Council Implementing Decision (EU) 2019/309 of 18 February 2019 authorising Lithuania to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

COUNCIL IMPLEMENTING DECISION (EU) 2019/309

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authorising Lithuania to introduce a special measure derogating from Article 193 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) Article 193 of Directive 2006/112/EC provides that the taxable person supplying the goods or services is, as a general rule, liable for the payment of value added tax (VAT) to the tax authorities.

(2) By letter registered with the Commission on 16 October 2018, Lithuania requested an authorisation to introduce a special measure derogating from Article 193 of Directive 2006/112/EC in order to apply the reverse charge mechanism to supplies of hard drives ('the special measure').

(3) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Lithuania by letters dated 19 November 2018. By letter dated 20 November 2018, the Commission notified Lithuania that it had all the information necessary to consider the request.

(4) Lithuania discovered missing trader fraud in intra-Community trade with respect to supplies of electronic goods such as laptops, mobile phones, tablets and hard drives. The scale and scope of this practice has a direct, very negative impact on the State budget.

(5) Lithuania has undertaken a number of measures to tackle and prevent this type of VAT fraud. According to Lithuania, those measures are not sufficient to prevent VAT fraud in the supply of electronic goods.

(6) Lithuania intends to introduce the reverse charge mechanism to electronic products based on Article 199a of Directive 2006/112/EC. However, hard drives fall outside the scope of that Article.

(7) In order to provide for a more comprehensive form of the reverse charge mechanism that would apply not only to the electronic products already covered by Article 199a

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Decision (EU) 2019/309. (See end of Document for details)*

of Directive 2006/112/EC but also to hard drives, Lithuania requests to be authorised to introduce the special measure.

(8) Given the possible positive impact of the special measure on the fight against VAT fraud identified by Lithuania, the derogation should be granted for a limited period, from 1 March 2019 until 28 February 2022.

(9) Derogations are in general authorised for a limited period, to allow an assessment of whether special measures are appropriate and effective. Derogations grant Member States time to introduce other conventional measures to tackle the specific problem until the expiry of special measures, thereby making an extension of the derogation redundant. Derogations that allow making use of the reverse charge mechanism are only granted exceptionally for specific areas where fraud occurs and constitute a means of last resort. Lithuania should therefore implement other conventional measures to fight and prevent the VAT fraud with respect to trade in hard drives until the expiry of the special measure and consequently should no longer need to derogate from Article 193 of Directive 2006/112/EC with regard to such supplies.

(10) The special measure 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, Lithuania is authorised to designate the recipient as the person liable to pay VAT in the case of supplies of hard drives.

Article 2

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

This Decision shall apply from 1 March 2019 and shall expire on 28 February 2022.

Article 3

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 18 February 2019.

For the Council

The President

N. BĂDĂLĂU