



Brussels, 14.11.2012  
COM(2012) 661 final

2012/0314 (NLE)

Proposal for a

**COUNCIL DECISION**

**amending Decision 2010/39/EU authorising Portugal to continue to apply a measure derogating from Articles 168, 193 and 250 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(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures derogating from the 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 18 April 2012 the Portuguese Republic requested an authorisation to continue applying a measure derogating from Articles 168, 193 and 250 of Directive 2006/112/EC, in order to apply a special optional scheme for doorstep sales.

In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 1 June 2012 of the request made by the Portuguese Republic. The Commission notified the Portuguese Republic by letter dated 6 June 2012 that it had all the information necessary to consider the request.

#### **General context**

Article 168 of Directive 2006/112/EC provides that a taxable person is entitled to deduct the VAT charged on purchases made for the purpose of his taxed transactions. Article 193 of Directive 2006/112/EC provides that the VAT shall be payable by any taxable person carrying out a taxable supply of goods or services, except where it is payable by another person in the cases referred to in Articles 194 to 199 and Article 202. Article 250(1) of Directive 2006/112/EC provides that every taxable person shall submit a VAT return setting out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, in so far as is necessary for the establishment of the basis of assessment, the total value of the transactions relating to such tax and deductions and the value of any exempt transactions.

The measure pursued by the Portuguese Republic however deviates from the abovementioned provisions. This special optional scheme concerns firms active in the doorstep sales sector who meet specific conditions and are authorised by the competent tax authorities to apply that scheme. The firms in question make use of interposed resellers by selling their products directly to those resellers who, in turn, sell the same products directly to the final consumers.

By way of derogation from Article 193 of Directive 2006/112/EC, those firms to which the scheme applies are made liable for the VAT borne on their resellers' supplies of goods to final consumers. By way of derogation from Article 168 of Directive 2006/112/EC, those firms are given the right to deduct the VAT payable or paid by their resellers for the corresponding goods that have been supplied to them. By way of derogation from Article 250 of Directive 2006/112/EC, the resellers' obligation to submit a VAT return relating to the goods which the authorised firms have supplied to them and the supply of those goods to the final consumers, is transferred to the authorised firm.

Only such firms may be authorised to use that special scheme whose total turnover is derived from doorstep sales made by resellers acting in their own name and on their own account,

provided that all products sold by the firm appear in a pre-established list of the prices applicable at the final consumption stage and the firm sells its products directly to resellers who, in turn, sell it directly to final consumers.

The derogating measure of the Portuguese Republic had initially been granted by Council Decision 2004/738/EC<sup>1</sup> for a period until 31 December 2009 and was again granted by Council Decision 2010/39/EU<sup>2</sup> until 31 December 2012.

In its current request, the Portuguese Republic informed the Commission that the reasons pursuant to which the Council has taken its Decision 2010/39/EU are still valid and explained that the special measure is being applied until now and has proved to be very useful in terms of simplifying the VAT collection and maintaining a more effective VAT control in this sector.

Derogations are in general granted for a limited time as to allow an assessment whether the special measure is appropriate and effective. In this respect, based on the information provided by the Portuguese Republic, the Commission understands that the special measure in question provides a facilitation to both tax administrations and businesses as it mainly concerns very small taxpayers without the appropriate structure or organisational capacity to comply with the requirements laid down in VAT law. The amount of tax due at the level of final consumption is only affected to a negligible extent. An extension of the derogating measure is therefore appropriate.

However, any extension should be limited in time in order to assess whether the conditions, on which the derogations are based, would still be valid. Therefore, it is proposed to extend the derogation until the end of 2015 and to request the Portuguese Republic to present, together with the extension request, a report by 1 April 2015 at the latest including a review of the application of the special measure in case a further extension would be envisaged beyond 2015.

### **Existing provisions in the area of the proposal**

Not applicable.

### **Consistency with 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.

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<sup>1</sup> OJ L 325, 28.10.2004, p. 62

<sup>2</sup> OJ L 19, 23.1.2010, p. 5

## **Impact assessment**

The proposal is designed to simplify the procedure for charging tax and has, therefore, a potential positive impact for both businesses and administrations. The solution has been identified by the Portuguese Republic as a suitable measure.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **Summary of the proposed action**

The proposal aims to authorise the Portuguese Republic to continue to apply a measure derogating from Articles 168, 193 and 250 of Directive 2006/112/EC so as to allow for imposing on certain authorised firms the liability for the VAT borne on supplies of goods to final consumers made by interposed resellers, granting those authorised firms the right to deduct the VAT payable or paid by the resellers for the respective purchase of those goods and transferring to the authorised firms the resellers' obligation to submit a VAT return linked to the supplies of those goods from the authorised firms to the resellers and from the resellers to the final consumers.

