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European Union

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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 749 final
Subject:	Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of that Directive

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Delegations will find attached document COM(2020) 749 final.

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Encl.: COM(2020) 749 final



Brussels, 18.12.2020  
COM(2020) 749 final

2020/0331 (CNS)

Proposal for a

## **COUNCIL DIRECTIVE**

**amending Directive 2006/112/EC as regards conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of that Directive**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

The Commission has currently no implementing powers in respect of the VAT Directive<sup>1</sup>. The only existing tool for the Commission to promote the uniform application of EU VAT rules is an *advisory Committee* set up under Article 398 of the VAT Directive, the ‘VAT Committee’.

The VAT Committee consists of representatives of the Member States and of the Commission, and examines questions concerning the application of EU VAT provisions raised by the Commission or a Member State. Because it is an advisory committee, the VAT Committee can currently only agree non-binding guidelines on the application of the VAT Directive, whereas binding implementing measures may only be adopted by the Council based on a Commission proposal (Article 397 of the VAT Directive).

Experience shows that these guidelines do not always ensure uniform application of the EU VAT legislation. For instance, the VAT Committee has recently failed to reach unanimous guidelines on a number of issues related to the practical application of the provisions of Council Directive (EU) 2018/1910 (the “Quick Fixes” Directive)<sup>2</sup>. As a consequence Member States follow different approaches on issues such as:

- whether a warehouse is a fixed establishment of a taxable person or otherwise (where the warehouse to which the goods are transported in the framework of call-off stock arrangements is owned or rented by the taxable person transferring the goods),
- what qualifies as “small losses”, or the treatment to be given to such small losses for the purposes of call-off stock arrangements;
- the meaning of the terms “supplier... who dispatches or transports the goods either himself or through a third party acting on his behalf” (Article 36a(3) of the VAT Directive).

The VAT Committee has also recently failed to reach a unanimous guideline:

- on how the location of a service consisting of an event which takes place in several Member States should be identified for VAT purposes;
- on whether a supply of goods or services between a head office of a company established in a Member State and a VAT group in another Member State which includes a branch of that same company constitutes a taxable transaction for VAT purposes.

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<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347 of 11.12.2006).

<sup>2</sup> Council Directive (EU) 2018/1910 of 4 December 2018 amending Directive 2006/112/EC as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States (OJ L 311 of 7.12.2018, p. 3-7).

These discrepancies are likely to result in instances of double taxation and will entail legal uncertainty and additional costs for businesses, which usually only come to an end, after a considerable time, with a ruling of the Court of Justice of the European Union (CJEU), sometimes leading to an interpretation which was not previously shared by the majority of Member States (such as for example on the application of “cost sharing rules”)<sup>3</sup>. It might even happen that the ruling of the CJEU, given that it refers to a concrete factual situation, does not resolve all uncertainties. That is what has happened regarding the VAT treatment of supplies between a head office and its branch (combined with VAT groups): although the ruling of the CJEU in *Skandia America*<sup>4</sup> solved a number of problems, doubts remain about the VAT treatment of situations which do not exactly correspond to the facts of the case which was submitted to the CJEU.

In the light of the above, and as announced in the Communication on an Action Plan for Fair and Simple Taxation supporting the Recovery Strategy<sup>5</sup>, a change to the VAT Directive is proposed in order to create a committee that would oversee the adoption of implementing acts in certain areas of VAT by the Commission. Three aspects are to be underlined in this regard:

-First, comitology procedures would only be applied in connection with a limited set of rules implementing the provisions of the VAT Directive, for which a common interpretation is required. Any change to the VAT Directive shall require, as is the case today, unanimous agreement in Council.

-Second, it is in the interest of both tax administrations and businesses to facilitate the adoption of common interpretations of the provisions of the VAT Directive, since discrepancies in this area are likely to result in double taxation, distortions of competition and additional costs for businesses. In this regard, comitology is the long-standing standard approach used in EU Law for facilitating the emergence of those common interpretations. It is worth noting that in the field of indirect taxation, standard comitology procedures are already used for VAT administrative cooperation and excise duties.

