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NOTE

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| From: | Presidency |
| To: | Council |
| No. prev. doc.: | 13373/19 FISC 405 ECOFIN 929 |
| Subject: | 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 – Political agreement |

I. INTRODUCTION

1. On 18 January 2018, the Commission tabled the legislative proposal for a Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises.¹
2. In the view of the Commission, the revision of rules applicable to small enterprises would be useful for the following three main reasons:
 - i) despite the fact that Member States may exempt small enterprises from VAT (an option that is widely used), such enterprises continue to suffer from disproportionate VAT compliance costs due to how the exemption for small enterprises is designed;
 - ii) the current system has distortive effects on competition on both domestic and EU markets;

¹ Doc. 5334/18.

iii) the review provides the opportunity to encourage voluntary compliance and therefore help reduce revenue losses due to non-compliance and VAT fraud.

3. The proposal consisted of:

i) revision of the rules on VAT exemption for small enterprises and

ii) simplification of VAT obligations for both exempt and non-exempt small enterprises.

4. The opinion of the European Economic and Social Committee was issued on 23 May 2018². The opinion of the European Parliament was issued on 11 September 2018.³

5. During the negotiations on this dossier at WPTQ level it became apparent that "appropriate balance will have to be obtained by providing a fair and proportionate simplification of VAT obligations for small enterprises, while ensuring that appropriate measures of administrative co-operation (including IT solutions) between tax authorities of Member States are in place, so that the modified scheme for small enterprises is applied correctly, and does not lead to weakened tax control and increase of risks of VAT fraud/evasion."⁴ With this objective in mind, amendments to the Regulation (EU) No. 904/2010 on administrative co-operation in the field of VAT were deemed to be necessary as well.

II. STATE OF PLAY

6. Following the preparatory work done during Bulgarian, Austrian and Romanian Presidency terms, the Finnish Presidency has continued technical work on this dossier, in order to address the concerns raised by Member States on the original Commission proposal.

² OJ C 283, 10.8.2018, p. 35.

³ P8_TA(2018)0319.

⁴ See doc. 15082/18 (ECOFIN report to European Council on tax issues under AT Presidency), point 99.

7. At the meeting of the Committee of Permanent Representatives (Part 2) on 30 October 2019, most delegations could support the Presidency compromise text that was tabled for discussion⁵. However, unanimous support on that compromise text could not yet be obtained, due to two outstanding issues, which are explained in Part III of this note.

III. KEY ISSUES

a) National and Union annual turnover thresholds for application of VAT exemption, opening of an exemption to tax payers established in another MS
(draft Art. 284 of the VAT Directive)

8. There still is no unanimous agreement on the level of the national and Union annual turnover thresholds for application of VAT exemption for small enterprises.
9. The Presidency compromise text provides that the national annual turnover threshold until which supplies made by a taxable person in a Member State of its establishment may be exempt from VAT by that Member State is set at 85 000 EUR.
10. The compromise text foresees that, under certain conditions, Member States, which allow VAT exemption to small enterprises established in their territory, would have to be obliged to apply such exemption to supplies made in their territory by taxable persons established in other Member States. One of the conditions is that the Union annual turnover of such taxable person should not exceed 100 000 EUR.

⁵ Doc. 13373/19 FISC 405 ECOFIN 929 LIMITE.

11. A large number of delegations insisted that these thresholds should not be higher, and the Presidency reflected this in the attached compromise text. However, at the meeting of the Committee of Permanent Representatives (Part 2) on 30 October 2019 some delegations indicated their preference for the national and EU turnover thresholds to be set at 100 000 EUR and 115 000 EUR and were not in a position to support the compromise text at that meeting.

b) Rules applicable in case of one-off excess of the turnover thresholds (*draft Art. 288a(1) of the VAT Directive*)

12. At the meeting of the Committee of Permanent Representatives (Part 2) on 30 October two delegations have indicated that the draft legislative act is not yet ready for approval, because, in their view, the draft rules would place disproportionate compliance and administrative burden on small enterprises and tax authorities.
13. Following further bilateral contacts, the Presidency noted that the concerns of these two Member States could possibly be addressed by modifying draft Article 288a(1) of the VAT Directive.
14. The draft text of Article 288a(1), second and third subparagraph, contains a rule specifying that a small enterprise can continue to benefit from the VAT exemption in case of a limited one-off excess of the turnover threshold. On the basis of bilateral contacts the Presidency has drafted an alternative text for Article 288a(1), which would provide Member States with an option not to apply this rule. The Member State which would use this option could cease the application of the exemption either immediately when the turnover threshold is exceeded or from the end of the year during which that turnover threshold was exceeded.
15. The alternative text of Article 288a(1) is set out in Annex II to this note. This text could help in building the final compromise on this dossier.

