Council of the European Union

Brussels, 24 September 2021
(OR. en)

11645/21

Interinstitutional File:
2021/0247 (NLE)

FISC 136
ECOFIN 827

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL IMPLEMENTING DECISION amending Implementing Decision (EU) 2018/789 authorising Hungary 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) …/…

of …

amending Implementing Decision (EU) 2018/789
authorising Hungary 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 valued added tax[1], and in particular Article 395(1), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

[1] OJ L 347, 11.12.2006, p. 1.

Whereas:

(1) Article 193 of Directive 2006/112/EC provides that any taxable person carrying out a taxable supply of goods or services is, as a general rule, liable for the payment of value added tax (VAT) to the tax authorities.

(2) Council Implementing Decision (EU) 2018/789[1] authorised Hungary to introduce a measure derogating from Article 193 of Directive 2006/112/EC regarding the person liable for payment of VAT in cases where certain supplies are carried out by a taxable person subject to liquidation or any other proceedings legally establishing its insolvency (‘the special measure’).

(3) By letter registered with the Commission on 18 February 2021, Hungary submitted a request to the Commission that the authorisation to apply the special measure be extended until 31 December 2026 (‘the request’). Hungary submitted a report, including a review of the special measure, together with the request.

(4) Pursuant to Article 395(2), second subparagraph, of Directive 2006/112/EC, by letters dated 7 April 2021 the Commission transmitted the request to the other Member States. By letter dated 8 April 2021, the Commission notified Hungary that it had all the information necessary to consider the request.

---

[1] Council Implementing Decision (EU) 2018/789 of 25 May 2018 authorising Hungary to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 134, 31.5.2018, p. 10).

(5) Hungary argues that taxable persons in liquidation or subject to insolvency proceedings frequently do not pay the VAT due to the tax authorities. At the same time, the purchaser, being a taxable person with the right of deduction, can still deduct the VAT incurred, thus negatively impacting the budget and financing the liquidation. Hungary also registered cases of fraud whereby companies in liquidation would issue fictitious invoices to active companies and greatly reduce their payable tax without any guarantee that the issuer would pay the VAT due.

(6) Article 199(1), point (g), of Directive 2006/112/EC enables Member States to provide that the person liable for the payment of VAT is the taxable person to whom the supply of immovable property sold by a judgment debtor in a compulsory sale procedure is made (‘the reverse charge mechanism’). The special measure allows Hungary to extend the application of the reverse charge mechanism to other supplies by taxable persons subject to insolvency proceedings, namely the supply of capital goods and the supply of other goods and services with an open market value exceeding HUF 100 000.

(7) On the basis of information provided by Hungary, applying the reverse charge mechanism to those types of transaction has been effective in simplifying tax collection and preventing tax evasion. The implementation of the special measure has limited losses to public revenues and generated additional budget revenue. Furthermore, the economic effects of the COVID-19 pandemic could lead to a sharp increase in the number of liquidations in the near future, underlining the need to extend the special measure.

(8) The requested derogation should be limited in time, but still give the tax administration time to introduce other conventional measures to tackle the problem and to reduce the losses to the public budget, in particular those connected with fraudulent practices, before the special measure expires, thus making a further extension of the special measure redundant. A derogation to allow use to be made of the reverse charge mechanism is only granted exceptionally for specific fraudulent areas and constitutes a means of last resort. The authorisation should therefore be extended only until 31 December 2024.

(9) The special measure will have no adverse impact on the Union's own resources accruing from VAT.

(10) Implementing Decision (EU) 2018/789 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Implementing Decision (EU) 2018/789, the second paragraph is replaced by the following:

'This Decision shall expire on 31 December 2024.'.

Article 2

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

Article 3

This Decision is addressed to Hungary.

Done at …,

For the Council
The President