The application and the necessity for the derogating measure are to be reviewed and reported on by the Portuguese Republic upon any request for an extension. The Decision will expire on the date specified therein.

#### **Legal basis**

Article 395(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

#### **Subsidiarity principle**

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

#### **Proportionality principle**

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

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

Given the narrow scope of the derogation, the special measure is proportionate to the aim pursued.

#### **Choice of instruments**

Proposed instruments: Council Decision.

Other means would not be adequate for the following reasons:

Under Article 395 of Council Directive 2006/112/EC, a derogation from the common VAT rules is only possible upon authorization of the Council acting unanimously on a proposal

from the Commission. A Council Decision is the only suitable instrument since it can be addressed to an individual Member State.

#### **4. BUDGETARY IMPLICATION**

The proposal will not adversely affect the Union's own resources from VAT.

#### **5. OPTIONAL ELEMENTS**

The proposal includes a review clause and a sunset clause.

Proposal for a

## **COUNCIL DECISION**

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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<sup>3</sup>, 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 18 April 2012, Portugal requested authorisation to continue to apply a special measure that was previously granted by Council Decision 2010/39/EU<sup>4</sup>, derogating from the provisions of Directive 2006/112/EC governing the right of deduction, the person liable to pay the tax and the obligation to submit a VAT return.
- (2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Portugal by letter dated 1 June 2012. By letter dated 6 June 2012, the Commission notified Portugal that it had all the information necessary to consider the request.
- (3) The derogating measure pursued by Portugal deviates from the provisions of Directive 2006/112/EC as it allows for the application of a special optional scheme concerning particular firms acting in the doorstep sales business that fulfil specific conditions, where authorised by the competent tax authorities. Those firms apply a particular business model by selling their products directly to interposed resellers who, in turn, sell the same products directly to the final consumers.
- (4) The special measure derogates from Article 168 of Directive 2006/112/EC which governs a taxable person's right to deduct VAT charged on goods and services supplied to him for the purposes of his taxed transactions by granting those firms the right to deduct the VAT payable or paid by their resellers for the corresponding goods that have been supplied to them.

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<sup>3</sup> OJ 347, 11.12.2006, p.1.

<sup>4</sup> OJ L 19, 23.1.2010, p. 5

- (5) The special measure derogates from Article 193 of Directive 2006/112/EC which governs the liability to pay the VAT by establishing those firms to which the scheme applies as the person liable for the VAT borne on their resellers' supplies of goods to final consumers.
- (6) The special measure derogates from Article 250 of Directive 2006/112/EC which governs the obligation to submit a VAT return by transferring the resellers' obligation to submit a VAT return relating to the goods which those firms have supplied to them and the supply of those goods to the final consumers.
- (7) The special measure may only be applied to firms whose total turnover is derived from doorstep sales made by resellers acting in their own name and on their own account, provided that all products sold by the firm appear in a pre-established list of the prices applicable at the final consumption stage and the firms sell their products directly to resellers who, in turn, sell it directly to final consumers.
- (8) This special scheme has the effect of ensuring that the VAT collected at the retail sale stage on sales of products coming from these firms is actually paid to the Treasury, thereby helping to prevent tax fraud. It also provides facilitation to the tax administration by simplifying the arrangements for collecting VAT and reducing the resellers' obligations in relation to VAT.
- (9) According to the information provided by Portugal, the legal and factual situation which justified the current application of the special measure in question has not changed and continues to exist. Portugal should therefore be authorised to continue applying this special measure during a further period, but limited in time until 31 December 2015 in order to allow for a review of the necessity and effectiveness of the derogating measure.
- (10) Where Portugal considers a further extension beyond 2015 to be necessary, a report on the application of the measure should be submitted to the Commission together with the extension request no later than 31 March 2015 in order to reserve sufficient time for the Commission to examine the request and, in case the Commission would come forward with a proposal, for the Council to adopt it.
- (11) The derogation will only have a negligible effect on the overall amount of tax collected at the stage of final consumption and will not adversely affect the Union's own resources accruing from value added tax.
- (12) Decision 2010/39/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Article 4 of Decision 2010/39/EU is replaced by the following:

'Article 4

1. This Decision shall expire on 31 December 2015.

2. Any request for the extension of the special measure provided for in this Decision shall be submitted to the Commission by 31 March 2015 at the latest.

Such request shall be accompanied by a report on the application of the special measure.'

*Article 2*

This Decision shall apply as from 1 January 2013.

*Article 3*

This Decision is addressed to the Portuguese Republic.

Done at Brussels,

*For the Council  
The President*