-Third, the Council shall retain its implementing powers insofar as they do not fall within the strictly defined scope of empowerment of the Commission and in particular on substantial matters especially sensitive for Member States.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

The proposal is based on Article 113 of the TFEU. This article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

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<sup>3</sup> Judgments of the of 4 May 2017, *Commission v Luxembourg*, C-274/15, EU:C:2017:333; of 21 September 2017, *DNB Banka*, C-326/15, EU:C:2017:719; of 21 September 2017, *Aviva*, C-605/15, EU:C:2017:718; and of 21 September 2017, *Commission v Germany*, C-616/15, EU:C:2017:721.

<sup>4</sup> Judgment of the CJEU of 17 September 2014, *Skandia America*, C-7/13, ECLI:EU:C:2014:2225.

<sup>5</sup> Communication from the Commission to the European Parliament and the Council – An action plan for fair and simple taxation supporting the recovery strategy, COM(2020) 312 final, 15.7.2020.

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

The proposal is consistent with the principle of subsidiarity as the main problem that has been identified is precisely the non-harmonised application by the Member States of concepts to be found in the VAT Directive, which in turn can lead to double or non-taxation, in particular in cross-border situations. It is not possible for Member States alone to address these problems. The fact that certain implementing powers are conferred on the Commission will allow addressing more quickly and efficiently situations that are the result of differences in interpretation and which cause problems for traders. In this, the Commission will be assisted by a committee, which shall consist of VAT experts from the Member States' tax administrations and which will therefore be well placed to deal consistently and swiftly with the problems.

- **Proportionality**

The proposal is consistent with the principle of proportionality since it does not go beyond what is necessary to meet the objectives of the Treaties, in particular the smooth functioning of the single market, which is currently hindered by diverging interpretation and application of VAT concepts by Member States.

- **Choice of the instrument**

A Directive is proposed in view of amending the VAT Directive.

### **3. BUDGETARY IMPLICATIONS**

The proposal has no negative impact on the EU budget.

### **4. OTHER ELEMENTS**

- **Detailed explanation of the specific provisions of the proposal**

The proposed role of the Commission assisted by a committee should focus on certain areas where uniform application of the concepts in the EU VAT legislation is needed. In absence of such uniform application, problems such as double taxation or to non-taxation will persist.

**A] Implementing powers assigned to the Commission and to the Council: new Article 397a of the VAT Directive, in connection with the new Article 397 therein**

**(i) the first subparagraph of paragraph 1 of Article 397a, in connection with the second subparagraph of that provision and with Article 397**

Article 291 TFEU provides, as a general rule, that “where uniform conditions for implementing legally binding Union acts are needed” those acts shall confer implementing powers, as a general rule, on the Commission and in duly justified specific cases, on the Council. The CJEU has consistently held that the notions and concepts used throughout the VAT Directive are, except in the very few cases in which their definition is expressly left in the Directive itself to Member States, Union Law notions and concepts, which require uniform interpretation and application<sup>6</sup>.

The terms of the VAT Directive for which that Directive has made “express reference to the law of the Member States for the purpose of determining (their) meaning and scope” are scarce. One can mention by way of examples, the notions of “building land” and “land on

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<sup>6</sup> See, inter alia, the judgment of 27 November 2003, *Zita Modes*, C-497/01, ECLI:EU:C:2003:644, paragraphs 34 to 36.

which a building stands” (Article 12), of “special investment funds” (Article 135(1)(g)), and of “provision of accommodation” (Article 135(2)(a)). Most other terms and concepts used in the Directive need, according to the CJEU, a uniform interpretation and application that, as established by Article 291 TFEU, should be laid down by means of implementing measures.

