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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards the extension of the application period of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud

COUNCIL DIRECTIVE (EU) 2022/...

of ...

amending Directive 2006/112/EC as regards the extension of the application period of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

¹ Opinion of 3 May 2022 (not yet published in the Official Journal).

² Opinion of 23 March 2022 (not yet published in the Official Journal).

Whereas:

- (1) Tax fraud in the field of value added tax (VAT) leads to considerable budget losses and has an impact on the operation of the internal market.
- (2) Council Directive 2006/112/EC¹ provides for Member States to use, on an optional basis, the reverse charge mechanism (RCM) for the payment of VAT on supplies of pre-defined goods and services that are susceptible to fraud, in particular, Missing Trader Intra-Community (MTIC) fraud. That Directive also provides for the Quick Reaction Mechanism (QRM) special measure, which offers Member States, under certain strict conditions, a faster procedure that allows for the introduction of the RCM, resulting in a more adequate and effective response to sudden and massive fraud. The application period of both mechanisms expires on 30 June 2022.
- (3) The Commission adopted two legislative proposals for the introduction of the definitive VAT system, which aim to provide a comprehensive response to MTIC fraud. Those proposals, initially foreseen to enter into force on 1 July 2022, are still being negotiated in the Council and it is foreseeable that they will not be adopted before, nor enter into force on, that date.

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

- (4) In its report of 8 March 2018 on the effects of Articles 199a and 199b of Directive 2006/112/EC on combatting fraud, the Commission indicates that Member States and stakeholders generally considered the RCM as an effective, temporary tool in fighting VAT fraud. Furthermore, Member States considered the QRM as a useful tool and a precautionary measure against exceptional cases of VAT fraud. Since then, the legal conditions or practicalities for the application of the RCM within the EU VAT system have not been altered. Also, Directive 2006/112/EC has not significantly been amended in order to tackle the issue of MTIC fraud in a more structural manner. It is therefore reasonable to assume that the findings and considerations in the report are still largely valid.
- (5) It therefore appears that the RCM and the QRM have been useful as temporary and targeted measures. Their expiration would deprive Member States of efficient tools to fight fraud. The application period of the RCM and the QRM should therefore be extended for another limited period of time so as to allow negotiations in the Council to take place on the definitive VAT system, and to allow for the continued development of tools to fight tax evasion and of modernised reporting rules to be adopted in the meantime.

- (6) Since the objective of this Directive, namely maintaining efficient tools to fight fraud, cannot be sufficiently achieved by the Member States but can rather, by reason of the effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (7) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

(1) Article 199a is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

‘Until 31 December 2026, Member States may provide that the person liable for the payment of VAT is the taxable person to whom any of the following supplies are made.’;

(b) paragraphs 3, 4 and 5 are deleted;

(2) in Article 199b, paragraph 6 is replaced by the following:

‘6. The QRM special measure as provided for in paragraph 1 shall apply until 31 December 2026.’.

Article 2

This Directive shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

Article 3

This Directive is addressed to the Member States.

Done at ...,

For the Council

The President
