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Proposal for a

COUNCIL IMPLEMENTING DECISION

**amending Implementing Decision (EU) 2018/593 authorising the Italian Republic to
introduce a special measure derogating from Articles 218 and 232 of Directive
2006/112/EC on the common system of value added tax**

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax¹ (hereafter 'the VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogation from the provisions of that Directive in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Commission on 11 April 2024, the Italian Republic requested authorisation to continue to derogate from Articles 218 and 232 of the VAT Directive to be able to continue imposing mandatory electronic invoicing. The present derogation expires on 31 December 2024. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 12 September 2024 of the request made by the Italian Republic. By letter dated 13 September 2024 the Commission notified the Italian Republic that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Following Implementing Decision (EU) 2018/593², the Italian Republic introduced a generalised system of mandatory electronic invoicing, *Sistema di Interscambio* (SdI), also in accordance with the Council Recommendation of 11 July 2017 on the 2017 National Reform Programme of Italy and delivering a Council opinion on the 2017 Stability Programme of Italy³. This measure was extended by Implementing Decision (EU) 2021/2251⁴, which included under the scope of the measure taxable persons who benefit from the exemption for small enterprises referred to in Article 282 of the VAT Directive.

Italy submits that the measure, aimed to combat tax fraud and evasion, to simplify tax compliance, to make tax collection more efficient and to modernise Italian production, thereby reducing administrative costs for businesses, has fully achieved its objectives.

Regarding the fight against VAT fraud and evasion, the measure has enhanced the capabilities of the tax administration, reducing the time necessary to detect and react against VAT fraud and evasion and improving the possibilities for risk analysis. Further, the measure has proved effective as a preventive measure, as it has deterred evasive and fraudulent taxpayer behaviours.

Even though it is not possible to quantify exactly how much recovery is directly attributable to the implementation of mandatory e-invoicing, Italy has provided some estimates. To verify whether the unaccounted-for residual is specifically attributable to the introduction of e-invoicing, Italy has conducted a micro-type of analysis. By restricting the analysis to a few economic sectors of particular relevance, a panel of taxpayers was constructed with a view to comparing their reporting behaviors before and after the introduction of e-invoicing. An econometric approach, based on the use of the B2C component of active transactions as a counterfactual assumption, allowed a causal link to be established between the increase in VAT revenue and the introduction of mandatory e-invoicing. Extrapolating the results of the counterfactual analysis to the universe of taxpayers leads to conclusions that are not significantly different from those obtained through the tabular methodology. The positive

¹ OJ L 347, 11.12.2006, p. 1.

² OJ L 99, 19.4.2018, p. 14.

³ OJ C 261, 9.8.2017, p. 46.

⁴ OJ L 454, 17.12.2021, p. 1.

residual revenue accruing from VAT, which is not accounted for by the economic cycle, is estimated between 1.7 and 2.0 billion euros.

Furthermore, while in 2019, the first year of application of the measure, the *Agenzia delle Entrate*, thanks to timely controls on invoice data, had detected and blocked fraud and false VAT credits amounting to almost EUR 1 billion, in 2022 the figure rose to EUR 9 billion.

Regarding the simplification of tax compliance, the implementation of mandatory e-invoicing has allowed the tax authority to make available for taxpayers pre-filled purchase and sales records, the scheduling of the periodic VAT settlement, pre-filled annual VAT returns and pre-filled payment forms including the taxes to be paid, offset or claimed for refund (where priority is given to those using e-invoicing). E-invoicing has allowed to eliminate a number of obligations, such as the reporting of invoice data on domestic transactions, the filing of Intrastat declarations on purchases, the obligation to provide details of contracts entered into by leasing, rental and hire companies and the obligation to report transactions involving supplies of goods from the Republic of San Marino to Italy.

As of 10 February 2023, the *Agenzia delle Entrate* made available the first pre-filled annual VAT return, referring to transactions carried out in 2022, for all the taxable persons covered by the scheme (approximately 2.3 million), who, in addition to being able to view, amend, supplement and send the return through a special application software, as well as to pay the VAT due, can also just download the data and compare them with those in their own application software.

