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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Council Directive amending Directive 2006/112/EC as regards the electronic value added tax exemption certificate - Political agreement

Delegations will find attached the text of the above draft Directive, which is submitted for a political agreement.

Draft

COUNCIL DIRECTIVE

amending Directive 2006/112/EC as regards the electronic value added tax exemption certificate

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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (1) Article 51 of Council Implementing Regulation (EU) No 282/2011³ provides that the value added tax (VAT) and/or excise duty exemption certificate set out in Annex II to that Implementing Regulation serves to confirm that a supply of goods or services made to an eligible body or individual qualifies for an exemption under Article 151 of Council Directive 2006/112/EC⁴. Implementing Regulation (EU) No 282/2011 provides for an exemption certificate in paper form to be signed by hand. It is necessary to digitalise the process of creating and submitting the exemption certificate and to replace the paper document with a document in electronic format in order to minimise bureaucracy and the administrative burden and to reduce costs in the long term. The data content of the electronic certificate should be based on the paper form of the exemption certificate provided for in Council Implementing Regulation (EU) No 282/2011.
- (2) In view of the large number of resource-intensive IT projects in which Member States are involved, in addition to that required to switch to an electronic exemption certificate, Member States should be given flexibility and sufficient time to complete the transition to the new electronic procedure. To this end, they should be allowed to continue to use the paper form set out in Annex II to Implementing Regulation (EU) No 282/2011 for transactions carried out during a transitional period. In cross-border scenarios the use of the electronic certificate during the transitional period would require for both Member States involved in a transaction to be ready to process it.
- (2a) Member States may have made significant investments to put in place or develop electronic systems or separate paper-based certificates for the application of the exemption to eligible bodies or individuals for domestic transactions. In order to ensure the necessary adaptation of national solutions to the use of the common electronic certificate and the system developed for its processing, Member States should be allowed to continue to use their national solutions until the end of the transitional period.

³ Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2011/282/oj).

⁴ 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, ELI: <http://data.europa.eu/eli/dir/2006/112/oj>).

- (2b) The use of a common electronic certificate is essential in cases of transactions where the exemption is granted up front. In some specific cases concerning transactions where the VAT should be charged in the Member State hosting the body or individual eligible for exemption, exemptions can also be granted by means of a refund. Such procedure may or may not involve the issuance of a certificate. In light of the specificities related to the use or non-use of certificates in the framework of the refund procedures, the scope of the obligation to use the electronic certificate should not be extended automatically to refund procedures. Member States should nevertheless benefit from the possibility to use this common electronic certificate in cases in refund procedures where relevant.
- (3) It is possible that, after an exemption certificate has been issued, a body or individual eligible for exemption for its purchases pursuant to Article 151 of Directive 2006/112/EC might become aware that the conditions for the exemption in question are not or cease to be met. Such information is normally only known to that body or individual as the assessment of compliance with those conditions is to be carried out on the basis of the activities of the body or individual to whom supplies are made and by which those goods or services are to be used. In order to ensure legal certainty for taxable persons and to avoid undue burdens on taxable persons, it is necessary to clarify that in such cases the VAT due should be paid by the eligible body or individual who issued the exemption certificate. Member States should avoid unnecessary burdens in such exceptional cases by allowing the payment of VAT without the need for a full VAT registration.
- (4) While maintaining the option currently available for the paper version of the certificate, it should be possible for Member States to continue to waive the requirement for the electronic certificate to be signed by the host Member State, subject to conditions which they may lay down and which may be withdrawn in the event of abuse.