The assignment of implementing powers to the Commission is restricted to determining the meaning of certain provisions of the VAT Directive. Council, in turn, retains its implementing powers outside this defined empowerment of the Commission. In particular, any implementing measures which do not aim at defining the meaning of the terms referred to in the first subparagraph of Article 397a(1) would fall under the competence of the Council. Further, any implementing measures regarding the provisions in Titles I (“Subject matter and scope”), Title VIII (“Rates”) and Title XIII (“Derogations”) of the VAT Directive, all of them particularly sensitive for Member States, fall squarely within the implementing powers of the Council. Finally, it would be for the Member States to adopt the relevant rules regarding the items expressly excluded from the Commission’s implementing powers in the second subparagraph of Article 397a(1).

**(ii) paragraph 1, first subparagraph, point (a), in connection with the second subparagraph**

Title III of the VAT Directive refers to the taxable persons. A number of provisions in this Title would need a uniform interpretation since the meaning of the terms used therein has not been assigned by the VAT Directive to the national legislation of Member States: thus, for instance, the notion of “occasional basis” (paragraph 2 of Article 9) or the notion of “trade fairs and exhibitions” (category (8) in Annex I).

By contrast, the Commission should not be empowered through implementing acts:

- to exercise on behalf of a Member State, or to prevent the exercise by a Member State, of the options assigned by the VAT Directive to Member States in relation to VAT groups (Article 11); occasional taxable persons, alternative criteria to that of first occupation for buildings and meaning of “the land on which a building stands” (Article 12) and exempt activities to be treated as public authority activities (paragraph 2 of Article 13);
- to lay down the definition of “building land”, since the Directive makes express reference to its definition through national law (paragraph 3 of Article 12).

**(iii) paragraph 1, first subparagraph, point (b), in connection with the second subparagraph**

Title IV of the VAT Directive deals with the taxable transactions. It is clear that the notions used in the provisions in this Title are in need of uniform application: thus, for instance, the notion of “tangible property” (paragraph 1 of Article 14), of “business assets” (paragraph 1 of Article 17) and of “arrival” (paragraph 4 of Article 17a). However, the Commission should not be entitled through implementing measures to exercise on behalf of a Member State, or to prevent the exercise by a Member State, of any of the options assigned to Member States in this Title. These options refer to the notion of “supply of goods” (paragraph 3 of Article 14, paragraph 2 of Article 15, Articles 18 and 19) and to the notion of supply of services (paragraph 2 of Article 26 and Articles 27 and 29).

**(iv) paragraph 1, first subparagraph, point (c), in connection with the second subparagraph**

Title V of the VAT Directive refers to the place of taxable transactions. Here the need for uniform application of the provisions is evident, since divergent interpretations by Member States of the terms used therein would most likely lead to cases of double taxation or non-taxation. Thus for instance the notions of “transport or dispatch by or on behalf” of the supplier (Articles 32 and 33), “assembly or installation” (Article 36), “first supplier” and “last customer” (Article 36a), “immovable property” (Article 47) and “restaurant or catering” (Article 55) are all in need of uniform application throughout the Union.

By contrast, the Commission should not be empowered, through implementing measures, to exercise on behalf of a Member State, or to prevent the exercise by a Member State, of the options assigned to Member States in that Title (thus for instance the options regarding “effective use and enjoyment” in relation to the place of supply of certain services).

**(v) paragraph 1, first subparagraph, point (d), in connection with the second subparagraph**

Title VI deals with the chargeable event and the chargeability of VAT. The provisions used in this Title are in need of uniform application: for instance the notions of “successive statements of account”, “successive payments” or “continuous supplies of goods” (Article 64) and the notions of “payment on account” and “receipt of payment” (Article 65). However, the Commission should not be empowered to exercise on behalf of a Member State, or to prevent the exercise by a Member State, of the option regarding chargeability of VAT for continuous supplies of goods (third subparagraph of paragraph 2 of Article 64). The same would apply for the derogations allowed to Member States regarding chargeability of VAT for certain transactions or certain categories of taxable persons (Article 66).

