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PROPOSAL

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

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Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION amending Implementing Decision 2013/680/EU authorising the Kingdom of Denmark and the Kingdom of Sweden to extend the application of a special measure derogating from Articles 168, 169, 170 and 171 of Directive 2006/112/EC on the common system of value added tax

Delegations will find attached document COM(2020) 328 final.

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2020/0147 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision 2013/680/EU authorising the Kingdom of Denmark and the Kingdom of Sweden to extend the application of a special measure derogating from Articles 168, 169, 170 and 171 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 Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹ (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.

Denmark and Sweden requested an extension to their existing derogation firstly granted by Decision 2000/91/EC² and extended by Decisions 2003/65/EC³, 2007/132/EC⁴ and 2013/680/EU⁵. In accordance with Article 395(2) of the VAT Directive, the Commission, in a letter dated 2 April 2020, informed the other Member States of the request by Denmark and Sweden. By letter dated 3 April 2020, the Commission notified Denmark and Sweden that it had all the information it considered necessary for the appraisal of the request.

General context

Denmark and Sweden have jointly introduced simplified rules on the recovery of VAT in connection with tolls on the Öresund fixed link between Denmark and Sweden. This was deemed necessary as the normal VAT rules would create excessive paperwork for taxpayers and administrations alike.

Under the normal VAT rules as contained in Articles 168, 169, 170 and 171 of the VAT Directive, VAT must be deducted in or refunded by the Member State in which it was due or paid. As the Öresund fixed link is located partly in the territory of Denmark and partly in the territory of Sweden the VAT paid on the toll charge for using the link would be recoverable from either of these countries to the extent that the charge relates to their territory. Specifically 50% would be recoverable from Denmark and 50% from Sweden.

In practice this would mean that taxable persons established in either Denmark or Sweden would only be able to recover 50% of the VAT on their periodic VAT returns in the Member State of registration. The remaining 50% would have to be claimed back as a refund from the other Member State via Directive 2008/9/EC⁶. Also, taxable persons established in Member

¹ OJ L 347, 11.12.2006, p. 1.

² Council Decision of 24 January 2000 authorising the Kingdom of Denmark and the Kingdom of Sweden to apply a measure derogating from Article 17 of the Sixth Council Directive (77/338/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 28, 3.2.2000, p. 38).

³ Council Decision of 21 January 2003 extending the application of Decision 2000/91/EC authorising the Kingdom of Denmark and the Kingdom of Sweden to apply a measure derogating from Article 17 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 25, 30.1.2003, p. 40).

⁴ Council Decision of 30 January 2007 extending the application of Decision 2000/91/EC authorising the Kingdom of Denmark and the Kingdom of Sweden to apply a measure derogating from Article 17 of the Sixth Council Directive (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 57, 24.2.2007, p. 10).

⁵ Council Implementing Decision of 15 November 2013 authorising the Kingdom of Denmark and the Kingdom of Sweden to extend the application of a special measure derogating from Articles 168, 169, 170 and 171 of Directive 2006/112/EC on the common system of value added tax (OJ L 316, 27.11.2013, p. 39–40).

⁶ Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ L 44, 20.2.2008, p. 23).

States other than Denmark and Sweden would be required to recover VAT via two separate refund claims under Directive 2008/9/EC, one submitted to Denmark and the other to Sweden. Likewise, taxable persons established outside the territory of the Union would under Directive 86/560/EEC⁷ need to send refund claims both to Denmark and to Sweden.

The existing derogation for Denmark and Sweden simplifies the VAT rules concerning the recovery of VAT. In effect, under that derogation, they allow a single claim for the recovery of VAT in relation to the toll. The simplified rules applied are as follows:

- Taxable persons established in Denmark and Sweden are entitled to deduct, on their domestic VAT return, the full amount of deductible VAT on the tolls including that part relating to the use of the link in the territory of the Member State in which they are not established.
- To recover VAT deductible under the procedure laid down in Directive 2008/9/EC regarding taxable persons established in a Member State other than Denmark or Sweden or under the procedure laid down in Directive 86/560/EEC for taxable persons established outside of the Member States, the application should be made to the Swedish authorities only.

Denmark and Sweden request that these existing simplification rules be extended for a further period.

According to the statistical information provided by Sweden, the derogation created for the taxable persons provides a significant simplification of the VAT recovery of the Öresund link tolls, and has proven successful. It is also the Commission's view that this type of cross-border deduction is a model of simplification of business obligations that could be extended through a generalised One Stop Shop in the long term.

The Commission therefore considers that a further extension is appropriate.

