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PROPOSAL

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION authorising Hungary to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax, and repealing Council Implementing Decision (EU) 2018/1490

Delegations will find attached document COM(2023) 203 final.

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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Hungary to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax, and repealing Council Implementing Decision (EU) 2018/1490

EXPLANATORY MEMORANDUM

Pursuant to Article 287, point (12), of Directive 2006/112/EC[1] ('the VAT Directive'), Hungary may exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 35 000 at the conversion rate on the day of its accession

Pursuant to Council Implementing Decision 2022/73 of 18 January 2022[2], Hungary is currently authorised to apply a special measure derogating from Article 287 of the VAT Directive to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 48 000 at the conversion rate on the day of its accession to the Union until 31 December 2024.

By letter registered with the Commission on 15 December 2022, Hungary requested an authorisation to increase the threshold of the above-mentioned existing measure to EUR 71 500 until 31 December 2024 ('the special measure').

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 11 January 2023 of the request made by Hungary. By letter dated 12 January 2023, the Commission notified Hungary that it had all the information it considered necessary for the appraisal of 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 a special scheme for small enterprises, which includes the possibility to exempt from VAT taxable persons below a certain annual turnover. Taxable persons falling under this exemption do not have to charge VAT on their supplies and, consequently, cannot deduct VAT on their inputs.

Under Article 287 of the VAT Directive, 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.

Under point 12 of Article 287 of the VAT Directive, Hungary may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 35 000 at the conversion rate on the day of its accession (this is referred to as the "personal exemption").

By virtue of Council Implementing Decision 2018/1490/EU[3] Hungary was authorised, until 31 December 2021, to apply a higher threshold, exempting from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 48 000 at the

1 OJ L 347, 11.12.2006, p. 1.

2 Council Implementing Decision (EU) 2022/73 of 18 January 2022 amending Implementing Decision (EU) 2018/1490 as regards authorisation to Hungary to apply for a further period the special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 12, 19.1.2022, p. 148–150).

3 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. 38-39).

conversion rate on the day of its accession. Hungary was subsequently authorised to extend the expiry date of the derogating measure until 31 December 2024, by Council Implementing Decision 2022/73 of 18 January 2022[4].

The higher threshold of EUR 71 500 here requested by Hungary would be consistent with a threshold used in a Hungarian tax on income tax (specific tax on small companies: “kata”), therefore simplifying the compliance for eligible businesses. Moreover, Hungary states that the exemption threshold should follow the increase in revenue among taxable persons created by the economic growth and that a valorization of that threshold would be justified in view of the inflationary pressures.

The special measure, simplifying the obligations of small operators, is in line with the objectives set out by the European Union for small businesses, as laid out in Commission Communication "Think small first” - A “Small Business Act” for Europe.

The special measure is optional for taxable persons. Therefore, small businesses whose turnover does not exceed the threshold would still have the possibility to exercise their right to apply the normal VAT arrangements.

Hungary reports that the threshold increase of the special measure could potentially affect around 35 000 taxable persons. Moreover, Hungary states that on the basis of the experience of previous years, it can be assumed that, even if the threshold is increased, as requested, a significant increase in the proportion of taxable persons actually opting for it, is not expected.

According to estimates provided by Hungary, the introduction of the special measure would lead to a loss of budgetary revenue of HUF 15 billion per year (i.e. around 0.05 % of VAT accrual (ESA) revenue in 2021) and would therefore not significantly affect the total amount of revenue from VAT collected at the stage of final consumption.

In light of the above, it is appropriate to authorise Hungary to apply the special measure until 31 December 2024.

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

The derogating measure is in line with Directive (EU) 2020/285[5] which resulted from the Commission’s VAT action plan[6], 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.

4 Council Implementing Decision (EU) 2022/73 of 18 January 2022 amending Implementing Decision (EU) 2018/1490 as regards authorisation to Hungary to apply for a further period the special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 12, 19.1.2022, p. 148–150).

5 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).

