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Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision 2013/54/EU as regards authorisation to the Republic of Slovenia to continue to apply the special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of valued added tax[1] ('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 27 October 2021, Slovenia requested an authorisation to continue to apply, until 31 December 2024, a measure derogating from Article 287 of the VAT Directive, allowing Slovenia to exempt from VAT taxable persons whose annual turnover is no higher than EUR 50 000.

In accordance with Article 395(2), second subparagraph, of the VAT Directive, the Commission informed the other Member States by letter dated 15 November 2021 of the request made by Slovenia. The Commission notified Slovenia by letter dated 16 November 2021 that it had all the information necessary to consider the request.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Chapter 1 of Title XII of the VAT Directive allows for the possibility for Member States to apply special schemes for small enterprises, including the possibility of exempting taxable persons below a certain annual turnover. This exemption implies that a taxable person does not have to charge VAT on his supplies and, consequently, he or she cannot deduct the VAT on his inputs.

Under Article 287 of the VAT Directive, particular Member States which acceded after 1 January 1978 may exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of the amounts at the conversion rate on the day of their accession as specified in that provision.

Under point 15 of Article 287 of the VAT Directive, Slovenia may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 25 000.

By Council Implementing Decision 2013/54/EU[2] Slovenia was authorised, until 31 December 2015, to apply a higher threshold and thus to exempt from VAT taxable persons whose annual turnover is no higher than EUR 50 000. That authorisation was extended initially by Council Implementing Decision (EU) 2015/2089[3] until 31 December 2018 and subsequently by Council Implementing Decision (EU) 2018/1700[4] until 31 December 2021.

Slovenia requested another extension of that special measure for a limited period.

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

[2] Council Implementing Decision 2013/54/EU of 22 January 2013 authorising the Republic of Slovenia to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 22, 25.1.2013, p.15).

[3] Council Implementing Decision (EU) 2015/2089 of 10 November 2015 amending Implementing Decision 2013/54/EU authorising the Republic of Slovenia to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 302, 19.11.2015 p. 107).

[4] Council Implementing Decision (EU) 2018/1700 of 6 November 2018 amending Implementing Decision 2013/54/EU authorising the Republic of Slovenia to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 285, 13.11.2018 p. 78).

An authorisation to continue to use the exemption beyond 2021 for taxable persons whose annual turnover is no higher than EUR 50 000 would be a significant simplification for persons operating relatively small businesses. Taxable persons covered by this exemption do not have to deduct and pay VAT, be registered for VAT or keep a full detailed record of transactions subject to VAT. Thanks to these simplifications, small business owners can devote more time and resources to developing their business. The special measure is and will remain fully optional for taxable persons. Therefore, small businesses whose turnover does not exceed the threshold will still have the possibility to exercise their right to apply the normal VAT arrangements.

Moreover, the cost of collecting VAT from taxable persons operating businesses with relatively low turnover, resulting from providing taxpayer services to these taxable persons and auditing their tax returns, is disproportionately high in comparison to the amount of tax collected. Accordingly, by applying a VAT exemption to small business owners, the revenue administration may direct more resources towards preventing and combating tax fraud, evasion and avoidance, and towards improving the quality of taxpayer services and the effectiveness of collecting VAT from large-scale business operators.

According to Slovenia, in 2019, 48 % of all registered taxable persons (i.e. approximately 60 000) had an annual turnover of EUR 50 000 or less, representing 1 % share of the total taxable turnover relevant for VAT purposes. It estimates that approximately 2 000 of these taxable persons (excluding those who opted for taxation) have an annual turnover between EUR 25 000 and EUR 50 000. Including these taxable persons in the VAT system would result in an increase of the state revenue from VAT by 0.3 %.

Therefore, the special measure does not significantly affect the total amount of revenue from VAT or the overall amount of tax revenue collected at the stage of final consumption.

The special measure, simplifying the obligations of small operators, is in line with the objectives set out by the European Union for small businesses.

Given the positive impact on the reduction of administrative burden for businesses and the tax administration without a major impact on the total VAT revenue, it is appropriate to authorise Slovenia to extend the application of the special measure until 31 December 2024.

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

The derogating measure is in line with the objectives of Directive (EU) 2020/285 amending Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises[5], which resulted from the VAT action plan[6], and aims to create a modern, simplified scheme for those businesses. In particular, it seeks to reduce VAT compliance costs and distortions of competition both domestically and at EU level, reduce the negative impact of the threshold effect, and facilitate business compliance as well as monitoring by tax administrations.