**(vi) paragraph 1, first subparagraph, point (e), in connection with the second subparagraph**

Title VII of the VAT Directive refers to the taxable amount of VAT. The provisions used in this Title are in need of uniform application: for instance the notions of “marketing stage”, “purchase price” or “cost price” (Article 72); “consideration” and “subsidies directly linked to the price of the supply” (Article 73); “taxes, duties, levies and charges” and “incidental expenses” (Article 78) and “price discounts and rebates” or “suspense account” (Article 79). By contrast, the Commission through implementing measures should be empowered neither to exercise on behalf of a Member State nor to prevent the exercise by a Member State, of any of the options assigned to Member States in that Title. Nor will the Commission be empowered to lay down the conditions and rules in respect of the modification of the taxable amount (paragraph 1 of Article 90) or the exchange rate (paragraph 2 of Article 91).

**(vii) paragraph 1, first subparagraph, point (f), in connection with the second subparagraph**

Title IX of the VAT Directive refers to exemptions. The Commission should not be empowered through implementing measures:

- to lay down the definitions, recognitions and authorisations entrusted to Member States in paragraph 1 of Article 132 (such as the definition of “medical and paramedical professions” in point (c) of paragraph 1 of Article 132 or the recognition of a body as being “devoted to social wellbeing” in point (g) of that same provision);
- to define the notion of “special investment funds” (point (g) of paragraph 1 of Article 135) and to lay down the conditions and limitations for the exemption



regarding betting, lotteries and other forms of gambling (point (i) of paragraph 1 of that same provision);

- to lay down the limitations regarding exemptions relating to certain transactions treated as exports which the Directive entrusts to the host Member State (Article 151).

Further, the Commission will not be empowered to exercise on behalf of a Member State, or to prevent the exercise by a Member State, of any of the options assigned to Member States in that Title. By way of example we can mention here the options regarding the exemptions for sport and cultural services (the second paragraph of Article 133); exclusions from the exemption regarding the leasing or letting of immovable property (the second subparagraph of paragraph 2 of Article 135) and the right of option for taxation (Article 137) or the decision to apply any of the exemptions for transactions relating to international trade (Chapter 10 of that Title).

**(viii) paragraph 1, first subparagraph, point (g), in connection with the second subparagraph**

Title X of the VAT Directive refers to deductions. The Commission should not be empowered to exercise on behalf of a Member State, or to prevent the exercise by a Member State, of the options assigned to Member States in that Title: for instance, the options regarding proportional deduction (paragraph 2 of Article 173); the restrictions of the right of deduction (in Articles 176 and 177) or the rules governing exercise of the right of deduction (in Articles 180 and 181).

**(ix) paragraph 1, first subparagraph, point (h), in connection with the second subparagraph**

Title XI and Annex VI of the VAT Directive refer to the VAT obligations. The Commission would for instance be empowered to determine, by means of implementing measures, the notion of “intervention” (Article 192a), the notions of “construction work” or “demolition services” (Article 199) or the concept of “tax representative” (Article 204). By contrast, the Commission would not be able to exercise on behalf of a Member State, or to prevent the exercise by a Member State, of the options in those provisions, namely the option to apply a reverse charge (Articles 194 or 199) or the option to allow the taxable person to appoint a tax representative. Further, the Commission could not define the “tax reference number” (Article 239), since that definition is directly entrusted by the VAT Directive to the Member States.

