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PROPOSAL

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| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
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| Subject: | Proposal for a COUNCIL IMPLEMENTING DECISION authorising Germany to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax |

Delegations will find attached document COM(2023) 340 final.

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EUROPEAN
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Brussels, 23.6.2023
COM(2023) 340 final

2023/0193 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Germany 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 10 November 2022, the Federal Republic of Germany requested authorisation to derogate from Articles 218 and 232 of the VAT Directive to be able to impose mandatory electronic invoicing for transactions between taxable persons established in Germany (B2B transactions).

Further, by letter registered with the Commission on 8 February 2023, the Federal Republic of Germany specified the requested date of entry into force of the special measure, which would be 1 January 2025.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 22 February 2023 of the request made by Germany. By letter dated 23 February 2023, the Commission notified Germany that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Germany submitted a request for derogation, based on Article 395 of the VAT Directive, to be authorised to implement an obligation to issue electronic invoices for transactions between taxable persons established in Germany. This obligation would be the first step to the introduction of an electronic reporting system for the transmission of transaction-based data on domestic B2B transactions from taxable persons to the tax authorities. According to Germany, such a reporting system would be an important tool to combat tax fraud and evasion and improve the collection of VAT.

Reporting systems that transfer transaction-based turnover data to the tax administration allow for a more effective fight against VAT fraud. Germany considers that the implementation of such a system will allow the earlier identification of fraudulent chains of transactions and the participants in such chains. In addition, the transaction data submitted can be used for cross-checking with the information in VAT returns and, in case of discrepancies, they can be detected and checked more timely. Overall, Germany expects that timely access to invoice data will avoid the need for a more bureaucratic request for invoices by the tax administration, speeding up and facilitating the fight against fraud.

Germany has adopted other measures in recent years to combat VAT fraud. As of 1 January 2019, Germany introduced rules on the liability of operators of electronic marketplaces and on specific record-keeping obligations for these operators. The entry into force of these rules led to a significant increase in the number of tax registrations of companies supplying such transactions via marketplaces.

Further, since 1 January 2020, the right to deduct input tax and the exemption for intra-Community supplies are refused when the trader knew or should have known that was participating in a VAT fraud or evasion chain, in line with the existing case-law of the European Court of Justice in the field. In addition, since 1 January 2021, the validity of the

¹ OJ L 347, 11.12.2006, p. 1.

VAT identification number for intra-Community supplies of goods and services can be limited when there are indications that it is being used for fraudulent purposes. This measure is also applied if the abuse results in damage to VAT revenues in another EU Member State.

Germany has made use of the possibilities offered by Article 199a(1) of the VAT Directive to apply the reverse charge mechanism to combat VAT fraud, most recently for transfers of gas and electricity certificates and certain telecommunications services. For the transfer of emission allowances under the Fuel Emissions Trading Act, as of 1 January 2023, the reverse charge mechanism is introduced on the basis of Council Implementing Decision (EU) 2021/1778².

Germany has also introduced national checklists to verify the information provided by traders during the process of tax registration. Tax registrations carried out solely for fraudulent purposes can thus be prevented. Moreover, it is possible to carry out further checks to verify the reliability of traders on a case-by-case basis and, if necessary, further checks can be initiated.

Germany considers that the opportunities offered by digitalisation to combat tax evasion and avoidance can only be fully exploited if the processing of data is done with continuity. They consider that the mandatory use of electronic invoices in structured format is a logical and necessary step towards a transaction-based reporting system that will allow to combat fraud more effectively through the analysis and use of the data collected.

According to Germany, the use of e-invoices is already common practice in many sectors of the economy. In the field of public procurement, Germany has transposed into national law Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement³, which introduced an obligation for public authorities to accept electronic invoices sent by their suppliers. The issuance of electronic invoices in the area of public procurement in Germany has been mandatory in the area of public procurement since November 2020.

Therefore, Germany claims that the introduction of mandatory electronic invoicing for VAT purposes will not require a significant financial burden for many businesses. There will be long-term savings from the elimination of paper invoices, derived in particular from the elimination of the costs of drawing up, sending and storing paper invoices. On the recipient side, the cost of processing paper invoices is also avoided. E-invoicing will allow the optimisation of accounting processes for both the supplier and recipient of the invoice. In order to ensure the interoperability of electronic invoicing systems used in the European Union, Germany shall allow the issuance of invoices that comply with the European standard on electronic invoicing and the list of its syntaxes pursuant to Directive 2014/55/EU of the European Parliament and of the Council⁴.

Article 218 of the VAT Directive provides for an obligation for Member States to accept all documents or messages both in paper or electronic form as invoices. Germany would therefore like to obtain a derogation from the above-mentioned Article of the VAT Directive so that only documents in electronic form can be considered as invoices by the German tax administration.

