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2022/0383 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision (EU) 2018/1904 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

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive'¹), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce 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 23 August 2022, the Netherlands requested an authorisation to extend a measure derogating from Article 285 of the VAT Directive allowing the exemption from VAT of taxable persons whose annual turnover does not exceed EUR 25 000.

In accordance with Article 395(2) of the VAT Directive, the Commission informed all Member States, except Spain, on 25 August 2022 and Spain on 26 August 2022, of the request made by the Netherlands. By letter dated 29 August 2022 the Commission notified the Netherlands 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 Member States to apply special schemes to small enterprises, including the possibility to exempt taxable persons whose annual turnover does not exceed a certain threshold from VAT. This exemption implies that a taxable person does not have to charge VAT on his supplies and, consequently, cannot deduct VAT on the inputs.

Under the first paragraph of Article 285 of the VAT Directive, Member States which have not exercised the option under Article 14 of the Second Council Directive 67/228/EEC² may exempt from VAT taxable persons whose annual turnover does not exceed EUR 5 000. 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.

The Netherlands were authorised to introduce such a special measure by Council Implementing Decision (EU) 2018/1904. The measure which will end on 31 December 2022 is optional for taxable persons.

In that context, the Netherlands requested an extension of the special measure for two additional years.

The Netherlands indicated that the special measure reduces administrative burden for both taxable persons and the tax authority and that it contributes to the simplification of tax collection. According to the Netherlands, the effect on the State budget of the special measure is around 0,1%. It also indicated that the extension of the special measure would only have a negligible impact on total VAT-revenue collected at the stage of final consumption. Such effects being in line with the requirements of the second subparagraph of Article 395(1) of the VAT Directive.

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).

Furthermore, the extension of the special measure until 31 December 2024 complies with the requirements of 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 which set a maximum VAT turnover threshold for small businesses across the EU as from 1 January 2025.

It is therefore proposed to allow the Netherlands to extend the special measure until 31 December 2024.

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

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. Recently, for example, Slovenia was granted the right to extend the use of a threshold of EUR 50 000³, Poland a threshold of EUR 40 000⁴, Hungary a threshold of EUR 48 000⁵, Belgium a threshold of EUR 25 000⁶, Malta a threshold of EUR 30 000⁷, and Czech Republic was granted a threshold of EUR 85 000⁸.

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 enterprises⁹, which resulted from the VAT action plan¹⁰, 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.

³ 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. 4–5).

⁴ 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. 122–123).

⁵ 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. 148–150).

⁶ 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. 23–24).

⁷ 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. 1–2).

⁸ 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. 66–67).

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.

Moreover, the threshold of EUR 25 000 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).

- **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 Europe¹¹, 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 strategy¹², 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 subsidiarity principle has already been applied at the level of the VAT Directive.

- **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.

¹¹ 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).

¹² 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).

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 the Netherlands 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 for taxable persons whose annual turnover does not exceed EUR 25 000. Taxable persons whose annual turnover does not exceed the threshold are released from many of the general VAT obligations and the administrative burden on them will reduce as a result of this measure as well. It also simplifies tax collection for the Dutch tax authorities.

According to the Netherlands, the extension of the EUR 25 000 threshold will not have any substantial impact on the total tax revenue at the stage of final consumption. Approximately 6% of taxpayers are expected to use the exemption threshold, which corresponds to an impact on the budget of around 0.1%. 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.

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

The special measure introduced by Council Implementing Decision (EU) 2018/1904 had no significant implications on the EU budget because the Netherlands carried out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89. 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 tax¹³, there will be no compensation calculation carried out by the Netherlands as of VAT own resource statement for the financial year 2021 onwards. The proposal for Council Implementing Decision which aims at extending the special measure of Council Implementing Decision (EU) 2018/1904 will not have either any significant implications on the EU budget. The corrections and compensations have historically had a negligible impact on the VAT-based own resource amount. Therefore their removal will not have a significant budgetary implication.

¹³ 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 tax¹, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By Council Implementing Decision (EU) 2018/1904², the Netherlands was authorised to introduce a special measure derogating from Article 285 of Directive 2006/112/EC ('the special measure') to exempt taxable persons whose annual turnover is no higher than EUR 25 000 from VAT.
- (2) Implementing Decision (EU) 2018/1904 is to expire on 31 December 2022. By letter dated 23 August 2022, the Netherlands requested authorisation to continue to apply the special measure, authorised by that Implementing Decision, for a further period until 31 December 2024, the date by which Member States are to transpose Council Directive (EU) 2020/285³. That Directive lays down simpler VAT rules for small enterprises and also allows Member States to exempt taxable persons whose Member State annual turnover does not exceed a threshold of EUR 85 000 or the equivalent in national currency.
- (3) By letter dated 25 August 2022, the Commission transmitted the request made by the Netherlands to the other Member States, except Spain, pursuant to Article 395(2), second subparagraph, of Directive 2006/112/EC. By letter dated 26 August, the Commission transmitted that request to Spain. By letter dated 29 August 2022, the Commission notified the Netherlands that it had all the information necessary for the appraisal of the request.

¹ OJ L 347, 11.12.2006, p. 1.

² Council Implementing Decision 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).

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).

- (4) The special measure is in line with Directive 2006/112/EC, as amended by Directive (EU) 2020/285, which seeks to reduce VAT compliance burden of small enterprises and avoid distortions of competition in the internal market.
- (5) 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.
- (6) According to information provided by the Netherlands, continued application of the special measure will only have a negligible effect on the overall amount of the tax revenue collected at the stage of final consumption.
- (7) Following the entry into force of Council Regulation (EU, Euratom) 2021/769⁴, there is to be no compensation calculation carried out by the Netherlands with regard to the VAT-based own resource statement for the financial year 2021 onwards.
- (8) 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 given a negligible effect on the total VAT revenue generated, it is appropriate to extend the authorisation set out in Implementing Decision (EU) 2018/1904.
- (9) The extension of the authorisation should be limited in time to allow for an evaluation of its 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 the Netherlands to apply the special measure until 31 December 2024.
- (10) Implementing Decision (EU) 2018/1904 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Implementing Decision (EU) 2018/1904 is replaced by the following:

'Article 2

This Decision shall apply from 1 January 2020 until 31 December 2024.'

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels,

*For the Council
The President*

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).