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

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**FISC 95  
ECOFIN 565**

**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a 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 - Policy debate

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**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)<sup>1</sup>.
2. The proposal aims to support and facilitate 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 foresees a retroactive effect, from 1 January 2021, to cover measures addressing the effects of the COVID-19 pandemic which are already underway.

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<sup>1</sup> Doc. ST 7749/21.

## II. STATE OF PLAY

4. The proposal was discussed in two meetings at Working Party on Tax Questions (WPTQ) level on 14<sup>th</sup> April and 20<sup>th</sup> May 2021.
5. A second compromise proposal of the Portuguese Presidency (WK 6949/21), trying to address concerns and suggestions expressed by Member States, was circulated for approval under a silence procedure.
6. Ten Member States broke the 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 impact assessment, the implementation period and electronic certificate. One delegation raised the issue of the impact of VAT on public expenditure and wished that the Commission commits to undertake appropriate initiatives in that respect.
7. A discussion on this file was held at the HLWP on 1st June 2021. Reservations were maintained, since some Member States considered it necessary to carry out further technical work on this file.

### III. KEY ISSUES

8. The main open issues in this proposal are:

a) The scope – although the scope of the exemptions was narrowed down and better targeted in the Presidency compromise, in order to make it clear that the exemptions only cover imports or acquisitions made by the Commission, an agency or an EU body destined to prevent, prepare for or to respond to emergencies and situations caused by natural disasters, humanitarian crises or extraordinary circumstances with comparable effects, some Member States still deemed that the scope is too broad and that an adequate impact assessment is needed. Furthermore, a few Member States would prefer an equal VAT treatment to be conferred to similar expenditures by national public bodies;

b) The electronic certificate – the proposal to replace the exemption certificate provided for in Annex II of Council Implementing Regulation (EU) No 282/2011 with an electronic certificate raised doubts among Member States about the scope of the new electronic certificate, the IT-solutions and the timeframe for its implementation. Hence, despite some adjustments introduced in the compromise proposal, for some Member States it appeared unfeasible to agree on the technical aspects associated with the implementation of the electronic certificate within this proposal.

#### **IV. WAY FORWARD**

Against this background, in order to get political guidance on the way to move forward on this file, the Presidency would like submit the following question to the Ministers:

Do you agree that a way to progress could be:

- in the short term, to limit the scope of the proposal to temporary exemptions related to the COVID-19 response, which in view of the emergency could be approved through written procedure and
- to continue the discussion at technical level on a permanent VAT exemption related to the prevention and response to future emergencies?

The Committee of Permanent Representatives is therefore invited to:

- examine the file and
- forward it to the Ministers (ECOFIN) for discussion.

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