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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Greece 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 2 July 2024, Greece requested authorisation to derogate from Articles 218 and 232 of the VAT Directive to be able to impose mandatory electronic invoicing for transactions between taxable persons established in Greece (B2B transactions).

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 24 September 2024 of the request made by Greece. By letter dated 25 September 2024, the Commission notified Greece that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Greece 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 Greece. Greece has in place a digital platform called myDATA. Entities obliged to keep accounting records, in accordance with the Greek legislation, must transmit income and expense transaction data to this platform.

Currently, there are different channels that can be used to transmit the data to the platform. Once the mandatory electronic invoicing is implemented in Greece, electronic invoices will be the main channel for this transmission, with their data directly feeding the myDATA platform. As a result, the information will arrive in real-time and with a high level of quality, making easier and faster for the tax administration to detect cases of VAT fraud. Further, the information received will be used to prepare prefilled VAT returns, helping businesses to comply with their VAT obligations.

In addition, the creation of a digitized tool for the transport of goods is in progress, utilizing the capabilities of the myDATA digital platform. This tool aims to digitally monitor all goods being delivered in real time. To achieve this objective, the institutional framework regarding the electronic issuance of documents for the transport of goods was put in place in 2024, and the implementation of an operational and technical framework is being prepared, to facilitate the compliance to taxable persons.

The different measures implemented so far have helped Greece to reduce its VAT gap. According to the VAT gap in the EU report[2], published by the European Commission, the VAT compliance gap has reduced from 29.1% in 2017 to 17.8% in 2021, and the forecast for 2022 envisages a steep decrease in that figure. According to the Greek authorities, the introduction of mandatory electronic invoicing will help to further reduce this figure, as it can be an important instrument towards the fight against circular or “carousel” fraud, allowing the tax authorities to identify the involved parties within a shorter time.

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1 OJ L 347, 11.12.2006, p. 1, ELI: http://data.europa.eu/eli/dir/2006/112/oj.

2 VAT gap in the EU - Publications Office of the EU (europa.eu)

According to Greece, the implementation of mandatory electronic invoicing will also be beneficial for taxable persons, providing them with prefilled VAT returns and allowing the timely processing of tax refund requests.

The implementation of the transmission of data to the myDATA platform has followed a gradual process since 2018, with different information campaigns, tests and pilot projects. Taxable persons, accountants, software companies and service providers were involved in the testing process.

The transmission of data to the myDATA platform can be done through five different transmission channels: (1) licensed providers of electronic invoicing services, (2) software programs (ERP) for issuing invoices and managing accounting entries, (3) a special data registration form provided by the Independent Authority for Public Revenue (IAPR) under certain conditions, which applies to small entities, (4) electronic mechanisms for the issuance of retail transaction documents and (5) an invoice issuance and transmission application called "timologio", provided by the IAPR.

In particular, the "timologio" application is provided free of charge and is considered a reliable solution for any kind of enterprises and especially small and medium-sized ones for the issuance and transmission of data in real time. Once the derogation is granted, Greece plans to expand the functionality of this application, which will become a way to comply with the electronic invoicing mandate.

According to Greece, the initial cost of subscribing to an Electronic Invoicing Service Provider or upgrading the existing management programs (commercial/accounting, ERP) used by the entities, is expected to be compensated by the reduction of accounting costs (cost of issuing, sending & storing invoices), but also by the general improvement of digital services which is expected to facilitate the development of entrepreneurship and the increase of competitiveness between entities. Greece is giving tax incentives to taxable persons who switch to electronic invoicing until 31 December 2024. Consequently, entities will meet their tax obligations immediately and at a lower cost. Electronic invoicing will also contribute to the objective of transmitting classified information "only once" since through interoperability, more than one obligation will be fulfilled for the entities, triggering a corresponding reduction of errors and administrative costs.

The myDATA platform does not require that all the data in the invoice is transmitted to the platform, but only that relevant for tax purposes.

To ensure the interoperability of electronic invoicing systems used in the European Union, Greece shall allow the issuance of invoices that comply with the European standard on electronic invoicing and the list of its syntaxes published by Commission Implementing Decision (EU) 2017/1870[3].

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. Greece 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 Greek tax administration.

[3] Commission Implementing Decision (EU) 2017/1870 of 16 October 2017 on the publication of the reference of 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 (OJ L 266, 17.10.2017, p. 19, ELI: http://data.europa.eu/eli/dec_impl/2017/1870/oj).

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 Greece 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.

Derogations are in general granted for a limited period of time as to allow an assessment whether the special measure is appropriate and effective and in order to grant Member States time to introduce other conventional measures to tackle the respective problem until the expiry of the derogating measure.