Moreover, the threshold of EUR 50 000 is consistent with Directive (EU) 2020/285, insofar as it allows Member States to set the annual turnover threshold required for an exemption from VAT at a level no higher than EUR 85 000 (or the equivalent in national currency).

[5] Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13).

[6] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT – Towards a single EU VAT area – Time to decide COM(2016)148 final.

Similar derogations, exempting from VAT taxable persons whose annual turnover is below a certain threshold, as provided for in Articles 285 and 287 of the VAT Directive, have been granted to other Member States. The Netherlands[7] and Belgium[8] have been granted a threshold of EUR 25 000; Italy[9] a threshold of EUR 30 000, Luxembourg[10] a threshold of EUR 35 000; Poland[11], Latvia[12] and Estonia[13] have been granted a threshold of EUR 40 000; Hungary[14] a threshold of EUR 48 000; Lithuania[15] a threshold of EUR 55 000; Croatia[16] a threshold of EUR 45 000; Malta[17] a threshold of EUR 30 000; and Romania[18] a threshold of EUR 88 500.

Derogations from the VAT Directive should always be limited in time so that their effects can be assessed. In addition, the inclusion of an expiry date of the special measure until 31 December 2024, as requested by Slovenia, is aligned with the requirements of Directive (EU) 2020/285. That Directive provides for 1 January 2025 as the date on which Member States will have to apply the national provisions, which they are required to adopt, to comply with it.

The proposed measure is therefore consistent with the provisions of the VAT Directive.

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7 Council Implementing Decision (EU) 2018/1904 of 4 December 2018 authorising the Netherlands to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 310, 6.12.2018, p. 25).

8 Council Implementing Decision (EU) 2018/2077 of 20 December 2018 amending Implementing Decision 2013/53/EU authorising the Kingdom of Belgium to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax, OJ L 331, 28.12.2018, p. 222.

9 Council Implementing Decision (EU) 2016/1988 of 8 November 2016 amending Implementing Decision 2013/678/EU authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 306, 15.11.2016, p.11).

10 Council Implementing Decision (EU) 2019/2210 of 19 December 2019 amending Implementing Decision 2013/677/EU authorising Luxembourg to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 332, 23.12.2019, p. 155).

11 Council Implementing Decision (EU) 2018/1919 of 4 December 2018 amending Decision 2009/790/EC authorising the Republic of Poland to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 311, 7.12.2018, p. 32).

12 Council Implementing Decision (EU) 2020/1261 of 4 September 2020 amending Implementing Decision (EU) 2017/2408 authorising the Republic of Latvia to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 296, 10.9.2020, p. 4).

13 Council Implementing Decision (EU) 2021/358 of 22 February 2021 amending Implementing Decision (EU) 2017/563 authorising the Republic of Estonia to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 69, 26.2.2021, p. 4).

14 Council Implementing Decision (EU) 2018/1490 of 2 October 2018 authorising Hungary to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 252, 8.10.2018, p. 38).

15 Council Implementing Decision (EU) 2021/86 of 22 January 2021 authorising the Republic of Lithuania to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 30, 28.1.2021, p. 2).

16 Council Implementing Decision (EU) 2020/1661 of 3 November 2020 amending Implementing Decision (EU) 2017/1768 authorising the Republic of Croatia to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 374, 10.11.2020, p. 4).

17 Council Implementing Decision (EU) 2021/753 of 6 May 2021 authorising Malta to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax, and repealing Implementing Decision (EU) 2018/279 (OJ L 163, 10.5.2021, p. 1).

18 Council Implementing Decision (EU) 2020/1260 of 4 September 2020 amending Implementing Decision (EU) 2017/1855 authorising Romania to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 296, 10.9.2020, p. 1).

- **Consistency with other Union policies**

The Commission has been consistently stressing the need for simpler rules for small enterprises. In this respect, the Commission adopted in March 2020 an SME Strategy for a sustainable and digital Europe[19], where it committed to continue to work to reduce the burden on SMEs. The objective to reduce the regulatory burden for SMEs is one of the pillars of that strategy. This special measure is in line with such objectives, as far as fiscal rules are concerned. It is also consistent with the 2020 Action Plan on fair and simple taxation supporting the recovery strategy[20], which acknowledges that tax compliance costs remain high in the EU, and that compliance costs are typically substantially higher for small than for large companies.

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 it is based, the proposal falls under the exclusive competence of the European Union. Hence, the subsidiarity principle does not apply.

- **Proportionality**

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 simplify the tax collection for small taxable persons and for the tax administration.

- **Choice of the instrument**

The instrument proposed is a Council Implementing Decision.