IV. WAY FORWARD

16. Against this background, the Presidency is of the view that the text of the draft Directive set out in the Annex I to this note continues to strike the right balance between a number of diverging concerns and provides a good basis for further progress in these negotiations. The Presidency hopes that the remaining reserves could be lifted and the key issues set out in Part III of this note will be resolved by the Council, in the spirit of compromise. If this is not the case, the Presidency would be ready to ask the Ministers to accept the Presidency compromise text with the alternative wording of Article 288a(1), which is set out in Annex II to this note.
17. The Council is invited to:
- resolve the key issues set out in Part III of this note;
 - reach a political agreement on the draft Directive, on the basis of the Presidency compromise text, set out in the Annex I to this note, with a view to adopting the Directive, subject to legal-linguistic revision.
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DRAFT

COUNCIL DIRECTIVE

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament⁶,

Having regard to the opinion of the European Economic and Social Committee⁷,

Acting in accordance with a special legislative procedure,

Whereas:

⁶ OJ C , , p. .

⁷ OJ C , , p. .

- (1) Council Directive 2006/112/EC⁸ allows Member States to continue to apply their special schemes to small enterprises in accordance with common provisions and with a view to closer harmonisation. However, those provisions are outdated and do not reduce the compliance burden of small enterprises as they were designed for a common system of value added tax (VAT) based on taxation in the Member State of origin.
- (2) In its VAT action plan⁹, the Commission announced a comprehensive simplification package for small enterprises aimed at reducing their administrative burden and helping create a fiscal environment to facilitate their growth and the development of crossborder trade. This would entail a review of the special scheme for small enterprises as outlined in the Communication on the follow-up to the action plan on VAT¹⁰. The review of the special scheme for small enterprises therefore constitutes an important element of the reform package set out in the VAT action plan.
- (3) In order to address the issue of the disproportionate compliance burden faced by exempt small enterprises, certain simplification measures should also be available to them.
- (4) The special scheme for small enterprises currently only allows for an exemption to be granted to enterprises established in the Member State in which the VAT is due. This has a negative impact on competition for non-established enterprises in the single market. To address this and to avoid further distortions, small enterprises established in Member States other than that in which the VAT is due should also be allowed to benefit from the exemption.

⁸ OJ L 347, 11.12.2006, p. 1.

⁹ 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 of 7.4.2016).

¹⁰ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the follow-up to the Action Plan on VAT — Towards a single EU VAT area — Time to act (COM(2017) 566 final of 4.10.2017).

- (5) Where a taxable person is subject to the regular VAT regime in its Member State of establishment but avails itself of the VAT exemption for small enterprises in another Member State, the input tax deduction should reflect a connection to taxed supplies of the taxable person. Therefore, where such taxable persons procure inputs in their Member State of establishment which are connected to exempt supplies in other Member States, no input VAT deduction should be possible in so far as those inputs are linked to exempt supplies.
- (6) Small enterprises may only benefit from the exemption where their annual turnover is below the threshold applied by the Member State in which the VAT is due. In setting their threshold, Member States should abide by the rules on thresholds laid down by Directive 2006/112/EC. Those rules, most of which were put in place in 1977, are no longer suitable.
- (7) For the purposes of simplification, a number of Member States have been authorised to apply a threshold higher than that authorised under Directive 2006/112/EC on a temporary basis. As it is not appropriate to continue modifying general rules using measures granted by way of derogation, the rules on thresholds should be updated.
- (8) Member States should be able to set their national threshold for the exemption at the level that suits their economic and political conditions best, subject to the upper threshold provided for under this Directive. In this regard, it should be clarified that where Member States apply varying thresholds for different business sectors, this would need to be based on objective criteria. Where a taxable person is eligible to benefit from more than one sectoral threshold, Member States should ensure that the taxable person can only use one of those thresholds. They should also ensure that their thresholds do not differentiate between the established and non-established taxable persons.

