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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION amending Implementing Decision (EU) 2018/593 as regards the duration and scope of the derogation from Articles 218 and 232 of Directive 2006/112/EC

Delegations will find attached document COM(2021) 681 final.

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COM(2021) 681 final

2021/0357 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision (EU) 2018/593 as regards the duration and scope of the derogation from Articles 218 and 232 of Directive 2006/112/EC

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EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[1] (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 31 March 2021, 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 2021. Further, the request asked for an extension of the scope of the derogating measure in force, granted by Council Implementing Decision (EU) 2018/593[2], to include taxable persons who benefit from the exemption for small enterprises referred to in Article 282 of the VAT Directive. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 10 September 2021 of the request made by the Italian Republic. By letter dated 13 September 2021 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) 2018/593, 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 Italy[3].

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. According to those estimates, around EUR 2 billion could be directly attributed to the improvement in VAT compliance following the introduction of the measure in question, while around EUR 580 million of additional revenue in the collection of direct taxes could indirectly be attributed to the measure. Regarding control and enforcement, the action to identify and stop false VAT credits allowed the recovery of EUR 945 million in 2019. Furthermore, the use of electronic invoicing data for the whole of 2019 has also been essential in identifying taxable persons not meeting the requirements for the status of *'esportatore abituale'* (over EUR 1.3 billion in false ceilings declared). Other processes are currently ongoing based on the cross-checking of electronic invoicing data with cross-border anti-fraud information sources (including the European anti-fraud network EUROFISC). It has also

[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.

made possible to identify companies involved in intra-Community fraud mechanisms carried out between the last months of 2019 and 2020, based on invoicing flows for non-existent transactions amounting to around EUR 1 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.

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 2021, 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.

Moreover, the request also asks for the extension of the scope of the measure for taxable persons who benefit from the exemption for small enterprises referred to in Article 282 of the VAT Directive. Italy considers that this extension will enhance the fight against VAT fraud and evasion, as it will provide the tax authorities with a complete picture of the transactions carried out by all taxpayers. Further, tax authorities will be able to monitor that the turnover of the taxable persons benefitting from the abovementioned exemption remains under the threshold, allowing them to combat evasion connected to the access and permanence in this regime of taxpayers who violate, in substantial terms, the conditions and requirements established by law.

According to Italy, the required extension of the scope of the measure should not entail a significant administrative burden for these taxable persons. More than 10% of the taxpayers benefiting from the exemption for small enterprises referred to in Article 282 of the VAT Directive are already issuing their invoices through the SdI. Furthermore, the Italian Revenue Agency has made available to all VAT operators, free of charge, various solutions to prepare and transfer electronic invoices. These include a software package that can be installed on a computer, which can be used to prepare the electronic invoicing files even in the absence of an internet connection and to transfer such files by simply uploading them, and an application which can be installed on any mobile device to prepare and transfer electronic invoices. Moreover, the Italian Revenue Agency has also made available, free of charge, a digital storage service, which makes it possible to archive the invoicing files while ensuring compliance with the requirements of authenticity, integrity and readability of the files for 15 years.

SMEs would benefit from the elimination of the costs of printing and archiving invoices, the reduction of the risk of making mistakes in preparing invoices, and the access to a number of online services, provided by the Italian Revenue Agency, which allow taxpayers to exploit the invoicing data for the purposes of analysing the performance of their business.

Given the broad scope of the derogation and its extension to taxable persons benefitting from the exemption for small enterprises referred to in Article 282 of the VAT Directive, it is important to ensure the necessary follow-up of this measure and in particular its impact on combatting VAT fraud and evasion and on taxable persons, with special attention to SMEs. Should Italy wish to prolong the derogating measure, a report on the functioning of the measure should be provided together with the prolongation request. This report should provide the assessment of the measure concerning 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, in particular SMEs, explaining in detail what concerns the increase of their administrative burdens and compliance costs.

It is proposed to prolong the authorisation until 31 December 2024.

- **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 Recommendation[4] 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'*.

Finally, 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*"[5]. One of the actions envisaged in this action plan is the presentation by the Commission of a legislative proposal for modernising VAT reporting obligations. The need to further expand e-invoicing will be examined in this context. Therefore, the derogating measure is aligned with the objectives pursued by the Commission's action plan. One of the aims of the future Commission's proposal will be to streamline the existing and future reporting mechanisms for domestic transactions, including the one authorised by this derogating measure.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 395 of the VAT Directive.

[4] OJ C 261, 9.8.2017, p. 46.
[5] https://ec.europa.eu/taxation_customs/system/files/2020-07/2020_tax_package_tax_action_plan_en.pdf

- **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 request submitted by Italy asks for the extension of the scope to taxable persons benefitting from the exemption for SMEs. Italy has put in place several measures to help the adaptation of these taxable persons to mandatory e-invoicing. 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 will 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. It should be noted that more than 10% of the taxable persons benefitting from the exemption for SMEs have already opted for issuing e-invoices voluntarily. In addition, several reporting obligations could be eliminated due to the implementation of mandatory electronic invoicing.

Further, the requested extension of the scope of the measure would enhance the fight against VAT fraud and evasion, as the Italian tax authorities would have a complete picture of the invoices issued by all taxable persons. It will also allow them to detect taxpayers who violate, in substantial terms, the conditions and requirements required by law to apply the said exemption for SMEs.

