



**COUNCIL OF
THE EUROPEAN UNION**

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"I/A" ITEM NOTE

from : General Secretariat
to : COREPER/Council

Subject : Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards tax evasion linked to import
- Political agreement

1. On 2 December 2008 the Commission transmitted to the Council a proposal on two anti-fraud measures linked to cross border transactions, concerning respectively exemption from VAT upon importation and joint and several liability.
2. The European Parliament and the European Economic and Social Committee delivered their opinions respectively on 24 April and 14 May 2009.
3. The Working Party on Tax Questions and the Fiscal Counsellors/Attachés examined the proposal at several meetings. At their meeting on 28 May 2009 the Fiscal Counsellors/Attachés:

- = agreed, in view of its urgency, to forward to the Council for adoption the first part of the proposed measures concerning exemption from VAT upon importation, on the understanding that the Council will continue work on the second part of the proposed measures concerning joint and several liability;
- = agreed the text of a draft Directive concerning exemption from VAT upon importation, as set out in Annex I, and the statements to be entered in the Council minutes when the Directive will be formally adopted, as set out in Annex II.

4. The Commission reserved its position on splitting the proposal.

5. Once the Commission has lifted its reservation, the Permanent Representatives Committee could decide

- to inform the European Parliament of the intention of the Council to adopt the first part of the proposed measures concerning exemption from VAT upon importation, and to continue work on the second part of the proposed measures concerning joint and several liability;
- to suggest that the Council express its political agreement on the abovementioned Directive as set out in Annex I and on the draft statements set out in Annex II, with a view to adopting the above Directive, after legal/linguistic finalisation, as an "A" item on its agenda for a forthcoming meeting, while agreeing to continue work on the proposed measures concerning joint and several liability.

Proposal for a
COUNCIL DIRECTIVE

amending Directive 2006/112/EC on the common system of value added tax as regards tax evasion linked to import

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Whereas:

- (1) The Council, in the Conclusions of its meeting on Economic and Financial Affairs of 28 November 2006, has agreed to establish an Anti-tax fraud Strategy implemented at Community level, especially for tax fraud in the field of indirect taxation, in order to complement national efforts.
- (2) Certain measures which have been discussed in that context require an amendment of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁴.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006. Directive last amended by Directive 2008/8/EC, OJ L 44, 20.2.2008.

- (3) The importation of goods is exempt from value added tax (VAT) if followed by a supply or transfer of those goods to a taxable person in another Member State. The conditions under which that exemption is granted are laid down by Member States. Experience, however, shows that divergences in application are exploited by traders to avoid payment of VAT on goods imported under those circumstances.
- (4) In order to prevent that exploitation it is necessary to specify, for particular transactions, at Community level a set of minimum conditions under which this exemption applies.
- (5) Since, for those reasons, the objectives of the proposed action with a view to address the problem of VAT evasion, cannot be sufficiently achieved by the Member States themselves and can therefore be better achieved at Community level, the Community may adopt measure in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 those objectives.
- (6) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁵, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (7) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

Article 143 is amended as follows:

- a) the introductory words are replaced by the following:
"1. Member States shall exempt the following transactions:"

⁵ OJ C 321, 31.12.2003, p. 1.

b) the following paragraph is added:

"2. The exemption provided for in point (d) of paragraph 1 shall apply in cases when the importation of goods is followed by the supply of goods exempted under Article 138(1) and (2)(c) only if at the time of importation the importer has provided to the competent authorities of the Member State of importation at least the following information:

- (a) his VAT identification number issued in the Member State of importation or the VAT identification number of his tax representative, liable for payment of the VAT, issued in the Member State of importation;
- (b) the VAT identification number of the customer, to whom the goods are supplied in accordance with Article 138(1), issued in another Member State, or his own VAT identification number issued in the Member State in which the dispatch or transport of the goods ends when the goods are subject to a transfer in accordance with Article 138(2)(c);
- (c) the evidence that the imported goods are intended to be transported or dispatched from the Member State of importation to another Member State.

However, Member States may provide that the evidence referred to in point (c) be indicated to the competent authorities only upon request."

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive with effect from 1 January 2011. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

Statements for the Council minutes

Re the Directive as a whole:

The Council stresses its commitment to continue discussions on the other part of the original Commission proposal relating to cross-border joint and several liability and stands ready to take stock of the progress by the end of 2009.

Re the Directive as a whole:

The Council invites the Commission to promptly examine the setting up of an automatic exchange between Member States of the information collected in accordance with Articles 143(2)(a) and (b) of Directive 2006/112/EC and to come forward, when appropriate, with the necessary legislative proposals by the end of 2010.

Re Article 143:

The Council and the Commission agree that the exemption on importation provided for in Article 143(1)(d) of Directive 2006/112/EC shall be granted only where the subsequent supply of goods within the Community involves the same goods that are imported.