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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2021) 735 final.

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2021/0388 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising France 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] ('the VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures derogating 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 12 April 2021, France requested authorisation to derogate from Articles 218, 178 and 232 of the VAT Directive to be able to impose mandatory electronic invoicing to all taxable persons established in the territory of France. The authorisation was requested from 1 December 2021 until 31 December 2028.

Further, by letter registered with the Commission on 20 September 2021, France requested that the authorisation to derogate would only extend to Articles 218 and 232 of the VAT Directive and that it would apply from 1 January 2024 to 31 December 2026.

In accordance with Article 395(2), second subparagraph, of the VAT Directive, the Commission informed the other Member States by letter dated 29 September 2021 of the request made by France. By letter dated 30 September 2021, the Commission notified France that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

France submitted a request for derogation based on Article 395 of the VAT Directive to be authorised to implement an obligation to issue electronic invoices for domestic transactions between VAT taxable persons established in France on the basis of Articles 153 of the Finance Law for 2020 and 195 of the Finance Law for 2021. This obligation will be accompanied by the obligation for those taxable persons to send certain additional data to the tax authorities.

France considers that the electronic invoicing obligation will improve the fight against fraud while strengthening the competitiveness of businesses. It will also increase real-time knowledge of business activity enabling economic policy to be steered as closely as possible to the economic reality of the players. This obligation will also allow the simplification of businesses' VAT reporting obligations by introducing pre-completion of their returns.

Article 218 of the VAT Directive provides for an obligation for Member States to accept as invoices all documents or messages both in paper or electronic form. France would therefore like to obtain a derogation from this Article of the VAT Directive so that only electronic invoices in mixed or structured format can be considered as invoices by the French tax administration.

Article 232 of the VAT Directive requires that the use of an electronic invoice shall be subject to acceptance by the recipient. Therefore, the introduction of an electronic invoicing obligation in France requires a derogation from this Article so that the issuer no longer has to obtain the consent of the recipient to send an invoice in a paperless format.

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

France submits that the introduction of a generalized electronic invoicing obligation would provide benefits in terms of combatting fraud and evasion, while facilitating voluntary compliance with tax legislation. Indeed, the obligation to issue electronic invoices, coupled with the transmission of additional transaction data, through a scheme involving certified private platforms and a centralised public platform, will enable the tax administration to check in real time the consistency between the VAT declared and collected and the invoices issued and received. Therefore, the capacity of the administration to prevent and counter VAT fraud will be significantly improved.

The electronic invoicing obligation will only cover transactions between taxable persons (B2B). The data of transactions involving final consumers (B2C) will be reported through a different mechanism. In case of intra-Community acquisitions, taxable persons will maintain their right to receive paper invoices. It should be noted that the obligation to use electronic invoicing for business to government (B2G) transactions gradually entered into force in France between 1 January 2017 and 1 January 2020. Therefore, companies that have already issued electronic invoices via the B2G Chorus Pro electronic invoicing platform developed by the State Financial Computing Agency (AIFE) are already equipped and prepared for the extension of the electronic invoicing obligation to B2B relations. France submits that the majority of French VAT taxable persons already send or receive invoices in electronic format. According to France, in 2017 only 31 per cent of French businesses with more than 10 persons used paper invoicing, this proportion probably having decreased since then. The move to an electronic format will permanently eliminate paper format in the processing of invoices, generating significant savings for businesses.

France considers that electronic invoicing will provide advantages to taxable persons, such as the reduction of payment times for the supplier, reduction of printing costs and postal charges, reduction of costs and delays in processing billing data, reduction of storage costs and the reduction of training and system development costs.

France envisages a gradual introduction of the obligation in order to allow for a transition and support to the new system, adapted to each type of company. As of 2024, an obligation to receive the electronic invoice will apply to all businesses. A progressive introduction of the obligation to issue electronic invoices is planned according to the size of the companies: 2024 for large enterprises, 2025 for companies between 250 and 4 999 employees and with a turnover below EUR 1,5 billion and 2026 for small and medium-sized enterprises and very small enterprises, including taxable persons benefitting from the exemption for small enterprises referred to in Article 282 of the VAT Directive.

In order to ensure the interoperability of exchanges, platforms providing electronic invoicing services, both private and public, should offer to taxable persons a minimum set of structured or mixed formats, without prejudice to their freedom to offer alternative formats.

Given the broad scope 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 France 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 on 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 January 2024 until 31 December 2026.

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

A similar authorisation allowing Italy to derogate from Articles 218 and 232 of the VAT Directive in order to implement mandatory electronic invoicing, was granted by Council Implementing Decision (EU) 2018/593[2].

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*"[3]. 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.

- **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 France and the preparation has already started. The obligation to use electronic invoicing for B2G transactions resulted in many companies

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

[3] https://ec.europa.eu/taxation_customs/system/files/2020-07/2020_tax_package_tax_action_plan_en.pdf

already being equipped and prepared for the extension of the electronic invoicing obligation to B2B relations.

Taxable persons benefiting from the exemption for SMEs are included under the scope of the measure. However, the gradual implementation of the measure will give them sufficient time to prepare. Further, these companies will be free to use either a private platform or the public invoicing platform operated by the AIFE (Chorus Pro). The latter will propose a minimum service for free, including the handling of PDF formats (with data retrieval in a structured format) and a 10-year archiving offer (corresponding to the legal duration of the obligation to archiving for commercial purposes in France). According to the data submitted by France, the savings and advantages that these taxable persons will obtain from the implementation of electronic invoicing will largely absorb the initial investment that they will have to incur to adapt their systems.

