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**PROPOSAL**

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| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 2 July 2018 |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2018) 509 final |
| Subject: | Proposal for a COUNCIL IMPLEMENTING DECISION authorising Latvia to introduce a special measure derogating from Article 193 of Council Directive 2006/112/EC on the common system of value added tax |

Delegations will find attached document COM(2018) 509 final.

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EUROPEAN
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Brussels, 2.7.2018
COM(2018) 509 final

2018/0270 (NLE)

Proposal for a

# COUNCIL IMPLEMENTING DECISION

**authorising Latvia to introduce a special measure derogating from Article 193 of Council 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 (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 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 9 April 2018, Latvia requested a derogation from Article 193 of the VAT Directive in order to apply the reverse charge mechanism to supplies of ferrous and non-ferrous semi-finished metals. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 4 May 2018 of the request made by Latvia. By letter dated 7 May 2018 the Commission notified Latvia 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 value added tax (VAT).

Pursuant to Article 199a(1) of the VAT Directive Member States may provide that the person liable for payment of VAT on supplies listed in this Article is the taxable person to whom the supply is made (the reverse charge mechanism). Under the reverse charge procedure, the taxable person, to whom the supplies are made, becomes liable for the payment of VAT. This taxable person, provided he has a full right of deduction, would simultaneously declare and deduct the VAT corresponding to the supply, thus leading to no effective payment of VAT to the Treasury. Supplies of ferrous and non-ferrous semi-finished metals are included in point (j) of Article 199a, paragraph 1.

Latvia did not make use of the option of Article 199a (1)(j) of the VAT Directive and did not apply the reverse charge mechanism to supplies of ferrous and non-ferrous semi-processed metals. However, due to recently discovered fraud schemes in the supplies of these products Latvia would like to introduce the reverse charge mechanism to domestic supplies of ferrous and non-ferrous semi-finished metals.

Following Article 199a (1) of the VAT Directive, the reverse charge mechanism may be applied until 31 December 2018 and for a minimum period of two years. As the condition of the two-year period is not fulfilled, Latvia cannot apply the reverse charge mechanism based on this Article.

Consequently, Latvia requests a derogation from Article 193 of the VAT Directive to be authorised to apply the reverse charge mechanism to supplies of ferrous and non-ferrous semi-finished metals based on Article 395 of the VAT Directive.

Latvia submits that during tax audits VAT fraud schemes have been identified in the sector of metal products. When assessing the tax audits whereby tax evasion in relation to transactions with metal products was detected, Latvia found out that they systematically led to significant amounts of additional tax be paid. These additional assessments mounted up to the double of

average additional assessments following audits. According to Latvia, this points to the high risk of fraud in transactions involving metal products.

According to the information submitted by Latvia, a number of measures are undertaken by Latvia to reduce and fight VAT fraud. For instance, cash registers have been subject to new requirements aiming to completely eliminate the fraudulent deletion of registered transactions, a detailed breakdown of transactions must be given in the VAT declaration and particular attention is also given to improving the standard controls and administrative measures. Despite all these measures, Latvia considers it nevertheless necessary to introduce the reverse charge mechanism for the supplies of ferrous and non-ferrous semi-processed metals to prevent VAT revenue losses to the public budget.

Supplies of ferrous and non-ferrous semi-finished metals are considered to be susceptible to fraud and are therefore included in Article 199a(1)(j) of the VAT Directive. If the condition regarding the minimum period of application was fulfilled, Latvia would have been able to rely on the latter Article for the application of the reverse charge mechanism.

It is therefore, proposed to grant the derogation for the period of validity of Article 199a of the VAT Directive. The derogation is thus proposed until 31 December 2018, i.e. the date of expiry of Article 199a of the VAT Directive.

