

SPANISH PARLIAMENT

REPORT 6/2017 OF 6 MARCH 2017 OF THE JOINT COMMITTEE ON THE EUROPEAN UNION ON THE APPLICATION OF THE PRINCIPLE OF SUBSIDIARITY IN THE PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 2006/112/EC ON THE COMMON SYSTEM OF VALUE ADDED TAX AS REGARDS THE TEMPORARY APPLICATION OF A GENERALISED REVERSE-CHARGE MECHANISM IN RELATION TO SUPPLIES OF GOODS AND SERVICES ABOVE A CERTAIN THRESHOLD [COM(2016) 811 FINAL] [2016/0406 (CNS)] {SWD(2016) 457 FINAL {SWD(2016) 458 FINAL}

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality annexed to the 2007 Lisbon Treaty, which has been in force since 1 December 2009, introduced a control procedure whereby national parliaments check whether draft EU legislation complies with the principle of subsidiarity. This Protocol was implemented in Spain by means of Law 24/2009 of 22 December 2009 amending Law 8/1994 of 19 May 1994. In particular, the new Articles 3(j), 5 and 6 of Law 8/1994 constitute the legal basis for this report.

B. The proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the application of a reverse charge mechanism to supplies of goods and services susceptible to fraud has been approved by the European Commission and forwarded to the national parliaments, which have eight weeks – until 9 March 2017 – to conduct the subsidiarity check.

C. On 16 February 2017 the Bureau and Spokespersons of the Joint Committee on the European Union decided to examine the proposal, appointed José Montilla Aguilera (MP) as rapporteur, and requested that the Government provide a report, as provided for in Article 3(j) of Law 8/1994.

D. A report has been received from the Government stating that this initiative complies with the subsidiarity principle. Written communications have also been received from the regional parliaments of Catalonia, La Rioja, Galicia and Cantabria notifying acknowledgement and closure of the file or non-delivery of a reasoned opinion.

E. At its meeting of 06 March 2017, the Joint Committee for the European Union approved this

REPORT

1. Article 5(1) of the Treaty on European Union states that ‘the use of Union competences is governed by the principles of subsidiarity and proportionality’. According to Article 5(3) of the same Treaty, ‘under the principle of subsidiarity [...]

the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level’.

2. The legislative proposal analysed is based on Article 113 of the Treaty on the Functioning of the European Union, which provides as follows:

‘Article 113

The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.’

3. On 7 April 2016 the Commission adopted the VAT Action Plan [COM(2016) 148 final], which sets out objectives and modernisation measures for the EU’s VAT system. It draws on the work undertaken since the Communication on the future of VAT (COM(2011) 851 final) resulting from the broad consultation process initiated by the Commission with its Green Paper on the future of VAT [COM(2010) 695].

4. The creation of a robust European VAT area is one of the key actions in the Commission’s Action Plan. This calls for the establishment of the definitive EU VAT system for trade between undertakings in the EU to replace the current system, which was intended to be transitional.

5. According to what was agreed between the Parliament and the Council, this definitive VAT system will be based on the principle of taxation in the country of destination of the goods (the ‘destination country principle’), whereas the current system is based on exemption of supplies of goods in the Member State of departure. The Commission has announced its intention of presenting a legislative proposal for the definitive VAT system for crossborder trade based on this taxation option in 2017.

6. However, since preparing, adopting and implementing such a major change is likely to take some time, the Commission has recognised the need to work in parallel on other initiatives, in particular on urgent measures to tackle VAT fraud and, subsequently, the VAT gap, which is the difference between the expected VAT revenue and the VAT actually collected by tax authorities. According to some studies, this VAT gap has reached the alarming level of nearly EUR 160 billion, about EUR 50 billion of which is revenue lost each year through crossborder fraud.

7. At the request of a number of Member States, among the urgent measures considered by the Commission was the possibility of allowing these Member States to implement a temporary generalised reverse charge mechanism (GRCM) that would derogate from one of the general principles of the VAT Directive (2006/112/EC), namely fractionated payment. It agreed to thoroughly study the political, legal and economic implications of such a temporary GRCM before presenting its conclusions

8. An in-depth technical analysis of a GRCM with an invoice threshold of EUR 10 000 was carried out and presented at the ECOFIN meeting of 17 June 2016. In the context of a political agreement on anti-fraud policy the Commission undertook to present, before the end of 2016, a legislative proposal to allow individual Member States to derogate from the common system of value added tax and apply a GRCM to domestic supplies above a given threshold and preserve the Internal Market.

9. The purpose of the legislative proposal is limited in scope and time and will not prejudice the development of the definitive VAT system based on the taxation of crossborder supplies. It requires an amendment of the VAT Directive, on the basis of Article 113 TFEU.

10. Its objectives, as we have seen, are: to reduce VAT fraud, especially carousel fraud in certain Member States, while minimising any overall increase in the administrative burden and preventing the shifting of fraud from one sector to another or from one Member State to another. This is particularly beneficial for Spain because VAT is our second most important tax resource.

11. Because of its optional and temporary character, the measure is proportionate to its objectives. Application of a GRCM by an individual Member State entails a fundamental change to the current VAT system, which will require amendment of the VAT Directive, and the objectives pursued cannot be sufficiently achieved by the Member States alone but have to be achieved at Union level. The measure is thus consistent with the principle of subsidiarity.

CONCLUSION

For the reasons set out above, the Joint Committee on the European Union considers that the proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold complies with the principle of subsidiarity set out in the current Treaty on European Union.