EUROPEAN
COMMISSION

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2018/0021 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Italian Republic to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added 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 27 September 2017, the Italian Republic requested authorisation to derogate from Articles 218 and 232 of the VAT Directive to be able to impose mandatory electronic invoicing. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 3 November 2017 and Portugal by letter dated 6 November 2017 of the request made by the Italian Republic. By letter dated 7 November 2017, 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

Italy submitted a request for derogation based on Article 395 of the VAT Directive to be authorised to apply a mandatory electronic invoicing to all taxable persons established in the territory of Italy except taxable persons benefiting from the exemption for small enterprises and to channel the invoices through the system Sistema de interscambio (hereafter 'SdI'–) managed by the Italian Revenue Agency.

Italy submits that the electronic invoicing obligation via the SdI allows the tax administration to acquire in real time the information contained in the invoices issued and received by traders. As a result tax authorities can carry out timely and automatic checks of the consistency between VAT declared and paid.

Italy thus considers that the introduction of a generalized electronic invoicing obligation would provide benefits in terms of combatting fraud and evasion, as well as in terms of simplification of tax collection. According to Italy, there would be real benefits from better tax compliance and from increased timeliness and effectiveness of anti-fraud and anti-evasion controls. It would also give a boost to digitization and administrative simplification.

According to information submitted by Italy, the grounds for mandatory electronic invoicing are prepared by the existing voluntary system and the mandatory electronic invoicing for supplies to public authorities thus ensuring a smooth transition to the obligatory electronic invoicing and limiting the impact of the measure on taxable persons and consumers.

Since 2014 taxable persons carrying out commercial transactions with the public authorities in Italy (20% of taxable persons) are under mandatory electronic invoicing. All public administration invoices are channelled through the SdI and are forwarded to the general accounting office for expenditure control purposes and to public authorities. Also an optional system for the electronic transmission of data or for electronic B2B invoicing was introduced starting from 2017. The scheme gives the opportunity to opt for quarterly electronic transmission of data to the tax authorities on all invoices issued in the reference quarter. Alternatively to this periodic data transmission, the suppliers can send and receive electronic invoices through the SdI. As from July 2016, the tax authorities have made available a free web application for generating, transmitting and storing electronic invoices. Consequently, a number of businesses are already under the obligation to issue electronic invoices while other

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

businesses had or will have a chance to get acquainted with it before the introduction of the measure.

Given the broad scope and the novelty of the derogation, it is important to ensure the necessary follow-up within the framework of this derogation and in particular the impact of the measure on combatting VAT fraud and evasion and on taxable persons. Should Italy 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 what concerns 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 July 2018 until 31 December 2021.

- **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 Italy 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. Italy requested the derogating measure to fight tax fraud and evasion as well as to simplify the tax collection. Based on the elements provided by Italy, the derogation is consistent with the existing policy provisions.

The derogation for mandatory electronic invoicing would be in line with the Council Recommendation on the 2017 National Reform Programme of Italy[2] recommending that *'Italy take action in 2017 and 2018 to, inter alia, broaden the compulsory use of electronic invoicing and payments'*.

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.

The mandatory electronic invoicing will entail a number of changes for taxable persons. These changes are however anticipated by Italy and the ground for them is prepared. Taxable persons benefiting from the exemption for SMEs are excluded from the measure. The

[2] https://ec.europa.eu/info/sites/info/files/2017-european-semester-country-specific-recommendations-commission-recommendations-italy.pdf

derogation is also limited in time and a report on the functioning and the effectiveness of the measure is to be prepared eighteen months after its entry into force.

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 introduce obligatory electronic invoicing for all invoices issued to other operators or to final consumers by taxable persons established on the Italian territory not benefiting from the exemption for small enterprises. Also simplified invoices, documents issued based on Article 219 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 excluded from mandatory electronic invoicing via SdI may also opt for it.