**(x) paragraph 1, first subparagraph, point (i), in connection with the second subparagraph**

Title XII of the VAT Directive refers to the special schemes of the tax. The Commission should not be empowered to exercise on behalf of a Member State, or to prevent the exercise by a Member State, of any of the options assigned to Member States in that Title, namely in Articles 281, 284, 285, 286, 287, 296, 301, 303, 318, 326, 330, 333, 342, 344, 349, 352, 366, 367, 369d, 369h and 369i. Nor should the Commission be empowered to determine the procedures for deduction or refund of the VAT entrusted to Member States in Article 303 regarding the special scheme for farmers. Further, the Commission should not be empowered to lay down the rules referred to in connection with the exercise of the options in Article 316 and 324 regarding the special arrangements for taxable dealers.



### **(xi) paragraph 1, third subparagraph**

According to paragraph 3 of Article 291 TFEU “the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers”. This the European Parliament and the Council have done through the “Comitology Regulation”, adopted in February 2011<sup>7</sup>.

Although in principle it would be legally possible for the legislator to confer implementing powers on the Commission without requiring any control by the Member States<sup>8</sup> this is not the option taken in the proposal. By contrast, a control mechanism entrusted to a committee is put in place. This means that in the exercise of its implementing powers the Commission cannot act alone since that exercise will in any event require the positive opinion of the committee. The rules of the Comitology Regulation relating to the examination procedure will apply in this framework.

### **(xii) paragraph 2**

The rules adopted by Council and currently featuring in the VAT Implementing Regulation remain in force despite the conferral of certain implementing powers on the Commission. Notwithstanding that the Commission, assisted by a committee, will be able, always within the defined scope of its empowerment, to adopt future rules which might have the same scope as the current provisions of the VAT Implementing Regulation, which in such a case would have to be deleted by Council.

## **B] The new committee: Article 398a of the VAT Directive**

The assignment of implementing powers to the Commission in this proposal does by no means entail a lack of control by Member States of the Commission's exercise of those powers. The rules and general principles concerning mechanisms of control by Member States of the Commission's exercise of implementing powers are laid down in secondary legislation, i.e. the Comitology Regulation. For taxation matters the “examination procedure” laid down in Article 5 of the Comitology Regulation (there is no possibility of applying in the field of taxation the “advisory procedure” referred to in Article 4) ensures that the Commission can do nothing without the agreement of Member States in the new committee. Only in case of a positive opinion of the committee shall the Commission be entitled to adopt the implementing measure; by contrast, both in cases of negative opinion and of no opinion of the committee the Commission shall not be empowered to adopt the relevant implementing act.

The provisions on the composition and chairman for the committee are directly laid down in Article 3 of the Comitology Regulation. The VAT Committee shall keep its role as the body in charge of examining the consultations provided for under the VAT Directive. Reference to such consultations is made in Articles 11, 27, 102, 155, 164, 167, 177, 191, 238, 281, 318 and 352. Further, the VAT Committee should also be able to examine any other matters on the application of Union provisions on VAT, but in these areas it will only be empowered to issue non-binding guidelines, as is the case today.

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<sup>7</sup> Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13.

<sup>8</sup> See recital (6) and Article 1 of the Comitology Regulation.

Proposal for a

## COUNCIL DIRECTIVE

### **amending Directive 2006/112/EC as regards conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of that Directive**

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<sup>9</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>10</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) In order to ensure uniform application of Union law and to comply with the principle of equality the terms used in provisions of Council Directive 2006/112/EC<sup>11</sup>, which do not expressly allow Member States to determine their meaning and scope, need uniform interpretation throughout the Union.
- (2) Divergent interpretation of the terms used in Directive 2006/112/EC are likely to result in instances of double taxation, entail legal uncertainty, additional costs for businesses and distortion of competition. Uniform interpretation of those terms at Union level is also necessary to facilitate application of Directive 2006/112/EC by the tax administrations and businesses.
- (3) Article 291 of the Treaty on the Functioning of the European Union provides that where uniform conditions for implementing legally binding Union acts are needed those acts are to confer implementing powers on the Commission or, in duly justified specific cases, on the Council.
- (4) In order to enhance the efficiency of the decision making process in the area of value added tax (VAT) and to contribute to a more uniform application of the Union VAT legislation implementing powers to determine the meaning of certain terms used in Directive 2006/112/EC should be conferred on the Commission.
- (5) The implementing powers conferred on the Commission should not undermine the discretion left to the Member States for adoption of measures of national law necessary to implement some of the provisions of Directive 2006/112/EC. It is

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<sup>9</sup> OJ C , , p. .