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

Moreover, the threshold of EUR 71 500 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 granted to other Member States such as the Netherlands[7] and Belgium[8] who have been granted a threshold of EUR 25 000. Luxembourg[9] as been granted a threshold of EUR 35 000 and Poland[10], Latvia[11] and Estonia[12] have been granted a threshold of EUR 40 000. Lithuania[13] has been granted a threshold of EUR 55 000; Croatia[14] a threshold of EUR 45 000; Malta[15] a threshold of EUR 30 000; Slovenia[16] a threshold of EUR 50 000; Czech Republic[17] a threshold of EUR 85 000; and Romania[18] a threshold of EUR 88 500.

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7 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).

8 Council Implementing Decision (EU) 2022/88 of 18 January 2022 amending Implementing Decision 2013/53/EU as regards authorisation to the Kingdom of Belgium to apply for a further period the special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 14, 21.1.2022, p. 23).

9 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).

10 Council Implementing Decision (EU) 2021/1780 of 5 October 2021 amending Implementing Decision 2009/790/EC authorising the Republic of Poland to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 360, 11.10.2021, p. 122).

11 Council Implementing Decision (EU) 2020/1261 of 4 September 2020 amending Implementing Decision (EU) 2017/2408 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 296, 10.9.2020, p. 4).

12 Council Implementing Decision (EU) 2021/358 of 22 February 2021 amending Implementing Decision (EU) 2017/563 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 69, 26.2.2021, p. 4).

13 Council Implementing Decision (EU) 2021/86 of 22 January 2021 authorising the Republic of Lithuania to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 30, 28.1.2021, p. 2).

14 Council Implementing Decision (EU) 2020/1661 of 3 November 2020 amending Implementing Decision (EU) 2017/1768 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 374, 10.11.2020, p. 4).

15 Council Implementing Decision (EU) 2021/753 of 6 May 2021 authorising Malta to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax, and repealing Implementing Decision (EU) 2018/279 (OJ L 163, 10.5.2021, p. 1).

16 Council Implementing Decision (EU) 2022/464 of 21 March 2022 amending Implementing Decision 2013/54/EU as regards the authorisation granted to the Republic of Slovenia to continue to apply the special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 94, 23.3.2022, p. 4).

17 Council Implementing Decision (EU) 2022/865 of 24 May 2022 authorising the Czech Republic to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 151, 2.6.2022, p. 66).

18 Council Implementing Decision (EU) 2020/1260 of 4 September 2020 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 (OJ L 296, 10.9.2020, p. 1).

Derogations from the VAT Directive should always be limited in time so that their effects can be assessed. In addition, the inclusion of an expiry date of the special measure until 31 December 2024, as requested by Hungary, is aligned with the date set up by Directive (EU) 2020/285. 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 this respect, the Commission adopted in March 2020 an SME Strategy for a sustainable and digital Europe[19], where it committed to continue to work on reducing the burden on SMEs. The objective to reduce the regulatory burden for SMEs is one of the pillars of that strategy. This special measure is in line with such objectives, as far as fiscal rules are concerned. It is also consistent with the 2020 Action Plan on fair and simple taxation supporting the recovery strategy[20], which acknowledges that tax compliance costs remain high in the EU, and that compliance costs are typically substantially higher for small than for large companies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 395 of the VAT Directive.

- **Subsidiarity (for non-exclusive competence)**

Considering the provision of the VAT Directive on which it is based, the proposal falls under the exclusive competence of the European Union. Hence, 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. to simplify tax collection for small taxable persons and for the tax administration.

- **Choice of the instrument**

The instrument proposed is a Council Implementing Decision.

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[19] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – An SME Strategy for a sustainable and digital Europe (COM(2020) 103 final).

[20] Communication from the Commission to the European Parliament and the Council – An Action Plan for fair and simple taxation supporting the Recovery Strategy (COM(2020) 312 final).