Other functionalities have recently been made available allowing interaction with the management systems of operators or their intermediaries thus enabling, in an immediate and massive manner, the download of pre-filled data and the exchange of information useful to complete the entries in the registers and the information to be reported in the return forms.

At the same time, the *Agenzia delle Entrate* has been offering a web service enabling VAT taxable persons to check, amend if necessary, and automatically pay the stamp duty shown on sales invoices subject to such levy.

According to Italy, the implementation of mandatory e-invoicing has provided other benefits, as it has simplified the invoicing process, both for issuers and recipients, and has allowed the development of related services which make possible to monitor business performance in real time, including, for example, cash flow management. Further, in the context of the COVID-19 pandemic, the data from mandatory electronic invoicing has proved to be of great help in analysing the changes in the economy associated with the health crisis and in putting into place the most appropriate support measures.

The Implementing Decision (EU) 2018/593 applies until 31 December 2024, and this is why Italy has requested to continue to derogate from Articles 218 and 232 of the VAT Directive to be able to continue imposing mandatory electronic invoicing.

However, a Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age⁵ (VAT in the digital age proposal), is currently being discussed in the Council. This Directive will amend Article 218 and will delete Article 232 of the VAT Directive. This reform, once adopted, will allow Member States to implement mandatory e-invoicing, eliminating the need to request further derogations from the VAT Directive in order to implement such systems. Therefore, the authorisation allowing Italy to continue to

⁵ COM/2022/701 final.

derogate from Articles 218 and 232 should only be extended for the period needed until such reform enters into force.

Thus, it is proposed to prolong the authorisation until 31 December 2025. Given the short period for which this extension is given, in case Italy needs to prolong further this authorisation no report should be needed.

- **Consistency with existing policy provisions in the policy area**

Article 218 of the VAT Directive puts paper and electronic invoices on equal footing by providing that Member States shall accept documents or messages on paper or in electronic form as invoices. Following Article 232 of the VAT Directive, the use of an electronic invoice shall be subject to acceptance by the recipient. The obligatory electronic invoicing as implemented by Italy indeed derogates from these two provisions.

The derogation can be authorised based on Article 395 of the VAT Directive in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance. Given that, based on the elements provided by Italy, the derogating measure has contributed to both fight tax fraud and evasion as well as to simplify the tax collection, the derogation is consistent with the existing policy provisions.

The derogation for mandatory electronic invoicing is also in line with the Council Recommendation⁶ on the 2017 National Reform Programme of Italy recommending that *'Italy take action in 2017 and 2018 to, inter alia, broaden the compulsory use of electronic invoicing and payments'*.

Similar authorisations allowing France, Poland, Germany and Romania to derogate from Articles 218 and 232 of the VAT Directive, in order to implement mandatory electronic invoicing, were granted by Council Implementing Decision (EU) 2022/133⁷, Council Implementing Decision (EU) 2022/1003⁸, Council Implementing Decision (EU) 2023/1551⁹ and Council Implementing Decision (EU) 2023/1553¹⁰.

The Commission adopted in 2020 the “*Communication from the Commission to the European Parliament and the Council: an Action Plan for fair and simple taxation supporting the recovery strategy*”¹¹. One of the actions envisaged in this action plan is the adoption by the Commission of a legislative proposal aimed at modernising VAT reporting obligations. As indicated in the Action Plan, this proposal should, amongst others, help streamline the reporting mechanisms that can be applied for domestic transactions. The need to further expand e-invoicing is also examined in this context.

As a result of this Action Plan, the Commission adopted on 8 December 2022 the VAT in the digital age proposal, which is being discussed in the Council. This Directive will amend Article 218 and will delete Article 232 of the VAT Directive. This reform, once adopted, will allow Member States to implement mandatory e-invoicing, eliminating the need to request further derogations from the VAT Directive in order to implement such systems. For that reason, once this proposal for a Directive is transposed by the Member States, this Council Decision would no longer have any useful effect.

⁶ OJ C 261, 9.8.2017, p. 46.

⁷ OJ L 20, 31.1.2022, p. 272.