The mandatory electronic invoicing will entail changes for taxable persons. The taxable persons would incur additional costs related to the implementation of a new invoicing system and operating the new system. However, the impact of the measure on taxable persons was anticipated by Italy since the system is already in place on an optional basis since beginning 2017 and businesses had or will have the opportunity to get acquainted with it. According to Italy e-invoicing will bring effective results in the fight against tax fraud due to the greater comprehensiveness, timeliness and traceability of the information. Dispatching invoices through the SdI will indeed provide the Italian Revenue Agency with timely and automated access to any invoice information that is relevant for tax purposes. As a result tax authorities could carry out timely and automatic checks on the consistency between the VAT declared and the VAT paid. Concretely, Italy submits that currently it takes around 18 months for the tax administration to become aware of the existence of a missing trader. The immediate availability of electronic invoices would allow this interval to be reduced to up to three months thus interrupting the fraudulent chain much quicker.

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 tax[1], 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 27 September 2017, Italy requested an authorisation to derogate from Articles 218 and 232 of Directive 2006/112/EC and to introduce mandatory electronic invoicing to all taxable persons established in the territory of Italy except taxable persons benefiting from the exemption for small enterprises as referred to in Article 282 of Directive 2006/112/EC and to channel the invoices through the system Sistema de interscambio (hereafter 'SdI'–) managed by the Italian Revenue Agency.

(2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Italy by letters dated 3 November 2017 and 6 November 2017. By letter dated 7 November 2017, the Commission notified Italy that it had all the information necessary to consider the request.

(3) Italy submits that the use of mandatory electronic invoicing whereby invoices are submitted by means of the SdI allows the tax administration in Italy to acquire in real time the information contained in the invoices issued and received by traders. As a result tax authorities could carry out timely and automatic consistency checks between the amounts of VAT declared and paid.

(4) Italy considers that the introduction of a generalised electronic invoicing obligation would be advantageous also in terms of combatting fraud and evasion, boosting efforts at digitalisation as well as in terms of simplifying tax collection.

(5) Italy submits that the groundwork had already been laid for the introduction of mandatory electronic invoicing on the basis of the optional use of the existing Sdi system, which would ensure a smooth transition to electronic invoicing and at the same time limit the impact of the measure on taxable persons.

(6) Given the broad scope and the novelty of the derogation, it is important to evaluate the impact of the measure on combatting VAT fraud and evasion and on taxable persons. Therefore, where Italy considers that the prolongation of the measure is necessary, it

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

should submit to the Commission, together with the prolongation request, a report including the assessment of the measure what concerns its effectiveness in fighting VAT fraud and evasion and in simplifying tax collection.

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

(8) The derogation requested should be limited in time to allow an assessment of whether the special measure is appropriate and effective in light of its objectives.

(9) The derogating measure is therefore proportionate to the objectives pursued since it is limited in time and restricted in application as it does not apply to taxable persons who benefit from the exemption for small enterprises referred to in Article 282 of Directive 2006/112/EC. In addition, the derogating measure does not give rise to the risk that fraud would shift to other sectors or to other Member States.

(10) The derogation 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, Italy is authorised to accept documents or messages only in electronic format as invoices if they are issued by taxable persons established in the Italian territory other than those taxable persons who benefit from the exemption for small enterprises referred to in Article 282 of Directive 2006/112/EC.

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 except where those invoices are issued by taxable persons who benefit from the exemptions for small enterprises referred to in Article 282 of Directive 2006/112/EC.

Article 3

Italy shall notify the national measures, referred to in Articles 1 and 2, to the Commission.

Where Italy considers that the prolongation of the measure, referred to in Articles 1 and 2, is necessary, Italy shall submit to the Commission a report assessing the effectiveness of the measure in fighting VAT fraud and evasion and in simplifying tax collection, together with a request for prolongation. The report shall also evaluate the impact of the measure on taxable persons and in particular whether the measure increases their administrative burdens and costs.

Article 4

This Decision shall apply from 1 July 2018 until 31 December 2021.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council
The President