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2022/0002 (NLE)

Proposal for a

**COUNCIL IMPLEMENTING REGULATION**

**amending Implementing Regulation (EU) No 282/2011 as regards the update of the VAT  
and/or excise duty exemption certificate**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

Since 1977, the VAT Directive<sup>1</sup> has provided for an exemption for supplies to the armed forces of any State party to the North Atlantic Treaty that are taking part in a common defence effort outside their own State. This exemption was established to address situations in which the circle of revenue and expenditure flow is broken, because VAT on such supplies would normally constitute revenue for the State in which the armed forces are located, rather than their own. It is among the exemptions to be found in Article 151 of the VAT Directive.

The Excise Directive<sup>2</sup> has provided for a similar exemption from excise duty<sup>3</sup> since 1993 for movements of excise goods to the armed forces of any North Atlantic Treaty Organisation (NATO) member.

In December 2019<sup>4</sup>, the Council adopted amendments to the VAT and Excise Directives, introducing exemptions with regard to defence efforts carried out by the armed forces of a Member State in another Member State for the implementation of a Union activity under the common security and defence policy (CSDP), which was established as the European security and defence policy (ESDP) in 2000. The date of entry into application of the new measures by the Member States is 1 July 2022.

In July 2021<sup>5</sup>, the Council adopted amendments to the VAT Directive, introducing further exemptions with regard to measures taken at Union level in response to the COVID-19 pandemic. Member States are set to apply these new exemptions from 1 January 2021 retroactively.

The measures provided for in the VAT Implementing Regulation<sup>6</sup> implementing the exemptions laid down in Article 151 of the VAT Directive therefore need to be adapted correspondingly.

#### **• Consistency with existing policy provisions in the policy area**

The proposal is closely linked with the amendments to the VAT and Excise Directives adopted in December 2019, complementing the 2016 VAT Action Plan<sup>7</sup> setting out ways to modernise the VAT system so as to make it simpler, more fraud-proof and business-friendly.

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<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([OJ L 347, 11.12.2006, p. 1](#)).

<sup>2</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC ([OJ L 9, 14.1.2009, p. 12](#)).

<sup>3</sup> Excise duties governed by EU law are applied on alcoholic beverages, manufactured tobacco products and energy products (motor fuels and heating fuels, such as petrol and gasoline, electricity, natural gas, coal and coke). The structure of the taxes and minimum rates is harmonised at EU level.

<sup>4</sup> Council Directive (EU) 2019/2235 of 16 December 2019 amending Directive 2006/112/EC on the common system of value added tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence efforts within the Union framework ([OJ L 336, 30.12.2019, p. 10](#)).

<sup>5</sup> Council Directive (EU) 2021/1159 of 13 July 2021 amending Directive 2006/112/EC amending Directive 2006/112/EC as regards temporary exemptions on importations and on certain supplies, in response to the COVID-19 pandemic ([OJ L 250, 15.07.2021, p. 1](#)).

<sup>6</sup> Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (recast) ([OJ L 77, 23.3.2011, p. 1](#)).

<sup>7</sup> *Towards a single EU VAT area — time to decide*, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT ([COM\(2016\) 148 final](#)).

It is also closely linked with the amendments to the VAT Directive adopted in July 2021, introducing exemptions with regard to Union measures in response to the COVID-19 pandemic addressing the effects of the ongoing health crisis.

The objective of the proposal is to provide for measures necessary to implement the new exemptions pursuant to Article 151(1)(ab), (ba) and (bb) of the VAT Directive as well as Article 12(1)(ba) of the Excise Directive.

- **Consistency with other Union policies**

The proposal is consistent with the global strategy for the European Union's foreign and security policy (EUGS)<sup>8</sup> and the implementation plan on security and defence<sup>9</sup>, which sets out proposals to implement the EUGS in the area of security and defence.

It implements the Commission's commitment in the action plan on military mobility<sup>10</sup> to assess the feasibility of aligning the VAT treatment of defence efforts in the EU framework and under the NATO umbrella.

The proposal is also consistent with the European defence action plan<sup>11</sup>, which includes the launch of a European Defence Fund<sup>12</sup>, and the Athena mechanism<sup>13</sup>, which (pursuant to Article 41(2) TEU) handles the financing of common costs of EU military missions and operations in the framework of the CSDP.

The proposal is also in line with Union initiatives taken in response to the COVID-19 pandemic and it particularly supports urgent measures taken under the Emergency Support Instrument (ESI<sup>14</sup>) in order to address the effects of the ongoing health crisis.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 397 of the VAT Directive. This article provides that the Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement the VAT Directive.

