

15.03.19**Decision**
of the Bundesrat

Proposal for a Council Directive amending Council Directive 2006/112/EC of 28 November 2006 as regards provisions relating to distance sales of goods and certain domestic supplies of goods**COM(2018) 819 final; Council doc. 15471/18**

At its 975th session on 15 March 2019, the Bundesrat adopted the following position pursuant to Sections 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG):

1. The Bundesrat takes note of the primarily technical amendments that have been submitted for electronic interfaces, which become incorporated into a VAT chain; it also takes note of the provisions relating to the ‘One Stop Shop’ (OSS).
2. Article 14a of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT Directive) will notionally incorporate electronic interfaces into a supply chain in order to combat fraud, provided that they ‘facilitate’ specific distance selling. The new Articles 5b and 54b of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC (VAT Implementing Regulation), are intended to lay down the detailed conditions under which such facilitation may be assumed (cf. COM (2018) 821 final, Council doc. 15472/18).

3. The Bundesrat is in favour of changing the ‘negative list’ hitherto set out in the second paragraph of Articles 5b and 54b(1) of the VAT Implementing Regulation into a corresponding ‘positive list’, to ensure that Article 14a of the VAT Directive has the broadest possible scope to ensure maximum effectiveness. The provision would thus always apply when the electronic interface directly or indirectly

- sets the delivery terms,
- is involved in the payment made, or
- is involved in the ordering or delivery of the goods.

As an alternative, the Bundesrat considers that deletion of the negative list would also be acceptable.

4. With regard to the expansion of the OSS, the Bundesrat refers to its positions of 15 December 2017 (BR-Document 661/17 (Decision), point 4) and of 21 September 2018 (BR-Document 297/18 (Resolution), paragraph 9), which state that due account should be taken of the interests of the Member States entitled to revenue, in particular as regards the definition of inspection and participation rights, should the OSS be introduced.

5. The Bundesrat hereby sends its position directly to the Commission.