- (9) The annual turnover threshold, which is the basis for the exemption under this special scheme, consists only of the combined value of the supplies of goods and services made by a small enterprise in the Member State where the exemption is granted. Distortions of competition could arise where an enterprise, not established in that Member State, could benefit from such an exemption regardless of the turnover it generates in other Member States. In order to mitigate such distortions in competition and as a tax revenue safeguard, only those enterprises whose Union annual turnover is below a certain threshold should be eligible for exemption in a Member State where they are not established. Enterprises whose turnover in the Member State in which they are established is below the national threshold should be able to continue to make exempt supplies in that Member State irrespective of the turnover they generate in other Member States, even if their overall turnover exceeds the Union threshold.
- (10) In order to allow an effective control of the application of the exemption and to ensure that Member States have access to the necessary information, a taxable person wanting to avail himself of the exemption in a Member State in which he is not established should be required to give prior notification to the Member State in which he is established. For the reasons of simplification and reduction of compliance costs, such a person should be identified by an individual number in the Member State of establishment only. This number may be, but would not necessarily need to be the VAT number.
- (11) In order to ensure proper functioning of the exemption, its monitoring and timely transmission of information, reporting obligations for a taxable person availing himself of the exemption in a Member State in which he is not established, should be clearly set out. This should enable compliant taxable persons to be released from such obligations and from the registration obligation in Member States other than the Member State of establishment. Member States should however, be able to require that, where such non-established taxable persons do not comply with reporting obligations set out specifically for them, they must meet the general VAT registration and reporting obligations as set out in national VAT laws

- (12) In order to avoid inconsistencies in the calculation of the Member State annual turnover serving as a reference for applying the exemption, and of the Union annual turnover, the elements of turnover to be taken into account should be specified.
- (13) In order to prevent circumvention of the rules regarding the exemption for small enterprises and to preserve the purpose of that exemption, a taxable person, whether or not established in the Member State granting the exemption, should not be able to benefit from the exemption if the national threshold laid down therein was exceeded in the preceding calendar year. For the same reasons, a taxable person not established in the Member State granting the exemption should not be able to benefit from the exemption where the Union annual turnover threshold was exceeded in the preceding calendar year.
- (14) In order to ensure a gradual transition of small enterprises from the exemption to taxation taxable persons should be allowed to continue benefitting from the exemption for a limited period of time if their turnover does not exceed the national exemption threshold by more than a set percentage of that threshold. As the level of thresholds applied may diverge, Member States should be able to choose to apply one of the two proposed percentages as long as the application of the percentage does not result in exempt taxable person's turnover exceeding a certain fixed amount. Where, during a calendar year, the Union annual turnover threshold is exceeded, it is necessary in view of the threshold's function as a revenue safeguard for the exemption to cease to apply as of that time.

- (15) Where an exemption applies, small enterprises availing themselves of the exemption in the Member State of establishment should, at a minimum, have access to a VAT registration procedure within a given time frame. It should be possible for Member States to extend this time frame in specific cases where in-depth checks are required to prevent tax evasion or avoidance.
- (16) Small enterprises availing themselves of the exemption in the Member State of establishment should, at a minimum, have access to simplified reporting obligations.
- (17) In addition to granting an exemption from VAT, the special schemes also allow for graduated tax relief. Graduated tax relief is a source of complexity and contributes little to reducing the compliance burden of small enterprises. This measure should therefore be removed.
- (18) Member States should be able to give taxable persons the right to choose between the general VAT regime and the special scheme for small enterprises. If the taxable person exercises that right, it is appropriate to leave it for Member States to lay down the detailed rules and conditions for exercising that choice.
- (19) This Directive should not entail new registration or reporting obligations for small enterprises that avail themselves of the exemption only in a Member State where they are established.
- (20) The objective of this Directive is to reduce the compliance burden of small enterprises, which cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level. As a result, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in Article 5, this Directive does not go beyond what is necessary in order to achieve these objectives.

- (21) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (22) In order to ensure that the simplifications set out in Council Directive 2006/112/EC¹² as regards special scheme for small enterprises can be monitored properly, it is necessary to amend Regulation (EU) No 904/2010¹³ so that the relevant competent authorities of the Member States have automated access to the data collected from taxable persons benefiting from the VAT exemption for small enterprises.
- (23) In order to provide small enterprises an easy access to the provisions concerning the special scheme for small enterprises in each Member State, those provisions should be published on the website of the Commission.
- (24) Directive 2006/112/EC and Regulation (EU) No 904/2010 should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

¹¹ OJ C 369, 17.12.2011, p. 14.