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<sup>8</sup> [Shared vision, common action: a stronger Europe – a global strategy for the European Union's foreign and security policy.](#)

<sup>9</sup> [https://eeas.europa.eu/sites/eeas/files/eugs\\_implementation\\_plan\\_st14392.en16\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/eugs_implementation_plan_st14392.en16_0.pdf)

<sup>10</sup> *Action plan on military mobility*, Joint Communication to the European Parliament and the Council ([JOIN\(2018\) 5 final](#)).

<sup>11</sup> *European defence action plan*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ([COM\(2016\) 950 final](#)).

<sup>12</sup> Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092 ([OJ L 170, 12.5.2021, p. 149](#)). The Fund will provide EUR 2.6 billion to directly finance competitive and collaborative research projects, in particular through grants, and EUR 5.3 billion to complement Member States' investment by co-financing collaborative development costs such as prototype development, the ensuing certification and testing requirements.

<sup>13</sup> [Council Decision \(CFSP\) 2015/528](#) establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) and repealing Decision 2011/871/CFSP ([OJ L 84, 28.3.2015, p. 39](#)).

<sup>14</sup> Council Regulation (EU) 2020/521 of 14 April 2020 activating the emergency support under Regulation (EU) 2016/369, and amending its provisions taking into account the COVID-19 outbreak ([OJ L 117, 15.4.2020, p. 3](#)).

- **Subsidiarity (for non-exclusive competence)**

In order to complement the alignment in the VAT and excise-duty treatment of defence efforts in the EU and under NATO frameworks established by the amendments made to the VAT and Excise Directives, as well as to enable the practical application of the exemptions introduced in the VAT Directive in order to support Union measures responding to the COVID-19 pandemic, a corresponding adjustment of the VAT Implementing Regulation is required. Member States could not address it by acting alone. The adjustment requires a proposal by the Commission to amend the VAT Implementing Regulation.

- **Proportionality**

The proposal is consistent with the principle of proportionality, as it does not go beyond what is necessary to meet the objectives of the Treaties linked to the smooth functioning of the single market and the progressive framing of a common defence policy under the CSDP. This proposal concerns practical aspects resulting from the alignment of the scope of exemptions for Union and NATO defence efforts as well as the introduction of new exemptions concerning Union measures taken in response to the COVID-19 pandemic, as already adopted by the Council, which will have only minimal effect on the tax base.

- **Choice of the instrument**

An Implementing Regulation is proposed in view of amending the VAT Implementing Regulation.

### **3. RESULTS OF EX-POST EVALUATIONS AND STAKEHOLDER CONSULTATIONS**

- **Stakeholder consultations**

Member States were consulted in the group on the future of VAT<sup>15</sup> and broadly confirmed the need to act at EU level by introducing a VAT exemption for supplies linked to defence effort in the EU framework similar to that for supplies linked to NATO defence effort under Article 151(1)(c) and (d) of the VAT Directive.

As regards the measures in response to the COVID-19 pandemic, no stakeholder consultation has been conducted due to the urgent character of this initiative.

The current proposal only implements the necessary practical arrangements for the smooth application of these new VAT exemptions in practice.

- **Collection and use of expertise**

Before it proposed to introduce the VAT exemption for supplies linked to defence effort in the EU framework, the Commission collected expertise through consultation with representatives of the European External Action Service (EEAS)<sup>16</sup>, the European Defence Agency (EDA)<sup>17</sup> and defence experts supporting the members of the group on the future of VAT. For the exemption proposed in response to the COVID-19 pandemic, the Commission relied on

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<sup>15</sup> Informal group of representatives of national tax administrations, providing the Commission with a forum for consulting VAT experts from Member States on pre-legislative initiatives.

<sup>16</sup> The EEAS assists the High Representative of the Union for Foreign Affairs and Security Policy in all his responsibilities, including the CSDP.

<sup>17</sup> The EDA was established in 2004 by Council Joint Action 2004/551/CFSP (OJ L 245, 17.7.2004, p. 17).

information publicly available as to the epidemiological situation as well as relevant available scientific evidence with regard to the ongoing COVID-19 pandemic. For this proposal, which implements these exemptions, no further expertise was needed.

- **Regulatory fitness and simplification**

The proposal is not linked to REFIT and has no particular impact on micro-enterprises or SMEs.

- **Fundamental rights**

The proposal has no consequences for the protection of fundamental rights.

#### **4. BUDGETARY IMPLICATIONS**

This proposal just amends the exemption certificate necessary to apply the VAT exemptions in practice but does not amend the scope of the exemptions as such. Therefore, there are no implications for the Union budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor implementation of the proposed measures as part of its responsibilities for ensuring the correct application of EU VAT and excise legislation.

