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COM(2020) 198 final

2020/0082 (CNS)

Proposal for a

COUNCIL DECISION

amending Directives (EU) 2017/2455 and (EU) 2019/1995 as regards the dates of transposition and application due to the outbreak of the COVID-19 crisis

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 5 December 2017, the Council adopted Directive (EU) 2017/2455¹ (“the VAT e-commerce Directive”) amending Directive 2006/112/EC² (“the VAT Directive”) and Directive 2009/132/EC³ as regards certain value added tax obligations for supplies of services and distance sales of goods.

On 21 November 2019, the Council adopted Directive (EU) 2019/1995⁴ (“the second VAT e-commerce Directive”) amending the VAT Directive as regards provisions relating to distance sales of goods and certain domestic supplies of goods.

The date of application of the major part of this comprehensive package of legislation on modernising VAT for cross-border B2C e-commerce (“VAT e-commerce package”) was fixed to be 1 January 2021, allowing Member States sufficient time to adapt their legislation and IT systems.

The Commission presented a state of play of the readiness of Member States on 14 February 2020, whereby most Member States confirmed that they would be in a position to apply the rules by due date. Two Member States raised concerns and requested a postponement for the entry into application by one year or more. The Commission offered assistance to those Member States encountering difficulties in order to help them overcome these hurdles and remained confident that Member States would be ready by 1 January 2021.

However, due to the unforeseen outbreak of the COVID-19 crisis and its major impact, Member States had to shift priorities and re-allocate resources from the implementation of the VAT e-commerce package to fighting this pandemic. Therefore, other Member States cannot guarantee anymore to be able to finalise the preparatory work to apply the new rules by 1 January 2021, including a timely transposition of the aforementioned Directives into national law. The IT system at national level required to implement the rules laid down in the VAT e-commerce Directives seriously risks to be delayed and thus jeopardises several Member States to be ready to apply the new rules as of 1 January 2021. Similar concerns were raised by key economic operators, especially postal and courier operators, who urged the Commission to postpone the date of application of the VAT e-commerce package by 6 months due to the COVID-19 crisis.

The Commission held a meeting with Member States on 24 April 2020 to assess their readiness to apply the new rules as of 1 January 2021. The majority of Member States still confirmed to be ready to apply them on time, but stressed that the provisions on the functioning of the VAT e-commerce package are based on the principle that all Member

¹ Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29.12.2017, p. 7).

² 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).

³ Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods (OJ L 292, 10.11.2009, p. 5).

⁴ Council Directive (EU) 2019/1995 of 21 November 2019 amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods (OJ L 310, 2.12.2019, p. 1–5→)

States should be in a position to apply them correctly and would therefore be ready to support a postponement not exceeding 6 months.

Taking into account the above, the objective of this proposal is to postpone the 1 January 2021 date of application of the amendments set out in Council Directive (EU) 2017/2455 and Council Directive (EU) 2019/1995 by six months. The new date of application shall thus be 1 July 2021. A postponement of six months is suggested, because the delay should be kept as short as possible to minimise additional budgetary losses for Member States.

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

The general objective of this proposal is the smooth functioning of the internal market, the competitiveness of EU business and the need to ensure effective taxation of the digital economy. The VAT e-commerce package is consistent with the future application of the destination principle for VAT as set out in the recent VAT Action plan supported by Council⁵.

In addition to the VAT Action Plan, the VAT e-commerce package has been identified as a key initiative in the Digital Single Market Strategy⁶ ('DSM Strategy') as well as the Single Market strategy⁷ and the E-Government Action Plan⁸.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU). This article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

- **Subsidiarity (for non-exclusive competence)**

This proposal postpones the 1 January 2021 date of application of the VAT e-commerce Directives, which have been adopted by Council in December 2017 and November 2019 and have to be transposed into national law by 31 December 2020 by all Member States. This proposal is made as a consequence of and reaction to the outbreak of the COVID-19 crisis, which confronts Member States with challenges at national level to tackle the current emergency situation and which causes some of them difficulties in guaranteeing a timely implementation of the required changes in their domestic IT systems. The provisions on the functioning of the VAT e-commerce package are based on the principle that all Member States should be in a position to apply them correctly.

