Council Directive (EU) 2020/2020 of 7 December 2020 amending Directive 2006/112/EC as regards temporary measures in relation to value added tax applicable to COVID-19 vaccines and in vitro diagnostic medical devices in response to the COVID-19 pandemic

COUNCIL DIRECTIVE (EU) 2020/2020

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amending Directive 2006/112/EC as regards temporary measures in relation to value added tax applicable to COVID-19 vaccines and *in vitro* diagnostic medical devices in response to the COVID-19 pandemic

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,

Whereas:

(1) On 30 January 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a ‘public health emergency of international concern’ and, on 11 March 2020, characterised it as a pandemic.

(2) The Union has joined forces with the WHO and a group of global actors in an unprecedented effort of global solidarity to fight the pandemic. That effort aims to support the development and equitable distribution of *in vitro* diagnostic medical devices, treatments and vaccines required to control and combat COVID-19.

(3) In view of the alarming increase in the number of COVID-19 cases in the Member States, in its communication of 17 June 2020 the Commission has proposed an EU strategy for COVID-19 vaccines. The aim of that strategy is to accelerate the development, manufacturing and deployment of vaccines against the virus to help protect people in the Union. While an effective and safe vaccine against COVID-19 is the most likely permanent solution to the pandemic, testing is indispensable to contain the pandemic.

(4) In the area of value added tax (VAT), the Commission has taken exceptional measures to help victims of the pandemic. On 3 April 2020, the Commission adopted Decision (EU) 2020/491[(3)] enabling Member States to temporarily exempt from VAT and import duties vital goods needed to combat the effects of the COVID-19 outbreak, including

COVID-19 *in vitro* diagnostic medical devices. However, that Decision covers only importation and not intra-Community or domestic supplies.

(5) Council Directive 2006/112/EC[(4)] contains tools allowing Member States to partly alleviate the cost of COVID-19 vaccination and testing, notably through a VAT exemption without deductibility for hospital and medical care and a reduced VAT rate available for vaccines. However, that Directive does not allow Member States to apply a reduced VAT rate to the supply of COVID-19 *in vitro* diagnostic medical devices or services closely linked to such devices. Nor does it allow Member States to grant an exemption with deductibility of VAT paid at the preceding stage in respect of the supply of COVID-19 vaccines and *in vitro* diagnostic medical devices or services closely linked to such vaccines and devices.

(6) In 2018, the Commission presented a proposal to amend Directive 2006/112/EC as regards VAT rates (the '2018 proposal'). If adopted by Council, it would, amongst other things, allow Member States, under certain conditions, to apply a reduced VAT rate to the supply of COVID-19 *in vitro* diagnostic medical devices as well as of services closely linked to such devices. In addition, the 2018 proposal would allow Member States, under certain conditions, to grant an exemption with deductibility of VAT paid at the preceding stage to the supply of COVID-19 vaccines and *in vitro* diagnostic medical devices as well as of services closely linked to such vaccines and devices. The 2018 proposal would allow Member States to apply those rates, if such supply benefits only the final consumer and pursues an objective of general interest.

(7) However, since the adoption of the 2018 proposal is still pending before the Council, it is necessary to take immediate action in order to adapt Directive 2006/112/EC to the exceptional circumstances caused by the COVID-19 pandemic. The aim of such action is to ensure that the supply of COVID-19 vaccines and *in vitro* diagnostic medical devices as well as of services closely linked to such vaccines and devices become more affordable in the Union as soon as possible.

(8) To that end, Member States should be allowed to apply a reduced VAT rate to the supply of COVID-19 *in vitro* diagnostic medical devices and services closely linked to such devices, or to grant an exemption with deductibility of VAT paid at the preceding stage in respect of the supply of COVID-19 vaccines and *in vitro* diagnostic medical devices, approved as such by the Commission or by them, as well as of services closely linked to such vaccines and devices.

(9) The possibility to apply a reduced VAT rate to the supply of COVID-19 *in vitro* diagnostic medical devices and services closely linked to such devices or to grant an exemption with deductibility of VAT paid at the preceding stage in respect of the supply of COVID-19 vaccines and *in vitro* diagnostic medical devices and services closely linked to such vaccines and devices, should be limited in time. That possibility should be allowed only for the duration of the exceptional circumstances caused by the COVID-19 pandemic. Due to the uncertainty of the duration of those exceptional circumstances, the possibility to apply a reduced VAT rate or to grant an exemption with deductibility of VAT paid at the preceding stage to such supplies should remain in place until 31 December 2022. Before the end of that period, the possibility to apply the reduction