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PROPOSAL

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date of receipt:	17 November 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 728 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION authorising the Netherlands to introduce a special measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax

Delegations will find attached document COM(2020) 728 final.

Encl.: COM(2020) 728 final

EUROPEAN
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Brussels, 30.9.2020
COM(2020) 617 final

2020/0281 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision (EU) 2018/279 authorising Malta to apply 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 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 5 June, Malta requested an authorisation to continue to apply, until 31 December 2024, a measure derogating from Article 287 of the VAT Directive, allowing Malta to exempt from VAT taxable persons whose annual turnover is no higher than EUR 20 000.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 12 June 2020 of the request made by Malta. The Commission notified Malta by letter dated 15 June 2020 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 or she cannot deduct the VAT on his inputs.

Under Article 287 of the VAT Directive, particular Member States which acceded after 1 January 1978 may exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of the amounts at the conversion rate on the day of their accession as specified in that provision. Malta started applying the EUR on 1 January 2008.

Under point 13 of Article 287 of Directive 2006/112/EC, Malta may exempt from VAT three categories of taxable persons: taxable persons whose annual turnover is no higher than EUR 37 000 if the economic activity consists principally in the supply of goods; EUR 24 300 if the economic activity consists principally in the supply of services with a low value added (high inputs); and EUR 14 600 in other cases, namely supplies of services with a high value added (low inputs).

Since its accession, Malta has made use of this provision to assist small businesses and to encourage new businesses to start operating. This has proved to be a useful simplification measure as it removes many of the VAT obligations for businesses operating below certain annual turnovers, which reduced the operating costs of these businesses. At the same time, the effect on revenue was insignificant. The Maltese government is committed to continue to apply measures to simplify the obligations of small operators, in line with the European

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

Union's objectives for small businesses, as laid out in the Commission Communication "Think small first" - a "Small Business Act" for Europe"[2].

For this purpose, with Implementing Decision (EU) 2018/279[3] Malta was authorised to increase the threshold for the category with the lowest turnover, that is EUR 14 600, to EUR 20 000 until 30 December 2020. Malta requested to prolong the application of this measure until 2024.

The adoption and subsequent transposition of this special measure to domestic law on 1 July 2018 led to over 1262 small enterprises benefitting from the increased threshold for annual turnover under such relative category of the simplification scheme for SMEs.

The special measure has reduced significantly the administrative burden and costs for the substantial amount of Maltese small enterprises indicated above. Moreover, the application of the special measure has enabled Malta to allocate more resources to the fight against VAT fraud and the enhancement of enforcement of the current VAT system.

The derogation measure, simplifying the obligations of small operators, is in line with the objectives set out by the European Union for small businesses.

It is therefore appropriate to authorise Malta to apply the derogating measure until 31 December 2024.

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

The derogating measure is in line with the philosophy of Council Directive (EU) 2020/285[4] amending Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises, which resulted from the VAT action plan[5], 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 20 000 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

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2 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "Think Small First" - A "Small Business Act" for Europe, Brussels, 25.6.2008, COM(2008)394 of 25 June 2008.

3 Council Implementing Decision (EU) 2018/279 of 20 February 2018 authorising Malta to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 54, 24.2.2018, p. 14–15).

4 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).

5 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.

granted to other Member States. The Netherlands[6] has been granted a threshold of EUR 25 000; Italy[7] a threshold of EUR 30 000; Luxembourg[8] a threshold of EUR 35 000; Latvia[9], Poland[10] and Estonia[11] have been granted a threshold of EUR 40 000; Croatia[12] and Lithuania[13] a threshold of EUR 45 000; Hungary[14] a threshold of EUR 48 000; Slovenia[15] a threshold of EUR 50 000; and Romania[16] a threshold of EUR 88 500.

As already mentioned, derogations from the VAT Directive should always be limited in time so that their effects can be assessed. The inclusion of an expiry date of the special measure until 31 December 2024, as requested by Malta, is aligned with the requirements of Directive (EU) 2020/285 on simpler VAT rules for small and medium-sized enterprises. 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 its annual work programmes. In this regard, the 2020 Commission Work

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6 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).

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.11-12).

8 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).

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) 2018/1919 of 4 December 2018 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 311, 7.12.2018, p. 32).

11 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)

12 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).

13 Council Implementing Decision (EU) 2017/1853 of 10 October 2017 amending Implementing Decision 2011/335/EU authorising the Republic of Lithuania to apply a 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. 15).

14 Council Implementing Decision (EU) 2018/1490 of 2 October 2018 authorising Hungary to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 252, 8.10.2018, p.38).

15 Council Implementing Decision (EU) 2018/1700 of 6 November 2018 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 285, 13.11.2018, p. 78).

