



Brussels, 8.7.2024  
COM(2024) 278 final

2024/0152 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**amending Directive 2006/112/EC as regards the electronic value added tax exemption certificate**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

The purpose of this proposal is to amend Council Directive 2006/112/EC<sup>1</sup> (the VAT Directive) in order to introduce an electronic exemption certificate confirming that a transaction qualifies for a specific exemption under the first subparagraph of Article 151(1) of that Directive.

Annex II of Council Implementing Regulation (EU) No 282/2011<sup>2</sup> (the VAT Implementing Regulation) provides for a VAT and/or Excise Duty exemption certificate, which is designed to be handled as a paper version, to be signed in hand. In order to enable Member States to keep pace with the increasing demands of the digital age and to reduce the administrative burden on businesses, the current paper version should be replaced by the new electronic certificate. In addition, such electronic conversion will allow Member States to comply with the obligations imposed by EU legislation<sup>3</sup> requiring them to put in place the necessary technical means to enable the electronic processing of electronically signed documents when using an online service provided by or on behalf of a public sector body.

This initiative also serves to align with the area of excise duties, where electronic procedures are already possible<sup>4</sup>.

It is to enable the Commission to adopt implementing measures laying down the technical details and specifications concerning the applicable electronic format of the certificate and the way in which it is to be processed electronically. The respective implementing acts shall be adopted in consultation of the Standing Committee on Administrative Cooperation established by Article 58 of Council Regulation (EU) No 904/2010<sup>5</sup>, applying the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011<sup>6</sup>.

This proposal is the result of an in-depth analysis of the feasibility and costs of introducing an electronic exemption certificate, carried out at the request of Member States, which had

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<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([OJ L 347, 11.12.2006, p. 1](#)), as amended.

<sup>2</sup> Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (recast) (OJ L 77, 23.3.2011, p. 1).

<sup>3</sup> Commission Implementing Decision (EU) 2015/1506 of 8 September 2015 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies pursuant to Articles 27(5) and 37(5) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market ([OJ L 235, 9.9.2015, p. 37](#)).

<sup>4</sup> Article 12(3) of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast) (OJ L 58, 27.2.2020, p. 4, ELI: <http://data.europa.eu/eli/dir/2020/262/oj>)

<sup>5</sup> Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax ([OJ L 268, 12.10.2010, p. 1](#)).

<sup>6</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, ([OJ L 55, 28.2.2011, p. 13](#)).

withdrawn this element of an earlier Commission proposal of April 2021<sup>7</sup> (the so-called "buy and donate" proposal) and asked for more insight into the implementation aspects when the corresponding amendments to the VAT Directive were adopted in July 2021<sup>8</sup>.

Following the broad support for an electronic transformation of the exemption certificate expressed at the 36<sup>th</sup> meeting of the Group on the Future of VAT in December 2021, the SCAC<sup>9</sup> Expert Group, in May 2022, mandated the SCIT<sup>10</sup> to study the feasibility and costs of such a project as well as its implementation aspects. During its 27<sup>th</sup> meeting in February 2023<sup>11</sup>, the SCAC Expert Group discussed the outcome of this technical study<sup>12</sup>.

During the 43<sup>rd</sup> meeting of the Group on the Future of VAT held in November 2023, consensus was reached on the principle of having a digital solution for the exemption certificate with preference for an option involving a PDF e-form accompanied by a fully electronic process. This technical solution has the advantage of building on standards already developed, as it is based on DG TAXUD technical stack and open source technologies, making it suitable for deployment in DG TAXUD data centres. Technical discussions with Member States will continue in SCAC and SCIT, including further analysis of technical details, which will also allow Member States to obtain the necessary elements for calculating their costs.

In view of the large number of IT projects currently facing them, Member States will be allowed to continue to use the paper version of the exemption certificate for a transitional period until 30 June 2030. In order to make it as easy as possible for Member States to switch to the electronic procedure, this option should be flexible and available on a transaction-by-transaction basis.

