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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Republic of Lithuania to apply a measure derogating from Article 287 of Directive 2006/112EC 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] ('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 18 June 2020, Lithuania requested an authorisation to apply, as of 1 January 2021, a measure derogating from Article 287 of the VAT Directive, allowing Republic of Lithuania to exempt from VAT taxable persons whose annual turnover is no higher than EUR 55 000. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 10 August 2020 and 11 August 2020 of the request made by the Republic of Lithuania. By letter dated 12 August 2020, the Commission notified the Republic of Lithuania 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 or her supplies and, consequently, he or she cannot deduct VAT on the inputs.

Under Article 287(11) of the VAT Directive, Lithuania may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 29 000 at the conversion rate on the day of its accession. The Republic of Lithuania joined the euro on 1 January 2015.

By raising the threshold for a person to be identified for VAT purposes from EUR 45 000 to EUR 55 000, it is anticipated that the measure will reduce significantly the administrative burden on businesses eligible for the scheme, and in particular on micro-enterprises, by releasing them from the VAT obligations under the normal VAT arrangements, such as keeping VAT records or submitting VAT returns.

Moreover, there will also be a reduction in the workload for the tax authorities.

According to the Lithuanian authorities, an analysis of three factors has been carried out. The first factor, taking into account persons registering as VAT taxpayers, shows that the number of VAT taxpayers in the Republic of Lithuania is constantly increasing since 2017 and the vast majority (around 90%) of persons registered as taxpayers for VAT purposes and paying VAT into the State budget consist in people who have opted for the voluntary registration.

The second factor refers to the impact on State budgetary revenue of increasing the threshold from EUR 45 000 turnover threshold to EUR 55.000. According to estimates provided by the Lithuanian authorities this increase would result in an annual EUR 6.4 million additional decrease in VAT revenue. Currently the VAT not collected due to the EUR 45 000 threshold amounts to EUR 13.2 million per year (with the minimum threshold of EUR 29 000). In comparison, the total VAT revenue was EUR 3.8 billion in 2019.

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

The third factor, relates to the number of taxpayers affected. Lithuania indicates that 7% of the total amount of taxpayers engaged in economic activities in Lithuania in 2019 is eligible for applying the scheme with the current threshold of EUR 45 000. Of this 7% only 1.8% is registered for VAT purposes.

Based on the information collected by the national authorities in 2019, there are 5 463 taxpayers with a turnover between EUR 45 000 to EUR 55 000. All those taxpayers would be eligible for the SME scheme upon increasing the threshold.

Further, the Lithuanian authorities explain that in the last years they observed that the EUR 45 000 threshold has not had any substantial impact on the collection of VAT revenues.

An annual turnover threshold of EUR 55 000 for registering for VAT would benefit small businesses, particularly natural persons engaged in small business, farmers subject to the compensatory VAT tariff scheme, and persons engaged in the provision of services to end-consumers and parties, from which a small portion of VAT would be deducted, i.e. the possibility of such people not having to register for VAT up to an annual turnover threshold of EUR 55 000 significantly eases the administrative and tax burden on them. This measure would also help small businesses, which have been hardly hit by the Covid-19 pandemic.

The measure has an optional character. 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.

Derogations are normally granted for a limited period to allow an assessment of whether the derogating measure remains appropriate and effective. Moreover, the provisions of Articles 281 to 294 of the VAT Directive on the special scheme for small enterprises have recently been reviewed. The new directive laying down simpler VAT rules for small enterprises[2] requires that Member States adopt and publish the laws, regulations and administrative provisions, which are necessary to comply with the new rules, by 31 December 2024 at the latest. Member States will have to apply those national provisions from 1 January 2025.

It is therefore requested to authorise the derogation until 31 December 2024.

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

The derogating measure is in line with the philosophy of the new directive amending Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises, which resulted from the VAT action plan[3], and aims to create a modern, simplified scheme for those businesses. In particular, it seeks to reduce VAT compliance costs and distortions of

[2] 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).

