Council Directive (EU) 2019/2235 of 16 December 2019 amending Directive 2006/112/EC on the common system of value added tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence efforts within the Union framework

COUNCIL DIRECTIVE (EU) 2019/2235

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amending Directive 2006/112/EC on the common system of value added tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence efforts within the Union framework

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 Parliament[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Directive 2006/112/EC[(3)] provides, under certain conditions, for an exemption from value added tax (VAT) for goods and services supplied to and goods imported by the armed forces of any State party to the North Atlantic Treaty when such forces take part in the common defence effort outside their own State.

(2) Council Directive 2008/118/EC[(4)] provides for an exemption from excise duty for excise goods intended to be used by the armed forces of any State party to the North Atlantic Treaty other than the Member State within which the excise duty is chargeable, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens, subject to conditions and limitations laid down by the host Member State.

(3) Such exemptions are not available where the armed forces of a Member State take part in activities under the common security and defence policy (CSDP) as set out in Section 2 of Chapter 2 of Title V of the Treaty on European Union. Priority should be given to the need to improve European capabilities in the field of defence and crisis management and to strengthen Union security and defence. In their joint communication of 28 March 2018 on the Action Plan on Military Mobility, the High Representative of the Union for Foreign Affairs and Security Policy and the Commission recognised the overall need for

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aligning the VAT treatment of defence efforts undertaken within the Union framework and the North Atlantic Treaty Organization (NATO) umbrella.

(4) A defence effort carried out for the implementation of a Union activity under the CSDP covers military missions and operations, activities of battlegroups, mutual assistance, permanent structured cooperation (PESCO) projects and activities of the European Defence Agency (EDA). It should not, however, cover activities under the solidarity clause set out in Article 222 of the Treaty on the Functioning of the European Union or any other bilateral or multilateral activities between Member States that do not relate to a defence effort carried out for the implementation of a Union activity under the CSDP.

(5) An exemption from VAT should thus be introduced to cover the supply of goods or services intended either for the use of the armed forces of a Member State or of the civilian staff accompanying them or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the CSDP outside their Member State. Supplies of goods or services for the armed forces of the Member State in which those goods or services are supplied should be excluded from the VAT exemption.

(6) In addition, it is necessary to provide for an exemption from VAT where goods imported by the armed forces of a Member State are intended either for the use of those forces or of the civilian staff accompanying them or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the CSDP outside their Member State.

(7) An exemption from excise duty should also be introduced to cover excise goods supplied for the use of the armed forces of any Member State other than the Member State within which the excise duty is chargeable when such forces take part in a defence effort carried out for the implementation of a Union activity under the CSDP outside their Member State.

(8) As with the exemption from VAT and excise duty for NATO defence efforts, the exemptions for defence efforts carried out for the implementation of a Union activity under the CSDP should be limited in scope. Those exemptions should apply only to situations where armed forces carry out tasks directly linked to a defence effort under the CSDP and should not cover civilian missions under the CSDP. Goods or services supplied for the use of civilian staff could therefore only be covered by the exemptions when the civilian staff are accompanying armed forces carrying out tasks directly linked to a defence effort under the CSDP outside their Member State. Tasks performed exclusively by civilian staff or performed exclusively by using civilian capabilities should not be considered to be a defence effort. The exemptions should not in any circumstances cover goods or services that the armed forces acquire for the use of those forces or the civilian staff accompanying them within their own Member State.

(9) Since the objective of this Directive, namely to align the VAT and excise duty treatment of defence efforts within the Union and NATO frameworks, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of

proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(10) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[(5)], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(11) Directives 2006/112/EC and 2008/118/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2006/112/EC

Directive 2006/112/EC is amended as follows:

(1) in Article 22, the following paragraph is inserted before the first paragraph:

> The application by the armed forces of a Member State taking part in a defence effort carried out for the implementation of a Union activity under the common security and defence policy, for their use or for the use of the civilian staff accompanying them, of goods which they have not purchased subject to the general rules governing taxation on the domestic market of a Member State shall be treated as an intra-Community acquisition of goods for consideration, where the importation of those goods would not be eligible for the exemption provided for in point (ga) of Article 143(1).;

(2) in Article 143(1), the following point is inserted:

> (ga) the importation of goods into Member States by the armed forces of other Member States for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the common security and defence policy;;

(3) in Article 151(1), the following points are inserted:

> (ba) the supply of goods or services within a Member State, intended either for the armed forces of other Member States for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the common security and defence policy;
>
> (bb) the supply of goods or services to another Member State, intended for the armed forces of any Member State other than the Member State of destination itself, for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such