 20 May 2015, the Commission notified Latvia that it had all the information necessary to consider the request.

(3) Council Decision 2006/42/EC[6] authorised Latvia to make the recipient liable for the VAT due on the supply of timber.

(4) The time period for the application of the derogating measure until 31 December 2009 was extended twice, by Council Implementing Decision 2009/1008/EU[7] and by Council Implementing Decision 2013/55/EU[8] .

(5) The investigations and the appropriate analysis of the application of the mechanism carried out by the Latvian tax authorities have revealed the effectiveness of that derogating measure.

---

5 OJ L 347, 11.12.2006, p. 1.

6 Council Decision 2006/42/EC of 24 January 2006 authorising Latvia to extend the application of a measure derogating from Article 21 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 25, 28.1.2006, p.31).

7 Council Implementing Decision 2009/1008/EU 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).

8 Council Implementing Decision 2013/55/EU 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) The Commission understands that the legal and factual situation which has justified the application of the derogating measure has not changed and continues to exist. Latvia should therefore be authorised to apply the measure concerned during a further limited period.

(7) If Latvia were to require a further extension of the derogating measure beyond 2018, an evaluation report should be submitted to the Commission together with the extension request no later than 31 March 2018.

(8) The derogating measure will have no adverse impact on the Union's own resources accruing from VAT,

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 2018.

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission no later than 31 March 2018 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 Latvia.

Done at Brussels,

For the Council
The President