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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION authorising the Republic of Poland to apply 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) 2022/...

of ...

**authorising the Republic of Poland to apply 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 tax¹, 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 5 August 2021, Poland requested authorisation for a special measure to derogate from Articles 218, 226 and 232 of Directive 2006/112/EC and to introduce mandatory electronic invoicing for all transactions carried out by taxable persons that require the issuance of an invoice ('the special measure'). The authorisation to apply the special measure was requested for a period from 1 January 2024 until 31 December 2026.
- (2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission transmitted the request made by Poland to the other Member States by letters dated 21 October 2021. By letter dated 22 October 2021, the Commission notified Poland that it had all the information necessary for the appraisal of the request.
- (3) By letter dated 8 February 2022, Poland informed the Commission that derogation from Article 226 of Directive 2006/112/EC was not needed and that the scope of the special measure requested would be limited to taxable persons established in the territory of Poland.

- (4) Poland submits that the special measure would provide benefits in combatting value added tax (VAT) fraud and evasion. The special measure, coupled with the transmission of additional transaction data, would significantly improve the analytical capabilities of the Polish tax administration, enabling it to automatically verify the consistency between VAT declared and VAT paid and increasing the accuracy of the verification of VAT refund claims submitted by taxpayers. Further, it would complement other measures which aim to combat VAT fraud and evasion and modernise the VAT system, such as the Single Audit File for VAT purposes, the split payment mechanism, the system for the electronic analysis of financial flows and the online fiscal cash register system for monitoring the retail sector.
- (5) Poland considers that the special measure would enable a number of simplification measures to facilitate compliance by taxable persons with their obligations, such as the pre-filling of VAT returns and recapitulative statements or accelerated VAT refunds. The special measure would provide advantages to taxable persons, such as an invoice storage and archiving service provided by the administration and the automation of accounting processes. According to Poland, the costs taxable persons would have to incur to adapt their systems to the special measure are not expected to be significant, especially when compared to the benefits they would obtain from the special measure. To help with those adaptations, Poland has put in place voluntary electronic invoicing before introducing the special measure. In addition, tools to comply with the the special measure would be provided free-of-charge and an extensive information campaign would be carried out in order to familiarise taxpayers with the new VAT rules on the special measure.

- (6) 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 Poland 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.
- (7) The special measure should not affect the right of customers to receive paper invoices in the case of intra-Community transactions.
- (8) 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.
- (9) 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.
- (10) 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, Poland is authorised to only accept invoices which have been issued by taxable persons established in the territory of Poland in the form of documents or messages in electronic format.

Article 2

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

Article 3

Poland 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. It shall apply from 1 January 2024 until 31 December 2026.
3. If Poland considers that an extension of the special measure laid down in Articles 1 and 2 is necessary, Poland 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 VAT 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 Republic of Poland.

Done at ...,

For the Council

The President