¹² Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1)

¹³ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p.1).

Article 1

Directive 2006/112/EC is amended as follows:

(1) in Article 2(1)(b), point (i) is replaced by the following:

'(i) a taxable person acting as such, or a non-taxable legal person, where the vendor is a taxable person acting as such who is not eligible for the exemption for small enterprises provided for in Article 284 and who is not covered by Articles 33 or 36;';

(2) Article 139 is amended as follows:

(a) the first subparagraph of paragraph 1 is replaced by the following:

'The exemption provided for in Article 138(1) shall not apply to the supply of goods carried out by taxable persons who within the Member State in which the supply is carried out are covered by the exemption for small enterprises provided for in Article 284.';

(b) paragraph 2 is replaced by the following:

'2. The exemption provided for in Article 138(2)(b) shall not apply to the supply of products subject to excise duty by taxable persons who within the Member State in which the supply is carried out are covered by the exemption for small enterprises provided for in Article 284.';

(3) Article 167a is amended as follows:

(a) the second paragraph is replaced by the following:

'Member States which apply the optional scheme referred to in the first paragraph shall set a threshold for taxable persons using the scheme within their territory, based on the annual turnover of the taxable person calculated in accordance with Article 288. That threshold may not be higher than EUR 2 000 000 or the equivalent in national currency.';

(b) the third paragraph is deleted;

(4) Article 169, point (a) is replaced by the following:

'(a) transactions other than those exempt under Article 284 relating to the activities referred to in the second subparagraph of Article 9(1), carried out outside the Member State in which that tax is due or paid, in respect of which VAT would be deductible if they had been carried out within that Member State;';

(5) in Article 220a(1), the following point (c) is added:

'(c) where the taxable person is benefitting from the exemption for small enterprises provided for in Article 284.';

(6) in Article 270, point (a) is replaced by the following:

'(a) the total annual value, exclusive of VAT, of their supplies of goods and services does not exceed by more than EUR 35 000, or the equivalent in national currency, the amount of the annual turnover which is used as a reference for taxable persons covered by the exemption for small enterprises provided for in Article 284;';

(7) in Article 272(1), point (d) is deleted;

(8) in Title XII, Chapter 1, the following Section -1 is inserted:

'Section -1

Definition

Article 280a

For the purposes of this Chapter, the following definitions shall apply:

- (1) 'Member State annual turnover' means the total annual value of supplies of goods and services, exclusive of VAT, made by a taxable person within that Member State during a calendar year;
- (2) 'Union annual turnover' means the total annual value of supplies of goods and services, exclusive of VAT, made by a taxable person within the territory of the Community during a calendar year.;

(9) the heading of Section 2 of CHAPTER 1 of TITLE XII is replaced by the following:

'Exemptions';

(10) Article 282 is replaced by the following:

'Article 282

The exemptions provided for in this Section shall apply to the supply of goods and services by small enterprises.';

(11) in Article 283(1), point (c) is deleted;

(12) Article 284 is replaced by the following:

'Article 284

1. Member States may exempt the supply of goods and services made within their territory by taxable persons established in that territory whose Member State annual turnover, attributable to such supplies, does not exceed a threshold fixed by those Member States for the application of this exemption. This threshold shall be no higher than EUR 85 000 or the equivalent in national currency.

Member States may fix varying thresholds for different business sectors based on objective criteria. However, none of those thresholds shall exceed the threshold of EUR 85 000 or the equivalent in national currency.

Member States shall ensure that a taxable person eligible to benefit from more than one sectoral threshold can only use one of those thresholds.

Thresholds set by a Member State shall not differentiate between taxable persons who are established and those who are not established in that Member State.

2. Member States that have put in place the exemption for taxable persons under paragraph 1 shall also grant that exemption to the supplies of goods and services in their own territory made by taxable persons established in another Member State, provided that the following conditions are fulfilled:
 - (a) the Union annual turnover of that taxable person does not exceed EUR 100 000;
 - (b) the value of the supplies in the Member State where the taxable person is not established does not exceed the threshold applicable in that Member State for the granting of the exemption to taxable persons established in that Member State.