- **Consistency with existing policy provisions in the policy area**

Based on Article 199a(1)(j) of the VAT Directive, the reverse charge mechanism may be applied to the supplies of ferrous and non-ferrous semi-finished metals. A number of Member States apply the reverse charge relying on this provision[1]. If the condition of the minimum period of two years were fulfilled, Latvia could apply the reverse charge mechanism to supplies of ferrous and non-ferrous semi-finished metals without requesting a derogation based on Article 395 of the VAT Directive.

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.

[1] See list of notifications of the VAT Committee: http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/key_documents/vat_committee/notifications.pdf

- **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, i.e. to prevent certain forms of tax evasion or avoidance in a specific sector.

- **Choice of the instrument**

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. Moreover, a Council Decision is the most suitable instrument since it can be addressed to individual Member States.

## 3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

This proposal is based on a request made by Latvia and concerns only this Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for Implementing Decision aims at preventing certain forms of tax evasion or avoidance in the sector of supplies of ferrous and non-ferrous semi-finished metals. The reverse charge mechanism should help Latvia to stop further spreading of the VAT fraud with the supplies of metal products. Consequently, the derogating measure will have a potential positive impact.

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

## 4. BUDGETARY IMPLICATIONS

The proposal has no negative implication for the EU budget.

## 5. OTHER ELEMENTS

The proposal includes a sunset clause set at 31 December 2018.

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Proposal for a

# COUNCIL IMPLEMENTING DECISION

## authorising Latvia to introduce a special measure derogating from Article 193 of Council 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 tax[1], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Pursuant to Article 193 of Directive 2006/112/EC any taxable person carrying out a taxable supply of goods or services is, as a general rule, liable for the payment of value added tax (VAT) to the tax authorities.

(2) Pursuant to point (j) of Article 199a(1) of Directive 2006/112/EC, Member States may provide that the person liable for payment of VAT on supplies of ferrous and non-ferrous semi-finished metals is the taxable person to whom the supply is made ("reverse charge mechanism"). Latvia has not availed of this option.

(3) Latvia has recently discovered a high risk of VAT fraud in the sector of ferrous and non-ferrous semi-processed metals and would therefore like to introduce the reverse charge mechanism to domestic supplies of these products.

(4) Pursuant to Article 199a(1) of Directive 2006/112/EC, the reverse charge mechanism may be applied until 31 December 2018 and for a minimum period of two years. As the condition of the two year period can no longer be fulfilled, Latvia cannot apply the reverse charge mechanism based on point (j) of Article 199a(1) of Directive 2006/112/EC.

(5) By letter registered with the Commission on 9 April 2018, Latvia has requested in accordance with Article 395(2) of Directive 2006/112/EC an authorisation to apply a measure derogating from Article 193 of that Directive in order to make the recipient liable for the payment of VAT for the supply of ferrous and non-ferrous semi-processed metals.

(6) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission, by letter dated 4 May 2018, transmitted the request to

[1] OJ L 347, 11.12.2006, p.1.

other Member States and by letter dated 7 May 2018, notified Latvia that it had all the information necessary to consider the request.

(7) According to information provided by Latvia, VAT fraud schemes have been identified in the sector of metal products. Although a number of conventional measures have been introduced by Latvia to combat the VAT fraud, Latvia considers that it is necessary to introduce the reverse charge mechanism for the supplies of ferrous and non-ferrous semi-finished metals in order to prevent VAT revenue losses to the public budget.

(8) Latvia should therefore be authorised to apply the reverse charge mechanism to supplies of ferrous and non-ferrous semi-finished metals for a limited period.

(9) The derogation has no adverse impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

*Article 1*

By way of derogation from Article 193 of Directive 2006/112/EC, Latvia is authorised to designate the recipient of the supply as the person liable to pay VAT in the case of the supply of ferrous and non-ferrous semi-finished metals.

*Article 2*

This Decision shall expire on 31 December 2018.

*Article 3*

This Decision is addressed to the Republic of Latvia.

Done at Brussels,

*For the Council*
*The President*