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Proposal for a

COUNCIL IMPLEMENTING DECISION

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, and repealing Implementing Decision (EU) 2020/647

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Council 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.

Pursuant to Council Implementing Decision 2020/647 of 11 May 2020[2], Italy is currently authorised to apply a special measure derogating from Article 285 of the VAT Directive to exempt from VAT taxable persons whose annual turnover is no higher than EUR 65 000 until 31 December 2024.

By letter registered with the Commission on 29 November 2022, Italy requested an authorisation to increase the threshold of the abovementioned existing measure, from EUR 65 000 to EUR 85 000, from 1 January 2023 to 31 December 2024.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 8 December 2022 of the request made by Italy. By letter dated 9 December 2022, the Commission notified Italy that it had all the information it considered necessary for the appraisal of 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 a special scheme for small enterprises, which includes the possibility to exempt from VAT taxable persons below a certain annual turnover. Taxable persons falling under this exemption do not have to charge VAT on their supplies and, consequently, cannot deduct 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[3]. 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[4], 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.

Italy never made use of the option provided for by Article 14 of Council Directive 67/228/EEC. In 2007, it requested authorisation to derogate from the first paragraph of Article 285, by exempting from VAT taxable persons whose annual turnover was no higher than

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

[2] 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)

[3] 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).

[4] 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).

EUR 30 000. That request was prompted by the Italian economic structure, largely comprised of micro enterprises with a very small number of employees, and Italy's desire to simplify VAT obligations for small businesses and to ease VAT collection for the national tax administration. The derogating measure was authorised until 31 December 2010, by virtue of Council Decision 2008/737/EC[5]. The measure had an optional character, allowing small businesses to opt for the normal VAT arrangements.

Italy was subsequently authorised to extend the expiry date of the derogating measure until 31 December 2013, by Council Implementing Decision 2010/688/EU[6], then until 31 December 2016, by Council Implementing Decision 2013/678/EU[7], which also increased the maximum exemption threshold from EUR 30 000 to EUR 65 000, and subsequently until 31 December 2019, by Council Implementing Decision (EU) 2016/1988[8]. Finally, by Council Implementing Decision (EU) 2020/647, Italy was authorised to continue to apply the derogating measure until 31 December 2024.

The higher threshold requested by Italy can be considered as a measure that will further reduce the administrative burden and compliance costs on businesses eligible for the exemption, 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.

The application of the special measure will enable Italy to focus its control activities towards larger taxable persons and to allocate more resources to the fight against VAT fraud and the enhancement of enforcement of the current VAT system. Moreover, Italy states that the special measure constitutes a significant incentive for the start-ups and consolidation of their economic activity.

The special measure, simplifying the obligations of small operators, is in line with the objectives set out by the European Union for small businesses, as laid out in Commission Communication "Think small first" - A "Small Business Act" for Europe.

The special measure is optional for taxable persons. Therefore, small businesses whose turnover does not exceed the threshold would still have the possibility to exercise their right to apply the normal VAT arrangements.

Italy reported that the number of enterprises existing in Italy according to the declarations submitted in 2020 for the fiscal year 2019 is 5,580,863. Italy stated that only 63,441 out of 229,563 taxable persons whose annual turnover is between EUR 65,001 and EUR 85,000

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5 Council Decision 2008/737/EC of 15 September 2008 authorising the Italian Republic to apply a measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 249, 18.09.2008, p. 13).

6 Council Implementing Decision 2010/688/EU of 15 October 2010 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 294, 12.11.2010, p. 12).

7 Council Implementing Decision 2013/678/EU of 15 November 2013 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 316, 27.11.2013, p. 35).

8 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).

would be able to join the scheme on the basis of the applicable legal conditions. The measure would therefore affect slightly more than 1.1% of the total number of enterprises.

According to estimates provided by Italy, the introduction of the special measure would lead to a decrease in VAT revenue collection of approximately 0.06 % and would therefore have a negligible impact on the overall amount of tax revenue of the Member State collected at the stage of final consumption.

In the light of the above, it is appropriate to authorise Italy to apply the special measure until 31 December 2024.