Article 232 of the VAT Directive requires that the use of an electronic invoice shall be subject to acceptance by the recipient. Therefore, the introduction of an electronic invoicing

² OJ L 360, 11.10.2021, p. 117.

³ OJ L 133, 6.5.2014, p. 1.

⁴ Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement (OJ L 133, 6.5.2014, p. 1).

obligation in Germany requires a derogation from this Article so that the issuer no longer has to obtain the consent of the recipient to send an invoice in a paperless format.

Derogations are in general granted for a limited period of time as to allow an assessment whether the special measure is appropriate and effective and in order to grant Member States time to introduce other conventional measures to tackle the respective problem until the expiry of the derogating measure.

Once this measure has been introduced, and given the broad scope of the derogation, it is important to assess its impact on taxable persons and, more specifically, whether it has contributed to combat VAT fraud and evasion. Should Germany wish to prolong the derogating measure, it is requested to provide a report on the functioning of the measure together with the prolongation request. This report should provide the assessment of the measure on its effectiveness in fighting VAT fraud and evasion and in simplifying tax collection. The report should also include an evaluation of the measure on taxable persons and in particular what concerns the increase of their administrative burdens and compliance costs.

It is proposed to authorise the derogation as from 1 January 2025 until 31 December 2027 or until the date 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, whichever is the earlier.

- **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 envisaged by Germany would indeed derogate 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. The introduction of mandatory electronic invoicing for B2B transactions will serve as a first step for the implementation of a transaction-based reporting system in Germany, which would allow for a more effective fight against VAT fraud and evasion. Based on the elements provided by Germany, the derogation is consistent with the existing policy provisions.

Similar authorisations allowing Italy, France and Poland 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) 2021/2251⁵, Council Implementing Decision (EU) 2022/133⁶ and Council Implementing Decision (EU) 2022/1003⁷.

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*”⁸. 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

⁵ OJ L 454, 17.12.2021, p. 1.

⁶ OJ L 20, 31.1.2022, p. 272.

⁷ OJ L 168, 27.6.2022, p. 81.

⁸ https://taxation-customs.ec.europa.eu/system/files/2020-07/2020_tax_package_tax_action_plan_en.pdf

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 a Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age⁹ (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.

In its request, Germany states that the Federal Government considers that the aims pursued by the special measure are in line with the European Commission's plans for a European reporting system. Further, in order to avoid duplication of efforts in the introduction and subsequent administration of a reporting system, both on the part of business operators and the tax authorities, Germany will take into account the VAT in the digital age proposal in the works toward the implementation of the national reporting system. The aim pursued by Germany is to synchronise the structures of both systems as much as possible.

Therefore, the derogation asked by the Federal Republic of Germany is aligned with the objectives pursued by the Commission as laid down in the Action Plan and in the Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age.

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 for the following reasons.

The Decision concerns an authorisation granted to a Member State upon its own request and does not constitute any obligation.

In order to reduce the burden on businesses and tax administration, Germany will proceed gradually, by introducing as a first step the obligation to issue e-invoices, in order to build on it later a reporting system. To avoid duplication of costs and unnecessary efforts, Germany will take into account the VAT in the digital age proposal when designing its national reporting system, aligning its system to that on the abovementioned proposal. In this regard, the future requirements of EU law for the reporting of cross-border transactions will be coordinated with the system for the reporting of national transactions, in order to ensure that both categories of transactions are handled as uniformly as possible by taxable persons, limiting the administrative burden for businesses.

⁹ COM/2022/701 final.

It should be noted that in Germany it is already obligatory to use electronic invoicing in the B2G relationships following the implementation of Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement.

The key elements of the planned national system include the timely transmission of invoice data, initially limited to the B2B area, to a central reporting system. Germany will accept the transmission of data on structured invoices corresponding to a format based on CEN standard EN 16931, to facilitate the interoperability of systems. The transmission of complete invoices is not foreseen, as taxable persons will only have to report the data necessary for tax purposes. Furthermore, the exchange of invoices between taxable persons will not be managed via the servers of the tax administration neither will the invoices be subject to a clearance procedure by the administration.

The obligation to use electronic invoices will only apply for transactions between taxable persons established in Germany. There is no derogation from the harmonised rules on invoice data. The measure will not impact companies not established in Germany, and the right to receive a paper invoice in case of intra-Community transactions is not affected.

The derogation is also limited in time and a report on the functioning and the effectiveness of the measure is to be prepared in case Germany wishes to prolong the derogating measure.

Therefore, the special measure is proportionate to the aim pursued, to combat tax fraud and evasion.

- **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**

The mandatory electronic invoicing will impact both the tax administration and taxable persons.

The implementation of a reporting system based on e-invoicing will complement the abovementioned measures that Germany has recently implemented to combat VAT fraud and evasion, such as the improvement of the registration processes. According to Germany, the effectiveness of those measures in fighting VAT fraud and ensuring tax collection is shown by the annual figures on the German VAT gap.

