



Council of the
European Union

Brussels, 22 September 2017
(OR. en)

11980/17

Interinstitutional File:
2017/0205 (NLE)

FISC 181
ECOFIN 708

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION authorising the Republic of Poland 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) 2017/...

of...

**authorising the Republic of Poland 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 tax¹, and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

¹ OJ 347, 11.12.2006, p. 1.

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 7 October 2016, Poland has requested a derogation from Article 193 of Directive 2006/112/EC in order to apply the reverse charge mechanism to supplies of hard drives such as solid-state drives and hard disk drives.
- (3) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letters dated 12 and 13 July 2017 of the request made by Poland. By letter dated 13 July 2017, the Commission notified Poland that it had all the information necessary to consider the request.
- (4) Hard drives, which are not covered by Article 199a of Directive 2006/112/EC, became another commodity in the category of electronic products used for VAT fraud in Poland. According to Poland, an increase of VAT fraud appeared on the hard drive market through the use of the "missing trader" mechanism. The scale and scope of this practice has a direct, very negative impact on distributors not participating in the fraud and it leads to the decrease of VAT revenues.

- (5) Poland undertook a number of measures to tackle and prevent VAT fraud. However, until the measures bring effective results, Poland considers that additional support, in the form of a temporary measure such as the introduction of the reverse charge mechanism, is necessary.
- (6) Poland should therefore be authorised to apply the reverse charge mechanism to supplies of hard drives such as solid-state drives and hard disk drives from 1 January 2018. The derogation should be limited in time until 31 December 2020.
- (7) Until the expiry of the derogation the measures undertaken by Poland are expected to prevent further spreading of the VAT fraud in the sector of hard drives and thus Poland will not need to derogate any more from Article 193 of Directive 2006/112/EC with regards to these supplies. Poland should therefore not seek the renewal of the derogation.
- (8) The derogation has no 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, Poland is authorised to designate the recipient as the person liable to pay VAT in the case of supplies of hard drives such as solid-state drives and hard disk drives.

Article 2

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

This Decision shall apply from 1 January 2018 and shall expire on 31 December 2020.

Article 3

This Decision is addressed to the Republic of Poland.

Done at Brussels,

For the Council

The President
