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Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision 2013/676/EU as regards an extension of the authorisation for Romania to continue to apply a special measure derogating from Article 193 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 ('the VAT Directive'¹), 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 Commission on 8 April 2022, the Republic of Romania (hereinafter Romania) requested the authorisation to continue to apply a measure derogating from Article 193 of the VAT Directive, which determines the person liable for the payment of VAT. By letter registered on the 28 June 2022 the Commission requested additional information concerning the request from Romania, which provided its reply by letter registered on 22 August 2022.

In accordance with Article 395(2) of the VAT Directive, the Commission informed all Member States, except Spain, on 1 September 2022 and Spain on 2 September 2022, of the request made by Romania. By letter dated 5 September 2022, the Commission notified Romania that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

As a general rule, Article 193 of the VAT Directive stipulates that the taxable person supplying goods or services is normally liable to pay VAT.

Pursuant to Article 395 of the VAT Directive, Member States may apply measures derogating from the provisions of the VAT Directive to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance if they have been authorised by the Council.

Romania requested in 2009 a derogation in order to be authorised to apply the reverse charge mechanism to, inter alia, supplies of wood products. Under this procedure, the taxable person, to whom the supplies are made, becomes liable for the payment of the VAT. These wood products include, more specifically, standing timber, round or cleft working wood, fuel wood, timber products, as well as square-edged or chipped wood and wood in the rough, processed or semi-manufactured wood.

The derogating measure for Romania had been initially granted by Council Implementing Decision 2010/583/EU² until 31 December 2013 and, as regards the wood products, it was subsequently extended by Council Implementing Decision 2013/676/EU³ until 31 December

¹ OJ L 347, 11.12.2006, p. 1.

² Council Implementing Decision 2010/583/EU of 27 September 2010 authorising Romania to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 256, 30.9.2010, p. 27).

³ Council Implementing Decision 2013/676/EU of 15 November 2013 authorising Romania to continue to apply a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 316, 27.11.2013, p. 31).

2016, by Council Implementing Decision (EU) 2016/1206⁴ until 31 December 2019 and by Council Implementing Decision (EU) 2019/1593⁵ until 31 December 2022.

Romania has now again asked for an extension of the derogation regarding the application of the reverse charge mechanism to supplies of these wood products.

On the basis of the report provided by Romania, which was presented together with the request for extension of the measure, designating the recipient as the person liable for the payment of VAT for supplies of the above-mentioned wood products had the effect of preventing tax evasion and avoidance in this sector which is characterised by a large number of small resellers and intermediaries which have proved difficult to control.

Derogations are in general granted for a limited period of time as to allow an assessment whether the special measure is appropriate and effective and in order to grant Member States time to introduce other conventional measures to tackle the respective problem until the expiry of the derogating measure. A derogation allowing making use of the reverse charge mechanism is only granted exceptionally for specific fraudulent areas and constitutes a means of last resort.

Romania explained that to that end, steps have been taken to introduce into national law conventional measures to combat VAT fraud and prevent its further spread in the sector of timber and wood such as digitalisation projects (RO e-Factura), the interconnection of fiscal cash registers, SAF-T, the monitoring of purchases and supplies and the RO e-Transport system (monitoring transports on national territory).

However, since the implementation of those measures is still at an early stage, Romania considers that in order to maintain the downward trend in tax evasion in the timber and wood sector, it is necessary to continue to apply the reverse charge in this sector after 1 January 2023.

An extension for another limited period seems therefore justifiable as it would appear that the measure has had no negative impact on fraud at the retail level, in other sectors or in other Member States. Taking into consideration the unchanged legal and factual situation, it is therefore proposed to extend the derogating measure, allowing Romania to continue to apply this derogating measure until 31 December 2025.

Therefore, until the expiry of this derogation Romania should fully implement the above mentioned conventional measures to fight and prevent further spreading of VAT fraud in the sector of timber. As a consequence there should be no further need to derogate from Article 193 of Directive 2006/112/EC with regard to these supplies.

- **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, Portugal⁶, Lithuania⁷ and Latvia⁸.

⁴ Council Implementing Decision (EU) 2016/1206 of 18 July 2016 amending Implementing Decision 2013/676/EU authorising Romania to continue to apply a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 198, 23.7.2016, p. 47).

⁵ Council Implementing Decision (EU) 2019/1593 of 24 September 2019 amending Implementing Decision 2013/676/EU authorising Romania to continue to apply a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 248, 27.9.2019, p. 69–70).

The proposed measure is, therefore, consistent with the existing provisions of the VAT Directive.

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 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 the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 395 of the VAT Directive, a derogation from the common VAT provisions 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 Romania and concerns only this Member State.

- **Impact assessment**

One of the most common types of fraud involves the inclusion in the timber and wood products marketing chain of companies that collect VAT, fail to pay it into the State budget, and then disappear. Their clients, in exercising their right to VAT deduction, then apply for reimbursement of amounts that have never been paid into the State budget.

⁶ Council Implementing Decision (EU) 2019/1592 of 24 September 2019 authorising Portugal to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 248, 27.9.2019, p. 67–68).

⁷ Council Implementing Decision (EU) 2018/1920 of 4 December 2018 amending Implementing Decision 2010/99/EU authorising the Republic of Lithuania 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 311, 7.12.2018, p. 34–35).

