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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DIRECTIVE amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold

COUNCIL DIRECTIVE (EU) 2018/...

of ...

**amending Directive 2006/112/EC on the common system of value added tax
as regards the temporary application of a generalised reverse charge mechanism
in relation to supplies of goods and services above a certain threshold**

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,

¹ OJ ..., ..., p. ...

² OJ ..., ..., p. ...

Whereas:

- (1) In its communication of 7 April 2016 on an action plan on VAT, the Commission announced its intentions to come forward with a proposal for a definitive value added tax (VAT) regime for cross-border business-to-business trade between Member States on the basis of the taxation of cross-border supplies of goods and services.
- (2) In light of the current level of VAT fraud and the fact that not all Member States are equally affected by such fraud, and given that it will take several years for the definitive VAT regime to be implemented, some urgent and specific measures may be necessary.
- (3) In this context, certain Member States have asked to be allowed to implement a temporary generalised reverse charge mechanism ('GRCM') with a certain threshold per transaction which would derogate from one of the general principles of the current VAT system, as regards the fractionated payment system, in order to address endemic carousel fraud. Carousel fraud finds notably its roots in the current exemption for intra-Community supplies that allows for goods to be obtained VAT-free. A number of traders subsequently engage in tax fraud by not paying to the tax authorities the VAT received from their customers. Those customers, however, being in receipt of valid invoices, remain entitled to a tax deduction. The same goods can be supplied several times over by including again exempt intra-Community supplies. Similar carousel fraud can also occur when services are supplied. By designating the taxable person to whom the goods or services are supplied as the person liable for payment of VAT, the derogation would remove the opportunity to engage in that form of tax fraud.

- (4) Member States showing differences in development of the capacities of their tax authorities sustain a special effort, in terms of addressing higher levels of VAT fraud and revenue losses, in the implementation of the VAT regime, as referred to in the first paragraph of Article 27 of the Treaty on the Functioning of the European Union.
- (5) In order to limit the risk of fraud shifting between Member States, Member States that fulfil certain criteria as regards their fraud level, in particular in relation to carousel fraud, and that are able to establish that other control measures are not sufficient to combat that fraud, should be allowed to use the GRCM. In addition, they should establish that estimated gains in tax compliance and collection expected as a result of the introduction of the GRCM outweigh the estimated overall additional burden on businesses and tax authorities and that businesses and tax authorities will not incur costs that are higher than those incurred as a result of the application of other control measures.
- (6) If Member States choose to apply the GRCM, they should apply it to all non-cross-border supplies of goods and services above a defined threshold per transaction. The application of the GRCM should not be restricted to any specific sector.
- (7) Member States choosing to apply the GRCM should introduce specific electronic reporting obligations on taxable persons so as to ensure the effective functioning and monitoring of the application of the GRCM. They should detect and prevent all new forms of tax fraud, such as artificial splitting of the taxable amount of transactions.

- (8) In order to be able to assess whether the introduction of the GRCM in one Member State results in fraud shifting towards other Member States and to be able to assess the degree of possible disturbance to the functioning of the internal market, it is appropriate to provide for a specific obligation to exchange information between the Member States that apply the GRCM and those that do not. All exchanges of information are subject to the applicable provisions on the protection of personal data and confidentiality, which include exemptions and restrictions for safeguarding the interests of the Member States or of the Union in the area of taxation.
- (9) In order to assess the effect of the application of the GRCM on fraudulent activities in a transparent manner, predefined evaluation criteria should be established by those Member States, to enable an assessment of the level of fraud before and after the application of the GRCM.
- (10) The decisions authorising the application of the GRCM would have a budgetary impact which could be significant for one or more Member States. Accordingly, the power to authorise the application of the GRCM should be conferred on the Council.
- (11) A Member State choosing to apply the GRCM should request the Commission to propose the application of the GRCM and provide relevant information to enable the Commission to assess such request. Where necessary, the Commission should be able to request additional information.

- (12) Given the unexpected effects that the application of the GRCM might have on the functioning of the internal market because of a possible shift in fraud to other Member States that do not apply the GRCM, the Council should be able, as a safeguard measure, to repeal all implementing decisions authorising the application of the GRCM. In view of the need to react quickly in a situation where a considerable negative impact on the internal market has been established, reversed unanimity voting should be used.
- (13) In view of the uncertain effects that the GRCM might have, the application thereof should be limited in time.
- (14) To closely monitor the impact on the internal market, all Member States should, where the GRCM is used in at least one Member State, present reports to the Commission so as to enable an assessment of the impact on fraud, the compliance costs for businesses and a shift in fraudulent activities due to the application of the GRCM.
- (15) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Directive 2006/112/EC, the following Article is inserted:

‘Article 199c

1. By way of derogation from Article 193, a Member State may, until 30 June 2022, introduce a generalised reverse charge mechanism (‘GRCM’) on non-cross-border supplies, providing that the person liable for payment of VAT is the taxable person to whom all supplies of goods and services are made above a threshold of EUR 17 500 per transaction.

