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Proposal for a

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

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 14 January 2022, Romania requested authorisation to derogate from Articles 178, 218 and 232 of the VAT Directive to be able to impose mandatory electronic invoicing for transactions between taxable persons.

Further, by letter registered with the Commission on 30 September 2022, Romania modified its request. Accordingly, Romania confirmed that it requests the authorisation to derogate only from Articles 218 and 232 of the VAT Directive and specified that the entry into force of the measure will be postponed to 1 January 2024, instead of 1 July 2022, which was the date originally requested.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 8 December 2022 of the request made by Romania. By letter dated 9 December 2022, the Commission notified Romania that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Romania 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 transactions between taxable persons established in Romania. According to Romania, the main objectives pursued by the implementation of the mandatory electronic invoicing system are to combat tax fraud and evasion, to make collection more efficient, particularly in the area of VAT, to improve the competitiveness of economic operators and to reduce administrative costs for both taxpayers and the tax administration.

The information in the invoices will be reported to the tax administration, who will therefore obtain this data in real time. This will allow the tax administration to carry out a timely and automatic verification of the consistency between the VAT declared and paid and the invoices issued and received. This possibility will help Romania to increase the efficiency and effectiveness of the fight against VAT fraud and evasion.

In this regard, Romania has consistently recorded a high VAT gap in recent years. The latest report published by the European Commission shows a VAT gap of 35.7% for 2020. According to Romania, this situation is indicative of a structural problem, which will require both urgent and sustained action, and the implementation of the necessary reforms.

The introduction of mandatory e-invoicing and the reporting of the invoice data will achieve greater taxpayers' compliance as well as a deterrent effect in terms of attempted fraud. The envisaged system will entail, for instance, that participants in the 'carousel fraud' will become visible to the tax administration from the outset. Currently, participants in carousel fraud are difficult to identify because they do not submit VAT returns and/or other returns. The introduction of generalised electronic invoicing will be a powerful tool for real-time tracking

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

of the fraudulent chain, allowing tax authorities to take immediate action to identify and stop traders participating in this fraud.

The introduction of mandatory electronic invoicing for transactions between taxable persons will also benefit economic operators through digitalisation and the reduction of administrative burden, while at the same time ensuring a fair competitive environment between companies. Some of the benefits of implementing electronic invoicing for economic operators are faster payments, saving on transmission costs, fast and cheap processing of invoice data and reduced archiving costs.

Article 218 of the VAT Directive provides for an obligation for Member States to accept all documents or messages both in paper or electronic form as invoices. Romania would therefore like to obtain a derogation from the above-mentioned Article of the VAT Directive so that only documents in electronic form can be considered as invoices by the Romanian 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 Romania 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.

In the field of electronic invoicing, Romania has transposed into national law Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement[2], which introduced an obligation for public authorities to accept electronic invoices sent by their suppliers. In order to ensure the interoperability of electronic invoicing systems used in the European Union, starting with the public procurement sector, electronic invoices should follow common standards identified in CEN (European Committee for Standardisation) with the European standard on electronic invoicing EN 16931.

Romania put in place in November 2021 the national electronic invoicing system RO e-Invoice, created, developed and managed by the Ministry of Finance through the National Financial Information Centre. According to Romania, this system is fully compatible with the European standard on electronic invoicing, and it has been designed and developed to be used for electronic invoicing in both public procurement (B2G) and transactions between taxable persons (B2B) should economic operators choose to do so.

In order to submit invoices via the RO e-Invoice system, both in the B2G relationship and in the B2B relationship, taxable persons have to authenticate themselves by using the qualified digital certificate. This certificate is also used for the submission of the different tax declarations.

The RO e-Invoice system will be used as the basis for the implementation of the mandatory e-invoicing system for transactions between taxable persons.

The use of the RO e-Invoice system will remain optional for non-established economic operators.

Given the broad scope of the derogation, it is important to assess its impact on taxable persons and, more specifically, whether it has contributed to combat VAT fraud and evasion. Should Romania 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

[2] OJ L 133, 6.5.2014, p. 1.

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 or until the date 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, whichever is the earlier.

- **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 Romania 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. Romania requested the derogating measure to fight tax fraud and evasion as its main purpose. Based on the elements provided by Romania, the derogation is consistent with the existing policy provisions.

Similar authorisations allowing Italy, France and Poland to derogate from Articles 218 and 232 of the VAT Directive, in order to implement mandatory electronic invoicing, were granted by Council Implementing Decision (EU) 2021/2251[3], Council Implementing Decision (EU) 2022/133[4] and Council Implementing Decision (EU) 2022/1003[5].

