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Proposal for a

COUNCIL IMPLEMENTING DECISION

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

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 11 March 2022, Luxembourg requested an authorisation to continue to apply, until 31 December 2024, a measure derogating from Article 285 of the VAT Directive, allowing Luxembourg to exempt from VAT taxable persons whose annual turnover is no higher than EUR 35 000.

In accordance with Article 395(2), second subparagraph, of the VAT Directive, the Commission informed the other Member States by letter dated 7 April 2022 of the request made by Luxembourg. The Commission notified Luxembourg by letter dated 8 April 2022 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 taxable persons do not have to charge VAT on their supplies and, consequently, they cannot deduct the VAT on their inputs.

The possibility of applying special VAT rules including exemptions or graduated tax relief to small undertakings was first introduced by Article 14 of Council Directive 67/228/EEC[2]. Member States which did not make use of the option provided for under that provision were allowed subsequently, according to Article 24(2)(b) of Directive 77/388/EEC[3] now recast as the first paragraph of Article 285 of the VAT Directive, to only exempt from VAT taxable persons whose annual turnover is no higher than EUR 5 000 or the equivalent in national currency. Pursuant to the second paragraph of Article 285 of the VAT Directive, those Member States may also grant graduated tax relief to taxable persons whose annual turnover exceeds the ceiling fixed by them for its application.

Until the end of 2012, Luxembourg exempted from VAT taxable persons whose annual turnover was no higher than EUR 10 000. In parallel, Luxembourg made use of the option pursuant to the second paragraph of Article 285 of the VAT Directive by granting graduated tax relief to taxable persons whose annual turnover was between EUR 10 000 and EUR 25 000.

Subsequently, Luxembourg requested and obtained a derogation pursuant to the first paragraph of Article 285 to apply a turnover threshold of EUR 25 000 as regards the

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

[2] Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes – Structure and procedures for application of the common system of value added tax (OJ 71, 14.4.1967, p. 1303/67).

[3] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p.1).

exemption scheme for small businesses whilst at the same time abolishing the application of the graduated tax relief. Council Implementing Decision 2013/677/EU[4] authorised Luxembourg to apply the special measure mentioned above until 31 December 2016.

By Council Implementing Decision (EU) 2017/319[5] Luxembourg was authorised to extend the expiry date of the special measure to 31 December 2019 and, at the same time, increase the threshold from EUR 25 000 to EUR 30 000. Then, by Council Implementing Decision (EU) 2019/2210[6], the expiry date was further extended to 31 December 2022 and the threshold increased from EUR 30 000 to EUR 35 000.

Luxembourg requested another extension of that measure for a limited period. Luxembourg indicated that the special measure reduces administrative burden for both taxable persons and the tax authority. It therefore contributes to the simplification of tax collection, as set out in Article 395(1) of the VAT Directive. The measure is and will remain fully optional for taxable persons.

According to Luxembourg, the special measure pursued would only have a negligible effect on the overall amount of VAT revenue collected at the stage of final consumption (not more than 0,05%), as required by the second subparagraph of Article 395(1) of the VAT Directive. More specifically, Luxembourg reported that, in 2020, 633 taxable persons with a turnover between EUR 10 000 and EUR 35 000 made use of the exemption, representing 0,78% of all taxable persons.

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 Luxembourg to extend 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[7], which resulted from the VAT action plan[8], and aims to create a modern, simplified scheme for those businesses. In particular, it seeks to reduce VAT compliance costs and distortions of

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[4] Council Implementing Decision 2013/677/EU of 15 November 2013 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 316, 27.11.2013, p. 33).

[5] Council Implementing Decision (EU) 2017/319 of 21 February 2017 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 47, 24.2.2017, p. 7).

[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 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).

[8] 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, the threshold of EUR 35 000 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).

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[9] and Belgium[10] have been granted a threshold of EUR 25 000; Italy[11] a threshold of EUR 30 000; Poland[12], Latvia[13] and Estonia[14] have been granted a threshold of EUR 40 000; Hungary[15] a threshold of EUR 48 000; Lithuania[16] a threshold of EUR 55 000; Croatia[17] a threshold of EUR 45 000; Malta[18] a threshold of EUR 30 000; Slovenia[19] a threshold of EUR 50 000; Czechia[20] a threshold of EUR 85 000; and Romania[21] a threshold of EUR 88 500.

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9 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).

10 Council Implementing Decision (EU) 2022/88 of 18 January 2022 amending Implementing Decision 2013/53/EU as regards authorisation to the Kingdom of Belgium to apply for a further period the special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 14, 21.1.2022, p. 23)

11 Council Implementing Decision (EU) 2020/647 of 11 May 2020 authorising the Italian Republic to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 151, 14.5.2020, p. 7).