The derogation is also limited in time and a report on the functioning and the effectiveness of the measure is to be prepared in case France 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**

The mandatory electronic invoicing will impact both the tax administration and taxable persons.

France expects that mandatory electronic invoicing will help combating tax evasion, including unintended tax evasion linked to non-declaration or under-declaration and, in general, non-payment of VAT. Beyond the fight against VAT fraud, the availability of information on commercial transactions will allow the identification of the intensity of commercial links between companies. It will therefore strengthen the analysis of transactions concluded between related companies in order to detect abnormal transactions, which may conceal possible reductions in corporate tax bases or hidden distributions of profits. Further, the scheme will allow the real-time collection of taxable persons' transaction data. Such data may feed into economic analyses carried out by, for example, the INSEE (National Statistical Institute) or the Directorate-General for the Treasury, in order to ensure that public policies can be steered as closely as possible.

France submits that electronic invoicing will lead to significant gains for companies in terms of digitalisation and reduction of administrative burdens, while securing business-to-business relations in order to make them more competitive. It would generate savings, with the full cost of issuing an electronic invoice estimated by the General Inspectorate of Finance at less than one euro, compared to more than ten euros for a paper invoice.

The expected gains will be different in nature depending on whether or not businesses already use electronic invoicing. For businesses not yet using electronic invoicing, mainly small and medium enterprises, the gains will be approximately of EUR 10 per invoice received. For those taxable persons already making extensive use of them, mainly companies with 250 or more employees, the measure will improve the processing of their invoicing chain, since the majority of the invoices currently exchanged electronically are still in PDF format, thus still entailing processing costs.

Based on these elements, the minimum gain for companies would be around EUR 4,5 billion per year. Around 1,5 million small businesses only issue invoices in paper format. Given that these companies issue fewer than 2000 invoices per year (65 % of them issue less than 500 invoices per year) the volume of invoices concerned would be estimated at 450 million. The removal of paper invoices would generate a saving in the processing costs of EUR 10 per invoice, resulting in a total gain of EUR 4,5 billion for these companies.

According to France, this evaluation does not take into account the gains in terms of securing transaction flows and reducing payment times, which, according to the Observatory on payment deadlines, affect the cash flow of taxable persons around EUR 15 billion each year, particularly the smaller ones.

Since the cost of acquiring the necessary software may be significant, the obligation to install billing software will not be imposed. France will leave the possibility for taxable persons to forward their invoices either to the public platform directly, which will forward them to their recipients, or to private platforms which will be responsible for transmitting the invoices to the tax administration and to the receiving company, in order to avoid additional costs. In addition, in order to minimise entry costs for small and medium-sized enterprises, the tax administration will offer the possibility to submit a PDF file to generate an electronic invoice for a period of time.

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 letters registered with the Commission on 12 April 2021 and 20 September 2021, France requested authorisation to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC ('the special measure') to introduce mandatory electronic invoicing to all taxable persons established in the territory of France. This obligation would cover invoices issued in transactions between taxable persons. The authorisation was requested for a period from 1 January 2024 to 31 December 2026.

(2) The Commission transmitted the request made by France to the other Member States by letters dated 29 September 2021. By letter dated 30 September 2021, the Commission notified France that it had all the information necessary to consider the request.

(3) France submits that the introduction of a generalized electronic invoicing obligation would provide benefits in combatting value added tax (VAT) fraud and evasion. The obligation to issue electronic invoices, coupled with the transmission of additional transaction data, would enable the tax administration to check in real time the consistency between the VAT declared and collected and the invoices issued and received, improving the capacity of the administration to prevent and counter VAT fraud. It would also increase real-time knowledge of business activity enabling economic policy to be steered as closely as possible to the economic reality of the players.

(4) France considers that the obligation to issue electronic invoices would facilitate voluntary compliance with tax legislation. It would allow the simplification of taxable persons' VAT reporting obligations by introducing pre-completion of their returns. Electronic invoicing would provide other advantages to taxable persons, such as the

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

reduction of payment times, reduction of printing costs and postal charges, reduction of costs and delays in processing billing data or the reduction of storage costs. The savings and advantages that taxable persons would obtain from the implementation of electronic invoicing would largely absorb the initial investment that they will have to incur to adapt their systems.

(5) Given the broad scope and the novelty of the special measure, it is important to evaluate the impact of the special measure on combatting VAT fraud and evasion and on taxable persons. Therefore, where France 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.

(6) This special measure should not affect the right of taxable persons to receive paper invoices in case of intra-Community acquisitions.

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

(8) The special measure is therefore proportionate to the objectives pursued since it is limited in time and will be implemented gradually. As of 2024, an obligation to receive electronic invoices is to apply to all businesses. The obligation to issue electronic invoices is to apply in 2024 to large enterprises, in 2025 to companies between 250 and 4 999 employees and with a turnover below EUR 1,5 billion and in 2026 to small and medium-sized enterprises, including taxable persons benefitting from the exemption for small enterprises referred to in Article 282 of Directive 2006/112/EC. In addition, the special measure does not give rise to the risk that fraud would shift to other sectors or to other Member States.

(9) 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, France is authorised to accept invoices which have been issued by taxable persons established in the French territory in the form of documents or messages only if those documents or messages are transferred in electronic format.

Article 2

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

Article 3

France shall notify the national measures implementing the special measures for derogations referred to in Articles 1 and 2 to the Commission.

Article 4

This Decision shall apply from 1 January 2024 until 31 December 2026.

Where France considers that the extension of the special measures for derogations referred to in Articles 1 and 2 is necessary, France 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 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 French Republic.

Done at Brussels,

For the Council
The President