Further, a Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age[4] (VAT in the digital age proposal), is currently being discussed in the Council. This Directive will amend Article 218 and 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. Therefore, the authorisation allowing Greece to derogate from Articles 218 and 232 should only be granted for the period needed until such reform enters into force.

Thus, it is proposed to grant the authorisation until 30 June 2026. Given the short period for which this derogation is granted, in case Greece needs to prolong further this authorisation no report should be needed.

- **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 Greece 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. The implementation of mandatory electronic invoicing for B2B transactions will complement the existing myDATA digital platform, which is used to report data to the tax administration. The mandatory electronic invoicing will allow to send the data to that platform in real-time while ensuring the highest quality of the data reported. Further, it will simplify the VAT obligations of taxable persons by allowing the preparation of pre-filled VAT returns. Therefore, the envisaged mandatory electronic invoicing will contribute to both the simplification of VAT obligations for taxable persons and, especially, the fight against VAT fraud. The derogation requested by Greece is consistent with the existing policy provisions.

Similar authorisations allowing Italy, France, Poland, Germany and Romania 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) 2018/593[5] (extended by

[4] COM/2022/701 final.

[5] Council Implementing Decision (EU) 2018/593 of 16 April 2018 authorising the Italian Republic to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax (OJ L 99, 19.4.2018, p. 14, ELI: http://data.europa.eu/eli/dec_impl/2018/593/oj).

Council Implementing Decision (EU) 2021/2251[6]), Council Implementing Decision (EU) 2022/133[7], Council Implementing Decision (EU) 2022/1003[8], Council Implementing Decision (EU) 2023/1551[9] and Council Implementing Decision (EU) 2023/1553[10].

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*"[11]. 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 is also examined in this context.

As a result of this Action Plan, the Commission adopted on 8 December 2022 the VAT in the digital age proposal, which is being discussed in the Council. This Directive will amend Article 218 and 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.

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.

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6 Council Implementing Decision (EU) 2021/2251 of 13 December 2021 amending Implementing Decision (EU) 2018/593 authorising the Italian Republic to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax (OJ L 454, 17.12.2021, p. 1, ELI: http://data.europa.eu/eli/dec_impl/2021/2251/oj).

7 Council Implementing Decision (EU) 2022/133 of 25 January 2022 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(OJ L 20, 31.1.2022, p. 272, ELI: http://data.europa.eu/eli/dec_impl/2022/133/oj).

8 Council Implementing Decision (EU) 2022/1003 of 17 June 2022 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 (OJ L 168, 27.6.2022, p. 81, ELI: http://data.europa.eu/eli/dec_impl/2022/1003/oj).

9 Council Implementing Decision (EU) 2023/1551 of 25 July 2023 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 (OJ L 188, 27.7.2023, p. 42, ELI: http://data.europa.eu/eli/dec_impl/2023/1551/oj).

10 Council Implementing Decision (EU) 2023/1553 of 25 July 2023 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 (OJ L 188, 27.7.2023, p. 48, ELI: http://data.europa.eu/eli/dec_impl/2023/1553/oj).

11 https://taxation-customs.ec.europa.eu/system/files/2020-07/2020_tax_package_tax_action_plan_en.pdf

- **Proportionality**

The proposal complies with the proportionality principle. The Decision concerns an authorisation granted to a Member State upon its own request and does not constitute any obligation.

It should be noted that Greece is progressively implementing, from September 2023 until January 2025, the obligation 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[12]. Further, according to the data provided by Greece, the use of electronic invoicing is becoming more extended among businesses. On average, on a daily basis, entities transmit more than 1.700.000 electronic invoices and retail receipts through an Electronic Invoicing Service Provider, more than 4.700.000 documents through software programs, more than 62.000 documents through the "timologio" application and more than 9.000 documents through the Special Registration Form. This "timologio" application is provided free of charge and is especially suited for small and medium-sized companies to comply with their tax obligations.

The system takes into account the main features laid down in the VAT in the digital age proposal, to avoid unnecessary adaptation costs when that proposal enters into force. In this regard, the transmission of invoices using accounting software or through service providers is allowed. Taxpayers will be able to exchange electronic invoices according to the EU standard and will only report the data necessary for tax purposes and not the whole invoice.

The obligation to use electronic invoices will only apply for transactions between taxable persons established in Greece. The measure will not impact companies not established in Greece, even if they are registered there for VAT purposes, and the right to receive a paper invoice in case of intra-Community transactions is not affected. Supplies of goods and services to final consumers are not included in the scope of the measure.

The derogation is also limited in time until harmonised rules allow Member States to implement mandatory e-invoicing.