⁸ Council Implementing Decision (EU) 2022/81 of 18 January 2022 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 13, 20.1.2022, p. 49–50).

Wood products account for the largest share of Romania's forest economy. At the end of 2020, Romania's national forest estate accounted for 6 604 200 ha, i.e. 27.66% of the country's total land area.

The reverse charge, the requested special measure, applies only to transactions between taxable persons registered for VAT purposes in Romania. Taxable persons in other Member States could be affected by the reverse charge mechanism only if they have an obligation to register for VAT purposes in Romania. In such cases, they would be subject to the same VAT rules as Romanian operators.

The reverse charge mechanism has decreased the risk of reimbursing, amounts that have never been paid to the state budget, due to carousel fraud.

Other positive effects of the reverse charge have included:

- enhanced competitiveness between producers to counteract distortions created by entities operating on the black market;
- a significant decrease of the shadow economy in the field, leading to an increase in state budget revenues.

In view of the foregoing, with an average increase of RON 46 077 in the amount of VAT established per taxpayer, Romania believes that the application of the reverse charge in respect of supplies of timber and wood products has reached its objectives in combating VAT fraud and preventing its spread.

Although Romania has achieved positive results in the fight against fraud by applying the reverse charge in this sector, the phenomenon still exists, albeit on a smaller scale⁹.

The extension of this measure will not have a negative impact on the total amount of vat revenue collected at the final stage of consumption and thus, does not affect the union's vat own resources in a negative way.

4. BUDGETARY IMPLICATIONS

The proposal has no implication on the EU budget.

5. OTHER ELEMENTS

The proposal is limited in time.

⁹ According to the year-by-year overview of tax inspections conducted at taxpayers with the NACE 'wood products' code over the 2018 - 2021 period, the cases of fraud decreased, as reported by Romania in its request.

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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 tax¹, and in particular Article 395(1) thereof,

Whereas:

- (1) Pursuant to Article 193 of Directive 2006/112/EC, value added tax ('VAT') shall be, as a general rule, payable by the taxable person supplying the goods or services.
- (2) By Council Implementing Decisions 2010/583/EU² and 2013/676/EU³, Romania was authorised to apply a special measure derogating from Article 193 of Directive 2006/112/EC ('the special measure') to designate the taxable person, to whom supplies of wood products by taxable persons are made, as the person liable for the payment of VAT on those supplies. The authorisation granted by Implementing Decision 2013/676/EU was extended until 31 December 2022.
- (3) By letter registered with the Commission on 11 April 2022, Romania requested authorisation to continue to apply the special measure, authorised by Implementing Decision 2013/676/EU, beyond 31 December 2022. By letter dated 28 June 2022, the Commission requested additional information concerning the request from Romania. Romania provided its reply by letter registered with the Commission on 22 August 2022.
- (4) By letter dated 1 September 2022, the Commission transmitted the request made by Romania to the other Member States, except Spain, pursuant to Article 395(2), second subparagraph, of Directive 2006/112/EC. By letter dated 2 September 2022, the Commission transmitted that request to Spain. By letter dated 5 September 2022, the Commission notified Romania that it had all the information necessary for appraisal of the request.

¹ OJ L 347, 11.12.2006, p. 1.

² Council Implementing Decision 2010/583/EU of 27 September 2010 authorising Romania to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 256, 30.9.2010, p. 27).

³ Council Implementing Decision 2013/676/EU of 15 November 2013 authorising Romania to continue to apply a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 316, 27.11.2013, p. 31).

- (5) According to the information provided by Romania in its request, the factual situation which justified application of the special measure has not changed. Moreover, analysis put forward by the Romanian authorities indicates that the special measure has proved to be effective in reducing tax evasion. In addition, the special measure has no adverse impact on the Union's own resources accruing from VAT.
- (6) The special measure is proportionate to the objectives pursued since it is confined to very specific operations in a sector which poses considerable problems with regard to tax evasion and avoidance. Moreover, the continued application of the measure would not have any adverse impact on the prevention of fraud at the retail level, in other sectors or in other Member States.
- (7) Derogations are in general authorised for a limited period of time to allow an assessment of whether the special measures are appropriate and effective. Derogations grant Member States time to introduce other conventional measures at national level to monitor the movement of materials, the payment of VAT, and the compliance of taxable persons which should tackle the respective problem until the expiry of the derogating measure, thus making an extension of the authorisation redundant. A derogation allowing making use of the reverse charge procedure is only granted exceptionally for specific fraudulent areas and constitutes a means of last resort. Therefore, before the expiry of the extension of the authorisation under this Implementing Decision, Romania should implement other conventional measures to fight and prevent VAT fraud in the timber market that another extension of the special measure would no longer be needed.
- (8) Therefore, it is appropriate to extend the authorisation set out in Implementing Decision 2013/676/EU. The extension of the authorisation for Romania should be limited in time to allow for an evaluation of the effectiveness and appropriateness of the special measure.
- (9) Implementing Decision 2013/676/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1 of Implementing Decision 2013/676/EU, '31 December 2022' is replaced by '31 December 2025'.

Article 2

This Decision is addressed to Romania.

Done at Brussels,

*For the Council
The President*