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

The derogating measure is in line with the philosophy of Directive (EU) 2020/285[9] amending Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises, which resulted from the VAT action plan[10], 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 85 000 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 Article 285 and 287 of the VAT Directive, have been granted to other Member States. The Netherlands[11] and Belgium[12] have been granted a threshold of EUR 25 000; Luxembourg[13] a threshold of EUR 35 000; Poland[14], Latvia[15] and

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9 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).

10 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.

11 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).

12 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).

13 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).

14 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).

15 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).

Estonia[16] have been granted a threshold of EUR 40 000; Hungary[17] a threshold of EUR 48 000; Lithuania[18] a threshold of EUR 55 000; Croatia[19] a threshold of EUR 45 000; Malta[20] a threshold of EUR 30 000; Slovenia[21] a threshold of EUR 50 000; Czechia[22] a threshold of EUR 85 000; and Romania[23] 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 Italy, 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[24], 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[25], which acknowledges that tax compliance costs remain

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16 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).

17 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).

18 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).

19 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).

20 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).

21 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).

22 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).

23 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).

24 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).

25 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).

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 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 Italy and concerns only this particular Member State.

- **Impact assessment**

The proposal for a Council Implementing Decision aims at increasing the current exemption threshold from EUR 65 000 to EUR 85 000. This increase of the threshold is a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 85 000. It will therefore have a positive impact on the reduction of administrative burden for both businesses and the 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.

Currently, based on data available from 2020, the increase in threshold to EUR 85 000 would benefit around 63 441 additional enterprises, leading to a decrease in VAT revenue of approximately 0.06 %.

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 for 2023 onwards is estimated by Italy at approximately EUR 80.8 million (0.06 % of the overall VAT revenue), which can be considered negligible.

- **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[26], there will be no compensation calculation carried out by Italy as of VAT own resource statement for the financial year 2021 onwards.

[26] 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), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Implementing Decision (EU) 2020/647[2], Italy was authorised to apply a special measure derogating from Article 285 of Directive 2006/112/EC to exempt from VAT taxable persons whose annual turnover was no higher than EUR 65 000 until 31 December 2024.

(2) By letter registered with the Commission on 29 November 2022, Italy requested authorisation to apply a measure until 31 December 2024, derogating from Article 285 of Directive 2006/112/EC in order to exempt taxable persons whose annual turnover was no higher than EUR 85 000 from VAT ('the special measure').

(3) By letter dated 8 December 2022, the Commission transmitted Italy's request to the other Member States in accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC. By letter dated 9 December 2022, the Commission notified Italy that it had all the information it considered necessary for the appraisal of the request.

(4) The special measure is in line with the amendments to Directive 2006/112/EC made by Council Directive (EU) 2020/285[3], which seek to reduce the VAT compliance costs for small enterprises and mitigate distortions of competition in the internal market.

(5) The special measure will remain optional for taxable persons as they may still opt for the regular VAT arrangements in accordance with Article 290 of Directive 2006/112/EC.

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

[2] 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).

[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).

(6) According to the information provided by Italy, the special measure will have a negligible effect on the overall amount of tax revenue of Italy collected at the stage of final consumption.

(7) Following the entry into force of Council Regulation (EU, Euratom) 2021/769[4], there is to be no compensation calculation carried out by Italy with regard to the VAT-based own resource statement for the financial year 2021 onwards.

(8) Given the expected positive impact of the special measure in reducing the administrative burden and compliance costs for both small enterprises and the tax authorities, and given the negligible impact on the total VAT revenue generated, Italy should be authorised to apply the special measure.

(9) The authorisation to apply the special measure should be limited in time. The time limit should be sufficient to allow the Commission to evaluate 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(12) of that Directive, and are to apply those provisions from 1 January 2025. It is therefore appropriate to authorise Italy to apply the special measure until 31 December 2024.

(10) Implementing Decision (EU) 2020/647 should therefore be repealed,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 285 of Directive 2006/112/EC, Italy is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 85 000.

Article 2

Implementing Decision (EU) 2020/647 is repealed.

Article 3

This Decision shall take effect on the date of its notification.

It shall apply until 31 December 2024.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council
The President

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[4] 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).