



Brussels, 30.11.2012  
COM(2012) 666 final

2012/0315 (NLE)

Proposal for a

**COUNCIL DECISION**

**amending Implementing Decision 2009/1008/EU authorising 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**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### **Grounds for and objectives of the proposal**

Pursuant to Article 395(1) of Council 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 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 20 April 2012, the Republic of Latvia (hereafter 'Latvia') requested authorisation 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 30 July 2012 of the request made by Latvia (however, Spain was informed by letter dated 31 July 2012). By letter dated 2 August 2012, the Commission notified Latvia that it had all the information it considered necessary for appraisal of the request.

#### **General context**

Latvia requests to be authorised to extend the current application of a reverse charge mechanism in relation to supplies of timber. On the basis of information provided by Latvia, it appears that the timber market in Latvia is still largely dominated by small companies and individual suppliers which often disappear without paying the tax to the authorities but leaving the customer in receipt of valid invoice for VAT deduction.

Under the reverse charge mechanism, the recipient, in so far he qualifies as a taxable person for VAT purposes, becomes liable for the payment of the VAT to the tax authorities. In practice, this results in the supplier of timber not charging the VAT to his customer who, provided he has a full right of deduction, would simultaneously declare and deduct the corresponding VAT; thus removing the need for an effective payment to the Treasury. The system is applied on the territory of Latvia and has no impact on cross-border transactions.

This derogating measure (derogating from the then applicable Sixth Directive<sup>1</sup> that has, without substantial modification to the content, been replaced by the VAT Directive) had initially been granted in the 2003 Act of Accession<sup>2</sup> and, more precisely, in Chapter 7, point 1(b) of Annex VIII for a period until 30 April 2005. Subsequently, the measure was extended until 31 December 2009 by Council Decision 2006/42/EC of 24 January 2006<sup>3</sup> and until 31 December 2012 by Council Decision 2009/1008/EU of 7 December 2009<sup>4</sup>.

The Commission understands that the situation, on which the initial derogation was based, continues to exist. Latvia claims that a number of indicators demonstrate that the risk level for

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<sup>1</sup> Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977)

<sup>2</sup> OJ L 236, 23.9.2003, p. 33

<sup>3</sup> OJ L 25, 28.1.2006, p. 31

<sup>4</sup> OJ L 347, 24.12.2009, p. 30

VAT fraud is still high in this sector. The derogation should therefore be granted for another limited period.

However, since the derogation has been in place for a rather long period, an evaluation report should, in case Latvia would consider another extension beyond 2015, be submitted to the Commission together with that extension request no later than 1 April 2015.

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

Similar derogations in relation to Article 193 of the VAT Directive have been granted to other Member States.

### **Consistency with the 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.

### **Impact assessment**

The Decision proposal aims at combating VAT evasion in the timber market of Latvia and has therefore a potential positive impact.

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

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

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

Authorisation for Latvia to extend the application of a measure derogating from Article 193 of the VAT Directive as regards the use of a reverse charge mechanism for timber transactions.

### **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 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.

## **4. BUDGETARY IMPLICATION**

The proposal has no implication for the Union budget.

## **5. OPTIONAL ELEMENTS**

### **Review/revision/sunset clause**

The proposal includes a sunset clause.

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## **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>5</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 20 April 2012, Latvia requested authorisation to continue to apply a measure derogating from the provisions of Directive 2006/112/EC governing the person liable for the payment of the value added tax (VAT) to the 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 30 July 2012. Spain, however, was informed of the request by letter dated 31 July 2012. By a letter dated 2 August 2012, the Commission notified Latvia that it had all the information that it considered necessary for appraisal of the request.
- (3) The timber market in Latvia remains dominated by small local companies and individual suppliers. The nature of the market and the businesses involved have generated tax fraud which the tax authorities have found difficult to control. In order to combat this abuse, a special provision was included in Latvia's law on VAT, laying down that, as regards timber transactions, the person liable to pay tax is the taxable person for whom the taxable supply of goods or services is carried out. This measure derogates from Article 193 of Directive 2006/112/EC, providing that, under the internal system, the taxable person supplying goods or services is normally liable for the payment of the tax.
- (4) The legal and factual situation which justified the derogating measure under 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

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<sup>5</sup> OJ L 347, 11.12.2006, p. 1.

Directive 2006/112/EC on the common system of value added tax<sup>6</sup> has not changed. On the basis of information provided by Latvia, it appears that the risk level for VAT fraud in the sector remains high. Latvia should therefore be authorised to apply the measure during a further limited period.

- (5) In case Latvia would consider another extension of the derogating measure beyond 2015, it should submit a report on the application of the measure to the Commission together with that request by 30 March 2015 at the latest.
- (6) The derogation has no adverse impact on the Union's own resources accruing from VAT.
- (7) Decision 2009/1008/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

#### *Article 1*

Decision 2009/1008/EU is amended as follows:

- (1) In Article 2, the date "31 December 2012" is replaced by the date "31 December 2015";
- (2) The following Article 2a is inserted:

#### *"Article 2a*

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission by 30 March 2015 at the latest and shall be accompanied by a report on the application of this measure."

#### *Article 2*

This Decision is addressed to the Republic of Latvia.

Done at Brussels,

*For the Council  
The President*

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<sup>6</sup> OJ L 347, 24.12.2009, p. 30.