16 COM (2020) 292: Proposal for a COUNCIL IMPLEMENTING DECISION 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

Programme[17] refers to “a dedicated SME Strategy that will make it easier for small and medium-sized businesses to operate, scale up and expand”. The derogating measure is in line with such objectives, as far as fiscal rules are concerned. It is notably consistent with the 2017 Commission Work Programme[18], which referred specifically to VAT, pointing out that the administrative burden of VAT compliance for small businesses is high and that technical innovations pose new challenges for effective tax collection, and stressed the need to simplify VAT for smaller companies.

Likewise, the measure is consistent with the 2015 single market strategy[19], where the Commission set out to help small and medium-sized businesses grow, inter alia by reducing the administrative burdens that prevent them from taking full advantage of the single market. It also follows the philosophy of the 2013 Commission Communication ‘Entrepreneurship 2020 Action Plan: Reigniting the entrepreneurial spirit in Europe’[20], which underlined the need to simplify tax legislation for small businesses.

Finally, the measure is in line with EU policies on small and medium-sized enterprises, as set out in the 2016 Start-Up Communication[21], and the 2008 Communication ‘”Thinks small first” – a “Small Business Act” for Europe’[22] which called on the Member States to take account of the special features of SMEs when designing legislation and 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 it is based, the proposal falls under the exclusive competence of the European Union. Hence, the subsidiarity principle does not apply.

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[17] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Commission Work Programme 2020 – A Union that strives for more (COM(2020) 37 final).

[18] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Commission Work Programme 2017 (COM(2016) 710 final).

[19] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions upgrading the Single Market: more opportunities for people and businesses (COM(2015) 550 final).

[20] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Entrepreneurship 2020 Action Plan: Reigniting the entrepreneurial spirit in Europe (COM(2012) 795 final).

[21] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Europe’s Next Leaders: The Start-Up and Scale-Up Initiative (COM(2016) 733 final).

[22] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Think Small First’ A ‘Small Business Act’ for Europe (COM(2008) 394 final).

- **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 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.

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 Malta and concerns only this particular Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for a Council Implementing Decision increases the threshold of annual turnover below which taxable persons may be exempted from VAT. It therefore extends the scope of the simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 20 000.

Persons whose taxable turnover does not exceed the threshold will not have to register to be identified for VAT purposes, and thus the administrative burden on them will reduce as a result of the measure, since they will not need to keep VAT records or submit a VAT return. There will also be a reduction in the workload for the tax authorities. This will have a potential positive impact on the reduction of administrative burden for taxable persons currently registered for VAT in Malta, and subsequently on tax administration.

The budgetary impact in terms of VAT revenue for Malta has not led to the reduction of the national revenue budget.

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

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

2020/0281 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision (EU) 2018/279 authorising Malta to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax

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) Pursuant to Article 287, point (13), of Directive 2006/112/EC, Malta may exempt from value added tax ('VAT') three categories of taxable persons: those whose annual turnover is no higher than EUR 37 000, if the economic activity consists principally in the supply of goods; EUR 24 300 if the economic activity consists principally in the supply of services with a low value added (high inputs), and EUR 14 600 in other cases, namely supplies of services with a high value added (low inputs).

(2) By Council Implementing Decision (EU) 2018/279[2] Malta was authorised to introduce a special measure derogating from Article 287 of Directive 2006/112/EC ('the derogating measure') to exempt from VAT taxable persons whose economic activity consists principally in supplies of services with a high value added (low inputs) and whose annual turnover is no higher than EUR 20 000, until 31 December 2020, or until the entry into force of a directive amending Articles 281 to 294 of Directive 2006/112/EC, whichever date is earlier.

(3) By letter registered with the Commission on 5 June 2020, Malta requested an authorisation to continue to apply the derogating measure until 31 December 2024, being the date by which Member States are to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive (EU) 2020/285[3],

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

[2] Council Implementing Decision (EU) 2018/279 of 20 February 2018 authorising Malta to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 54, 24.2.2018, p. 14).

[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).

which lays down simpler VAT rules for small enterprises and *inter alia* deletes Article 287 of Directive 2006/112/EC.

(4) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 12 June 2020 of the request made by Malta. The Commission notified Malta by letter dated 15 June 2020 that it had all the information necessary to consider the request.

(5) Given that the derogating measure has resulted in reduced VAT obligations and thus a reduction in the administrative burdens and costs for small enterprises, Malta should be authorised to continue applying the derogating measure.

(6) The authorisation to apply the derogating measure should be limited in time. The time limit should be sufficient to allow the effectiveness and appropriateness of the threshold to be evaluated. Moreover, Article 287 of Directive 2006/112/EC is deleted by Directive (EU) 2020/285 with effect from 1 January 2025. It is therefore appropriate to authorise Malta to apply the derogating measure until 31 December 2024.

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

(8) Implementing Decision (EU) 2018/279 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Implementing Decision (EU) 2018/279, the second paragraph is replaced by the following:

‘It shall apply from 1 January 2018 until 31 December 2024.’

Article 2

This Decision is addressed to Republic of Malta.

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).