- (5) In order to ensure uniform conditions for the implementation of Article 151(1) of Directive 2006/112/EC, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁵.
- (5a) Those implementing powers should allow the Commission to establish an IT system which will keep track of the certificates issued, including issuing a certificate by eligible bodies or individuals and obtaining this by the suppliers for whom it is intended. Duly accredited persons of the Commission should be able to access the information that is exchanged and stored in the IT system only for the purpose of developing and maintaining the system. Member States will remain responsible to communicate to the system established by the Commission whether the conditions to issue a certificate are met. To fulfil their responsibilities, Member States should be provided with the means to interact with the Commission, minimizing the effort required for development and maintenance by Member States.
- (6) Directive 2006/112/EC should therefore be amended accordingly,

⁵ 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 Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: <http://data.europa.eu/eli/reg/2011/182/oj>).

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Article 151 of Directive 2006/112/EC, the following paragraphs 1a and 1b are inserted:

‘1a. Member States shall use an electronic certificate to confirm that a transaction qualifies for an exemption provided for in paragraph 1, first subparagraph. The eligible body or individual to whom the exempt supply of goods or services is made, shall issue the certificate and, together with the host Member State, shall sign it by electronic means.

The first subparagraph shall not apply to transactions, where the exemption is provided by means of a refund as referred to in the second paragraph and where the VAT is due in the host Member State. Member States may nevertheless opt to provide for the use of an electronic certificate, in accordance with this paragraph, for those transactions.

The data set of the electronic certificate shall include at least

- (a) the identification data of the eligible body or individual, including an identification number issued by the host Member State where available,
- (b) the identification data of the competent authority certifying the exemption,
- (c) the declaration by the eligible body or individual on the intended use of the goods and services acquired, and on meeting the conditions of the exemption as determined by the relevant Member State,
- (d) the description, the quantity and value, excluding VAT and excise duty, of the goods and services for which the exemption is requested, including the vehicle identification number or the address and the purpose of the use of the immovable property where required,

- (e) the certification by the competent authorities of the host Member State, and
- (f) information concerning the supplier, including name and address, Member State of establishment and VAT/excise number or tax reference number.

When making use of the certificate referred to in the first subparagraph, the host Member State may decide to use either a common VAT and excise duty exemption certificate or two separate certificates.

If the goods or services are intended for official use, Member States may dispense the eligible body from the requirement to have the certificate signed by the host Member State under the conditions they may lay down. This dispensation may be withdrawn in the case of abuse. Member States shall inform the Commission of the contact point designated to identify the services responsible for signing the certificate by electronic means and the extent to which they dispense with this requirement. The Commission shall inform the other Member States of the information received from Member States.

By way of derogation from the first two subparagraphs, Member States may opt to use for any transaction made until 30 June 2032:

- a) the paper version of the certificate set out in Annex II to Council Implementing Regulation (EU) No 282/2011* or,
- b) where the VAT is due in the host Member State, any electronic system or any other paper version of the certificate that a Member State has in place.

The Commission shall, by means of implementing acts, determine the technical details and specifications as regards the electronic format of the certificate referred to in the first subparagraph and its processing, taking into account the necessities of the Member States, including determining the applicable IT system for this purpose. The processing shall in particular consist in the access to the IT system for eligible bodies or individuals, Member States and suppliers, in the issuing and signing of the exemption certificate electronically, in the recording and the storing of the certificates issued by eligible bodies and individuals in accordance with the first subparagraph and making them available to the eligible bodies and individuals and the suppliers making an exempt supply in accordance with paragraph 1, first subparagraph and the competent authorities of the Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011 and for this purpose the committee shall be the committee established by Article 58 of Regulation (EU) No 904/2010.

The Commission shall develop, maintain, host and technically manage the respective central electronic system for the purpose of storing and processing the electronic certificates.

1b. Without prejudice to paragraph 3, if the goods and/or services did not comply with the conditions of exemption or if the goods and/or services were not used in the manner intended, the eligible body or individual who issued and signed the certificate shall undertake to pay the VAT to the Member State where it is due.

* Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2011/282/oj).’.

Article 2

1. Member States shall bring into force, by 30 June 2031, the laws, regulations, and administrative provisions necessary to comply with Article 1 of this Directive. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by Article 1 of this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President