⁸ OJ L 168, 27.6.2022, p. 81.

⁹ OJ L 188, 27.7.2023, p. 42.

¹⁰ OJ L 188, 27.7.2023, p. 48.

¹¹ https://taxation-customs.ec.europa.eu/system/files/2020-07/2020_tax_package_tax_action_plan_en.pdf

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 395 of the VAT Directive.

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

Considering the provision of the VAT Directive on which the proposal is based, subsidiarity principle does not apply.

- **Proportionality**

The proposal complies with the proportionality principle. The Decision concerns an authorisation granted to a Member State upon its own request and does not constitute any obligation.

The implementation of mandatory electronic invoicing has taken place smoothly, without raising any particular problems. According to the information submitted by Italy, it has contributed to achieve the objectives pursued regarding the fight against VAT fraud and evasion, while simplifying tax collection.

The scope of the measure covers all transactions carried out within the Italian territory between taxable persons established in Italy. Therefore, intra-Community transactions are excluded from the scope of the measure, as stated in recital 7 of Implementing Decision (EU) 2018/593. Further, taxable persons registered in Italy but not established within its territory are also excluded from the scope of the measure, so the transactions where they intervene are not subject to mandatory electronic invoicing.

Italy considers that the extension of the scope to taxable persons benefitting from the exemption for SMEs has allowed to complement the system, avoiding inconsistencies and information gaps, while improving the dialogue of small enterprises with tax authorities, as well as their digital capability and competitiveness. The burdens entailed by the introduction of the obligation were mitigated by the support offered by the *Agenzia delle Entrate* in terms of free services to generate, transmit, receive and digitally store electronic invoices.

Indeed, the Italian Revenue Agency has made available, free of charge, different solutions, such as a software package for installation on computers or an application for mobile devices, which allow taxpayers to easily prepare and transfer electronic invoices. These measures alleviate these companies from their current costs of issuing and processing invoices, such as printing or archiving costs, while reducing the possibilities of mistakes.

Furthermore, the mandatory electronic invoicing has allowed the Italian Revenue Agency to offer different online services to taxpayers. In addition, several reporting obligations were eliminated due to the implementation of mandatory electronic invoicing.

The derogation is also limited in time until harmonised rules allow Member States to implement mandatory e-invoicing.

Therefore, the special measure is proportionate to the aim pursued, i.e. to combat tax evasion and simplify tax collection.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible upon authorisation of the Council acting unanimously on a proposal from the

Commission. A Council Implementing Decision is the most suitable instrument since it can be addressed to an individual Member State.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Impact assessment**

Italy requested an authorisation to continue applying obligatory electronic invoicing for all invoices issued to other taxable persons or to final consumers by taxable persons established on the Italian territory. Also simplified invoices, documents issued based on Article 219 of the VAT Directive and invoices relating to exempt transactions should fall under the mandatory electronic invoicing. Non-established taxable persons may opt for the transmission of their invoices through the SdI.

Taxable persons have already adapted their systems to comply with the requirements of mandatory electronic invoicing. The non-extension of the authorisation would imply that the costs incurred for such adaptation would be sunk costs for taxable persons, while they would probably have to incur additional costs related to the adaptation to a new reporting system that could be implemented to replace mandatory e-invoicing.

According to Italy, e-invoicing has brought effective results in the fight against tax fraud due to the greater comprehensiveness, timeliness and traceability of the information. The measure has also had a preventive measure, as a deterrent to evasive and fraudulent taxpayer behaviour. Dispatching invoices through the SdI has provided the *Agenzia delle Entrate* with timely and automated access to any invoice information that is relevant for tax purposes. The extension of the measure to taxable persons benefitting from the exemption for SMEs has allowed to complement the system, avoiding inconsistencies and information gaps. As a result, tax authorities can carry out timely and automatic checks on the consistency between the VAT declared and the VAT paid.

According to the data submitted by Italy, the positive residual revenue accruing from VAT, which is not accounted for by the economic cycle, can be estimated between EUR 1.7 and 2.0 billion. Furthermore, while in 2019, the first year of application of the measure, the *Agenzia delle Entrate*, thanks to timely controls on invoice data, had detected and blocked fraud and false VAT credits amounting to almost EUR 1 billion, in 2022 the figure rose to EUR 9 billion.