Given that VAT is a tax harmonised at EU level, Member States cannot by themselves set different rules. Therefore, any initiative to amend the VAT rules for e-commerce, including a change of the date of application, requires a proposal by the Commission to amend the VAT Directive and cannot be achieved by unilateral actions at national level.

The proposal is therefore consistent with the subsidiarity principle.

⁵ <http://www.consilium.europa.eu/en/press/press-releases/2016/05/25-conclusions-vat-action-plan/>

⁶ COM(2015) 192 final.

⁷ COM(2015) 550 final.

⁸ COM(2016) 179 final.

- **Proportionality**

The proposal is consistent with the principle of proportionality, i.e. it does not go beyond what is necessary to meet the objectives of the Treaties and in particular the smooth functioning of the single market. As with the subsidiarity test, it is not possible for Member States to address the issues without a proposal to amend the dates of application of the VAT e-commerce Directives.

- **Choice of the instrument**

The proposal amends Council Directive (EU) 2017/2455 and Council Directive (EU) 2019/1995. A Council Decision has been chosen for this purpose, because the only amendment made is the postponement of the dates of transposition and application.

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

- **Stakeholder consultations**

The Commission has been contacted by several Member States as well as postal and courier operators stressing that it will be highly unlikely for them to be able to have their IT systems ready and operational for the application and implementation of the VAT e-commerce package by 1 January 2021 due to the outbreak of the COVID-19 crisis.

The Commission held a meeting with Member States on 24 April 2020 to assess their readiness to apply the new rules as of 1 January 2021. The majority of Member States still confirmed to be ready to apply them on time, but stressed that the provisions on the functioning of the VAT e-commerce package are based on the principle that all Member States should be in a position to apply them correctly and would therefore be ready to support a postponement not exceeding 6 months.

- **Impact assessment**

An impact assessment was carried out for the proposal⁹ which led to the adoption of the VAT e-commerce Directive. The current proposal only amends the dates of application of the amendments set out in Directive (EU) 2017/2455 and Directive (EU) 2019/1995 due to the outbreak of the COVID-19 crisis.

- **Regulatory fitness and simplification**

The main goal of this proposal is to postpone the date of application of the VAT e-commerce package by six months due to the outbreak of the COVID-19 crisis.

The proposal does not change the substance of the rules, but only postpones their date of application by six months.

4. BUDGETARY IMPLICATIONS

This proposal is part of the project to postpone the date of application of the VAT e-commerce package.

⁹ COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Proposals for a Council Directive, a Council Implementing Regulation and a Council Regulation on Modernising VAT for cross-border B2C e-Commerce, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2016:0379:FIN>

The budgetary implications of the already adopted VAT e-commerce package as a whole are set out in detail in the explanatory memorandum of the proposal for Council Directive 2017/2455, document COM(2016)757 final¹⁰.

The budgetary losses for Member States have been estimated at around EUR 5-7 billion yearly if the VAT e-commerce package is not implemented successfully. A delay of 6 months would therefore cause losses of around EUR 2.5-3.5 billion. However, if Member States and businesses are not ready to apply the new VAT e-commerce rules, the risk of the system not working properly could entail almost the same losses.

5. OTHER ELEMENTS

• Implementation plans and monitoring, evaluation and reporting arrangements

Implementation will be overseen by the Standing Committee on Administrative Cooperation (SCAC), supported by its IT subcommittee, the Standing Committee on Information Technology (SCIT).

• Detailed explanation of the specific provisions of the proposal

This proposal only concerns the date of application of the already adopted legal framework of the VAT e-commerce package set out in the VAT Directive. The date of application shall be postponed by six months. This means that the rules shall be applied as of 1 July 2021 instead of 1 January 2021. Consequently, Member States shall adopt and publish their transposition measures by 30 June 2021 instead of 31 December 2020.

