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2020/0083 (NLE)

Proposal for a

COUNCIL IMPLEMENTING REGULATION

**amending Implementing Regulation (EU) 2019/2026 as regards the dates of 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 21 November 2019, the Council adopted Implementing Regulation (EU) 2019/2026¹ amending Implementing Regulation (EU) No 282/2011² as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods.

The date of application of the bulk of the package of legislation on modernising VAT for cross-border B2C e-commerce (“VAT e-commerce package”), including the implementing provisions, was fixed to be 1 January 2021.

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. The IT system at national level required for the implementation of the VAT e-commerce package 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 States should be in a position to apply them correctly and would therefore be ready to support a postponement not exceeding 6 months.

The objective of this proposal is to postpone the dates of application of the implementing rules of the VAT e-commerce package laid down in Implementing Regulation (EU) 2019/2026 and scheduled for 1 January 2021 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.

¹ Council Implementing Regulation (EU) 2019/2026 of 21 November 2019 amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods (OJ L 313, 4.12.2019, p. 14).

² Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

- **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 Council³.

In addition to the VAT Action Plan, the VAT e-commerce package has been identified as a key initiative in the Digital Single Market Strategy⁴ ('DSM Strategy') as well as the Single Market strategy⁵ and the E-Government Action Plan⁶.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 397 of Directive 2006/112/EC⁷ on the common system of value added tax (the 'VAT Directive'). This article provides that the Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement the VAT Directive.

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

This proposal changes the date of application of the implementing rules of the VAT e-commerce package that have been adopted by Council in November 2019 insofar that date was fixed on 1 January 2021. This goes hand in hand with the proposal to postpone the date of application of the VAT e-commerce package, including thus all the legal acts affected. 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 to finalise the preparatory work to apply the new rules as of 1 January 2021. 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.

The measures necessary to implement the VAT Directive are adopted by Council acting unanimously on a proposal from the Commission. A proposal by the Commission is therefore necessary to change the date of application of the already adopted implementing measures, which cannot be achieved by unilateral actions at national level.

The proposal is therefore consistent with the subsidiarity principle.

- **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 date of application of the Council Implementing Regulation.

³ <http://www.consilium.europa.eu/en/press/press-releases/2016/05/25-conclusions-vat-action-plan/>

⁴ COM(2015) 192 final.

⁵ COM(2015) 550 final.

⁶ COM(2016) 179 final.

⁷ OJ L 347, 11.12.2006, p. 1.

- **Choice of the instrument**

This proposal amends Council Implementing Regulation (EU) 2019/2026. The only amendment made is the postponement of the date of application.

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

- **Stakeholder consultations**

This proposal reflects the strong concerns some Member States, postal and courier operators have expressed and addressed to the Commission not to be able to finalise the preparatory works of the VAT e-commerce package at national level to apply the new rules by 1 January 2021 due to the current 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 proposal which led to the adoption of the VAT e-commerce Directive⁸ which is the basis for the implementing rules laid down in the Implementing Regulation (EU) 282/2011 as amended by Implementing Regulation (EU) 2019/2026. The current proposal only amends the date of application of these amendments due to 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 implementing rules, but only postpones their date of application.

4. BUDGETARY IMPLICATIONS

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

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 final⁹.

⁸ 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>

⁹ 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>

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 implementing provisions of the VAT e-commerce package set out in Implementing Regulation (EU) 2019/2026. The date of application of these new rules originally fixed for 1 January 2021, shall be postponed by six months. This means that the provisions shall be applied as of 1 July 2021 instead of 1 January 2021. The registration of a taxable person to use one of the new schemes shall be possible three months before the date of application, i.e. as of 1 April 2021. The current mechanism for corrections of VAT returns will continue to apply to VAT returns up to and including the second quarter of 2021.

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 finalise the preparatory work to apply the new rules of the VAT e-commerce package as of 1 January 2021.

Proposal for a

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amending Implementing Regulation (EU) 2019/2026 as regards the dates of application due to the outbreak of the COVID-19 crisis

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 tax¹, and in particular Article 397 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Implementing Regulation (EU) No 282/2011² lays down detailed provisions for the special schemes for taxable persons supplying certain services to non-taxable persons.
- (2) Council Implementing Regulation (EU) 2019/2026³ amends those provisions in line with the extension of the scope of the existing special schemes and the introduction of a new scheme in the framework of the package of legislation on modernising value added tax (VAT) for cross-border business to consumer (B2C) e-commerce. Those amendments are to be applied from 1 January 2021.
- (3) 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 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.
- (4) The outbreak of the COVID-19 crisis constitutes an unexpected and unprecedented emergency that deeply affects all Member States and obliges them to take immediate action at national level to deal with the ongoing crisis as a priority by reallocating resources to other issues. Due to this crisis, several Member States encounter

¹ OJ L 347, 11.12.2006, p. 1.

² Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

³ Council Implementing Regulation (EU) 2019/2026 of 21 November 2019 amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods (OJ L 313, 4.12.2019, p. 14).

difficulties in finalising the development of IT systems necessary for the application of the rules laid down in Implementing Regulation (EU) 2019/2026 and apply them as of 1 January 2021. Several Member States as well as postal and courier operators have therefore asked for the postponement of the dates of application of Implementing Regulation (EU) 2019/2026.

- (5) 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 Implementing Regulation (EU) 2019/2026, thus ensuring the collection and transmission of information and payments under the modified schemes, it is necessary to postpone the dates of application of this Regulation 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.
- (6) Implementing Regulation (EU) 2019/2026 should therefore be amended accordingly,
HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2019/2026 is amended as follows:

- (1) in Article 1 point (5) replacing Section 2 of Chapter XI of Implementing Regulation (EU) No 282/2011, paragraph 1 of Article 61 is replaced by the following:

1. Changes to the figures contained in a VAT return relating to periods up to and including the second return period in 2021 shall, after the submission of that VAT return, be made only by means of amendments to that return and not by adjustments in a subsequent return.

Changes to the figures contained in a VAT return relating to periods from the third return period in 2021 shall, after the submission of that VAT return, be made only by adjustments in a subsequent return.’;

- (2) in Article 2, the second and the third paragraphs are replaced by the following:

‘It shall apply from 1 July 2021.

However, Member States shall allow taxable persons and intermediaries acting on their behalf to submit the information required under Articles 360, 369c or 369o of Directive 2006/112/EC for registration under the special schemes as from 1 April 2021.’.

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President