<sup>10</sup> OJ C , , p. .

<sup>11</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12. 2006, p. 1.).

therefore necessary to clarify the scope of the implementing powers conferred on the Commission accordingly.

- (6) The implementing powers in duly justified specific cases, on substantial matters particularly sensitive for Member States, should be assigned to the Council. This would in particular be the case regarding any implementing measures which might be needed regarding the provisions in Title I (“Subject matter and scope”), Title VIII (“Rates”) and Title XIII (“Derogations”) of the VAT Directive.
- (7) In order to ensure uniform conditions for the implementation of the relevant provisions of Directive 2006/112/EC, implementing powers should be conferred on the Commission as regards the determination of the meaning of the terms used in certain provisions of that Directive. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>12</sup>.
- (8) Since the objective of this Directive, namely ensuring a more uniform application of the Union VAT legislation, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (9) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

Directive 2006/112/EC is amended as follows:

- (1) Article 397 is replaced by the following:

#### *‘Article 397*

The Council, acting unanimously on a proposal from the Commission, may adopt:

- (a) any measures necessary to implement the provisions in Titles I, VIII, XIII, and in Annexes III, IV, V and X of this Directive;
- (b) any measures necessary to implement the provisions in the Titles and Annexes of this Directive not mentioned in point (a), in so far as those measures do not entail determination of the meaning of the terms used therein.

- (2) in Chapter 1 of Title XIV, the following Article 397a is inserted:

#### *‘Article 397a*

1. The Commission may, by means of implementing acts, determine the meaning of the terms used in the following provisions:

- (a) as regards the taxable persons for the purposes of VAT, the provisions in Title III and Annex I;

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<sup>12</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (b) as regards the transactions that are taxable for VAT purposes, the provisions in Title IV;
- (c) as regards the place of taxable transactions, the provisions in Title V and Annex II;
- (d) as regards the chargeable event and the chargeability of VAT, the provisions in Title VI;
- (e) as regards the taxable amount of VAT, the provisions in Title VII;
- (f) as regards the exemptions from VAT, the provisions in Title IX;
- (g) as regards the deductions from VAT, the provisions in Title X;
- (h) as regards the obligations of taxable persons and certain non-taxable persons, the provisions in Title XI and Annex VI;
- (i) as regards the special schemes of the tax, the provisions in Title XII and Annexes VII, VIII and IX.

The first subparagraph shall not apply to the following provisions:

- (a) provisions that allow Member States to exercise an option, in so far as the decision to exercise that option is concerned;
- (b) provisions containing express reference to terms to be defined by the Member States, in so far as the definition of the meaning of those terms is concerned;
- (c) provisions where conditions, procedures and rules are to be determined by the Member States, in so far as those conditions, procedures and rules are concerned;
- (d) provisions on procedures for recognitions and authorisations to be granted by the Member States, in so far as those procedures are concerned;
- (e) provisions on the tax reference number in Article 239.

The implementing acts referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 398a(2).

2. Where the provisions of the Commission implementing acts adopted in accordance with paragraph 1 of this Article have the same scope as the provisions of implementing measures adopted by the Council in accordance with Article 397 of this Directive as amended by Council Directive (EU) 2020/285\*, the Council shall delete the relevant provisions in its implementing measures.

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\* Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13).

- (3) in Title XIV, the title of Chapter 2 is replaced by the following:

*'CHAPTER 2  
Committees'*;

(4) in Chapter 2 of Title XIV, the following Article 398a is inserted:

*'Article 398a*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. '

*Article 2*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 3*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*