In the interests of legal certainty and administrative simplification, and to avoid additional IT implementation costs, no distinction will be made between domestic and cross-border transactions when applying the electronic exemption certificate. The electronic exemption certificate will also be applied if the exemption is granted by means of a refund of the VAT in accordance with Article 151(2) of the VAT Directive.

In addition, this proposal adds a new provision clarifying that, in cases where the conditions for exemption are not met or cease to apply, the eligible body or individual who issued the certificate is liable to pay any VAT due. In such cases, the taxable person would be unduly disadvantaged by a claim for additional payment of VAT, as only the eligible body or individual would normally have knowledge of the relevant information on the fulfilment of the conditions for the exemption. Such clarification is also necessary to avoid legal uncertainty. In order to avoid unnecessary burdens in these exceptional cases, Member States may take the necessary measures to allow eligible bodies or individuals to pay the VAT due without the need for full VAT registration.

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<sup>7</sup> Proposal for a Council Directive amending Directive 2006/112/EC as regards exemptions on importations and on certain supplies, in respect of Union measures in the public interest (COM(2021) 181 final).

<sup>8</sup> Council Directive (EU) 2021/1159 of 13 July 2021 amending Directive 2006/112/EC amending Directive 2006/112/EC as regards temporary exemptions on importations and on certain supplies, in response to the COVID-19 pandemic ([OJ L 250, 15.07.2021, p. 1](#)).

<sup>9</sup> Standing Committee on Administrative Cooperation

<sup>10</sup> Sub-committee for IT matters

<sup>11</sup> See working paper SCAC-EG No 158 and minutes of the meeting, document SCAC-EG No 159.

<sup>12</sup> See technical study annexed to document SCIT 214

The auto-validation clause provided for in Article 51(2) of the VAT Implementing Regulation will be maintained for the new electronic procedure. Consequently, if the goods or services are intended for official use, Member States may dispense the eligible body or individual from the requirement to have the exemption certificate signed electronically by the host Member State under the conditions they may lay down. This dispensation may be withdrawn in the case of abuse.

Member States will have to apply the new rules from 1 July 2026, which will give them sufficient time to implement the new electronic VAT exemption certificate and procedure.

- **Consistency with existing policy provisions in the policy area**

The proposal allows for the electronic conversion of the exemption certificate as the next step following its adaptation in 2022<sup>13</sup>, which reflects the extended scope of the exemptions under Article 151(1) of the VAT Directive, to encompass Union activities under the Common Security and Defence Policy (CSDP)<sup>14</sup> and Union measures in response to the COVID-19 pandemic<sup>15</sup>.

- **Consistency with other Union policies**

The introduction of the electronic VAT exemption certificate is in line with the initiatives taken as part of the EU's digitalisation policy such as the Berlin Declaration on the Digital Society and Value-based Digital Government<sup>16</sup>, and will help Member States to equip their tax administrations to comply with the requirements for the use of advanced electronic signatures laid down in EU legislation<sup>17</sup>.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis of the proposal is Article 113 of the Treaty on the Functioning of the EU. This Article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

- **Subsidiarity (for non-exclusive competence)**

According to the principle of subsidiarity, as set out in Article 5(3) of the Treaty on European Union, action at Union level may only be taken if the envisaged aims cannot be achieved

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<sup>13</sup> Council Implementing Regulation (EU) 2022/432 of 15 March 2022 amending Implementing Regulation (EU) No 282/2011 as regards the VAT and/or excise duty exemption certificate ([OJ L 88, 16.3.2022, p. 15](#))

<sup>14</sup> Council Directive (EU) 2019/2235 of 16 December 2019 amending Directive 2006/112/EC on the common system of value added tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence efforts within the Union framework ([OJ L 336, 30.12.2019, p. 10](#))

<sup>15</sup> Council Directive (EU) 2021/1159 of 13 July 2021 amending Directive 2006/112/EC amending Directive 2006/112/EC as regards temporary exemptions on importations and on certain supplies, in response to the COVID-19 pandemic ([OJ L 250, 15.07.2021, p. 1](#))

<sup>16</sup> <https://digital-strategy.ec.europa.eu/en/news/berlin-declaration-digital-society-and-value-based-digital-government>

<sup>17</sup> Commission Implementing Decision (EU) 2015/1506 of 8 September 2015 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies pursuant to Articles 27(5) and 37(5) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market ([OJ L 235, 9.9.2015, p. 37](#)).

sufficiently by the Member States alone and can therefore, by reason of the scale or effects of the proposed actions, be better achieved by the EU. The current VAT Directive prevents Member States from introducing and applying an electronic VAT exemption certificate.