[3] 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.

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, increasing the threshold from EUR 45 000 to EUR 55 000 is consistent with the new directive, 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).

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[4] has been granted a threshold of EUR 25 000; Italy[5] a threshold of EUR 30 000; Luxembourg[6] a threshold of EUR 35 000; Latvia[7], Poland[8] and Estonia[9] have been granted a threshold of EUR 40 000; Croatia[10] a threshold of EUR 45 000 and Malta[11] a threshold of EUR 20 000; Hungary[12] a threshold of EUR 48 000; Slovenia[13] a threshold of EUR 50 000; and Romania[14] a threshold of EUR 88 500.

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[4] 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).

[5] 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.11-12).

[6] 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).

[7] 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. 4–5).

[8] 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).

[9] Council Implementing Decision (EU) 2017/563 of 21 March 2017 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 80, 25.3.2017, p.33)

[10] 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. 4–5).

[11] Council Implementing Decision (EU) 2020/1662 of 3 November 2020 amending Implementing Decision (EU) 2018/279 authorising Malta to apply 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. 6–7).

[12] 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).

[13] 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).

[14] 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. 1–3).

As already mentioned, derogations from the VAT Directive should always be limited in time so that their effects can be assessed. The inclusion of an expiry date of the special measure until 31 December 2024, as requested by Lithuania, is aligned with the requirements of the new directive on simpler VAT rules for small and medium-sized enterprises, which applies as from 1 January 2025.

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

- **Consistency with other Union policies**

The Commission has been consistently stressing the need for simpler rules for small enterprises in its annual work programmes. In this regard, the 2020 Commission Work Programme[15] refers to "a dedicated SME Strategy that will make it easier for small and medium-sized businesses to operate, scale up and expand". The derogating measure is in line with such objectives, as far as fiscal rules are concerned. It is notably consistent with the 2017 Commission Work Programme[16], which referred specifically to VAT, pointing out that the administrative burden of VAT compliance for small businesses is high and that technical innovations pose new challenges for effective tax collection, and stressed the need to simplify VAT for smaller companies.

Likewise, the measure is consistent with the 2015 single market strategy[17], where the Commission set out to help small and medium-sized businesses grow, inter alia by reducing the administrative burdens that prevent them from taking full advantage of the single market. It also follows the philosophy of the 2013 Commission Communication 'Entrepreneurship 2020 Action Plan: Reigniting the entrepreneurial spirit in Europe'[18], which underlined the need to simplify tax legislation for small businesses.

Finally, the measure is in line with EU policies on small and medium-sized enterprises, as set out in the 2016 Start-Up Communication[19], and the 2008 Communication '"Thinks small first" – a "Small Business Act" for Europe'[20] which called on the Member States to take account of the special features of SMEs when designing legislation and simplify the existing regulatory environment.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

[15] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Commission Work Programme 2020 – A Union that strives for more (COM(2020) 37 final).

[16] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Commission Work Programme 2017 (COM(2016) 710 final).

[17] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions upgrading the Single Market: more opportunities for people and businesses (COM(2015) 550 final).

[18] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Entrepreneurship 2020 Action Plan: Reigniting the entrepreneurial spirit in Europe (COM(2012) 795 final).

[19] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Europe's Next Leaders: The Start-Up and Scale-Up Initiative (COM(2016) 733 final).

[20] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Think Small First' A 'Small Business Act' for Europe (COM(2008) 394 final).

- **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 Lithuania and concerns only this particular Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for a Council Implementing Decision aims at increasing the current exemption threshold from EUR 45 000 to EUR 55 000. This increase in the threshold is a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 55 000. It will therefore have a potential positive impact on the reduction of administrative burden for a number of taxable persons and, subsequently, on the tax administration.

In 2019 there were approximately 8 737 VAT taxable person of which 7 664 registered for VAT compliance on voluntary basis, which represent approximately the 90% of persons registered for VAT purposes.

