



Council of the
European Union

Brussels, 1 July 2019
(OR. en)

10845/19

Interinstitutional File:
2019/0144(NLE)

FISC 314
ECOFIN 686

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	29 June 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2019) 304 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION 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

Delegations will find attached document COM(2019) 304 final.

Encl.: COM(2019) 304 final



Brussels, 28.6.2019
COM(2019) 304 final

2019/0144 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

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

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 11 March 2019, 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.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 9 April 2019 of the request made by Romania. By letter dated 10 April 2019, 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.

This request was approved 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 2016 and by Council Implementing Decision (EU) 2016/1206⁴ until 31 December 2019.

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

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)

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)

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. 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 2022.

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.

Therefore, until the expiry of this derogation Romania should implement other 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.

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 Council Directive 2006/112/EC, 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.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for a Council Implementing Decision aims at preventing certain forms of tax evasion or avoidance in the wood sector and has therefore a potential positive impact as it will continue to prevent previously applied fraud schemes in this wood sector. The non-extension of the measure would, according to Romania, inevitably lead to the revival of these schemes.

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

4. BUDGETARY IMPLICATIONS

The proposal will have no negative implication for the EU budget.

5. OTHER ELEMENTS

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

The proposal is limited in time.

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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,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Implementing Decision 2010/583/EU² and, subsequently, Council Implementing Decision 2013/676/EU³ authorised Romania to apply a special measure designating the taxable person to whom supplies of wood products by taxable persons are made as the person liable for the payment of value added tax (VAT) on those supplies. The authorisation granted by Implementing Decision 2013/676/EU was extended to 31 December 2019 by Council Implementing Decision (EU) 2016/1206⁴.
- (2) By letter registered with the Commission on 11 March 2019, Romania requested authorisation to continue to apply the special measure authorised by Implementing Decision 2013/676/EU. The request was accompanied by a report on the application of that measure, as required by Article 3 of that Implementing Decision.
- (3) By letters dated 9 April 2019, the Commission informed the other Member States of the request made by Romania. By letter dated 10 April 2019, the Commission notified Romania that it had all the information necessary to consider the request.
- (4) According to information provided by Romania in its request, the factual situation which justified application of the special measure has not changed. Moreover, analysis by the Romanian authorities indicates that the measure has proved to be effective in reducing tax evasion.
- (5) The Commission considers that the special measure is proportionate to the objectives pursued since it is confined to very specific operations in a sector which poses

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).

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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)

considerable problems with regard to tax evasion and avoidance. It further considers that 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.

- (6) Romania should therefore be authorised to continue to apply the special measure for a further limited period of time until 31 December 2022.
- (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 to tackle the problem in question until the expiry of the special measures. A derogation allowing for use to be made of the reverse charge mechanism is only granted exceptionally for specific areas where fraud occurs and constitutes a means of last resort. Romania should therefore implement other conventional measures to fight and prevent further spreading of VAT fraud in the sector of timber and wood and, as a consequence, should no longer need to derogate from Article 193 of Directive 2006/112/EC with regard to such supplies. It is therefore not necessary at this stage to include specific provision in Implementing Decision 2013/676/EU for the making of further requests to extend the derogation authorised by that Implementing Decision beyond 31 December 2022.
- (8) The derogating measure has no adverse impact on the Union's own resources accruing from VAT.
- (9) Implementing Decision 2013/676/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Council Implementing Decision 2013/676/EU should be amended as follows:

- (1) in Article 1, the date '31 December 2019' is replaced by the date '31 December 2022';
- (2) Article 3 is deleted.

Article 2

This Decision is addressed to Romania.

Done at Brussels,

*For the Council
The President*