The implementation of mandatory e-invoicing will not be very burdensome for businesses as it is already common practice in many sectors of the economy and mandatory in the field of public procurement. Furthermore, businesses will obtain benefits from the automation of processes, such as accounting, as well as long-term savings from the elimination of paper invoices, due to the elimination of the costs from issuing, sending, processing and storing paper invoices.

In addition, the system will follow to the extent possible the features of the one included in the VAT in the digital age proposal, aligning the reporting of domestic transactions with the future system for the reporting of intra-Community transactions. This will avoid duplication of costs for taxable persons and tax administration, making possible to comply with the reporting of both types of transactions in the same way.

The specific needs of small businesses will be taken into account in the design of national provisions. This can be done, for example, by setting company sizes or a minimum invoice amount below which the use of electronic invoices remains optional for a period to be determined.

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 letter registered with the Commission on 10 November 2022, Germany requested authorisation to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC ('the special measure') in order to introduce mandatory electronic invoicing for all transactions carried out between taxable persons established in the territory of Germany.
- (2) By letter registered with the Commission on 8 February 2023, Germany specified that the requested date of entry into force of the special measure is 1 January 2025.
- (3) Pursuant to Article 395(2), second subparagraph, of Directive 2006/112/EC, by letters dated 22 February 2023, the Commission transmitted the request made by Germany to the other Member States and, by letter dated 23 February 2023, it notified Germany that it had all the information necessary for the appraisal of the request.
- (4) Germany intends to put in place the mandatory electronic invoicing for transactions between taxable persons established in Germany as a first step in the implementation of a transaction-based reporting system. Such reporting system would provide benefits in combatting value added tax (VAT) fraud and evasion. It would allow an earlier identification of VAT fraud chains by the tax administration and would also enable the tax administration to carry out timely and automatic verifications of the consistency between the VAT declared and the VAT due. In the case of discrepancies, the system would allow for their early detection and checking. Furthermore, Germany expects that the timely access to invoice data would obviate the need for a more bureaucratic request for invoices by the tax administration, speeding up and facilitating the fight against VAT fraud.
- (5) Germany considers that the introduction of mandatory electronic invoicing would not be very burdensome for businesses as, in Germany, mandatory electronic invoicing is already common practice in many sectors of the economy and is mandatory in the field of public procurement. Furthermore, it would benefit economic operators through the digitalisation of processes and the reduction of their administrative burden. The use of electronic invoices would provide long-term savings due to the elimination of paper

¹ OJ L 347, 11.12.2006, p. 1.

invoices, thereby reducing the costs of issuing, sending, processing and storing invoices.

- (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 age². The proposed amendments set out in the Directive amending Directive 2006/112/EC would amend Article 218 and delete Article 232 of Directive 2006/112/EC, allowing Member States to implement mandatory electronic invoicing, and eliminating the need to request further derogations from Directive 2006/112/EC in order to implement such systems. Therefore, from the date Member States are to apply any national provisions that they are required to adopt in the event that that directive is adopted, this Decision would no longer have any useful effect.
- (7) Given the broad scope and the novelty of the special measure, it is important to evaluate its impact on combatting VAT fraud and evasion and on taxable persons. Therefore, if Germany considers that an extension of the special measure is necessary, it should submit to the Commission, together with the request for extension, a report including an assessment of the special measure concerning its effectiveness in fighting VAT fraud and evasion and in simplifying VAT collection.
- (8) The special measure should not affect the right of the customer to receive paper invoices in case of intra-Community transactions.
- (9) The special measure should be limited in time to allow for an appraisal to be carried out of whether it is appropriate and effective in light of its objectives.
- (10) The special measure is proportionate to the objectives pursued since it is limited in time and scope. In addition, the special measure does not give rise to the risk that fraud would shift to other sectors or to other Member States.
- (11) 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,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 218 of Directive 2006/112/EC, Germany is authorised to accept invoices which have been issued by taxable persons established in the territory of Germany in the form of documents or messages only if those documents or messages are transferred in electronic format.

Article 2

By way of derogation from Article 232 of Directive 2006/112/EC, Germany is authorised to provide that the use of electronic invoices issued by taxable persons established in the territory of Germany shall not be subject to an acceptance by the recipient established in the territory of Germany.

²

COM/2022/701 final.

Article 3

Germany shall notify the national measures implementing the special measure for the derogations referred to in Articles 1 and 2 to the Commission.

Article 4

1. This Decision shall apply from 1 January 2025 until the earlier of the following two dates:

- (a) 31 December 2027;
- (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.

2. If Germany considers that an extension of the special measure is necessary, Germany shall submit its request for extension to the Commission, together with a report assessing the extent to which the national measures referred to in Article 3 have been effective in combatting VAT fraud and evasion and in simplifying tax collection. That report shall also evaluate the impact of those measures on taxable persons and in particular whether those measures increase their administrative burdens and costs.

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels,

For the Council
The President