- **Proportionality**

The proposal complies with the proportionality principle as it does not go beyond what is necessary and is proportionate to the objective pursued. The initiative introduces an electronic exemption certificate confirming that a transaction qualifies for a specific exemption under the first subparagraph of Article 151(1) of the VAT Directive. Given the increased administrative burden and lack of flexibility associated with an exemption procedure based on paper documents, the proposed measures will lead to significant simplification and cost savings in the long term and are therefore proportionate in view of their limited budgetary impact.

- **Choice of the instrument**

A Directive is required to amend the current VAT Directive.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Stakeholder consultations**

No stakeholder consultation was carried out, due to the highly technical nature of this initiative and its alignment with efforts at EU level to promote digital government interactions.

- **Collection and use of expertise**

The Commission, in consultation with Member States, has carried out a technical study to identify possible IT solutions for the introduction of an electronic exemption certificate and corresponding procedure.

- **Impact assessment**

No separate impact assessment has been conducted, due to the technical nature and very narrow scope of this initiative.

- **Fundamental rights**

The proposed electronic conversion of the VAT exemption procedure supports the adaptation to the digital age and strengthens the rights of citizens with regard to the processing of their personal data, as protected by Article 8 of the EU Charter of Fundamental Rights and Article 16 of the Treaty on the Functioning of the European Union.

### **4. BUDGETARY IMPLICATIONS**

The proposal will remove the administrative burden and costs associated with processing the paper version of the VAT exemption certificate. Most of the costs for the implementation and operation of the digital solution, estimated at EUR 2.9 million, will be borne by the Commission, fully financed by FISCALIS programme within its foreseen financial envelope in the current Multiannual Financial Framework. The costs for Member States, mainly related to providing access to the central application, are estimated to be low.

The new electronic certificate will not affect the scope of VAT exemptions applied. There will therefore be no impact on the EU budget as the own resources based on gross national income (GNI) will not be affected.

## **5. OTHER ELEMENTS**

- **Explanatory documents (for directives)**

The proposal does not require Explanatory Documents on the transposition.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 aims to amend the VAT Directive by enabling the Commission, in consultation with Member States, to adopt implementing measures providing for an electronic certificate confirming that the transaction qualifies for a specific exemption under the first subparagraph of Article 151(1) of the VAT Directive, to be issued by the eligible body or person to whom the exempt supply of goods or services is made and who, together with the host Member State, will sign that certificate by electronic means.

The necessary implementing acts shall contain the technical details and specifications for the electronic format and processing of the certificate and shall be adopted in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011, for which purpose the Committee established by Article 58 of Council Regulation (EU) No 904/2010 shall be used.

Due to the large number of ongoing IT projects, Member States may alternatively use the paper version of the certificate set out in Annex II of the VAT Implementing Regulation for transactions carried out until 30 June 2030.

Recognising that businesses do not normally have access to the relevant information, it is clarified that if the conditions for exemption are not met or cease to apply, it is the eligible body or individual issuing the electronic certificate who is liable to pay any VAT to the Member State where it is due.

In order to give Member States sufficient time to implement the new electronic procedure, they will have to apply the new rules from 1 July 2026.

