EUROPEAN
COMMISSION

Brussels, 20.11.2018
COM(2018) 749 final

2018/0387 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision 2013/53/EU authorising the Kingdom of Belgium 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 (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 12 September 2018, Belgium requested an authorisation to continue to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 14 September 2018. By letter dated 17 September 2018, the Commission notified Belgium 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 285 of the VAT Directive, Member States which did not make use of Article 14 of Council Directive 67/228/EEC[1], can exempt taxable persons whose threshold is no higher than EUR 5 000. As Belgium did not make use of this option, this resulted in the application of a particularly low threshold which in 2012 corresponded to EUR 5 580.

At the request of Belgium, by Council Implementing Decision 2013/53/EU[2] the Council authorised Belgium to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000 until 31 December 2015. This decision was prolonged until 31 December 2018 by Council Implementing Decision (EU) 2015/2348[3].

Belgium requested an extension of that measure for another limited period. Belgium indicated that the special measure reduces administrative burden for taxable persons and for tax authorities. 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 Belgium, at the end of 2017 around 142 000 taxpayers, being 15% of all registered taxpayers made use of the special measure. The impact of the special measure on VAT revenues remains negligible.

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1 OJ 71, 14.4.1967, p. 1303/67.

2 Council Implementing Decision 2013/53/EU of 22 January 2013 authorising the Kingdom of Belgium to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax, OJ L 22, 25.1.2013, p. 13–14.

3 Council Implementing Decision (EU) 2015/2348 of 10 December 2015 amending Implementing Decision 2013/53/EU authorising the Kingdom of Belgium to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax, OJ L 330, 16.12.2015, p. 51–52.

Given a potential positive impact on the reduction of administrative burden for businesses and tax administration without a major impact on the total VAT revenue, it is proposed to extend the derogation for another limited period, until 31 December 2021.

The Commission has recently launched a proposal[4] 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. Luxembourg[5] was granted a threshold of EUR 30 000, Estonia[6] a threshold of EUR 40 000, Italy[7] a threshold of EUR 65 000, Croatia[8] a threshold of EUR 45 000, Latvia[9] a threshold of EUR 40 000 and Romania[10] 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 Plan[11], and the 2017 Commission Work Programme[12], the Commission's proposal on the SMEs scheme[13] 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.

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4. 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.
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) 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 Economic 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 Belgium 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 25 000 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 Belgium will carry out a compensation calculation in accordance with Article 6(1) 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 tax[1], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Implementing Decision 2013/53/EU[2] the Kingdom of Belgium was authorised to apply until 31 December 2015 a special measure to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000. This authorisation was subsequently extended until 31 December 2018 by Council Implementing Decision (EU) 2015/2348[3].

(2) By letter registered with the Commission on 12 September 2018, Belgium requested a further extension of the special measure for a limited period.

(3) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letter dated 14 September 2018, of the request made by Belgium. By letter dated 17 September 2018, the Commission notified Belgium that it had all the information necessary to consider the request.

(4) According to Belgium the special measure reduces the administrative burden and compliance costs for small enterprises and for tax authorities and therefore it contributes to the simplification of tax collection, as set out in Article 395(1) of Directive 2006/112EC. The measure is and will remain entirely optional for taxable persons.

(5) Given the potential positive impact on the reduction of the administrative burden and compliance costs for small businesses and for the tax administration, without any major impact on the total VAT revenue to be generated, it is proposed to extend the special measure for another limited period, until 31 December 2021.

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

[2] Council Implementing Decision 2013/53/EU of 22 January 2013 authorising the Kingdom of Belgium to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax, (OJ L 22, 25.1.2013, p. 13).

[3] Council Implementing Decision (EU) 2015/2348 of 10 December 2015 amending Implementing Decision 2013/53/EU authorising the Kingdom of Belgium to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax, (OJ L 330, 16.12.2015, p. 51).

(6) 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.

(7) The derogation has no impact on the Union's own resources accruing from VAT because Belgium is to carry out a compensation calculation in accordance with Article 6(1) of Council Regulation (EEC, Euratom) No 1553/89[4].

(8) Decision 2013/53/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Implementing Decision 2013/53/EU is replaced by the following:

'*Article 2*

This Decision shall apply from 1 January 2013 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 shall apply from 1 January 2019.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels,

For the Council
The President

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[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).