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2024/0153 (NLE)

Proposal for a

**COUNCIL IMPLEMENTING REGULATION**

**amending Implementing Regulation (EU) No 282/2011 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 adapt Council Implementing Regulation (EU) No 282/2011<sup>1</sup> (the VAT Implementing Regulation) to pave the way for the introduction of an electronic exemption certificate confirming that a transaction qualifies for a specific exemption under the first subparagraph of Article 151(1) of Council Directive 2006/112/EC (the VAT Directive).

Annex II of the VAT Implementing Regulation provides for a paper-based exemption certificate for VAT and/or excise duty designed to be signed by hand. To allow 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 will be replaced by the new electronic exemption certificate, to prepare for the increasing use of advanced electronic signatures. In addition, such electronic conversion will allow Member States to comply with the obligations imposed by EU legislation<sup>2</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.

Under the new Article 151(1a) of the VAT Directive, the Commission, in consultation with Member States, will be able to adopt implementing measures laying down the technical details and specifications concerning the applicable electronic format of the new exemption certificate and the way in which it is to be processed electronically. This new electronic certificate will fully replace the paper version from 1 July 2030. For transactions carried out before that date, and to take better account of other IT projects under way, Member States may continue to use the paper version set out in Annex II to the VAT Implementing Regulation. Consequently, the wording of Article 51(1) of the VAT Implementing Regulation is amended to allow for the alternative use of both paper and electronic certificates.

Annex II of the VAT Implementing Regulation is no longer up to date as it refers to Directive 2008/118/EC which has been replaced by Council Directive (EU) 2020/262 (recast)<sup>3</sup> and will be amended accordingly.

Finally, both Article 51 and Annex II of the VAT Implementing Regulation will be deleted from 1 July 2030, the date on which this paper version will be replaced by the new electronic VAT exemption certificate pursuant to Article 151(1a) of the VAT Directive.

- **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>4</sup>, which reflects the extended scope of the exemptions under

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<sup>1</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>2</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>3</sup> 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](#)).

Article 151(1) of the VAT Directive, to encompass Union activities under the Common Security and Defence Policy (CSDP)<sup>5</sup> and Union measures in response to the COVID-19 pandemic<sup>6</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 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>7</sup>.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 397 of the VAT Directive. This article provides that the Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement the VAT Directive.

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

The introduction of the electronic VAT exemption certificate under Article 151(1a) of the VAT Directive requires the VAT Implementing Regulation to be adapted accordingly. This could not be done by Member States acting alone. The adaptation requires a Commission proposal to amend the VAT Implementing Regulation.

- **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 budgetary impact.

- **Choice of the instrument**

An Implementing Regulation is proposed in view of amending the VAT Implementing Regulation.

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<sup>4</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>5</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>6</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>7</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](#)).

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

- **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.

- **Regulatory fitness and simplification**

The proposal is not linked to REFIT and has no particular impact on micro-enterprises or SMEs.

- **Fundamental rights**

The proposed electronic conversion of the VAT exemption procedure supports the adaptation to the digital age and strengthens the rights of citizens regarding 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**

This proposal introduces certain changes necessary for the electronic conversion of the VAT exemption certificate but does not affect the scope of the VAT exemptions to which it refers. It therefore has no impact on the Union budget.

### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation, and reporting arrangements**

The Commission will monitor implementation of the proposed measures as part of its responsibilities for ensuring the correct application of EU VAT legislation.

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

Article 1, paragraph 1, of the proposal amends the wording of the first sentence of Article 51(1) of the VAT Implementing Regulation to ensure that the new electronic VAT exemption certificate referred to in Article 151(1a) of the VAT Directive can be used as an alternative.

Article 1, paragraph 2, of the proposal replaces the VAT and/or excise duty exemption certificate provided for in Annex II of the VAT Implementing Regulation by a new version which reflects the fact that Directive 2008/118/EC has been replaced by Council Directive (EU) 2020/262 (recast).

Article 2 of the proposal deletes Article 51 and Annex II of the VAT Implementing Regulation to ensure that from 1 July 2030 only the electronic VAT exemption certificate referred to in Article 151(1a) of the VAT Directive will apply.

Proposal for a

## **COUNCIL IMPLEMENTING REGULATION**

### **amending Implementing Regulation (EU) No 282/2011 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,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>1</sup>, and in particular Article 397 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 151(1a) of Directive 2006/112/EC introduces the new electronic VAT exemption certificate and the electronic procedure required to process it. To give Member States sufficient flexibility to implement the large number of related IT projects under way, they are allowed to continue to use the existing paper certificate, as set out in Annex II to Council Implementing Regulation (EU) No 282/2011<sup>2</sup>, for transactions made until 30 June 2030. Article 51(1) of that Implementing Regulation should be amended to allow for the use of either electronic or paper certificates during a transitional period.
- (2) Annex II to Implementing Regulation (EU) No 282/2011 should be replaced to reflect the fact that Council Directive 2008/118/EC<sup>3</sup> has been replaced by Council Directive (EU) 2020/262<sup>4</sup>.
- (3) In accordance with Directive 2006/112/EC, from 1 July 2030, only the electronic exemption certificate referred to in Article 151(1a) of that Directive is to be used. Consequently, Article 51 of, and Annex II to, Implementing Regulation (EU) No 282/2011, which provide for the paper version of the exemption certificate, should be deleted from that date.
- (4) Implementing Regulation (EU) No 282/2011 should therefore be amended accordingly,

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<sup>1</sup> OJ L 347, 11.12.2006, p. 1, ELI: [http://data.europa.eu/eli/reg\\_impl/2011/282/oj](http://data.europa.eu/eli/reg_impl/2011/282/oj).

<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 (OJ L 77, 23.3.2011, p. 1, ELI: <http://data.europa.eu/eli/dir/2006/112/oj>).

<sup>3</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12, ELI: <http://data.europa.eu/eli/dir/2008/118/oj>).

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

HAS ADOPTED THIS REGULATION:

*Article 1*

Implementing Regulation (EU) No 282/2011 is amended as follows:

(1) in Article 51, paragraph 1 is replaced by the following:

‘1. Where the recipient of a supply of goods or services is established within the Union but not in the Member State in which the supply takes place, and the electronic exemption certificate pursuant to Article 151(1a) of Directive 2006/112/EC is not used, the VAT and/or excise duty exemption certificate set out in Annex II to this Regulation, shall, subject to the explanatory notes set out in the Annex to that certificate, be used to confirm that the transaction qualifies for the exemption under Article 151(1) of Directive 2006/112/EC.

When making use of that certificate, the Member State in which the recipient of the supply of goods or services is established may decide to use either a common VAT and excise duty exemption certificate or two separate certificates.’;

(2) Annex II is replaced by the text in the Annex to this Regulation.

*Article 2*

Implementing Regulation (EU) No 282/2011 is amended as follows:

(1) Article 51 is deleted;

(2) Annex II is deleted.

*Article 3*

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

Article 1 shall apply from 1 July 2026.

Article 2 shall apply from 1 July 2030.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council  
The President*