3. Notwithstanding Article 294b, in order for a taxable person to avail himself of the exemption in a Member State in which he is not established, the taxable person shall:
 - (a) give prior notification to the Member State in which he is established, and
 - (b) be identified for the application of the exemption by an individual number in the Member State of establishment only.

Member States may use the individual VAT identification number already allocated to the taxable person in respect of his obligations under the internal system or apply the structure of a VAT number or any other number for the purpose of the identification referred to in point (b) of the first subparagraph.

The individual identification number referred to in point (b) of the first subparagraph shall have the suffix “EX”, or the number shall be added such a suffix.

4. The taxable person shall inform the Member State of establishment in advance, by means of an update to a prior notification, of any changes to the information previously provided in accordance with the first subparagraph of paragraph 3, including the intention to avail himself of the exemption in a Member State or Member States other than the ones indicated in the prior notification and the decision to cease applying the exemption scheme in a Member State or Member States in which he is not established.

The cessation shall be effective as of the first day of the next calendar quarter following the receipt of the information from the taxable person or, where such information is received during the last month of a calendar quarter, as of the first day of the second month of the next calendar quarter.

5. The exemption shall apply as regards the Member State in which the taxable person is not established and where he intends to avail himself of the exemption according to:
 - a) a prior notification, from the date of informing the taxable person of the individual identification number by the Member State of establishment; or
 - b) an update to a prior notification, from the date of confirming the number to the taxable person in consequence of his update by the Member State of establishment.

The date referred to in the first subparagraph shall be no later than 35 working days following the receipt of the notification or the update by the taxable person in accordance with the first subparagraph of paragraph 3 and with paragraph 4 except in specific cases where in order to prevent tax evasion or avoidance Member States may require additional time to carry out the necessary checks.

6. The corresponding value in national currency of the amount referred to in this Article shall be calculated by applying the exchange rate published by the European Central Bank on 18 January 2018.

(12a) the following Articles 284a to 284e are added:

Article 284a

1. The prior notification referred to in point (a) of the first subparagraph of Article 284(3) shall contain at least the following information:
 - (a) the name, activity, legal form and address of the taxable person;
 - (b) the Member State or Member States in which the taxable person intends to avail himself of the exemption;
 - (c) the total value of supplies of goods and/or services carried out in the Member State in which the taxable person is established and in each of the other Member States during the previous calendar year;
 - (d) the total value of supplies of goods and/or services carried out in the Member State in which the taxable person is established and in each of the other Member States during the current calendar year prior to the notification.

The information referred to in point (c) of the first subparagraph has to be given for each previous calendar year belonging to the period referred to in the first subparagraph of Article 288a(1) as regards any Member State who applies the option stipulated therein.

2. Where the taxable person informs the Member State of establishment in accordance with Article 284(4) that he intends to avail himself of the exemption in a Member State or Member States other than the ones indicated in the prior notification, he is not obliged to give information referred to in paragraph 1 in so far as this information has already been included in reports previously submitted under Article 284b.

The update referred to in the first subparagraph shall include the individual identification number referred to in Article 284(3)(b).

'Article 284b

1. A taxable person availing himself of the exemption provided for in paragraph 1 of Article 284 in a Member State in which he is not established in accordance with the procedure under paragraphs 3 and 4 of that Article shall report for each calendar quarter to the Member State of establishment the following information, including the individual identification number allocated to him:
 - (a) the total value of supplies carried out during the calendar quarter in the Member State in which he is established or “0” if no supplies have been made;
 - (b) the total value of supplies carried out during the calendar quarter in each of the Member States other than that in which he is established or “0” if no supplies have been made;
2. The taxable person shall communicate the information set out in paragraph 1 within one month from the end of the calendar quarter.

3. When the Union annual turnover threshold referred to in Article 284(2)(a) is exceeded, the taxable person shall inform the Member State of establishment within 15 working days. At the same time, the taxable person shall be required to report the value of the supplies referred to in points (a) and (b) of paragraph 1 that have been made from the beginning of the current calendar quarter up until the date the Union annual turnover threshold was exceeded.

Article 284c

1. For the purposes of Article 284a(1)(c) and (d) and Article 284b(1)(a) and (b) the following shall apply:
 - a) the values shall consist of the amounts listed in Article 288;
 - b) the values shall be denominated in euro;
 - c) where the Member State granting the exemption applies varying thresholds as referred to in the second subparagraph of Article 284(1), the taxable person shall be obliged in respect of that Member State to report separately the total value of supplies of goods and/or services as regards each threshold that may be applicable.