12 Council Implementing Decision (EU) 2021/1780 of 5 October 2021 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 360, 11.10.2021, p. 122).

13 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).

14 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).

15 Council Implementing Decision (EU) 2022/73 of 18 January 2022 amending Implementing Decision (EU) 2018/1490 as regards authorisation to Hungary to apply for a further period the special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 12, 19.1.2022, p. 148).

16 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).

17 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).

18 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).

19 Council Implementing Decision (EU) 2022/464 of 21 March 2022 amending Implementing Decision 2013/54/EU as regards the authorisation granted 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 (OJ L 94, 23.3.2022, p. 4).

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 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.

- **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[22], where it committed to continue to work on reducing 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[23], 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.

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[20] Council Implementing Decision (EU) 2022/865 of 24 May 2022 authorising the Czech Republic to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 151, 2.6.2022, p. 66).

[21] 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).

[22] 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).

[23] 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).

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 Luxembourg and concerns only this particular Member State.

- **Impact assessment**

The proposal for a Council Implementing Decision aims at continuing for another two years a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 35 000 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[24], there will be no compensation calculation carried out by Luxembourg as of VAT own resource statement for the financial year 2021 onwards.

[24] 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) Under Article 285 of Directive 2006/112/EC, Member States which have not exercised the option under Article 14 of Second Council Directive 67/228/EEC[2] are able to exempt from value added tax ('VAT') taxable persons whose annual turnover is no higher than EUR 5 000, or the equivalent in national currency, and may grant graduated tax relief to taxable persons whose annual turnover exceeds the ceiling fixed by them for its application..

(2) By Council Implementing Decision 2013/677/EU[3], Luxembourg was authorised to introduce a special measure derogating from Article 285 of Directive 2006/112/EC ('the special measure') to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000 until 31 December 2016.

(3) Implementing Decision 2013/677/EU was initially amended by Council Implementing Decision (EU) 2017/319[4], which authorised Luxembourg to exempt from VAT taxable persons whose annual turnover was no higher than EUR 30 000 until 31 December 2019. It was subsequently amended by Council Implementing Decision (EU) 2019/2210[5], authorising Luxembourg to increase the threshold to EUR 35 000 and extend the expiry date of the special measure to 31 December 2022.

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1 OJ L 347, 11.12.2006, p. 1.

2 Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (OJ 71, 14.4.1967, p. 1303).

3 Council Implementing Decision 2013/677/EU of 15 November 2013 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 316, 27.11.2013, p. 33).

4 Council Implementing Decision (EU) 2017/319 of 21 February 2017 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 47, 24.2.2017, p. 7).

5 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).

(4) By letter of 11 March 2022, Luxembourg submitted a request to the Commission for 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[6] which lays down simpler VAT rules for small enterprises. That Directive also allows Member States to exempt taxable persons whose Member State annual turnover does not exceed a threshold of EUR 85 000.

(5) Pursuant to Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Luxembourg to the other Member States, by letter of 7 April 2022. By letter of 8 April 2022, the Commission notified Luxembourg that it had all the information necessary for the appraisal of the request.

(6) The special measure is in line with Directive (EU) 2020/285, which seeks to reduce VAT compliance costs for small enterprises, distortions of competition at both national and Union level, and the negative impact of transition from exemption to taxation (the threshold effect). It also seeks to facilitate compliance by small enterprises as well as monitoring by tax authorities. The threshold of EUR 35 000 is consistent with the new threshold for exemption as laid down by Directive (EU) 2020/285.

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

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

(9) Following the entry into force of Council Regulation (EU, Euratom) 2021/769[7], there will be no compensation calculation carried out by Luxembourg with regard to the VAT own resource statement for the financial year 2021 onwards.

(10) Given the positive impact of the special measure in simplifying VAT-related obligations by reducing the administrative burden and compliance costs for both small enterprises and tax authorities, and the lack of any major impact on the total VAT revenue generated, Luxembourg should be authorised to apply the special measure for a further period.

(11) The authorisation to apply the special measure should be limited in time. The time limit should be sufficient to allow for evaluating the effectiveness and appropriateness of the threshold. 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, and are to apply those provisions from 1 January 2025. It is therefore appropriate to authorise Luxembourg to apply the special measure until 31 December 2024.

(12) Implementing Decision 2013/677/EU should therefore be amended accordingly,

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[6] 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).

[7] 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).

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Implementing Decision 2013/677/EU is replaced by the following:

'*Article 2*

This Decision shall apply from 1 January 2013 until 31 December 2024.'.

Article 2

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels,

For the Council
The President