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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	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

COUNCIL IMPLEMENTING DECISION (EU) 2023/…

of …

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

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,

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

Whereas:

(1) By letter registered with the Commission on 10 November 2022, Germany requested an authorisation for a special measure to derogate from Articles 218 and 232 of Directive 2006/112/EC in order to introduce mandatory electronic invoicing for all transactions carried out between taxable persons established in the territory of Germany (the 'special measure').

(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 was 1 January 2025.

(3) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Germany to the other Member States by letters dated 22 February 2023. By letter dated 23 February 2023, the Commission notified Germany that it had all the information necessary for the appraisal of the request.

(4) Germany intends to put in place the special measure as a first step in the implementation of a transaction-based reporting system. Such a reporting system would provide benefits in combatting value added tax (VAT) fraud and evasion. It would enable the earlier identification of VAT fraud chains by the tax authorities. It would also enable the tax authorities to verify consistency between the VAT declared and the VAT due in a timely and automatic manner. The transaction-based reporting system would enable such discrepancies to be detected and checked early. Furthermore, Germany expects that timely access to invoice data would obviate the need for a more bureaucratic request for invoices by the tax authorities, speeding up and facilitating the fight against VAT fraud.

(5) Germany considers that the introduction of the special measure would not be very burdensome for taxable persons as, in Germany, electronic invoicing is already common practice in many sectors of the economy and is mandatory in the field of public procurement. Furthermore, the special measure would benefit taxable persons through the digitalisation of processes and the reduction of their administrative burden. Finally, the use of electronic invoices would provide long-term savings due to the elimination of paper 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 age. The Commission proposes to amend Article 218 and delete Article 232 of Directive 2006/112/EC. It is therefore possible that a directive amending those Articles will be adopted which would allow Member States to implement mandatory electronic invoicing and eliminate the need to request further special measures to derogate from Directive 2006/112/EC. Therefore, from the date Member States would be required to apply any national provisions transposing the Directive amending those Articles, this Decision should cease to apply.

(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 combatting VAT fraud and evasion and in simplifying VAT collection.

(8) The special measure should not affect the right of customers to receive paper invoices in the 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 only accept invoices which have been issued by taxable persons established in the territory of Germany in the form of documents or messages 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.

Article 3

Germany shall notify the national measures implementing the special measure laid down in Articles 1 and 2 to the Commission.

Article 4

1. This Decision shall take effect on the date of its notification.

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

   (a) 31 December 2027; or

(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.

3. If Germany considers that an extension of the special measure laid down in Articles 1 and 2 is necessary, Germany 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 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 …,

For the Council
The President