Council of the
European Union

Brussels, 14 July 2023
(OR. en)

11330/23

Interinstitutional File:
2023/0190 (NLE)

FISC 153
ECOFIN 708

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL IMPLEMENTING DECISION authorising Romania 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 Romania 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 14 January 2022, Romania requested an authorisation for a special measure to derogate from Articles 178, 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 Romania (the 'special measure'). The special measure was requested for a period from 1 July 2022 to 31 December 2025.

(2) By letter registered with the Commission 30 September 2022, Romania informed the Commission that the requested derogation from Article 178 of Directive 2006/112/EC was no longer required. Further, Romania requested the authorisation to be granted for a period from 1 January 2024 to 31 December 2026, instead of the period originally requested.

(3) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Romania to the other Member States by letters dated 8 December 2022. By letter dated 9 December 2022, the Commission notified Romania that it had all the information necessary for the appraisal of the request.

(4) Romania submits that mandatory electronic invoicing for transactions between taxable persons established in Romania, coupled with the obligation to report the data on those transactions to the tax authorities, would be beneficial in combatting value added tax (VAT) fraud and evasion. It would enable the tax authorities to verify consistency between the VAT declared and VAT due in a timely and automatic manner. Such automatic verification would significantly improve the analytical skills of the Romanian tax authorities. Further, the introduction of mandatory electronic invoicing would be a powerful tool for real-time tracking of VAT fraud chains, enabling tax authorities to take immediate action to identify and stop taxable persons from participating in such fraudulent activities.

(5) Romania considers that the introduction of the special measure would also benefit taxable persons through the digitalisation of invoicing processes and the reduction of their administrative burden, while at the same time ensuring a fair competitive environment for taxable persons. The digitalisation of invoicing processes would entail faster payments, savings on transmission costs, fast and cheap processing of invoice data and reduced archiving costs for taxable persons. The introduction of the special measure would lead to the removal of the current obligation to report information on domestic supplies, reducing the administrative burden for taxable persons.

(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 Romania 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 the 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 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, Romania is authorised to only accept invoices which have been issued by taxable persons established in the territory of Romania in the form of documents or messages in electronic format.

Article 2

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

Article 3

Romania 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 2024 until the earlier of the following two dates:

   (a) 31 December 2026; 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 Romania considers that an extension of the special measure laid down in Articles 1 and 2 is necessary, Romania 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 Romania.

Done at …,

For the Council
The President