According to the information collected by the national authorities in 2019, there were 5 463 taxpayers with turnover from EUR 45 000 to EUR 55 000. All those taxpayers would be eligible for the SME scheme upon increasing the threshold.

Currently 7% of the total amount of taxpayers engaged in economic activities in Lithuania in 2019 is eligible for the scheme applying the current threshold of 45 000 EUR and 1.8% of them is registered for VAT purposes.

According to estimates provided by the Lithuanian authorities increasing the threshold from EUR 45 000 to EUR 55 000 would result in EUR 6.4 million additional decrease in VAT revenue per year. Currently the VAT not collected due to the EUR 45 000 threshold amounts to EUR 13.2 million per year (with the minimum threshold of EUR 29 000). In comparison, the total VAT revenue was EUR 3.8 billion in 2019.

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. The budgetary impact in terms of VAT revenue is estimated at EUR 20 million, which is considered as negligible.

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

The proposal will not have a negative impact on the EU budget because Lithuania will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, EURATOM) 1553/89

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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 the first subparagraph of Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Pursuant to Article 287 point (11) of Directive 2006/112/EC, Lithuania may exempt from value added tax ('VAT') taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 29 000 at the conversion rate on the day of its accession. Pursuant to Council Implementing Decision (EU) 2011/335[2], Lithuania was authorised to apply a special measure derogating from Article 287 of Directive 2006/112/EC to exempt from VAT taxable persons whose annual turnover is no higher than EUR 45 000, until 31 December 2020.

(2) By letter registered with the Commission on 18 June 2020, Lithuania requested an authorisation to apply a special measure derogating from point (11) of Article 287 of Directive 2006/112/EC ('the derogating measure') from 1 January 2021 until 31 December 2024 in order to continue to apply the exemption and increase the exemption threshold to EUR 55 000, that is the date by which Member States are to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive (EU) 2020/285[3], which lays down simpler VAT rules for small enterprises and, inter alia, deletes Article 287 of Directive 2006/112/EC with effect from 1 January 2025.

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1 OJ L 347, 11.12.2006, p. 1.

2 Council Implementing Decision 2011/335/EU of 30 May 2011 authorising the Republic of Lithuania to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 150, 9.6.2011, p. 6).

3 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. 13–23).

(3) Through the derogating measure, taxable persons whose annual turnover is no higher than EUR 55 000 would be exempt from certain or all of the obligations in relation to VAT as referred to in Chapters 2 to 6 of Title XI of Directive 2006/112/EC.

(4) A higher threshold for the special scheme for small enterprises set out in Articles 281 to 294 of Directive 2006/112/EC is a simplification measure, as it may significantly reduce the VAT obligations of small enterprises. The requested threshold of EUR 55 000 is consistent with Article 284 of Directive 2006/112/EC, as amended by Directive (EU) 2020/285.

(5) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letters dated 10 August 2020 and 11 August 2020 of the request made by Lithuania. By letter dated 12 August 2020, the Commission notified Lithuania that it had all the information necessary for appraisal of the request.

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

(7) According to the information provided by Lithuania, the derogating measure will only have a negligible impact on the overall amount of tax revenue collected at the stage of final consumption.

(8) The derogating measure will not adversely affect the Union's own resources accruing from VAT because Lithuania will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, Euratom) No 1553/89[4].

(9) Given that the increased threshold is expected to reduce VAT obligations and thus the administrative burden and compliance costs for small enterprises, and for the tax authorities, and the impact on the total VAT revenue generated is negligible, Lithuania should be authorised to apply the derogating measure.

(10) The authorisation to apply the derogating 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, in accordance with 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, and apply those provisions from 1 January 2025. It is therefore appropriate to authorise Lithuania to apply the derogating measure until 31 December 2024,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from point (11) of Article 287 of Directive 2006/112/EC, Lithuania is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 55 000.

[4] Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9).

Article 2

This Decision shall apply from 1 January 2021 until 31 December 2024.

Article 3

This Decision is addressed to the Republic of Lithuania.

Done at Brussels,

For the Council
The President