Thanks to e-invoicing data, the *Agenzia delle Entrate* is providing different services to taxpayers, such as pre-filled purchases and sales record, pre-filled periodic VAT settlements communication, pre-filled annual VAT return with the relevant schedule of the calculations made and pre-filled payment forms including the taxes to be paid, offset or claimed for refund.

Further, the introduction of electronic invoicing has allowed to remove several obligations, including some not strictly in the field of VAT, such as the reporting of invoice data on domestic transactions, the filing of Intrastat statistical declarations on purchases, the obligation to provide the details of contracts entered into by leasing, rental and hire companies and the obligation to report transactions involving supplies of goods from the Republic of San Marino to Italy.

4. BUDGETARY IMPLICATIONS

The measure will have no adverse impact on the Union's own resources accruing from VAT.

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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 tax¹, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By Council Implementing Decision (EU) 2018/593², Italy was authorised until 31 December 2021 to introduce a measure derogating from Articles 218 and 232 of Directive 2006/112/EC ('the special measure') in order to implement mandatory electronic invoicing for all taxable persons established in the territory of Italy, except for taxable persons benefiting from the exemption for small enterprises referred to in Article 282 of that Directive.
- (2) By Council Implementing Decision (EU) 2021/2251³, Italy was authorised to apply the special measure until 31 December 2024 and its scope was broadened to include taxable persons benefiting from the exemption for small enterprises referred to in Article 282 of the VAT Directive.
- (3) By letter registered with the Commission on 11 April 2024, Italy requested authorisation to continue to derogate from Articles 218 and 232 of Directive 2006/112/EC in order to continue applying mandatory electronic invoicing.
- (4) By letters dated 12 September 2024, the Commission informed the other Member States of the request made by Italy. By letter dated 13 September 2024, the Commission notified Italy that it had all the information necessary to consider the request.
- (5) Italy submits that the implemented mandatory electronic invoicing system, which channels all issued invoices through the system 'Sistema di Interscambio' managed by the Italian Revenue Agency, has fully achieved its objectives, namely to combat tax fraud and evasion, to simplify tax compliance and to make tax collection more efficient, thereby reducing administrative costs for businesses.
- (6) On 8 December 2022, the Commission adopted a proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age⁴ (VAT in

¹ OJ L 347, 11.12.2006, p. 1.

² OJ L 99, 19.4.2018, p. 14.

³ OJ L 454, 17.12.2021, p. 1.

⁴ COM/2022/701 final.

the digital age proposal). The Commission proposes to amend Article 218 and to delete Article 232 of Directive 2006/112/EC. It is therefore possible that a directive amending those Articles will be adopted which would allow Member States to implement mandatory electronic invoicing and eliminate the need to request further special measures to derogate from Directive 2006/112/EC. Therefore, from the date Member States would be required to apply any national provisions transposing the Directive amending those Articles, this Decision should cease to apply.

- (7) The progress made in Council on the discussions on the VAT in the digital proposal make advisable to extend the special measure only for the period necessary to guarantee the continuity of the current mandatory electronic invoicing system until the amendment of Directive 2006/112/EC concerning Articles 218 and 232 enters into force. If the continuity of such system requires a further extension of the special measure, such extension would as appropriate be granted upon request for an additional period.
- (8) The special measure should not affect the right of customers to receive paper invoices in the event of intra-Community transactions.
- (9) The special measure will not negatively affect the overall amount of tax revenue collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT.
- (10) Implementing Decision (EU) 2018/593 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision (EU) 2018/593 is amended as follows:

Article 4 is replaced by the following:

'Article 4

This Decision shall apply until the earlier of the following two dates:

- (a) 31 December 2025; or
- (b) the date from which Member States are to apply any national provisions that they are required to adopt in the event that a directive is adopted amending Directive 2006/112/EC as regards VAT rules for the digital age, in particular Articles 218 and 232 of that Directive.'

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels,

*For the Council
The President*