Existing provisions in the area of the proposal

An existing derogation granted to Denmark and Sweden on 24 January 2000 and extended on 21 January 2003, on 30 January 2007 and on 13 November 2013.

Consistency with 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 proposed Decision aims at simplifying the procedure for recovery of VAT on tolls for taxable persons using the Öresund fixed link between Denmark and Sweden and therefore potentially has a positive economic impact.

⁷ Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in Community territory (OJ L 326, 21.11.1986, p. 40-41).

The impact will in any case be limited because of the narrow scope of the derogation.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for Denmark and Sweden to apply a measure derogating from Articles 168, 169, 170 and 171 of the VAT Directive as regards the right of deduction for taxable persons.

Legal basis

Article 395 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

Subsidiarity principle

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

This Decision concerns an authorisation granted to two Member States upon their 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

Proposed instruments: other.

Other means would not be adequate for the following reasons:

Under Article 395 of the Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, derogation from the common VAT rules is only possible on the authority of the Council acting unanimously on a proposal from the Commission. A Council Implementing Decision is the only suitable instrument since it can be addressed to an individual Member State.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union's budget.

5. OPTIONAL ELEMENTS

Review/revision/sunset clause

The proposal includes a sunset clause.

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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 tax⁸, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letters registered with the Commission on 20 February 2020 Denmark and Sweden requested authorisation to extend the application of a special measure derogating from Articles 168, 169, 170 and 171 of Directive 2006/112/EC requiring taxable persons to exercise their right to deduct or obtain a refund of value added tax (VAT) in the Member State where it was paid.
- (2) In accordance with Article 395(2), the second subparagraph, of Directive 2006/112/EC the Commission informed the other Member States by letter dated 2 April 2020 of the requests made by Denmark and Sweden. By letter dated 3 April 2020, the Commission notified Denmark and Sweden that it had all the information it considered necessary for appraisal of the requests.
- (3) The requests for derogation relate to the recovery of VAT paid on tolls for the use of the Öresund fixed link between Denmark and Sweden. Under the VAT rules on the place of supply of services connected with immovable property, part of the VAT on tolls for the Öresund fixed link is payable to Denmark and part to Sweden.
- (4) By Council Decision 2000/91/EC⁹, by way of derogation from the requirement for taxable persons to exercise their right to deduct or obtain a refund of VAT in the Member State where it was paid, Denmark and Sweden were authorised to apply a special measure enabling taxpayers to recover VAT from a single administration until 31 December 2002. The authorisation to apply that special measure was subsequently extended by Council Decision 2003/65/EC¹⁰ until 31 December 2006 and by Council

⁸ OJ L 347, 11.12.2006, p. 1.

⁹ Council Decision 2000/91/EC of 24 January 2000 authorising the Kingdom of Denmark and the Kingdom of Sweden to apply a measure derogating from Article 17 of the Sixth Council Directive (77/338/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 28, 3.2.2000, p. 38).

¹⁰ Council Decision 2003/65/EC of 21 January 2003 extending the application of Decision 2000/91/EC authorising the Kingdom of Denmark and the Kingdom of Sweden to apply a measure derogating from

Decision 2007/132/EC¹¹ until 31 December 2013. By Council Implementing Decision 2013/680/EU¹² Denmark and Sweden were authorised to apply special measure derogating from Articles 168, 169, 170 and 171 of Directive 2006/112/EC from 1 January 2014 until 31 December 2020.

- (5) The legal and factual situation which justified that derogation has not changed and continues to exist. Denmark and Sweden should therefore be authorised to apply the special measure during a further limited period.
- (6) The derogation has no negative effect on the Union's own resources accruing from VAT.
- (7) Implementing Decision 2013/680/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Implementing Decision 2013/680/EU, the date "31 December 2020" is replaced by "31 December 2027".

Article 2

This Decision is addressed to the Kingdom of Denmark and to the Kingdom of Sweden.

Done at Brussels,

*For the Council
The President*

Article 17 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 25, 30.1.2003, p. 40).

¹¹ Council Decision 2007/132/EC of 30 January 2007 extending the application of Decision 2000/91/EC authorising the Kingdom of Denmark and the Kingdom of Sweden to apply a measure derogating from Article 17 of the Sixth Council Directive (77/388/EEC) on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 57, 24.2.2007, p. 10).

¹² Council Implementing Decision 2013/680/EU of 15 November 2013 authorising the Kingdom of Denmark and the Kingdom of Sweden to extend the application of a special measure derogating from Articles 168, 169, 170 and 171 of Directive 2006/112/EC on the common system of value added tax (OJ L 316, 27.11.2013, p. 39).