



**COUNCIL OF
THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION amending Implementing Decision 2010/39/EU authorising the Portuguese Republic to apply a measure derogating from Articles 168, 193 and 250 of Directive 2006/112/EC on the common system of value added tax
COMMON GUIDELINES
Consultation deadline for Croatia: 14.1.2013

COUNCIL IMPLEMENTING DECISION

of...

amending Implementing Decision 2010/39/EU authorising the Portuguese Republic to apply a measure derogating from Articles 168, 193 and 250 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 tax¹, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 347, 11.12.2006, p.1.

Whereas:

- (1) By letter registered with the Secretariat-General of the Commission on 18 April 2012, Portugal requested authorisation to continue to apply a measure that was previously granted by Council Implementing Decision 2010/39/EU¹, derogating from the provisions of Directive 2006/112/EC governing the right of deduction, the person liable to pay the tax and the obligation to submit a value added tax (VAT) return.
- (2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 1 June 2012 of the request made by Portugal. By letter dated 6 June 2012, the Commission notified Portugal that it had all the information necessary to consider the request.
- (3) The derogating measure pursued by Portugal deviates from the provisions of Directive 2006/112/EC, as it allows for the application of a special optional scheme concerning particular firms acting in the doorstep sales business that fulfil specific conditions, where authorised by the competent tax authorities ('authorised firms'). Those authorised firms apply a particular business model by selling their products directly to interposed resellers who, in turn, sell the same products directly to the final consumers.

¹ OJ L 19, 23.1.2010, p. 5.

- (4) The measure derogates from Article 168 of Directive 2006/112/EC, which governs a taxable person's right to deduct VAT charged on goods and services supplied to him for the purposes of his taxed transactions, by granting authorised firms the right to deduct the VAT payable or paid by their resellers for the corresponding goods that have been supplied to those resellers.
- (5) The measure derogates from Article 193 of Directive 2006/112/EC, which governs the liability to pay the VAT, by establishing authorised firms to which the scheme applies as the person liable for the VAT borne on their resellers' supplies of goods to final consumers.
- (6) The measure derogates from Article 250 of Directive 2006/112/EC, which governs the obligation to submit a VAT return, by transferring to authorised firms the obligation to submit a VAT return relating to the goods which they have supplied to the reseller and relating to the supply of those goods to the final consumers.
- (7) The derogating measure may only be applied to firms whose total turnover is derived from doorstep sales made by resellers acting in their own name and on their own account, provided that all products sold by the firm appear in a pre-established list of the prices applicable at the final consumption stage and the firms sell their products directly to resellers who, in turn, sell them directly to final consumers.

- (8) The derogating measure has the effect of ensuring that the VAT collected at the retail sale stage on sales of products coming from authorised firms is actually paid to the Treasury, thereby helping to prevent tax fraud. It also facilitates the tax administration by simplifying the arrangements for collecting VAT and reducing the resellers' obligations in relation to VAT.
- (9) According to the information provided by Portugal, the legal and factual situation which justified the application of the derogating measure has not changed and continues to exist. Portugal should therefore be authorised to apply that measure during a further period, but limited in time in order to allow for a review of the necessity and effectiveness of the derogating measure.
- (10) Where Portugal considers a further extension beyond 2015 necessary, a report on the application of the derogating measure should be submitted to the Commission together with the extension request by 31 March 2015 in order to reserve sufficient time for the Commission to examine the request and, in case the Commission would come forward with a proposal, for the Council to adopt it.
- (11) The derogating measure will have only a negligible effect on the overall amount of the tax revenue of Portugal collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT.
- (12) Implementing Decision 2010/39/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2010/39/EU is hereby amended as follows:

- (1) In second paragraph of Article 4, the date "31 December 2012" is replaced by that of "31 December 2015";
- (2) The following article is inserted:

"Article 4a

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2015 and shall be accompanied by a report on the application of that measure."

Article 2

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

It shall apply from 1 January 2013.

Article 3

This Decision is addressed to the Portuguese Republic.

Done at Brussels,

For the Council

The President