The reason for this proposal is the outbreak of the COVID-19 crisis, which puts Member States under pressure to react immediately and adopt measures urgently at national level to alleviate its consequences for businesses and the population in general. Due to these unprecedented, exceptional circumstances, several Member States cannot guarantee to meet the deadline to transpose and implement the necessary rules of the VAT e-commerce package at national level by 1 January 2021.

¹⁰ Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods COM/2016/0757 final - 2016/0370 (CNS), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1586260266830&uri=CELEX:52016PC0757>

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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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2006/112/EC³ as amended by Council Directive (EU) 2017/2455⁴ and Council Directive (EU) 2019/1995⁵ lays down the legal framework of the package of legislation on modernising value added tax (VAT) for cross-border business to consumer (B2C) e-commerce. The majority of those new provisions are to be applied as from 1 January 2021.
- (2) On 30 January 2020, the World Health Organisation (WHO) declared the COVID-19 outbreak a public health emergency of international concern. On 11 March 2020, WHO declared the COVID-19 outbreak a pandemic. COVID-19 has provoked infections in all Member States. Due to the alarming increase in the number of cases and the lack of efficient means immediately available to deal with the COVID-19 outbreak, numerous Member States have declared a national state of emergency.
- (3) The outbreak of the COVID-19 crisis constitutes an unprecedented and unpredictable emergency that deeply affects all Member States and obliges them to take immediate action at national level to tackle the ongoing crisis as a priority by reallocating

¹ OJ C , , p. .

² OJ C , , p. .

³ 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).

⁴ Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29.12.2017, p. 7).

⁵ Council Directive (EU) 2019/1995 of 21 November 2019 amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods (OJ L 310, 2.12.2019, p. 1).

resources to other issues. Due to this crisis, several Member States encounter difficulties in finalising the development of IT systems necessary for the application of the rules laid down in Directives (EU) 2017/2455 and (EU) 2019/1995 by 31 December 2020 and apply them as of 1 January 2021. Some Member States as well as postal and courier operators have therefore asked for the postponement of the dates of application of Directives (EU) 2017/2455 and (EU) 2019/1995.

- (4) Taking into consideration the challenges that Member States are facing to tackle the COVID-19 crisis and the fact that the new provisions are based on the principle that all Member States have to update their IT systems in order to be able to apply the provisions laid down in Directives (EU) 2017/2455 and (EU) 2019/1995, thus ensuring the collection and transmission of information and payments under the modified schemes, it is necessary to postpone the dates of transposition and application of those Directives by six months. A postponement of six months is appropriate, because the delay should be kept as short as possible to minimise additional budgetary losses for Member States.
- (5) Directives (EU) 2017/2455 and (EU) 2019/1995 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1
Amendments to Directive (EU) 2017/2455

Directive (EU) 2017/2455 is amended as follows:

- (1) Article 2 is amended as follows:
 - (a) the heading is replaced by the following:

‘Amendments to Directive 2006/112/EC with effect from 1 July 2021’;

- (b) the introductory sentence is replaced by the following:

‘With effect from 1 July 2021, Directive 2006/112/EC is amended as follows.’;

- (2) Article 3 is replaced by the following:

‘Article 3
Amendment to Directive 2009/132/EC

With effect from 1 July 2021, Title IV of Directive 2009/132/EC is deleted.’;

- (3) in Article 4, paragraph 1 is amended as follows:

- (a) the second subparagraph is replaced by the following:

‘Member States shall adopt and publish, by 30 June 2021, the laws, regulations and administrative provisions necessary to comply with Articles 2 and 3 of this Directive.

They shall immediately communicate to the Commission the text of those provisions.’;

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

‘They shall apply the measures necessary to comply with Articles 2 and 3 of this Directive from 1 July 2021.’;

Article 2

Amendments to Directive (EU) 2019/1995

In Article 2(1) of Directive (EU) 2019/1995, the first and the second subparagraphs are replaced by the following:

‘Member States shall adopt and publish, by 30 June 2021 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those measures from 1 July 2021.’

Article 3

Entry into force

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Decision is addressed to the Member States.

Done at Brussels,

For the Council

The President