For to purposes of point (b) of the first subparagraph, Member States which have not adopted the euro may require the values to be expressed in their national currencies. If the supplies have been made in other currencies, the taxable person shall use the exchange rate applying on the first day of the calendar year. The conversion shall be made by applying the exchange rate published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.

2. The Member State of establishment may require the information referred to in Article 284(3) and (4) and the information referred to in Article 284b(1) and (3) to be submitted by electronic means, in accordance with conditions that it lays down.

Article 284d

1. A taxable person availing himself of the exemption in a Member State in which he is not established shall not be required in respect of the supplies covered by the exemption in that Member State:
 - (a) to be registered for VAT purposes pursuant to Articles 213 and 214;
 - (b) to submit a VAT return pursuant to Article 250.
2. A taxable person availing himself of the exemption in the Member State of establishment and in any Member State in which he is not established shall not be required in respect of the supplies covered by the exemption in the Member State of establishment to submit a VAT return pursuant to Article 250.
3. In derogation to paragraph 1 and 2, where a taxable person fails to comply with the rules provided for in Article 284b, Member States may require such a taxable person to fulfil VAT obligations such as those referred to in paragraph 1.

Article 284e

The Member State in which the taxable person is established shall without delay either deactivate the identification number referred to in Article 284(3)(b) or, if the taxable person continues to avail himself of the exemption in another Member State or other Member States, adapt the information received pursuant to Article 284(3) and (4) as regards the Member State or Member States concerned in the following cases:

- a) the total value of supplies reported by the taxable person exceeds the amount referred to in Article 284(2)(a);
- b) the Member State granting the exemption has notified that the taxable person is not eligible to the exemption or the exemption has ceased to apply in that Member State;
- c) the taxable person has informed of his decision to cease to apply the exemption;
or
- d) the taxable person has informed or it may otherwise be assumed that his activities have ceased.

(13) Articles 285, 286 and 287 are deleted;

(14) Article 288 is replaced by the following:

'Article 288

1. The annual turnover serving as a reference for applying the exemption provided for in Article 284 shall consist of the following amounts, exclusive of VAT:
 - (1) the value of supplies of goods and services, in so far as they would be taxed were they supplied by a non-exempt taxable person;
 - (2) the value of transactions which are exempt, with deductibility of the VAT paid at the preceding stage, pursuant to Articles 110, 111 or 125(1);
 - (3) the value of transactions which are exempt pursuant to Articles 146 to 149 and Articles 151, 152 and 153;
 - (4) the value of transactions which are exempt pursuant to Article 138 where the exemption provided for in that Article applies;
 - (5) the value of real estate transactions, financial transactions as referred to in points (b) to (g) of Article 135(1), and insurance and reinsurance services, unless those transactions are ancillary transactions.
2. Disposals of the tangible or intangible capital assets of a taxable person shall not be taken into account for the purposes of calculating turnover referred to in the first paragraph.

(15) the following Article 288a is inserted:

'Article 288a

1. A taxable person, whether or not established in the Member State granting the exemption provided for in Article 284(1), shall not be able to benefit from that exemption during a period of one calendar year where the threshold laid down therein was exceeded in the preceding calendar year. The Member State granting the exemption may extend this period to two calendar years.

Where, during a calendar year, the threshold referred to in Article 284(1) is exceeded by

- (a) not more than 10%, a taxable person shall be able to continue to benefit from the exemption provided for in Article 284(1) during that calendar year;
- (b) more than 10%, the exemption provided for in Article 284(1) shall cease to apply as of that time.

For the application of points (a) and (b) of the second subparagraph, Member States may opt for a ceiling of 25%. However, the application of this ceiling may not result in exempting a taxable person whose turnover within the Member State granting the exemption exceeds EUR 100 000.

2. A taxable person not established in the Member State granting the exemption provided for in Article 284(1) shall not be able to benefit from the exemption provided for in Article 284, where the Union annual turnover threshold referred to in Article 284(2)(a) was exceeded in the preceding calendar year.

Where, during a calendar year, the Union annual turnover threshold referred to in Article 284(2)(a) is exceeded, the exemption provided for in Article 284(1) granted to a taxable person established in another Member State shall cease to apply as of that time.

3. The corresponding value in national currency of the amount referred to in the first paragraph shall be calculated by applying the exchange rate published by the European Central Bank on 18 January 2018.