Therefore, the special measure is proportionate to the aim pursued, to combat tax fraud and evasion while helping simplify the procedure for collecting VAT.

- **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.

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12 OJ L 133, 6.5.2014, p.1, ELI: http://data.europa.eu/eli/dir/2014/55/oj.

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 will provide faster and higher quality data to the myDATA platform, helping the tax authorities in the detection of non-declaration or under-declaration of VAT. It will also help them in the fight against circular or “carousel” fraud, allowing the tax authorities to identify the involved parties within a shorter time.

Greece has already reduced their VAT compliance gap from 29.1% in 2017 to 17.8% in 2021. The implementation of mandatory electronic invoicing will contribute to continue reducing this figure.

Further, the implementation of mandatory electronic invoicing will reduce the errors in the reporting of the data. This will contribute to reducing the costs incurred by both the tax administration and taxable persons, avoiding the burden derived from the procedure to correct such mistakes.

The implementation of mandatory e-invoicing should not be very burdensome for businesses as it is already common practice in many sectors of the economy and it is becoming mandatory in the field of public procurement. As explained above, a significant part of the reporting to the myDATA platform is already done via electronic invoices.

Furthermore, the electronic invoicing will facilitate the issuance of prefilled VAT returns, that will help businesses in complying with their VAT obligations. Electronic invoicing will also contribute to fulfil more than one obligation at once, with the corresponding reduction of errors and administrative costs.

The costs for business derived from the adaptation to electronic invoicing should be compensated, according to Greece, by the reduction of the costs derived from the issuing, sending and storing invoices compared with the current situation, but also by the benefits for taxable persons derived from the improvement of their processes though digitalisation.

To reduce the burden on businesses from this transition, Greece is giving tax incentives to taxable persons who switch to electronic invoicing until 31 December 2024 and is providing the “timologio” application, which allows to comply with the reporting obligation, free of charge.

In addition, the e-invoicing and reporting system will follow the main features of the one included in the VAT in the digital age proposal. This will avoid duplication of costs for taxable persons and the tax administration.

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 2 July 2024, Greece 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 Greece ('the special measure').

(2) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted Greece's request to the other Member States by letters dated 24 September 2024. By letter dated 25 September 2024, the Commission notified Greece that it had all the information necessary for the appraisal of the request.

(3) Greece has in place a digital platform called myDATA. Entities obliged to keep accounting records under the Greek legislation must transmit income and expense transaction data to this platform. The implementation of mandatory electronic invoicing will allow that the data from electronic invoices directly feed the myDATA platform. As a result, the information will arrive in real time and with a high level of quality, making it easier and faster for the tax administration to detect cases of non-declaration or under-declaration of VAT. Further, it will help the tax administration in the fight against circular or 'carousel' fraud, allowing the identification of the parties involved within a shorter time.

(4) Greece considers that implementing mandatory e-invoicing will not be too burdensome for taxable persons, as it is already common practice in many sectors of the economy and it is becoming mandatory in the field of public procurement. Furthermore, electronic invoicing will make issuing prefilled VAT returns easier and will allow taxable persons to comply with more than one reporting obligation at once, which will reduce both errors and administrative costs. According to Greece, the costs for business due to the adaptation to electronic invoicing should be compensated by the reduction of the costs associated with the issuing, sending and storing invoices

[1] OJ L 347, 11.12.2006, p. 1, ELI: http://data.europa.eu/eli/dir/2006/112/oj.

compared with the current situation, and by the benefits for taxable persons resulting from the improvement of their processes though digitalisation.

(5) 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[2]. By means of that Directive, the Commission proposes to amend Article 218 and delete Article 232 of Directive 2006/112/EC. The Council, in the ECOFIN meeting of 5 November, reached a general approach on the proposal and will re-consult the European Parliament before formally adopting the proposal. Once adopted, the proposal will enable Member States to implement mandatory electronic invoicing, hence eliminating the need to request further special measures to derogate from Directive 2006/112/EC. Therefore, from the date Member States will be required to apply any national provisions transposing the proposed Directive, this Decision should cease to apply.

(6) The special measure should not affect the right of customers to receive paper invoices in the case of intra-Community transactions.

(7) 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 shift to other sectors or to other Member States.

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

Article 2

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

Article 3

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

Article 4

This Decision shall apply from 1 July 2025 until the earlier of the following two dates:

(a) 30 June 2026; or

2 COM/2022/701 final.

(b) the date from which Member States are required to apply any national provisions transposing a directive amending Directive 2006/112/EC, in particular Articles 218 and 232 thereof, as regards VAT rules for the digital age, in the event that directive is adopted.

Article 5

This Decision is addressed to the Hellenic Republic.

Done at Brussels,

For the Council
The President