A Member State wishing to introduce the GRCM shall comply with all of the following conditions:

- (a) it had in 2014, in accordance with the method and figures set out in the 2016 final report dated 23 August 2016 on the VAT gap published by the Commission, a VAT gap, expressed as a percentage of the VAT total tax liability, of at least 5 percentage points above the Community median VAT gap;
- (b) it has, based on the impact assessment that accompanied the legislative proposal for this Article, a carousel fraud level within its total VAT gap of more than 25 %;

- (c) it establishes that other control measures are not sufficient to combat carousel fraud on its territory, in particular by specifying the control measures applied and the particular reasons for their lack of effectiveness, as well as the reasons why administrative cooperation in the field of VAT has proven insufficient;
- (d) it establishes that the estimated gains in tax compliance and collection expected as a result of the introduction of the GRCM outweigh the expected overall additional burden on businesses and tax authorities by at least 25 %; and
- (e) it establishes that the introduction of the GRCM will not result in businesses and tax authorities incurring costs that are higher than those incurred as a result of the application of other control measures.

The Member State shall attach to the request referred to in paragraph 3 the calculation of the VAT gap according to the method and figures available in the report on the VAT gap published by the Commission, as referred to in point (a) of the second subparagraph of this paragraph.

2. Member States that apply the GRCM shall establish appropriate and effective electronic reporting obligations for all taxable persons and, in particular, for taxable persons who supply or receive goods or services to which the GRCM applies to ensure the effective functioning and monitoring of the application of the GRCM.

3. Member States wishing to apply the GRCM shall submit a request to the Commission and provide the following information:
- (a) a detailed justification of fulfilment of the conditions referred to in paragraph 1;
 - (b) the starting date of application of the GRCM and the period to be covered by the GRCM;
 - (c) actions to be taken to inform taxable persons of the introduction of the application of the GRCM; and
 - (d) a detailed description of the accompanying measures referred to in paragraph 2.

If the Commission considers that it does not have all the necessary information, it shall request additional information, including underlying methods, assumptions, studies and other supporting documents, within one month of receipt of the request. The requesting Member State shall submit the required information within a month of receipt of the notification.

4. Where the Commission considers that a request complies with the requirements set out in paragraph 3, it shall, no later than three months after it has received all the necessary information, submit a proposal to the Council. The Council, acting unanimously on such a proposal from the Commission, may authorise the requesting Member State to apply the GRCM. Where the Commission considers that a request is not compliant with the requirements set out in paragraph 3, it shall, within the same deadline, communicate its reasons to the requesting Member State and to the Council.
5. Where a considerable negative impact on the internal market has been established in accordance with the second subparagraph of this paragraph, the Commission shall, no later than three months after it has received all the necessary information, propose the repeal of all the implementing decisions referred to in paragraph 4, at the earliest six months after the entry into force of the first implementing decision authorising a Member State to apply the GRCM. Such repeal shall be deemed to be adopted by the Council unless the Council decides by unanimity to reject the Commission's proposal within 30 days of the Commission's adoption thereof.

A considerable negative impact shall be considered established where the following conditions are fulfilled:

- (a) at least one Member State that does not apply the GRCM informs the Commission of an increase of VAT fraud on its territory due to the application of the GRCM; and
- (b) the Commission establishes, including on the basis of the information provided by the Member States referred to in point (a) of this subparagraph, that the increase of VAT fraud on their territory is related to the application of the GRCM in one or more Member States.

6. Member States that apply the GRCM shall submit the following information in electronic format to all Member States:

- (a) the names of the persons who, in the 12 months preceding the starting date of application of the GRCM, have been subject to proceedings, whether criminal or administrative, for VAT fraud; and

- (b) the names of the persons, including in the case of legal persons the names of their directors, whose VAT registration in that Member State is terminated after the introduction of the GRCM; and
- (c) the names of the persons, including in the case of legal persons the names of their directors, who have failed to submit a VAT return for two consecutive tax periods after the introduction of the GRCM.

The information referred to in points (a) and (b) of the first subparagraph shall be submitted no later than three months after the introduction of the GRCM and shall be updated every three months thereafter. The information referred to in point (c) of the first subparagraph shall be submitted no later than nine months after the introduction of the GRCM and shall be updated every three months thereafter.

Member States that apply the GRCM shall submit an interim report to the Commission no later than one year after the start of application of the GRCM. That report shall provide a detailed assessment of the effectiveness of the GRCM. Three months after the end of the application of the GRCM, Member States that apply the GRCM shall submit a final report on its overall impact.

7. Member States that do not apply the GRCM shall submit an interim report to the Commission as regards the impact in their territory of the application of GRCM by other Member States. That report shall be submitted to the Commission within three months following the application of the GRCM for at least one year in one Member State.

If at least one Member State applies the GRCM, Member States that do not apply the GRCM shall, by 30 September 2022, submit a final report to the Commission as regards the impact in their territory of the GRCM applied by other Member States.

8. In the reports referred to in paragraph 6, Member States shall assess the impact of the application of the GRCM on the basis of the following evaluation criteria:
- (a) the evolution of the VAT gap;
 - (b) the evolution of VAT fraud, in particular carousel fraud and fraud at retail level;
 - (c) the evolution of the administrative burden on taxable persons;
 - (d) the evolution of administrative costs for the tax authorities.

9. In the reports referred to in paragraph 7, Member States shall assess the impact of the application of the GRCM on the basis of the following evaluation criteria:
- (a) the evolution of VAT fraud, in particular carousel fraud and fraud at retail level;
 - (b) a shift in fraud from those Member States that apply or have applied the GRCM.’.

Article 2

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply until 30 June 2022.

Article 3

This Directive is addressed to the Member States.

Done at ...,

For the Council
The President
