



Brussels, 25 June 2021
(OR. en)

9995/21

**Interinstitutional File:
2021/0097(CNS)**

**FISC 103
ECOFIN 613
COVID-19 282**

'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	7749/21 - COM (2021) 181 final
Subject:	Council Directive amending Directive 2006/112/EC as regards exemptions on importations and on certain supplies, in respect of Union measures in the public interest - Adoption

I. INTRODUCTION

1. On 12 April 2021, the Commission presented a proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards exemptions on importations and on certain supplies, in respect of Union measures in the public interest (the so-called 'buy and donate' proposal)¹.
2. The proposal aims to support measures taken at Union level in the public interest, in particular where the Union is acting in the execution of a mandate to buy goods and services in order to distribute them free of charge to Member States according to their emergency needs.
3. The proposal provides for retroactive effect, from 1 January 2021, to cover measures that are already underway to address the effects of the COVID-19 pandemic.

¹ Doc. 7749/21.

4. The European Economic and Social Committee issued its opinion on the proposal at its plenary session on 27 April 2021². The European Parliament delivered its opinion on 18 May 2021³.

II. COUNCIL DISCUSSIONS

5. The proposal was discussed in two informal meetings of the Working Party on Tax Questions (WPTQ) on 14 April and 20 May 2021.
6. A compromise proposal of the Portuguese Presidency, trying to address concerns and suggestions expressed by Member States, was circulated for approval under an informal silence procedure.
7. Ten Member States broke the informal silence procedure: three for outstanding parliamentary scrutiny reservations, six for substantial issues related to the content of the proposal, namely its scope, the lack of an impact assessment, the transposition date and the introduction of an electronic exemption certificate. One delegation raised the issue that VAT also has an impact on national public expenditures and suggested that the Commission commit to undertake appropriate initiatives in that respect.
8. On 1 June 2021 a discussion on this file was held at the informal meeting of the High Level Working Party on Taxation. The reservations entered at WPTQ level were maintained, and some Member States considered it necessary to continue the technical work on this file.

² Doc. ECO/554-EESC-2021-02040.

³ Doc. P9_TA(2021)0228.

9. The file was subsequently submitted to the Committee of Permanent Representatives on 9 June 2021 and to the Council (Economic and Financial Affairs) on 18 June 2021 for a policy debate⁴. The debate demonstrated the willingness of the Member States to reduce the scope of the proposal to the COVID-19 emergency and to delete the electronic exemption certificate from the proposal, to allow for a swift adoption of the draft Directive.
10. Based on the policy debate in the Council, the Portuguese Presidency decided to launch an informal silence procedure on a Presidency compromise text until noon on Friday 25 June 2021. Since no comments were received by that time, the text is considered as acceptable to all delegations.

III. WAY FORWARD

11. Against this background, the Committee of Permanent Representatives is invited to confirm the agreement on the text in the annex to this note with a view to its adoption by the Council as an A-item, subject to legal-linguistic revision.

⁴ Doc. 9427/21.

COUNCIL DIRECTIVE (EU) 2021/.....

of

amending Directive 2006/112/EC as regards temporary exemptions on importations and on certain supplies, in response to the COVID-19 pandemic

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 Parliament⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Acting in accordance with a special legislative procedure,

⁵ OJ C , , p. .

⁶ OJ C , , p. .

Whereas:

- (1) In accordance with Council Directive 2006/112/EC⁷, Member States are to exempt from value added tax (VAT) the importation of goods by, and the supply of goods and services to the Union, the European Atomic Energy Community, the European Central Bank or the European Investment Bank or the bodies set up by the Union to which the Protocol (No 7) on the privileges and immunities of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union (“the Protocol”), applies, within the limits and under the conditions of the Protocol and the agreements for its implementation or the headquarters agreements, in so far as it does not lead to distortion of competition. That exemption is, however, strictly limited to purchases made for official use and it does not extend to situations where goods and services are purchased by Union bodies in order to respond to the emergency situation posed by the COVID-19 pandemic, particularly when they are to be made available for free to Member States or third parties such as national authorities or institutions.
- (2) Therefore, because there is still an urgent need for the adoption of measures in order to create readiness to act when dealing with the on-going sanitary crisis, it is necessary to ensure a VAT exemption for the purchase of goods and services by the Commission or by an agency or body established under Union law in the execution of its tasks, in order to respond to the COVID-19 pandemic. This would ensure that measures taken under the various Union initiatives in this situation are not hampered by amounts of VAT which cannot be recovered by the Union institutions, or by the compliance burden resulting from obligations to register for VAT.
- (3) Council Directive (EU) 2020/2020 is not sufficient to achieve the objective of enhancing the fight against the COVID-19 pandemic since it only allows, for a limited period of time, the application by Member States of reduced rates to the supply of COVID-19 *in vitro* diagnostic medical devices and services closely linked to such devices or the granting of an exemption with deductibility of VAT paid at the preceding stage in respect of the supply of COVID-19 vaccines and *in vitro* diagnostic medical devices, and services closely linked to such vaccines and devices⁸.
- (4) Directive 2006/112/EC should therefore be amended accordingly.