Under Article 395 of the VAT Directive, a derogation from the common VAT rules is only possible upon authorisation by the Council, which is acting unanimously on a proposal from the Commission. A Council Implementing Decision is the most suitable instrument since it can be addressed to an individual Member State.

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 Hungary and concerns only this particular Member State.

- **Impact assessment**

The proposal for a Council Implementing Decision aims at increasing the current exemption threshold to EUR 71 500. This increase of the threshold is a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than that threshold. It will therefore have a positive impact on the reduction of administrative burden for both businesses and the 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.

Currently, based on data available from 2021, the increase in proposed threshold would lead to a decrease in VAT revenue of approximately 0.05 %.

The derogating measure will be optional for taxable persons. Taxable persons will be able to opt for the regular VAT arrangements in accordance with Article 290 of Directive 2006/112/EC.

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

Following entry into force of Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax[21], there will be no compensation calculation carried out by Hungary as of VAT own resource statement for the financial year 2021 onwards.

[21] Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 165, 11.5.2021, p. 9).

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added 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 (12), of Directive 2006/112/EC, Hungary may exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 35 000 at the conversion rate on the day of its accession.

(2) By Council Implementing Decision 2022/73[2], Hungary was authorised to continue to apply a special measure derogating from Article 287 of Directive 2006/112/EC to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 48 000 at the conversion rate on the day of its accession to the Union until 31 December 2024.

(3) By letter registered with the Commission on 15 December 2022, Hungary requested an authorisation to increase the threshold of the above mentioned existing special measure to EUR 71 500 until 31 December 2024 ('the special measure').

(4) By letter dated 11 January 2023, the Commission transmitted the request made by Hungary to the other Member States in accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC. By letter dated 12 January 2023, the Commission notified Hungary that it had all the information it considered necessary for the appraisal of the request.

(5) The special measure requested by Hungary is in line with the amendments to Directive 2006/112/EC made by Council Directive (EU) 2020/285[3], which seeks to reduce the

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

[2] Council Implementing Decision (EU) 2022/73 of 18 January 2022 amending Implementing Decision (EU) 2018/1490 as regards authorisation to Hungary to apply for a further period the special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 12, 19.1.2022, p. 148).

[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

VAT compliance costs for small enterprises and mitigate distortions of competition in the internal market.

(6) The special measure will remain optional for taxable persons as they may still opt for the regular VAT arrangements in accordance with Article 290 of Directive 2006/112/EC.

(7) According to the information provided by Hungary, the special measure will have a negligible effect on the overall amount of tax revenue of Hungary collected at the stage of final consumption.

(8) Following the entry into force of Council Regulation (EU, Euratom) 2021/769[4], there is to be no compensation calculation carried out by Hungary with regard to the VAT-based own resource statement for the financial year 2021 onwards.

(9) Given the positive impact of the special measure in reducing the VAT compliance burden of both small enterprises and the tax authorities and given the negligible impact on the total VAT revenue generated, Hungary should be authorised to apply the special measure.

(10) The authorisation to apply the special measure should be limited in time. The time limit should be sufficient to allow the Commission to evaluate the effectiveness and appropriateness of the threshold. Moreover, pursuant to Article 3(1) of Directive (EU) 2020/285, Member States are to adopt and publish, by 31 December 2024, the laws, regulations and administrative provisions necessary to comply with Article 1(12) of that Directive and are to apply those provisions from 1 January 2025. It is therefore appropriate to authorise Hungary to apply the special measure until 31 December 2024.

(11) Implementing Decision (EU) 2018/1490 should therefore be repealed.

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 287, point (12), of Directive 2006/112/EC, Hungary is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 71 500 at the conversion rate on the day of its accession.

Article 2

Implementing Decision (EU) 2018/1490 is repealed.

Article 3

This Decision shall take effect on the date of its notification.

It shall apply until 31 December 2024.

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purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13).

4 Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 165, 11.5.2021, p. 9).

Article 4

This Decision is addressed to Hungary.

Done at Brussels,

For the Council
The President