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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION amending Decision 2009/791/EC authorising the Federal Republic of Germany to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2024/...

of ...

amending Decision 2009/791/EC

**authorising the Federal Republic of Germany to continue to apply a measure
derogating from Articles 168 and 168a of 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,

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), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 347, 11.12.2006, p.1.

Whereas:

- (1) Articles 168 and 168a of Directive 2006/112/EC govern taxable persons' right to deduct value added tax (VAT) charged on supplies of goods and services used by them for the purposes of their taxed transactions. Germany has been authorised to introduce a special measure intended to exclude VAT borne on goods and services from the right of deduction where those goods and services are used by taxable persons for more than 90 % for their private purposes or for purposes of their employees, or in general for non-business purposes or non-economic activities (the 'special measure').
- (2) Council Decision 2000/186/EC² authorised Germany to introduce and apply special measures derogating from Articles 6 and 17 of Council Directive 77/388/EEC³ until 31 December 2002. Council Decision 2003/354/EC⁴ authorised Germany to apply the special measure, derogating from Article 17 of Directive 77/388/EEC, until 30 June 2004. Council Decision 2004/817/EC⁵ extended the authorisation until 31 December 2009.

² Council Decision of 28 February 2000 authorising the Federal Republic of Germany to apply measures derogating from Articles 6 and 17 of the Sixth Directive 77/388/EEC 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 59, 4.3.2000, p.12).

³ Sixth 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, p. 1).

⁴ Council Decision of 13 May 2003 authorising Germany to apply a measure derogating from Article 17 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 123, 17.5.2003, p. 47).

⁵ Council Decision of 19 November 2004 authorising Germany to apply a measure derogating from Article 17 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 357, 2.12.2004, p. 33).

- (3) Council Decision 2009/791/EC⁶ authorised Germany to continue to apply the special measure, derogating from Article 168 of Directive 2006/112/EC, until 31 December 2012.
- (4) Council Implementing Decision 2012/705/EU⁷ amended Decision 2009/791/EC, authorising Germany to apply the special measure, derogating from Articles 168 and 168a of Directive 2006/112/EC, until 31 December 2015. That authorisation was subsequently extended by Council Implementing Decisions (EU) 2015/2428⁸, (EU) 2018/2060⁹ and (EU) 2021/1776¹⁰.
- (5) Decision 2009/791/EC is due to expire on 31 December 2024.

⁶ Council Decision 2009/791/EC of 20 October 2009 authorising the Federal Republic of Germany to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 283, 30.10.2009, p. 55).

⁷ Council Implementing Decision of 13 November 2012 amending Decision 2009/791/EC and Implementing Decision 2009/1013/EU authorising Germany and Austria respectively to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 319, 16.11.2012, p. 8).

⁸ Council Implementing Decision (EU) 2015/2428 of 10 December 2015 amending Decision 2009/791/EC and Implementing Decision 2009/1013/EU authorising Germany and Austria respectively to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 334, 22.12.2015, p. 12).

⁹ Council Implementing Decision (EU) 2018/2060 of 20 December 2018 amending Decision 2009/791/EC authorising Germany to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 329, 27.12.2018, p. 20).

¹⁰ Council Implementing Decision (EU) 2021/1776 of 5 October 2021 amending Decision 2009/791/EC authorising Germany to continue to apply a measure derogating from Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 360, 11.10.2021, p. 112).

- (6) By letter registered with the Commission on 19 February 2024, Germany requested an authorisation to continue to apply the special measure. That request was accompanied by a report on the application of the special measure, including a review of the apportionment rate applied on the right to deduct VAT as required by Article 2 of Council Decision 2009/791/EC. The Commission requested further explanations from Germany on 26 March 2024 and a reply was received on 27 March 2024.
- (7) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Germany to the other Member States by letters dated 27 May 2024. By letter dated 28 May 2024, the Commission notified Germany that it had all the information necessary for the appraisal of the request.
- (8) According to Germany, the special measure has proven very effective in simplifying the collection of VAT and preventing tax evasion and avoidance. The special measure reduces the administrative burden for businesses and tax administrations, as there is no need for any monitoring of the subsequent use of the goods and services to which the exclusion from deduction applied at the time of their acquisition. Germany should therefore be authorised to continue to apply the special measure until 31 December 2027.
- (9) In the event that Germany considers an extension of the special measure beyond 2027 to be necessary, it should submit a request for extension to the Commission by 31 March 2027. That request should be accompanied by a report on the application of the measure, including a review of the apportionment rate applied.

(10) The special measure will not adversely affect the Union's own resources accruing from VAT.

(11) Decision 2009/791/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Decision 2009/791/EC is replaced by the following:

‘Article 2

This Decision shall expire on 31 December 2027.

Any request for an extension of the special measure provided for in this Decision shall be submitted to the Commission by 31 March 2027.

The request referred to in the second paragraph shall be accompanied by a report on the application of the special measure provided for in this Decision, including a review of the apportionment rate applied on the right to deduct VAT on the basis of this Decision.’.

Article 2

This Decision shall take effect on the date of its notification.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at ..., ...

For the Council

The President