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*"[6]. One of the actions envisaged in this action plan is the adoption by the Commission of a legislative proposal aimed at modernising VAT reporting obligations. As indicated in the Action Plan, this proposal should, amongst others, help streamline the reporting mechanisms that can be applied for domestic transactions. The need to further expand e-invoicing will also be examined in this context.

As a result of this Action Plan, the Commission adopted on 8 December 2022 a Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age[7]. This Directive will amend Article 218 and will delete Article 232 of the VAT Directive. This reform, once adopted, will allow Member States to implement mandatory e-invoicing, eliminating the need to request further derogations from the VAT Directive in order to implement such systems. For that reason, once this proposal for a Directive is transposed by the Member States, this Council Decision would no longer have any useful effect. The Directive will require that Member States imposing this obligation allow for the issuance of electronic invoices which comply with the European standard on electronic invoicing and the list of its syntaxes pursuant to Directive 2014/55/EU of the European Parliament and of the Council. Further, the issuance of electronic invoices by taxable persons and their transmission cannot be subject to a prior mandatory authorisation or verification by the tax authorities,

3 OJ L 454, 17.12.2021, p. 1.
4 OJ L 20, 31.1.2022, p. 272.
5 OJ L 168, 27.6.2022, p. 81.
6 https://taxation-customs.ec.europa.eu/system/files/2020-07/2020_tax_package_tax_action_plan_en.pdf
7 COM/2022/701 final.

without prejudice to the special measures authorised under Article 395 and already implemented at the time the Directive enters into force.

While, according to Romania, the national electronic invoice system RO e-Invoice is fully compatible with the European standard on electronic invoicing, Romania intends to require, at a first stage, that e-invoicing will be carried out mandatorily through a system managed by the tax administration. Therefore, suppliers will have to send electronic invoices to their customers via this system.

This will imply that each electronic invoice will be automatically checked by the RO e-Invoice system. The system will perform semantic checks and validations on structure and syntax. It will also verify the authenticity of the origin regarding the identity of the issuer. Once these operations have been performed, an automatic response message is generated. If no errors are identified, the electronic seal of the Ministry of Finance is applied, certifying receipt of the electronic invoice in the RO e-Invoice system. Only then the electronic invoice will be made available to the issuer and the recipient for download.

As the prior mandatory authorisation or verification by the tax authorities will not be aligned with the future system envisaged by the Proposal on VAT rules for the digital age from 1 January 2028, Romania will introduce the necessary adaptations to its system to allow taxable persons, as of 1 January 2026, to send the necessary data through other means outside the RO e-Invoice system. Therefore, the authorisation or verification of the electronic invoices by the tax authorities will no longer be mandatory.

Therefore, the derogation asked by Romania is aligned with the objectives pursued by the Commission as laid down in the Action Plan and in the Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age.

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. However, taxpayers are already familiar in Romania with the digitisation of their relations with the tax administration. The submission of VAT returns and other tax returns is carried out by electronic means, through a service provided free of charge by the tax authorities. In order to use this method of declaration, taxpayers have a qualified electronic signature obtained by means of a digital certificate.

The national system for electronic invoices, RO e-Invoice, is already operational and economic operators have the option to submit electronic invoices via this system, both in the B2G and B2B relationships. At the same time, in order to minimise the financial impact of the mandatory implementation of the system, tax authorities will provide free of charge an application allowing the generation of e-invoices.

It should be noted that in Romania it is already obligatory to use electronic invoicing in the B2G relationships following the implementation of Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement.

Romania considers that the preparatory work carried out through the voluntary electronic invoicing model and the tools that will be put at the disposal of the taxpayers to comply with the obligation, coupled with the advantages and benefits derived from the implementation of electronic invoicing, will largely absorb the investments necessary to adapt taxpayers' IT 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 Romania wishes to prolong the derogating measure.

Therefore, the special measure is proportionate to the aim pursued, i.e. to combat tax evasion.

- **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.

The implementation of mandatory electronic invoicing is one of the measures included in the National Recovery and Resilience Plan. According to Romania, it will reduce the VAT gap by a minimum of 5 percentage points by the second quarter of 2026 as compared to 2019. The implementation of mandatory electronic invoicing will translate in an increase of the collection of VAT and direct taxes of at least RON 7.6 billion (around EUR 1.5 billion).

