



EUROPEAN COMMISSION

Brussels, 29.6.2012  
COM(2012) 356 final

2012/0173 (NLE)

Proposal for a

**COUNCIL DECISION**

**authorising Hungary to introduce a special measure derogating from Article 193 of  
Directive 2006/112/EC on the common system of value added tax**

**(only the Hungarian text is authentic)**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

Pursuant to Article 395 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>1</sup> (hereafter: 'VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogation from the provisions of that Directive, in order to simplify the procedure for collecting value added tax (VAT) or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Commission on 3 February 2012, Hungary requested, for a period of 2 years, to be authorised to introduce a measure derogating from Article 193 of the VAT Directive in order to designate the taxable recipient of supplies of wheat and meslin, rye, barley, oats, maize, triticale, soya beans, rape or colza seeds and sunflower seeds as the person liable to pay VAT to the tax authorities instead of the supplier (the so-called 'reverse charge').

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 26 April 2012 of the request made by Hungary. By letter dated 2 May 2012, the Commission notified Hungary that it had all the information necessary for appraisal of the request.

Hungary explained that it has been confronted with several types of tax evasion which, in essence, involves the invoicing of supplies followed by the disappearance of the supplier without paying tax to the tax authorities but leaving the taxable customer in receipt of a valid invoice in respect of which he can claim a tax deduction. Evasion schemes have been discovered at national level as well as in relation to Intra-Community trade.

On the basis of information provided by Hungary, about 20% of all VAT deducted or reclaimed as regards the above-mentioned agricultural products would be of a fraudulent nature and, calculated at year 2010 prices, result in an estimated VAT loss for the Treasury of HUF 13,5 billion.

In reaction, Hungary would like to apply a reverse charge procedure, thus eliminating the possible fraud insofar as, in the absence of VAT being charged, the potential 'missing' trader would not be able to keep the VAT received from his customer. The taxable recipient, insofar as being a taxable person with a full right of deduction, would declare and deduct the VAT in the same VAT return. This would have the effect of instantly preventing further significant revenue losses.

At the same time, Hungary should establish appropriate control measures and reporting obligations for taxable persons who are engaged in supplies of agricultural products to which the derogation applies in order to ensure the proper functioning of the measure and to prevent a shift of evasion to other stages (e.g. when the raw products are processed), agricultural products or sectors. The Commission should be notified of these measures.

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<sup>1</sup> OJ L 347, 11.12.2006, p. 1

During the 2-years application period of the measure, Hungary will be able to introduce conventional and more definitive control measures that are compatible with the VAT Directive and designed to combat this type of VAT evasion after expiry of the authorisation. In fact, Hungary has committed itself not to seek renewal of the measure.

The goods targeted by the derogating measure should be determined as accurately as possible as to avoid legal uncertainty and, therefore, the combined nomenclature laid down in Council Regulation (EEC) No 2658/87 should be used. The measure will only apply to unprocessed goods, which are normally not used in unaltered state for final consumption.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

There was no need for consultation or external expertise.

The Decision proposal aims at combating VAT evasion in the agricultural market in Hungary and has therefore a potential positive impact.

Because of the narrow scope of the derogation, and its limited application in time, the impact will in any case be limited.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

The Decision authorises Hungary to apply a derogating measure from the VAT Directive as regards the shifting of the VAT liability from the supplier to the taxable customer in relation to certain supplies of agricultural products.

This Decision is based on Article 395 of the VAT Directive.

The proposal falls under the exclusive competence of the EU. The subsidiarity principle therefore does not apply.

This Decision concerns an authorisation granted to a Member State upon its own request and does not constitute any obligation.

Given the strict limitation in time and scope, the special measure appears to be proportionate to the aim pursued.

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible on the authority of the Council acting unanimously on a proposal from the Commission. A Council Decision is the only suitable instrument since it can be addressed to an individual Member State.

## **4. BUDGETARY IMPLICATION**

The proposal has no implications for the Union budget.

**5. ADDITIONAL INFORMATION**

The proposal includes a sunset clause.

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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 tax<sup>2</sup>, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered at the Commission on 3 February 2012, Hungary requested authorisation to derogate, for a period of 2 years, from the provisions of Article 193 of Directive 2006/112/EC governing the person liable for the payment of value added tax (VAT) to the tax authorities. In that letter, Hungary has mentioned that it will not seek renewal of that authorisation.
- (2) In accordance with the second paragraph of Article 395(2) of Directive 2006/12/EC, the Commission informed the other Member States by letter dated 26 April 2012 of the request made by Hungary. By letter dated 2 May 2012, the Commission notified Hungary that it had all the information it considered necessary for the appraisal of the request.
- (3) The person liable for payment of VAT is, as a general rule, the taxable person supplying the goods, in accordance with Article 193 of Directive 2006/112/EC. The purpose of the derogation requested by Hungary is to place that liability, for a limited period, on that taxable person to whom supplies of certain unprocessed agricultural products in the sectors of cereals and oilseeds are made.
- (4) Within those sectors, Hungary has noted that a number of traders engage in different forms of tax evasion, both domestically and in Intra-Community trade, by not paying the VAT to the tax authorities they have charged on their supplies. Their customers, insofar as they are taxable persons with a full right of deduction, remain entitled to deduct the VAT.

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<sup>2</sup> OJ L 347, 11.12.2006, p. 1.

- (5) Designating the taxable person to whom the goods are supplied as liable for payment of VAT instead of the supplier, would be a temporary emergency measure that would remove the opportunity to engage in that form of tax evasion. Application of that measure for 2 years should give Hungary the time to introduce in the agricultural sector definitive measures compatible with Directive 2006/112/EC that would prevent and combat this form of tax evasion.
- (6) To prevent tax evasion being transferred to the processing stage of the products, to other products or sectors, Hungary should introduce suitable control measures and reporting obligations and notify the Commission thereof.
- (7) In order to ensure that the derogation measure only applies to certain specific agricultural products and to guarantee its legal certainty, the goods covered by this measure should be determined by using the combined nomenclature laid down in Council Regulation No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Custom Tariff<sup>3</sup>.
- (8) The measure is proportionate to the objectives pursued since it is limited in time and not intended to apply generally but only to a number of carefully specified products that are normally not destined for final consumption in unaltered state, and in relation to which tax evasion has caused substantial loss of VAT revenue.
- (9) The special measure will not affect the overall amount of VAT revenue collected at the stage of final consumption in Hungary and will have no adverse impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

#### *Article 1*

By way of derogation from Article 193 of Directive 2006/112/EC, Hungary is hereby authorised to designate the taxable person to whom the following supplies of goods, as set out in the combined nomenclature established by Regulation (EEC) No 2658/87, are made, as the person liable for payment of VAT:

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<sup>3</sup> OJ L 256, 7.9.1987, p. 1.

CN code	Product
1001	Wheat and meslin
1002	Rye
1003	Barley
1004	Oats
1005	Maize (corn)
1008 60 00	Triticale
1201	Soya beans, whether or not broken
1205	Rape or colza seeds, whether or not broken
1206 00	Sunflower seeds, whether or not broken

#### *Article 2*

The authorisation provided for in Article 1 is subject to Hungary introducing appropriate and effective control measures and reporting obligations with respect to taxable persons that supply goods to which this Decision applies.

Hungary shall notify the Commission of the introduction of the measures and obligations referred to in the first paragraph.

#### *Article 3*

This Decision shall apply for two years from the date of its notification.

#### *Article 4*

This Decision is addressed to Hungary.

Done at Brussels,

*For the Council  
The President*