Proposal for a

## COUNCIL DIRECTIVE

### amending Directive 2006/112/EC as regards the electronic value added tax exemption certificate

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament<sup>18</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>19</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Article 51 of Council Implementing Regulation (EU) No 282/2011<sup>20</sup> provides that the value added tax (VAT) and/or excise duty exemption certificate set out in Annex II to that Implementing Regulation serves to confirm that a supply of goods or services made to an eligible body or individual qualifies for an exemption under Article 151 of Council Directive 2006/112/EC<sup>21</sup>. Implementing Regulation (EU) No 282/2011 provides for an exemption certificate in paper form to be signed by hand. It is necessary to digitalise the process of creating and submitting the exemption certificate and to replace the paper document with a document in electronic format in order to minimise bureaucracy and the administrative burden and to reduce costs in the long term.
- (2) In view of the large number of resource-intensive IT projects in which Member States are involved, in addition to that required to switch to an electronic exemption certificate, Member States should be given flexibility and sufficient time to complete the transition to the new electronic procedure. To this end, they should be allowed to continue to use the paper form set out in Annex II to Implementing Regulation (EU) No 282/2011 for transactions carried out during a transitional period.
- (3) It is possible that, after an exemption certificate has been issued, a body or individual eligible for exemption for its purchases pursuant to Article 151 of Directive 2006/112/EC might become aware that the conditions for the exemption in question

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<sup>18</sup> OJ C , , p. .

<sup>19</sup> OJ C , , p. .

<sup>20</sup> Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1, ELI: [http://data.europa.eu/eli/reg\\_impl/2011/282/oj](http://data.europa.eu/eli/reg_impl/2011/282/oj)).

<sup>21</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1, ELI: <http://data.europa.eu/eli/dir/2006/112/oj>).

are not or cease to be met. Such information is normally only known to that body or individual as the assessment of compliance with those conditions is to be carried out on the basis of the activities of the body or individual to whom supplies are made and by which those goods or services are to be used. In order to ensure legal certainty for taxable persons and to avoid undue burdens on taxable persons, it is necessary to clarify that in such cases the VAT due should be paid by the eligible body or individual who issued the exemption certificate. Member States should avoid unnecessary burdens in such exceptional cases by allowing the payment of VAT without the need for a full VAT registration.

- (4) While maintaining the option currently available for the paper version of the certificate, it should be possible for Member States to continue to waive the requirement for the electronic certificate to be signed by the host Member State, subject to conditions which they may lay down and which may be withdrawn in the event of abuse.
- (5) In order to ensure uniform conditions for the implementation of Article 151(1) of Directive 2006/112/EC, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>22</sup>.
- (6) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

In Article 151 of Directive 2006/112/EC, the following paragraphs 1a and 1b are inserted:

‘1a. Member States shall use an electronic certificate to confirm that a transaction qualifies for an exemption provided for in paragraph 1, first subparagraph. The eligible body or individual to whom the exempt supply of goods or services is made, shall issue the certificate and, together with the host Member State, shall sign it by electronic means.

If the goods or services are intended for official use, Member States may dispense the eligible body or individual from the requirement to have the certificate signed by the host Member State under the conditions they may lay down. This dispensation may be withdrawn in the case of abuse. Member States shall inform the Commission of the contact point designated to identify the services responsible for signing the certificate by electronic means and the extent to which they dispense with this requirement. The Commission shall inform the other Member States of the information received from Member States.

By way of derogation from the first two subparagraphs, Member States may opt to use the paper version of the certificate set out in Annex II to Council Implementing Regulation (EU) No 282/2011\* for any transaction made until 30 June 2030.

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<sup>22</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: <http://data.europa.eu/eli/reg/2011/182/oj>).



The Commission shall, by means of implementing acts, determine the technical details and specifications as regards the electronic format of the certificate referred to in the first subparagraph and its processing. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011 and for this purpose the committee shall be the committee established by Article 58 of Regulation (EU) No 904/2010.

1b. Without prejudice to paragraph 3, if the conditions for exemption laid down in paragraph 1, first subparagraph, are not met or cease to apply, the eligible body or individual who issued and signed the certificate shall be liable to pay the VAT to the Member State where it is due.

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\* Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1, ELI: [http://data.europa.eu/eli/reg\\_impl/2011/282/oj](http://data.europa.eu/eli/reg_impl/2011/282/oj)).’

#### *Article 2*

1. Member States shall bring into force, by 30 June 2026, the laws, regulations, and administrative provisions necessary to comply with Article 1 of this Directive. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by Article 1 of this Directive.

#### *Article 3*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

#### *Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*  
*The President*