



EUROPEAN
COMMISSION

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Proposal for a

COUNCIL IMPLEMENTING DECISION

**authorising Italy to introduce a special measure derogating from Articles 206 and 226 of
Directive 2006/112/EC on the common system of value added tax**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (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 24 November 2014, the Italian Republic requested authorisation to derogate from Articles 206 and 226 of the VAT Directive. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 16 March 2015 of the request made by the Italian Republic. By letter dated 17 March 2015, the Commission notified the Italian Republic that it had all the information necessary to consider the request.

General context

Following the introduction of a system of statistical checks, Italy has discovered that considerable VAT fraud exists in relation to supplies of goods and services to public authorities. In accordance with the general rule, VAT is charged on these supplies and the public authorities pay the VAT, together with the price, to the supplier. Italy has noted that a significant number of suppliers engage in tax evasion by not paying this VAT to the tax authorities.

To put an end to these practices, Italy has requested that, for supplies to public authorities, the VAT due would no longer be paid to the supplier. Since, however, public authorities are in principle not taxable persons, the application of the so-called 'reverse charge' mechanism is not possible as VAT returns, in which VAT due can be accounted for and deducted, are, as a general rule, not filed by non-taxable persons. Therefore, Italy has the intention to develop a system under which the VAT, in relation to supplies to public authorities, would be paid to a separate and blocked bank account. Italy has estimated that this would generate VAT revenues for an estimated total between 741 and 1.235 million euro.

In order to enable such a system, Italy has requested to be authorised to derogate from Article 206 of the VAT Directive as to ensure that the supplier is no longer obliged to pay over the VAT on his supplies to the tax authorities since this VAT has to be paid, as mentioned above, to a special account by the public authority to whom a supply has been made. At the same time, it is necessary to derogate from Article 226 of the VAT Directive regarding the maximum invoice details that can be requested from taxable suppliers as to allow the introduction of a special additional mentioning on the invoice indicating that the amount of VAT has to be paid to that separate account and not to the supplier.

Since June 2014, Italy has implemented the obligation of electronic invoicing for supplies to public authorities, which has opened the possibility of real-time control of individual transactions and the exact amounts of VAT which public authorities are due to pay on their purchases. On the basis of this precise information, it should be possible to audit the sector concerned on the basis of conventional control techniques without the need to derogate from the VAT Directive. However, in order to organise and implement an adequate control policy and to fully benefit from the data available via electronic invoicing, Italy requested a derogation for a limited period during which the above-mentioned special system would be applied. At the same time, Italy has accepted not to seek any renewal of the derogation.

In the context of this electronic invoicing, a database of all public authorities has been set up and made available via a dedicated website, which should provide the necessary guarantee to providers that they are indeed supplying to public authorities to whom the derogating measure applies.

One of the effects of the proposed measure, however, is the fact that taxable persons, mainly engaged in supplies of goods or services to public authorities, will no longer be able to offset the VAT paid on their input with the VAT received on their supplies from their clients. This type of taxable persons might be constantly in a credit position and will need to ask for an effective refund of this VAT from the tax administration.

However, the refund procedure in Italy has given rise to concerns and it should be pointed out that there is still an infringement procedure in this context that has not been closed yet¹.

Against this background, Italy has reformed its refund procedure of which the main feature is to refund the VAT within three months to the claimant. In addition to this overall reform, a number of categories of taxable persons, in terms of business conducted and types of transactions carried out, are identified to which refunds are made as priority. Taxable persons within the scope of the proposed derogation will be able to benefit of this priority procedure.

Nonetheless, as to guarantee the necessary follow-up within the framework of this derogation, Italy is requested to provide a report, eighteen months after the entry into force of this derogation, on the VAT refund procedure with regard to this category of taxable persons. This report should, in particular, provide statistics as regards the average time needed to effectively refund the VAT to these taxable persons and outline particular problems that might have occurred in this context.

Finally, it has been brought to the attention of the Commission that Italy would have started applying the measure without having awaited the adoption of the relevant Council decision.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

This proposal is based on a request made by Italy and concerns only this Member State.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

The Decision aims at the first place at combating VAT fraud in relation to supplies of goods and services to public authorities by imposing that the VAT due is paid onto a separate and blocked bank account.

However, as suppliers under this system do not receive the VAT from their clients, they will more often have to ask for an effective refund of the VAT. As to avoid a negative impact on these taxable persons, is essential that the refund procedure is functioning properly. According to Italy, the necessary legislative and administrative measures have been taken in this respect.