The derogation is also limited in time and a report on the functioning and the effectiveness of the measure, in particular on the impact on SMEs, is to be submitted with the request in case Italy wishes to prolong the derogating measure.

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 operators or to final consumers by taxable persons established on the Italian territory, extending the scope of the measure to taxable persons benefiting from the exemption for small enterprises. 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 Italian Revenue Agency 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 will boost this possibility. 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 estimates provided by Italy, the implementation of mandatory e-invoicing has improved VAT compliance in around EUR 2 billion. It has also allowed to obtain another EUR 580 million indirectly due to additional revenue obtained from the collection of direct taxes. Another EUR 945 million were recovered in 2019 due to actions to identify and stop false VAT credits. The use of electronic invoicing data for the whole of 2019 has also been essential for identifying taxable persons not meeting the requirements for the status of *'esportatore abituale'* (over EUR 1.3 billion in false ceilings declared). Finally, the information obtained has allowed the identification of companies involved in intra-Community fraud mechanisms carried out between the last months of 2019 and 2020, based on invoicing flows for non-existent transactions amounting to around EUR 1 billion.

The extension of the scope of the measure to taxable persons benefitting from the exemption for SMEs is accompanied by mitigating measures, such as the availability, free of charge, of different solutions to prepare and transfer electronic invoices, such as a software package for installation on computers or an application for mobile devices. Furthermore, the implementation of e-invoicing is accompanied by the suppression of other requirements and the provision of additional services to taxable persons. As previously mentioned, the extension of the scope of the measure to taxable persons benefitting from the exemption for SMEs would provide the Italian Revenue Agency with a complete picture of the invoices issued by all taxable persons, helping them in the fight against VAT fraud and evasion.

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 valued added tax[1], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Implementing Decision (EU) 2018/593[2], Italy was authorised 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 letter registered with the Commission on 31 March 2021, 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. Furthermore, Italy asked in the request for permission to extend the scope of the special measure to cover also taxable persons benefiting from the exemption for small enterprises referred to in Article 282 of that Directive.

(3) The Commission informed the other Member States of the request made by Italy by letters dated 10 September 2021. By letter dated 13 September 2021, the Commission notified Italy that it had all the information necessary to consider the request.

(4) Italy submits that the implemented mandatory electronic invoicing system, which channels all issued invoices through the 'Sistema di Interscambio' ('the SdI') 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.

(5) Italy considers that the extension of the scope of the special measure to cover also taxable persons benefiting from the exemption for small enterprises referred to in Article 282 of Directive 2006/112/EC, would enhance the possibilities of the Italian Revenue Agency to fight value added tax (VAT) fraud and evasion, by providing a complete picture of the invoices issued by all taxable persons. Furthermore, it would allow the Italian Revenue Agency to monitor that these taxable persons comply with the requirements and conditions for benefiting of the said exemption.

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[1] OJ L 347, 11.12.2006, p. 1.

[2] OJ L 99, 19.4.2018, p. 14.

(6) Italy argues that the requested extension of the scope of the special measure will not imply substantial costs to taxable persons benefiting from the exemption for small enterprises referred to in Article 282 of Directive 2006/112/EC. To mitigate these costs, Italy has made available, free of charge, different solutions to prepare and transfer electronic invoices, such as a software package for installation on computers and an application for mobile devices. Furthermore, the implementation of electronic invoicing is accompanied by the suppression of other requirements, such as the reporting of invoice data on domestic transactions, the filing of Intrastat declarations on purchases or the obligation to provide details of contracts entered into by leasing, rental and hire companies. It has also allowed the provision of additional services to taxable persons, such as 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. These measures should assure the proportionality of the special measure.

(7) The special measure should be limited in time to monitor its impact on combatting VAT fraud and evasion and on taxable persons, in particular on those benefiting from the exemption for small enterprises referred to in Article 282 of Directive 2006/112/EC.

(8) If Italy considers that the extension of the special measure is necessary, it should submit to the Commission, together with the request for extension, a report including the assessment of the special measure concerning its effectiveness in fighting VAT fraud and evasion and in simplifying tax collection. This report will also evaluate the impact of the measure on taxable persons, in particular those benefiting from the exemption for small enterprises referred to in Article 282 of Directive 2006/112/EC.

(9) This special measure should not affect the right of the customer to receive paper invoices in case of intra-Community transactions.

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

(11) 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:

(1) Article 1 is replaced by the following:

'*Article 1*

By way of derogation from Article 218 of Directive 2006/112/EC, Italy is authorised only to accept invoices in the form of documents or messages in electronic format if they are issued by taxable persons established in the Italian territory.';

(2) Article 2 is replaced by the following:

'*Article 2*

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

(3) Article 4 is replaced by the following:

'*Article 4*

This Decision shall apply until 31 December 2024.

Where Italy considers that the extension of the derogations referred to in Articles 1 and 2 is necessary, Italy shall submit a 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, in particular those who benefit from the exemption for small enterprises referred to in Article 282 of Directive 2006/112/EC, and in particular whether those measures increases their administrative burdens and costs.'

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council
The President