PROPOSAL FOR A UNION ACT

pursuant to Rule 46(2) of the Rules of Procedure

on amending Directive 2006/112/EC on the common system of value added tax

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Proposal for a Union act on amending Directive 2006/112/EC on the common system of value added tax

The European Parliament,

– having regard to Article 225 of the Treaty on the Functioning of the European Union,
– having regard to Rule 46(2) of its Rules of Procedure,

A. whereas Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services\(^1\) changed the location and conditions for the payment of value added tax (hereinafter 'VAT') by providers of telecommunications services, radio and television broadcasting services (hereinafter 'selected electronic services') to non-taxable persons, to the effect that providers of selected electronic services pay VAT in the state in which their customers use the services they provide;

B. whereas according to the explanatory memorandum to Directive 2008/8/EC, the main reason given for the aforementioned amendment is to prevent situations in which providers of certain electronic services base themselves in Member States with low rates of VAT, a trend which particularly concerns larger companies with their seats in the Member State with the EU's lowest VAT rates; whereas this reason cannot be applied in the case of small enterprises;

C. whereas the provision of selected electronic services within a single Member State is subject to national laws, according to which small entrepreneurs are exempted from the requirement to register for VAT in the majority of Member States until they have reached a certain level of turnover, which creates disparities in the provision of selected electronic services in the EU, particularly where providers of selected electronic services cease providing services outside the Member State in which they have their seat in order to avoid the requirement to register for VAT;

D. Recalls that it is important to remove all barriers to the entry of small entrepreneurs, since small enterprises play a vital role in creating new jobs and innovation;

E. whereas one of the Commission's three main priorities is to create a single digital market, and one of the six basic means of achieving this objective is, according to the Commission, making it easier for innovators to set up their own companies, and whereas the VAT Mini One Stop Shop (hereinafter 'VAT MOSS') is currently in direct conflict with the aforementioned idea;

F. whereas paying VAT in the Member State of consumption without offering an exemption for small entrepreneurs could have a negative and even fatal impact on

\(^1\) OJ L 44, 20.2.2008, p. 11.
small providers of selected electronic services for whom registration and tax requirements create an administrative barrier that could discourage them from providing services, even in spite of the existence of the VAT MOSS system, which serves to prevent the need for multiple VAT registrations in different Member States by enabling the provider of selected electronic services to submit a single tax return and to pay tax on all services delivered within the Member States;

G. whereas the VAT MOSS system, besides its registration and payment requirements, includes other administrative measures, such as the obligation to preserve documents for 10 years that include data on buyers, even in respect of purchases of applications worth a few cents, while it has not been necessary to obtain the personal data of the buyers until now; whereas following the entry into force of the VAT MOSS system, small entrepreneurs will be obliged to collect and preserve these data, resulting in further administrative requirements for entrepreneurs in connection, for instance, with ensuring that the personal data gathered is protected and with drawing up obligatory quarterly reports; whereas failure to meet these requirements will result in the service provider being denied access to the VAT MOSS system and subsequently having to register separately for VAT in each Member State;

H. whereas the aforementioned provisions of Directives 2006/112/EC and 2008/8/EC may lead providers of selected electronic services who, in view of the specific nature of their products, can carry out their business anywhere in the world, to either cease providing selected electronic services outside the Member State in which they are taxable, or to transfer its seat outside the EU, e.g., by registering a platform created outside the EU through which the providers of electronic services will sell electronic services for a price that has been reduced in proportion to the removal of the administrative barriers associated with the VAT MOSS system;

I. whereas small entrepreneurs must be supported and excessive barriers should not be created for them, even if those administrative barriers stem from a good idea, such as the VAT MOSS system, which ultimately proves to be a barrier;

J. whereas it is inappropriate to raise administrative barriers to small entrepreneurs and then to compensate them with possible financial support associated with the additional administrative burdens accompanying EU funds;


2. Considers that the aforementioned Commission proposal should include an exemption from paying VAT on the provision of selected electronic services if the total value net of VAT of electronic services delivered by the provider and carried out in the Member State of consumption does not exceed in one calendar year EUR 100 000 or its equivalent in the national currency;

3. Considers that the aforementioned Commission proposal should ensure that the Member State in which the provider of selected electronic services is based enables
taxable persons providing electronic services to decide whether they should be subject to the requirement to pay VAT in the Member State of consumption.
EXPLANATORY STATEMENT

From 1 January 2015, providers of selected electronic services delivered outside the home Member State are required to pay VAT in the Member State of consumption. This relates to the requirement to register and then pay VAT when selling any quantity of services outside the home Member State of the service provider. The main reasons for the aforementioned amendment were:

- preventing major service providers from basing themselves in Member States with lower rates of VAT;
- fairer competition and division of tax revenues between domestic and foreign enterprises providing the same services;
- the political line debated at international level which seeks to ensure that services are taxed in the place of consumption.

In spite of the administrative assistance introduced in accordance with the aforementioned amendment in the form of VAT MOSS, the aforementioned Directive raises barriers to small entrepreneurs. The existence of small enterprises can be significantly affected by the barriers created by the market, i.e. by the Member States through their legal rules. Given the important role played by small enterprises in the internal market, these barriers should be removed as far as is practical.