

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

7885/20 - COM(2020) 201

7886/20 – COM(2020) 199

7887/20 – COM(2020) 198

Proposal for a COUNCIL REGULATION amending Regulation (EU) 2017/2454 as regards the dates of application due to the outbreak of the COVID-19 crisis.

Proposal for a COUNCIL IMPLEMENTING REGULATION amending Implementing Regulation (EU) 2019/2026 as regards the dates of application due to the outbreak of the COVID-19 crisis.

Proposal for a COUNCIL DECISION amending Directives (EU) 2017/2455 and (EU) 2019/1995 as regards the dates of transposition and application due to the outbreak of the COVID-19 crisis.

Submitted by HM Treasury

28 May 2020

SUBJECT MATTER

The EU Commission has proposed a delay in the implementation of the remaining constituent parts of the VAT “E-commerce package” by 6 months so that the measures apply from 1 July 2021 rather than 1 January 2021. The proposal is a response to requests from EU Member States who, as a result of the diversion of resources to deal with the COVID 19 crisis, anticipate that they will not be ready by the end of 2020, especially in respect of the necessary Information Technology changes. Key businesses, notably postal and courier operators have also asked for a delay in implementation. EU Member States consider that it is important that they all implement the provisions at the same time.

The EU Commission’s view is that any delay should be as short as possible to minimise budgetary losses for EU Member States and that six months is the appropriate delay.

The parts of the E-commerce package due to take effect in 2021 introduce changes to address the challenges of the growth in e-commerce trade internationally, the

taxing of goods coming into the EU, and the arrangements for cross border trade within the EU.

SCRUTINY HISTORY

Explanatory Memorandum 14820/16 of 20 December 2016 cleared scrutiny in the House of Commons on 24 January 2018 and the House of Lords on 1 March 2018.

Both Houses had granted scrutiny waivers to enable the Government to agree to the changes to the Directive and Regulation (now Directive 2017/2455 and Regulation 2017/2454) at the 5 December 2017 ECOFIN.

Explanatory Memorandum 15471/18 of 10 January 2019 was the subject of letters to both Committees dated 7 March 2019 requesting scrutiny overrides. The Government agreed to the proposed legislation at the March 2019 ECOFIN. Letters of explanation were sent on 20 March 2019 in respect of what are now Directive 2019/1995 and Implementing Regulation 2019/2026.

MINISTERIAL RESPONSIBILITY

The Chancellor of the Exchequer has responsibility for United Kingdom policy on European Union monetary and economic issues. The Foreign and Commonwealth Secretary is responsible for overall United Kingdom policy towards the European Union.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

VAT policy is a reserved matter under the UK's devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

i. Legal basis

The legal basis for the proposal to amend Council Directives (EU) 2017/2455 and (EU) 2019/1995, and Regulation (EU) 2017/2454 is Article 113 of the Treaty on the Functioning of the European Union (TFEU).

The legal basis for the proposal to amend the Council Implementing Regulation is Article 397 of Council Directive 2006/112/EC.

The Justice and Home Affairs (JHA) opt-in is not a consideration.

ii. European Parliament Procedure

Special legislative procedure (SLP) Consultation.

iii. Voting procedure

Unanimity

iv. Impact on United Kingdom Law (including the impact on retained law, application of EU law during the transition period and under the Northern Ireland protocol)

The amendments will come into effect after the termination date of the Transition Period. The amendments to Directives 2017/2455 and 2019/1995 and Regulation 2017/2454 will fall under the provisions of the Northern Ireland Protocol as they amend Directive 2006/112 and Regulation 904/2010 respectively. The Implementing Regulation is covered by Article 6(3) of the Withdrawal Agreement.

v. Application to Gibraltar

The proposals do not apply to Gibraltar.

vi. Fundamental rights analysis

None identified

APPLICATION TO THE EUROPEAN ECONOMIC AREA

Not applicable.

SUBSIDIARITY

The proposed legislation delays the application date of legal instruments which seek to introduce common rules governing cross border trade, including amendments to a shared IT system and collection of VAT on behalf of other Member States. The objectives can only be achieved by action at the European level. The Government therefore believes that this proposal is compliant with the subsidiarity principle.

POLICY IMPLICATIONS (including implications for the application of EU law during the Implementation Period and under the Northern Ireland Protocol)

The delay is a practical response to changing circumstances and raises no additional policy issues. The changes were always due to come into effect after the end of the Transition Period.

CONSULTATION

There have been no consultations on these proposals by the Government.

IMPACT ASSESSMENT

No additional impact assessment has been produced. This is a six month delay in already agreed legislation.

FINANCIAL IMPLICATIONS

The financial implications of a delay for EU Member States has been estimated by the EU Commission at €2.5-3.5 Billion (approximately £2.17 - £3.04 Billion). The Government has not undertaken a separate assessment given the proposed starting date is beyond the end of the Transition Period.

TIMETABLE FOR ADOPTION AND IMPLEMENTATION IN THE UK (WHERE APPROPRIATE)

EU Member States will want clarity on the commencement date to help them and businesses plan for an orderly introduction. We anticipate that the Presidency will push for early agreement. The Government recently set out its wider position on VAT and the Protocol in the paper “The UK’s approach to the Northern Ireland Protocol”.

A handwritten signature in black ink, reading "Jesse Norman". The signature is fluid and cursive, with the first letter 'J' being particularly large and stylized.

Rt Hon Jesse Norman MP

Financial Secretary to the Treasury