(16) in Article 290, the second sentence is replaced by the following:

‘Member States may lay down the detailed rules and conditions for applying that option.’;

(17) Articles 291 to 294 are deleted;

(18) in Title XII, Chapter 1, the following Section 2a is inserted:

'Section 2a

Simplification of obligations for exempt small enterprises

Article 294a

For the purposes of this Section 'exempt small enterprise' means any taxable person benefitting from the exemption in the Member State in which the VAT is due as provided for in Article 284(1) and (2).

Article 294b

Without prejudice to paragraph 3 of Article 284, Member States may release exempt small enterprises established in their territory, that avail themselves of the exemption only there, from the obligation to state the beginning of their activity pursuant to Article 213 and to be identified by means of an individual number pursuant to Article 214, except where these enterprises carry out transactions covered by points (b), (d) or (e) of Article 214.

Where option referred to in the first paragraph is not exercised, Member States shall put in place a procedure for the identification of such small enterprises by means of a individual number. The identification procedure shall not take longer than 15 working days except in specific cases where in order to prevent tax evasion or avoidance Member States may require additional time to carry out the necessary checks.

Article 294e

Member States may release exempt small enterprises established in their territory that avail themselves of the exemption only there from the obligation to submit a VAT return laid down in Article 250.

Where the option referred to in the first paragraph is not exercised, Member States shall allow such exempt small enterprises to submit a simplified VAT return to cover the period of a calendar year. However, small enterprises may opt for the application of the tax period set in accordance with Article 252.

Article 294f

Member States may release exempt small enterprises from certain or all obligations referred to in Articles 217 to 271.'

(19) in Article 314, point (c) is replaced by the following:

'(c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Article 284 and involves capital goods;

(20) in Article 334, point (c) is replaced by the following:

'(c) another taxable person, in so far as the supply of goods, carried out by that taxable person in accordance with a contract under which commission is payable on a sale, is covered by the exemption for small enterprises provided for in Article 284 and involves capital goods;'

Article 2

Regulation (EU) No 904/2010 is amended as follows:

- (1) Article 17 is amended as follows:
 - (a) in paragraph 1, the following point is added:

“(g) information which it collects pursuant to paragraphs 3 and 4 of Article 284 and Article 284b of Directive 2006/112/EC”;
 - (b) paragraph 2 is replaced by the following:

“2. The Commission shall adopt by means of implementing acts the technical details concerning the automated enquiry of the information referred to in points (a) to (g) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).”

- (2) In Article 21 the following paragraph shall be inserted:

"2b. With respect to the information referred to in Article 17(1)(g), at least the following details shall be accessible:

 - (a) individual identification numbers of exempt taxable persons issued by the Member State providing the information;
 - (b) the name, activity, legal form and address of the exempt taxable persons identified by the individual identification number referred to in point (a);
 - (c) the Member State or Member States in which the taxable person avails himself of the exemption;

- (d) the date of commencement of the exemption in respect of the taxable person in a Member State or Member States;
- (e) the information referred to in points (c) and (d) of the first subparagraph of Article 284a(1) of Directive 2006/112/EC;
- (f) the total value of supplies of goods and/or services, per calendar quarter carried out by each taxable person holding an individual identification number referred to in point (a) in the Member State in which the taxable person is established;
- (g) the total value of supplies of goods and/or services, per calendar quarter, carried out by each taxable person holding an individual identification number referred to in point (a) in each of the Member States other than that in which the taxable person is established;
- (h) the date on which the Union annual turnover of the taxable person exceeded the amount referred to in Article 284(2)(a) of Directive 2006/112/EC;
- (i) the date on which the decision of taxable person to voluntarily cease to apply the exemption takes effect and the Member State or Member States in which the cessation shall take effect;
- (j) the date on which the activities of the taxable person has ceased and the Member State or Member States concerned.

The values referred to in points (e) to (g) of the first subparagraph shall be specified separately for each threshold that may be applicable pursuant to the second subparagraph of Article 284(1) of Directive 2006/112/EC.

(2a) in Article 31, the following paragraph is inserted:

“2a. Each Member State shall provide confirmation by electronic means that the taxable person to whom the individual identification number referred to paragraph 3 of Article 284 of Directive 2006/112/EC has been issued is an exempt small enterprise. The confirmation shall contain the name of the Member State or Member States in which the taxable person avails himself of the exemption.”