The measure will have no adverse impact on the Union's own resources accruing from VAT.

¹ Infringement number 2013/4080

3. LEGAL ELEMENTS OF THE PROPOSAL

Authorisation for Italy to apply a derogating measure from the VAT Directive as to impose that the VAT due on a supply is not paid by the customer to the supplier but to a special bank account in case of supplies to public authorities. The proposal imposes the obligation for Italy to present a report within eighteen months regarding the situation of VAT refunds to taxable persons affected by this measure.

Legal basis

Article 395 of the VAT Directive.

Subsidiarity principle

Considering the provision of the VAT Directive on which the proposal is based, the proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

Proportionality principle

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.

Given the limited scope of the derogation, the special measure is proportionate to the aim pursued, i.e. to combat tax evasion.

4. BUDGETARY IMPLICATION

Choice of instruments

Under Article 395 of the VAT Directive, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. Moreover, a Council Decision is the most suitable instrument since it can be addressed to individual Member States.

5. OPTIONAL ELEMENTS

The proposal includes a sunset clause; an automatic time limit which is set at 31 December 2017 for this derogation.

Proposal for a

COUNCIL IMPLEMENTING DECISION

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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 value added tax², 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 24 November 2014, Italy requested authorisation to introduce a special measure derogating from Articles 206 and 226 of Directive 2006/112/EC in relation to value added tax (VAT) payment and invoicing arrangements.
- (2) The Commission informed the other Member States of the request made by Italy by letter dated 16 March 2015. By letter dated 17 March 2015, the Commission notified Italy that it had all the information it considered necessary for appraisal of the request.
- (3) Italy has detected substantial fraud with regard to supplies of goods and services to public authorities. On these supplies, VAT is paid by the public authority to the supplier who is, as a rule, liable for the payment of this VAT to the tax administration. However, Italy has indicated that a significant number of traders engage in tax evasion by not paying the VAT to the tax authorities.
- (4) Italy requested the derogating measure in order to prevent VAT due on supplies to public authorities from being paid to the supplier, requiring instead for it to be paid to a separate and blocked bank account. This derogating measure should ensure the opportunity to engage in that form of tax evasion is excluded without affecting the amount of VAT due. To that end, it is necessary to derogate for those supplies from Article 206 of Directive 2006/112/EC. In addition, it is also necessary to derogate from Article 226 of Directive 2006/112/EC as to allow for a special remark on the invoice that VAT has to be paid onto that special account.
- (5) As a consequence of the measure, taxable persons, acting as suppliers to public authorities, might have to request more often an effective refund of VAT from the tax administration. Italy has indicated to have taken the necessary legislative and administrative steps to speed up the refund procedure as to the guarantee that the right of deduction of the taxable persons concerned is fully respected. Italy should therefore be required to submit a report to the Commission within 18 months after the entry into force of the derogating measure in Italy regarding the overall situation of, and in particular the average time needed for, VAT refunds to taxable persons. In 2014, Italy

² OJ L 347, 11.12.2006, p. 1.

has introduced an obligation of electronic invoicing for supplies of goods and services to public authorities. That should allow for a proper control of the sector concerned in the future when an adequate control policy will have been developed and deployed on the basis of electronically available data. Once this system is fully implemented, there should be no more need to derogate from Directive 2006/112/EC. Therefore, Italy has offered assurance not to seek renewal of the authorisation of the derogating measure.

- (6) The derogating measure is therefore proportionate to the objectives pursued since it is limited in time and restricted to a sector which poses considerable problems of tax evasion. In addition, the derogating measure does not give rise to the risk that fraud would shift to other sectors or other Member States.
- (7) The derogation 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 206 of Directive 2006/112/EC, Italy is authorised to provide that the VAT due on supplies of goods and services to public authorities has to be paid by the recipient to a separate and blocked bank account of the tax administration.

Article 2

By way of derogation from Article 226 of Directive 2006/112/EC, Italy is authorised to require that invoices, issued in relation to supplies of goods and services to public authorities, include a special remark that VAT has to be paid to that separate and blocked bank account of the tax administration.

Article 3

Italy shall notify the national measures, referred to in Articles 1 and 2, to the Commission.

Within 18 months after the entry into force in Italy of the measures referred to in Articles 1 and 2, Italy shall submit a report to the Commission on the overall situation of VAT refunds to taxable persons affected by these measures and, in particular, on the average duration of the refund procedure.

Article 4

This Decision shall expire on 31 December 2017.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council
The President