Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2019/310

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authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax

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[(1)], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter registered with the Commission on 15 May 2018 Poland requested an authorisation to introduce a special measure derogating from Article 226 of Directive 2006/112/EC in order to apply a split payment mechanism ('the special measure'). The special measure should require the inclusion of a special statement that value added tax (VAT) has to be paid to the blocked VAT account of the supplier on invoices issued in relation to the supplies of goods and services susceptible to fraud and generally covered by the reverse charge mechanism and by the joint and several liability in Poland. Poland requested the special measure for period of three years, from 1 January 2019 to 31 December 2021.

(2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission transmitted the request of Poland to other Member States by letters dated 3 September 2018. By letter dated 4 September 2018, the Commission notified Poland that it had all the information necessary to consider the request.

(3) Poland has already taken numerous measures to fight fraud. It has introduced, the reverse charge mechanism and joint and several liability of the supplier and the customer, the Standard Audit File, tighter rules for the VAT registration and de-registration of taxable persons, increased number of audits among others. However, Poland nonetheless considers that those measures are insufficient to prevent VAT fraud.

(4) Poland is of the view that the application of the special measure will eliminate VAT fraud. Since under the split payment mechanism the amount of VAT deposited on a separate VAT account of a supplier (taxable person) can be used for restricted purposes only, namely for the payment of the VAT liability to the tax authority or for the payment of VAT on invoices received from suppliers, it is better guaranteed that the

tax authorities will receive the whole VAT amount which should be transferred by the taxable person to the Polish State Treasury.

(5) Poland introduced the voluntary split payment mechanism on 1 July 2018. Poland considers that in areas particularly exposed to VAT fraud, the special measure should be introduced. Those areas are sectors of economy such as steel, scrap, electronics, gold, non-ferrous metals, fuels, and plastics. Those areas are generally covered by the reverse charge mechanism and by joint and several liability of the supplier and the customer in Poland.

(6) The special measure will apply to supplies between taxable persons, of goods and services listed in the Annex in business-to-business (B2B) supplies, and will cover only electronic bank transfers.

(7) Where a surplus of input tax in excess of the output tax that is recognised by the supplier in the VAT return as a refundable amount, the payment of such refund is normally carried out within 60 days to supplier's regular account. However, Poland has informed the Commission that, for the transactions covered by the special measure, at the request of a supplier who holds a blocked VAT account, the refund is to take place within 25 days.

(8) Suppliers are not to incur costs on opening and operating the VAT bank account, as the VAT account is to be free from any commissions and fees by the bank.

(9) The special measure is to apply to all suppliers, including those suppliers who are not established in Poland, as they have to hold a bank account operated pursuant to Polish Banking Law. In this respect, Poland confirmed that the suppliers will not incur any additional costs relating to the obligation of opening a bank account in Poland, since those suppliers will be able to open and hold the bank account for VAT payments in Poland free of charge.

(10) The special measure as envisaged by Poland will impose significant changes on suppliers. The system has already been operating since 1 July 2018 on a voluntary basis, and taxable persons have had the opportunity to become acquainted with it.

(11) The Commission is of the view that the special measure for supplies of goods and services susceptible to fraud is likely to bring effective results in the fight against VAT fraud. The derogations are usually granted for a limited period of time. The special measure should therefore be authorised from 1 March 2019 until 28 February 2022.

(12) Given the novelty and the broad scope of the special measure, it is important to ensure necessary follow-up. In particular, such follow-up needs to focus on the impact of the special measure on the level of VAT fraud and on the taxable persons regarding the refunds of VAT, the administrative burden, costs for taxable persons among others. Poland should therefore provide a report on the impact of the special measure 18 months after the entry into force of the special measure in Poland.

(13) The special measure will not negatively affect the overall amount of tax revenue collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

***Changes to legislation:** There are currently no known outstanding effects for the Council Implementing Decision (EU) 2019/310. (See end of Document for details)*

Article 1

By way of derogation from Article 226 of Directive 2006/112/EC, Poland is authorised to introduce a special statement that VAT shall be paid to the separate and blocked VAT bank account of the supplier opened in Poland on invoices issued in relation to supplies between taxable persons of goods and services listed in the Annex to this Decision where payments for supplies are made by electronic bank transfers.

Article 2

Poland shall notify the national measure referred to in Article 1 to the Commission.

Within 18 months after the entry into force in Poland of the measure referred to in Article 1, Poland shall submit a report to the Commission on its overall impact on the level of VAT fraud and on the taxable persons concerned.

Article 3

This Decision shall take effect on the date of its notification.

This Decision shall apply from 1 March 2019 to 28 February 2022.

Article 4

This Decision is addressed to the Republic of Poland.

Done at Brussels, 18 February 2019.

For the Council

The President

N. BĂDĂLĂU

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Decision (EU) 2019/310. (See end of Document for details)*

ANNEX

List of supplies of goods and services covered by Article 1

Article 1 shall apply to the following supplies of goods and services described according to the Polish Classification of Products and Services (PKWiU):

Item	PKWiU	Name of goods (group of goods)/Name of services (group of services)
1	24.10.12.0	Ferro-alloys
2	24.10.14.0	Pig iron pellets and powder, specular pig iron or steel
3	24.10.31.0	Flat rolled products of non-alloy steel, not further worked than hot-rolled, of a width of >= 600 mm
4	24.10.32.0	Flat rolled products of non-alloy steel, not further worked than hot-rolled, of a width of < 600 mm
5	24.10.35.0	Flat rolled products of other alloy steel, not further worked than hot-rolled, of a width of >= 600 mm, excluding products of electrical silicon steel
6	24.10.36.0	Flat rolled products of other alloy steel, not further worked than hot-rolled, of a width of < 600 mm, excluding products of electrical silicon steel
7	24.10.41.0	Flat rolled products of non-alloy steel, not further worked than cold-rolled, of a width of >= 600 mm
8	24.10.43.0	Flat rolled products of non-alloy steel, not further worked than cold-rolled, of a width of >= 600 mm, excluding products of electrical silicon steel
9	24.10.51.0	Flat rolled products of non-alloy steel, of a width of >= 600 mm, clad, plated or coated

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10	24.10.52.0	Flat rolled products of other alloy steel, of a width of >= 600 mm, clad, plated or coated
11	24.10.61.0	Bars and rods, hot rolled, in irregularly wound coils, of non-alloy steel
12	24.10.62.0	Other bars and rods of steel, not further worked than forged, hot rolled, hot-drawn or extruded, but including those twisted after rolling
13	24.10.65.0	Bars and rods, hot rolled, in irregularly wound coils, of other alloy steel
14	24.10.66.0	Other bars and rods of other alloy steel, not further worked than forged, hot rolled, hot-drawn or extruded, but including those twisted after rolling
15	24.10.71.0	Open sections, not further worked than hot rolled, hot-drawn or extruded, of non-alloy steel
16	24.10.73.0	Open sections, not further worked than hot rolled, hot-drawn or extruded, of other alloy steel
17	24.31.10.0	Cold drawn bars and solid profiles of non-alloy steel
18	24.31.20.0	Cold drawn bars and solid profiles of alloy steel, other than stainless steel
19	24.32.10.0	Flat cold rolled steel products, uncoated, of a width of < 600 mm
20	24.32.20.0	Flat cold-rolled steel products, clad, plated or coated, of a width of < 600 mm
21	24.33.11.0	Open sections cold formed or folded of non-alloy steel
22	24.33.20.0	Ribbed sheets of non-alloy steel