(3) In Article 32, paragraph 1 is replaced by the following:

“1. The Commission shall, on the basis of the information provided by the Member States, publish on its website the details of the provisions approved by each Member State which transpose Article 167a, Chapter 3 of Title XI and Chapter 1 of Title XII of Directive 2006/112/EC.”

- (4) The following Chapter Xa is inserted:

"CHAPTER Xa

PROVISIONS CONCERNING THE SPECIAL SCHEME IN CHAPTER 1 OF TITLE XII
OF DIRECTIVE 2006/112/EC

Article 37a

1. The Member State of establishment shall transmit the following information by electronic means to the competent authorities of the Member States granting the exemption in 15 working days from the date that the information becomes available:
 - (a) as regards the taxable persons who have given a prior notification or an update to a notification referred to in paragraphs 3 and 4 of Article 284 of Directive 2006/112/EC, the information referred to in Article 21(2b)(a) and (d) of this Regulation;
 - (b) as regards the taxable persons whose Union annual turnover exceeded the amount referred to in Article 284(2)(a) of Directive 2006/112/EC, the information referred to in Article 21(2b)(a) and (h) of this Regulation;
 - (c) as regards the taxable persons who has failed to comply with the rules provided for in Article 284b of Directive 2006/112/EC, the fact of this failure and the information referred to in Article 21(2b)(a) of this Regulation.
2. The Commission shall adopt by means of implementing acts the technical details including a common electronic message by which the information referred to in paragraph 1 of this Article is to be submitted. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2)."

Article 37b

1. The Member State to which the taxable person has given a prior notification or a subsequent update in accordance with paragraphs 3 or 4 of Article 284 of Directive 2006/112/EC shall, before identifying the taxable person or confirming the individual identification number to the taxable person, calculate on the basis of the total values of supplies reported by the taxable person, that the Union annual turnover threshold referred to in Article 284(2)(a) of the Directive was not exceeded during the current or the previous calendar year.
2. The Member State granting the exemption shall, within 15 working days after receiving the information referred to in Article 37a(1)(a), confirm by electronic means to the competent authorities of the Member State where the taxable person is established, based on the total values of supplies reported by the taxable person, that the annual turnover threshold referred to in Article 284(2)(b) of Directive 2006/112/EC was not exceeded during the current calendar year and that the conditions referred to in Article 288a(1) are fulfilled.
3. The Member State granting the exemption shall without delay notify by electronic means the competent authorities of the Member State where the taxable person is established of the date on which the taxable person has ceased to be eligible for the exemption under Article 288a(1) of Directive 2006/112/EC.
4. The technical details, including a common electronic message, of the notifications referred to in paragraphs 2 and 3 shall be determined in accordance with the procedure provided for in Article 58(2) of this Regulation.

Article 3

1. Member States shall adopt and publish, by 31 December 2024 at the latest, the laws, regulations and administrative provisions necessary to comply with Article 1 of this Directive.

They shall communicate to the Commission the text of those provisions without delay.

They shall apply those provisions from 1 January 2025.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by Article 1 of his Directive.
3. Article 2 of this Directive shall apply from 1 January 2025.

Article 4

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

The Presidency compromise text of Article 288a(1), which is set out in Annex I to this note could be modified as follows:

- "1. A taxable person, whether or not established in the Member State granting the exemption provided for in Article 284(1), shall not be able to benefit from that exemption during a period of one calendar year where the threshold laid down therein was exceeded in the preceding calendar year. The Member State granting the exemption may extend this period to two calendar years.

Where, during a calendar year, the threshold referred to in Article 284(1) is exceeded by

- (a) not more than 10%, a taxable person shall be able to continue to benefit from the exemption provided for in Article 284(1) during that calendar year;
- (b) more than 10%, the exemption provided for in Article 284(1) shall cease to apply as of that time.

For the application of points (a) and (b) of the second subparagraph, Member States may opt for a ceiling of 25% **for opt to allow the taxable person to continue to benefit from the exemption without any ceiling during the calendar year when the threshold is exceeded**. However, the application of this ceiling **for option** may not result in exempting a taxable person whose turnover within the Member State granting the exemption exceeds EUR 100 000. **Member States may alternatively opt not to apply any ceiling in which case, the exemption provided for in Article 284(1) shall cease to apply as of the time when the threshold is exceeded.]**"