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2018/0335 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

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

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereafter ‘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 22 May 2018, Slovenia requested an authorisation to continue to exempt from VAT taxable persons whose annual turnover is no higher than EUR 50 000. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 25 June 2018 of the request made by Slovenia. By letter dated 26 June 2018, the Commission notified Slovenia 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 cannot deduct the VAT on his input.

Under Article 287(15) 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/EU¹ the Council authorised Slovenia to exempt from VAT taxable persons whose annual turnover is no higher than EUR 50 000. This Decision was prolonged by Council Implementing Decision (EU) 2015/2089² until 31 December 2018. This measure is optional for taxable persons who can always opt for the normal VAT arrangements.

Slovenia has requested an extension of that measure. From the information provided by Slovenia, at the end of 2017, around 48% of VAT registered persons had a taxable turnover below EUR 50 000 and the VAT revenue generated by them represented only 1% of the total VAT revenue of which 0.3% was represented by taxable persons with taxable turnover under 25 000. Additionally the number of taxable persons registered for VAT purposes with a threshold between EUR 25 000 and EUR 50 000 has decreased over the years starting in 2013. This signifies that an increasing number of small businesses make use of the simplification measure.

From information provided by Slovenia, it appears that the impact of the measure on tax VAT revenue collected at the final consumption stage is negligible.

¹ 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).

² 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).

It is therefore proposed to extend the derogation for another limited period until 31 December 2021. The Commission has recently launched a proposal³ modifying Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises. It is thus possible that a directive amending those Articles enters into force and sets a date from which Member States are to apply national provisions to implement it. If this date is set before the derogation expires on 31 December 2021, this Decision should cease to apply.

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

Similar derogations have been granted to other Member States. Luxembourg⁴ was granted a threshold of EUR 30 000, Poland⁵ and Estonia⁶ a threshold of EUR 40 000, Italy⁷ a threshold of EUR 65 000, Croatia⁸ a threshold of EUR 45 000, Latvia⁹ a threshold of EUR 40 000 and Romania¹⁰ a threshold of EUR 88 500.

Derogations from the VAT Directive should always be limited in time so that their effects can be assessed. Moreover, the provisions of Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises are currently subject to review. As announced in the VAT Action Plan¹¹, and the 2017 Commission Work Programme¹², the Commission's proposal on the SMEs scheme¹³ has recently been presented.

It is therefore proposed to grant the derogating measure until 31 December 2021 or until the date from which Member States are to apply any national provisions that they are required to adopt in the event that a directive is adopted amending Articles 281 to 294 of Directive 2006/112/EC.

³ Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises, 18.1.2018, COM(2018) 21 final.

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) 2016/2090 of 21 November 2016 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 324, 30.11.2016, p.7).

⁶ 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).

⁷ 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).

⁸ Council Implementing Decision (EU) 2017/1768 of 25 September 2017 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 250, 28.9.2017, p. 71).

⁹ Council Implementing Decision (EU) 2017/2408 of 18 December 2017 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 342, 21.12.2017, p. 8).

¹⁰ Council Implementing Decision (EU) 2017/1855 of 10 October 2017 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 265, 14.10.2017, p. 19).

¹¹ Communication from the Commission to the European Parliament, the Council and the European and Social Committee on an action plan on VAT, Towards a single EU VAT area – Time to decide, Brussels, 7.4.2016, COM(2016)148 final.

¹² Commission Work Programme 2017 - Delivering a Europe that protects, empowers and defends, Strasbourg, 25.10.2016, COM(2016)710 final

¹³ Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises, 18.1.2018, COM(2018) 21 final.

- **Consistency with other Union policies**

The measure is in line with the Union's objectives for small businesses, as laid down in the Commission Communication "Think small first" – a "Small Business Act" for Europe"¹⁴ which calls on the Member States to take account of the special features of SMEs when designing legislation and, therefore, to simplify the existing regulatory environment.

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 the proposal is based, 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. simplification for an additional number of small taxable persons and for the tax administration.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 395 of Council Directive 2006/112/EC, a derogation from the common VAT rules is only possible upon authorisation of the Council 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**

This proposal is based on a request made by Slovenia and concerns only this 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 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 potential 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.

¹⁴ COM(2008)394 of 25 June 2008.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the EU budget because Slovenia will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89.

5. OTHER ELEMENTS

The proposal includes a sunset clause; an automatic time limit.

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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) Point (15) of Article 287 of Directive 2006/112/EC authorises Slovenia to exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than EUR 25 000.
- (2) By Council Implementing Decision 2013/54/EU², Slovenia was authorised until 31 December 2015 and by way of derogation from point (15) of Article 287 of Directive 2006/112/EC, to exempt from VAT taxable persons whose annual turnover is no higher than EUR 50 000. By Council Implementing Decision (EU) 2015/2089³, the application of Decision 2013/54/EU was extended until 31 December 2018.
- (3) By letter registered with the Commission on 22 May 2018, Slovenia requested an authorisation to continue to exempt from VAT taxable persons whose annual turnover is no higher than EUR 50 000.
- (4) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission transmitted the request of Slovenia to other Member States by letter dated 25 June 2018. By letter dated 26 June 2018, the Commission notified Slovenia that it had all the information necessary to consider the request.
- (5) From the information provided by Slovenia, at the end of 2017 around 48% of VAT registered persons had a taxable turnover below EUR 50 000 and the VAT revenue generated by them represented only 1% of the total VAT revenue of which 0.3% was represented by taxable persons with taxable turnover under 25 000.

¹ OJ 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).

- (6) Given that the higher threshold has resulted in reduced VAT obligations for the small businesses, whilst such businesses may still opt for the regular VAT arrangements in accordance with Article 290 of Directive 2006/112/EC, Slovenia should be authorised to apply the measure for a further limited period until 31 December 2021.
- (7) As Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises are subject to review, it is possible that a directive amending those Articles will enter into force setting a date from which Member States are to apply national provisions before the period of validity of the derogation expires on 31 December 2021. If that happens, this Decision should cease to apply.
- (8) The derogation has no impact on the Union's own resources accruing from VAT because Slovenia is to carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, Euratom) No 1553/89⁴.
- (9) 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 2019 until the earlier of the following two dates:

- (a) 31 December 2021;
- (b) the date from which Member States are to apply any national provisions that they are required to adopt in the event that a directive is adopted amending Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises.'

Article 2

This Decision is addressed to the Republic of Slovenia.

Done at Brussels,

*For the Council
The President*

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).