⁷ 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).

⁸ Council Directive (EU) 2020/2020 of 7 December 2020 amending Directive 2006/112/EC as regards temporary measures in relation to value added tax applicable to COVID-19 vaccines and *in vitro* diagnostic medical devices in response to the COVID-19 pandemic (OJ L 419, 11.12.2020, p. 1).

- (5) In view of the current COVID-19 pandemic, the measures that could fall under the new exemption to address the effects of the COVID-19 pandemic are already underway, for example under the Emergency Support Instrument established by Council Regulation (EU) 2020/521⁹. If VAT were to be paid for transactions related to such measures, valuable resources would be lost, resulting in fewer goods and services being provided to the Member States in proportion to the amount of tax to be paid. In order to make the best use of the Union budget in addressing the very serious consequences of the COVID-19 pandemic, the exemptions introduced by this Directive should therefore apply, with retroactive effect, from 1 January 2021. Such retroactive application is indispensable to avoid the measures that are being taken to address the effects of the COVID-19 pandemic from being deprived of their effect. Any adjustment required in respect of transactions initially taxed could be made by using correction mechanisms already in place, for example through a subsequent VAT return.
- (6) In view of the urgency of the situation related to the COVID-19 pandemic, this Directive should enter into force on the day of its publication in the *Official Journal of the European Union*.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

- (1) in Article 143(1), the following point is inserted:

‘(fb) the importation of goods by the Commission or by an agency or a body established under Union law where the Commission or such an agency or body imports those goods in the execution of tasks conferred on it by Union law in order to respond to the COVID-19 pandemic, except where the goods imported are used, either immediately or at a later date, for the purposes of onward supplies for consideration by the Commission or such an agency or body;’;

⁹ Council Regulation (EU) 2020/521 of 14 April 2020 activating the emergency support under Regulation (EU) 2016/369, and amending its provisions taking into account the COVID- 19 outbreak (OJ L 117, 15.4.2020, p. 3).

(2) in Article 143, the following paragraph is added:

‘3. When the conditions for the exemption laid down in point (fb) of paragraph 1 cease to apply, the Commission or the agency or body concerned shall inform the Member State in which the exemption was applied and the importation of those goods shall be subject to VAT under the conditions applicable at that time.’;

(3) Article 151(1) is amended as follows:

(a) in the first subparagraph, the following point is inserted:

‘(ab) the supply of goods or services to the Commission or to an agency or a body established under Union law where the Commission or such an agency or body purchases those goods or services in the execution of the tasks conferred on it by Union law in order to respond to the COVID-19 pandemic, except where the goods and services acquired are used, either immediately or at a later date, for the purposes of onward supplies for consideration by the Commission or such an agency or body.’;

(b) the second subparagraph is replaced by the following:

‘Pending the adoption of common tax rules, the exemptions provided for in the first subparagraph, other than that referred to in point (ab), shall be subject to the limitations laid down by the host Member State.’;

(4) in Article 151, the following paragraph is added:

‘3. When the conditions for the exemption laid down in point (ab) of paragraph 1, first subparagraph, cease to apply, the Commission or the agency or body concerned which received the exempt supply shall inform the Member State in which the exemption was applied and the supply of those goods or services shall be subject to VAT under the conditions applicable at that time.’.

Article 2

Transposition

Member States shall adopt and publish, by 31 December 2021, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply the measures provided for in Article 1 from 1 January 2021.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 3

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

Article 1 shall apply from 1 January 2021.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*