The implementation of the digitisation projects, such as the RO e-Invoice system, the interconnection of fiscal marking machines, the SAF-T, the monitoring of purchases and deliveries and the RO e-Transport system (monitoring of transport on national territory), will allow the integration of risk management. As a result, according to Romanian estimates, the collection of additional revenue in GDP will increase in at least 2.5 percentage points by the fourth quarter of 2025 compared to the level achieved in 2019.

The increase in revenue expected to be collected from VAT and direct taxes associated with the implementation of the different tax administration reform measures, will amount to a

minimum of RON 10.87 billion, 5 of which will correspond to VAT revenue and 5.87 will correspond to income from direct taxes. The contribution generated by the implementation of the RO e-Invoice system is estimated at approximately 70% of this total additional revenue collected, therefore RON 7.6 billion, from the following sources:

Increase in voluntary compliance — RON 0.6 billion;

Reduction of tax evasion and MTIC fraud — RON 1.3 billion

Reduction of tax optimisation and informal economy — RON 1.6 billion

Effects of direct taxes resulting from the re-dimensioning of the VAT taxable base — RON 4.1 billion.

Regarding taxable persons, they will incur costs generated by the acquisition of IT systems and/or software, as probably their current systems/software would not be able to issue and submit electronic invoices to the RO e-invoice system. However, such cost could be significantly reduced or even eliminated by using the services and applications made available free of charge by the tax authorities.

Economic operators will also benefit from digitalisation of their processes. The implementation of electronic invoicing will entail faster payments, savings on transmission costs, fast and cheap processing of invoice data and reduced archiving costs. Further, the introduction of the mandatory electronic invoicing system will lead to the removal of the current obligation to report information on domestic supplies.

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 letter registered with the Commission on 14 January 2022, Romania requested authorisation to introduce a special measure derogating from Articles 178, 218 and 232 of Directive 2006/112/EC ('the special measure') in order to introduce mandatory electronic invoicing for all transactions carried out between taxable persons established in the territory of Romania. The authorisation 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 is 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) By letters dated 8 December 2022, the Commission transmitted the request made by Romania to the other Member States. By letter dated 9 December 2022, the Commission notified Romania that it had all the information necessary to consider 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 administration, would provide benefits in combatting value added tax (VAT) fraud and evasion. It would allow the tax administration to carry out a timely and automatic verification of the consistency between the VAT declared and paid and the invoices issued and received, which would significantly improve the analytical capabilities of the Romanian tax administration. Further, the introduction of mandatory electronic invoicing would be a powerful tool for real-time tracking of VAT fraud chains, allowing tax authorities to take immediate action to identify and stop traders participating in such fraudulent activities.

(5) Romania considers that the introduction of mandatory electronic invoicing will also benefit economic operators through digitalisation of processes and the reduction of administrative burden, while at the same time ensuring a fair competitive environment

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

for taxable persons. The digitalisation of 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 mandatory electronic invoicing system would lead to the removal of the current obligation to report information on domestic supplies, reducing the administrative burden for economic operators.

(6) On 8 December 2022, the European Commission adopted a proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age[2]. The proposed amendments will amend Article 218 and delete Article 232 of Directive 2006/112/EC, allowing Member States to implement mandatory e-invoicing, eliminating the need to request further derogations from Directive 2006/112/EC in order to implement such systems. Therefore, from the date Member States are to apply any national provisions that they are required to adopt in the event that that directive is adopted, this Decision would no longer have any useful effect. Pursuant to that proposal, without prejudice to certain transitional provisions, the transmission of electronic invoices will no longer be subject to a prior mandatory authorisation or verification by the tax authorities. Romania intends to require, as a first step, a verification by the tax administration of the correctness of the invoice before the electronic invoice can be considered valid. Nevertheless, Romania is to make the necessary adaptations to the system to allow taxable persons, by 31 December 2025, to send the necessary data to the tax administration without the invoice being subject to a prior verification. As a result, the prior verification of invoices by the tax administration will become optional for taxable persons.

(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, where 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 fighting VAT fraud and evasion and in simplifying VAT collection.

(8) The special measure should not affect the right of the customer 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 therefore 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 accept invoices which have been issued by taxable persons established in the territory of

[2] COM/2022/701 final.

Romania 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, 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 measures for derogations referred to in Articles 1 and 2 to the Commission.

Article 4

1. This Decision shall apply from 1 January 2024 until the earlier of the following two dates:

(a) 31 December 2026;

(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.

2. If Romania considers that an extension of the special measure 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 Brussels,

For the Council
The President