- **Detailed explanation of the specific provisions of the proposal**

Articles 1 and 2 of the proposal replace the VAT and/or excise duty exemption certificate provided for in Annex II to the VAT Implementing Regulation by a new version which also covers goods and services intended for the official use of the armed forces of a Member State taking part in a Union activity in another Member State under the CSDP as well as goods and services acquired by the European Commission or any European agency or body executing their tasks for use in response to the COVID-19 pandemic. There are two versions of the VAT and/or excise duty exemption certificate annexed to the proposal due to the timeline of the entry into force of the amendments to the VAT Directive. The certificate as provided for in Annex I to the proposal, which incorporates a box concerning eligible bodies executing tasks in response to the COVID-19 pandemic, will enter into application immediately. It will be replaced as from 1 July 2022 by the version set out in Annex II to the proposal, which adds a box covering activities under the CSDP.

Notwithstanding the withdrawal of the United Kingdom from the Union, the box set out in Annex II referring to the United Kingdom's armed forces stationed in the island of Cyprus will remain. In accordance with the Withdrawal Agreement<sup>18</sup> and the Protocol on the Sovereign Base Areas in Cyprus<sup>19</sup> in particular, the provisions of Union law on turnover taxes, excise duties and other forms of indirect taxation adopted pursuant to Article 113 TFEU

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<sup>18</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7).

<sup>19</sup> Protocol relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus (OJ L 29, 31.1.2020, p. 146).

shall apply to and in the Sovereign Base Areas<sup>20</sup> and the United Kingdom shall issue exemption certificates upon approval by the Republic of Cyprus<sup>21</sup>.

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<sup>20</sup> Article 3(1) of the Protocol on the Sovereign Base Areas in Cyprus.

<sup>21</sup> Article 4(1) of the Protocol on the Sovereign Base Areas in Cyprus.

Proposal for a

## **COUNCIL IMPLEMENTING REGULATION**

### **amending Implementing Regulation (EU) No 282/2011 as regards the update of the VAT and/or excise duty exemption certificate**

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 tax<sup>1</sup>, and in particular Article 397 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Directive 2006/112/EC and Council Directive 2008/118/EC<sup>2</sup> were amended by Council Directive (EU) 2019/2235<sup>3</sup>, which introduced exemptions from VAT and excise duty for defence efforts undertaken within the Union framework. Those exemptions were to be applied by the Member States from 1 July 2022.
- (2) Directive 2006/112/EC was further amended by Council Directive (EU) 2021/1159<sup>4</sup>, which introduced new VAT exemptions with regard to measures taken at Union level in response to the COVID-19 pandemic. Those exemptions were to be applied by the Member States with retroactive effect from 1 January 2021.
- (3) Annex II to Council Implementing Regulation (EU) No 282/2011<sup>5</sup> provides a certificate, which serves to confirm that a certain transaction qualifies for exemption from VAT and/or excise duty under Article 151 of Directive 2006/112/EC. In order to enable the Member States to apply the new VAT exemption for defence efforts and the VAT exemptions with regard to measures taken at Union level in response to the COVID-19 pandemic in a uniform way, that certificate needs to be adjusted.
- (4) With regard to the new VAT exemptions concerning measures taken at Union level in response to the COVID-19 pandemic under Directive 2006/112/EC, the certificate should be amended in order to include as an eligible body the Commission or any European agency or body executing their tasks in response to the COVID-19

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<sup>1</sup> OJ L 347, 11.12.2006, p. 1.

<sup>2</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).

<sup>3</sup> Council Directive (EU) 2019/2235 of 16 December 2019 amending Directive 2006/112/EC on the common system of value added tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence efforts within the Union framework (OJ L 336, 30.12.2019, p. 10).

<sup>4</sup> Council Directive (EU) 2021/1159 of 13 July 2021 amending Directive 2006/112/EC amending Directive 2006/112/EC as regards temporary exemptions on importations and on certain supplies, in response to the COVID-19 pandemic (OJ L 250, 15.07.2021, p. 1).

<sup>5</sup> Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

pandemic. For that purpose, Annex II to Implementing Regulation (EU) No 282/2011 should be amended with effect from 1 January 2021.

- (5) With regard to the new exemption from VAT for defence efforts undertaken within the Union framework, the certificate should be amended in order to include as an eligible body the Commission or any European agency or body executing their tasks in response to the COVID-19 pandemic, as well as the armed forces of a Member State taking part in a Union activity under the common security and defence policy. For that purpose, Annex II to Implementing Regulation (EU) No 282/2011 should be amended with effect from 1 July 2022.
- (6) Implementing Regulation (EU) No 282/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex II to Implementing Regulation (EU) No 282/2011 is replaced by the text in Annex I to this Regulation.

*Article 2*

Annex II to Implementing Regulation (EU) No 282/2011 is replaced by the text in Annex II to this Regulation.

*Article 3*

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

Article 1 shall apply from 1 January 2021.

Article 2 shall apply from 1 July 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*  
*The President*