Under Article 395 of the VAT Directive, a derogation from the common VAT rules is only possible upon authorisation by the Council, which is 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

- **Stakeholder consultations**

No stakeholder consultation has been conducted. The present proposal is based on a request made by Slovenia and concerns only this particular Member State.

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[19] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – An SME Strategy for a sustainable and digital Europe (COM(2020) 103 final).

[20] Communication from the Commission to the European Parliament and the Council – An Action Plan for fair and simple taxation supporting the Recovery Strategy (COM(2020) 312 final).

- **Impact assessment**

The proposal for a Council Implementing Decision aims at continuing for another three years a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 50 000 and therefore has a positive impact on the reduction of administrative burden for businesses and tax administration without a major impact on the total VAT revenue. Because of the narrow scope of the derogation and its limited application in time, the impact of the measure will in any case be limited.

The derogating measure will be optional for taxable persons. Taxable persons will be able to opt for the regular VAT arrangements in accordance with Article 290 of Directive 2006/112/EC.

- **Fundamental rights**

The proposal does not have any consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

Following entering into force of Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax[21], there will be no compensation calculation carried out by Slovenia as of VAT own resource statement for the financial year 2021 onwards.

[21] Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 165, 11.5.2021, p. 9).

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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 tax[1], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 287, point (15), of Directive 2006/112/EC allows Slovenia to exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 25 000 at the conversion rate on the date of its accession.

(2) By Council Implementing Decision 2013/54/EU[2], Slovenia was authorised, until 31 December 2015, to introduce a special measure derogating from Article 287, point (15), of Directive 2006/112/EC and thus to exempt from VAT taxable persons whose annual turnover is no higher than EUR 50 000 ('the special measure'). That authorisation was extended twice, most recently by Council Implementing Decision (EU) 2018/1700[3], until 31 December 2021.

(3) By letter registered with the Commission on 27 October 2021, Slovenia requested an authorisation to continue to apply the special measure until 31 December 2024, the date by which Member States are to transpose Council Directive (EU) 2020/285[4]. It follows from that Directive that, from 1 January 2025, Member States will be allowed to exempt from VAT the supply of goods and services made by taxable persons whose Member State annual turnover does not exceed a threshold of EUR 85 000 or the equivalent in national currency.

1 OJ L 347, 11.12.2006, p.1.

2 Council Implementing Decision 2013/54/EU of 22 January 2013 authorising the Republic of Slovenia to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 22, 25.1.2013, p.15).

3 Council Implementing Decision (EU) 2018/1700 of 6 November 2018 amending Implementing Decision 2013/54/EU authorising the Republic of Slovenia to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 285, 13.11.2018 p. 78).

4 Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13).

(4) Pursuant to Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Slovenia to the other Member States by letter dated 15 November 2021. By letter dated 16 November 2021, the Commission notified Slovenia that it had all the information necessary for the appraisal of the request.

(5) The special measure is in line with Directive (EU) 2020/285, which seeks to reduce the compliance burden of small enterprises and avoid distortions of competition in the internal market.

(6) The special measure will remain optional for taxable persons as they may still opt for the normal VAT arrangements pursuant to Article 290 of Directive 2006/112/EC.

(7) According to information provided by Slovenia, the special measure will only have a negligible effect on the overall amount of the tax revenue Slovenia collects at the stage of final consumption.

(8) Following entry into force of Council Regulation (EU, Euratom) 2021/769[5], there will be no compensation calculation carried out by Slovenia with regard to the VAT own resource statement for the financial year 2021 onwards.

(9) Given the positive impact of the special measure in reducing the administrative burden and compliance costs for both small enterprises and the tax authorities, and the lack of any major impact on the total VAT revenue generated, Slovenia should be authorised to continue apply the special measure.

(10) The authorisation to continue to apply the special measure should be limited in time. The time limit should be sufficient to allow the effectiveness and appropriateness of the threshold to be evaluated. Moreover, pursuant to Article 3(1) of Directive (EU) 2020/285, Member States are to adopt and publish, by 31 December 2024, the laws, regulations and administrative provisions necessary to comply with Article 1 of that Directive, which amends Directive 2006/112/EC, and apply those provisions from 1 January 2025. It is therefore appropriate to authorise Slovenia to apply the special measure until 31 December 2024.

(11) Implementing Decision 2013/54/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Implementing Decision 2013/54/EU, the second paragraph is replaced by the following:

‘It shall apply from 1 January 2013 until 31 December 2024.’.

[5] Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 165, 11.5.2021, p. 9).

Article 2

This Decision is addressed to the Republic of Slovenia.

Done at Brussels,

For the Council
The President