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2020/0136 (NLE)

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

EXPLANATORY MEMORANDUM

Pursuant to Article 395(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value 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 14 January 2020, Romania requested an authorisation to continue, after 31 December 2020, to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 88 500.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 18 February 2020 of the request made by Romania. By letter dated 19 February 2020, the Commission notified Romania 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(18) of the VAT Directive, Romania may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 35 000.

By Council Implementing Decision 2012/181/EU[2] Romania was authorised until 31 December 2014 to exempt from VAT taxable persons with annual turnover not exceeding the equivalent in national currency of EUR 65 000 at the conversion rate on the date of its accession to the European Union. Council Implementing Decision 2014/931/EU[3] authorised Romania to continue to apply until 31 December 2017 the special measure derogating from Article 287(18) of the VAT Directive. Romania was subsequently authorised by Council Implementing Decision (EU) 2017/1855[4] to increase the exemption threshold to the equivalent in national currency of EUR 88 500 and to extend the expiry date of the derogating measure until 31 December 2020 or until the entry into force of a directive amending the provisions of Articles 281 to 294 of the VAT Directive, whichever date was the earlier. The measure has an optional character, allowing small businesses to opt for the normal VAT arrangements.

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1 OJ L 347, 11.12.2006, p. 1.

2 Council Implementing Decision 2012/181/EU of 26 March 2012 authorising Romania to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 92, 30.3.2012, p. 26).

3 Council Implementing Decision 2014/931/EU of 16 December 2014 extending the application of Implementing Decision 2012/181/EU authorising Romania to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 365, 19.12.2014, p. 145).

4 Council Implementing Decision (EU) 2017/1855 of 10 October 2017 authorising Romania to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 265, 14.10.2017, p. 19).

The present request from Romania to prolong further the expiry date of the derogating measure, without increasing the current threshold of EUR 88 500, is based on the same grounds as those presented in the previous requests.

Romania maintains that the prolongation of the derogating measure as well as the current exemption ceiling are justified, taking into account the structure of the national economy. Small and medium-sized enterprises bear disproportionate VAT compliance costs in comparison with large enterprises. The exemption from VAT significantly reduces small businesses' VAT obligations, while relieving the tax authorities of the burden of having to monitor the collection of a small volume of revenue from small and medium-sized enterprises with an annual turnover of less than EUR 88 500.

In this regard, Romania estimates that in 2019 the amount of VAT paid to the state budget by taxable persons registered for VAT purposes with an annual turnover of less than EUR 88 500 represented 2.52% of total VAT revenue and 1.09% of total State budget revenue. For the same year, taxable persons with an annual turnover above EUR 88 500 (representing 42.85% of the total number of taxable persons registered for VAT purposes) made a contribution of 97.48% to total VAT revenue. Thus, it appears that the impact of the derogating measure on tax revenue collected at the final consumption stage will be negligible, whereas its impact will be significant in terms of simplifying both the tax obligations of the taxable persons concerned as well as the procedure for collecting VAT for the tax administration.

Based on the information provided by Romania, it is clear that the aim of the request to prolong the derogating measure is to release small businesses from many of the VAT obligations under the normal VAT arrangements as well as to reduce the burden of the tax administration in terms of tax collection, thus making it more efficient, while saving administrative resources and reducing tax evasion. The derogating measure is thus in line with the objectives of the first subparagraph of Article 395(1) of the VAT Directive, which allows Member States to introduce special measures derogating from its provisions in order to simplify the procedure for collecting VAT or to prevent tax evasion. In this context, it is reiterated that the measure is and will remain optional for taxable persons, which are allowed to opt for the normal VAT arrangements.

As demonstrated by Romania, the derogating measure is not expected to either affect significantly the overall amount of its tax revenue collected at the stage of the final consumption. Therefore, the derogating measure appears to be in accordance with the second subparagraph of Article 395(1) of the VAT Directive.

In the light of the above, and given that the EU legal framework and the factual situation remain unchanged, the requested extension of the expiry date of the derogating measure appears to be justified. Hence, it is proposed that Romania's request be granted.

Derogations are normally granted for a limited period to allow an assessment of whether the derogating measure remains appropriate and effective. Moreover, the Council adopted on 18 February 2020 a directive amending the provisions of Articles 281 to 294 of the VAT Directive on the special scheme for small enterprises[5]. The new directive on simpler VAT

[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).

rules for small enterprises requires that Member States adopt and publish the laws, regulations and administrative provisions, which are necessary to comply with the new rules, by 31 December 2024 at the latest. Member States will have to apply those national provisions from 1 January 2025.

It is therefore appropriate to authorise Romania to continue 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 the abovementioned directive amending Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises, adopted on 18 February 2020, which resulted from the 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.

Similar derogations, exempting from VAT taxable persons whose annual turnover is below a certain threshold, as provided for in Article 285 of the VAT Directive, have been granted to other Member States. Malta[7] has been granted a threshold of EUR 20 000; the Netherlands[8] a threshold of EUR 25 000; Luxembourg a threshold of EUR 35 000[9]; Poland[10], Estonia[11] and Latvia[12] have been granted a threshold of EUR 40 000; Croatia[13] and Lithuania[14] a threshold of EUR 45 000; Hungary a threshold of EUR 48 000[15]; Slovenia[16] a threshold of EUR 50 000; and Italy[17] a threshold of EUR 65 000.

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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.

7 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).

8 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).

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) 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) 2017/2408 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).

13 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).

14 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).

15 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).

As already mentioned, derogations from the VAT Directive should always be limited in time so that their effects can be assessed. The extension of the expiry date of the derogating measure until 31 December 2024 is aligned with the requirements of the new directive 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 Programme[18] 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[19], 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[20], 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'[21], 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[22], and the 2008 Communication '"Think small first"

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16 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).

17 Council Implementing Decision (EU) 2020/647 of 11 May 2020 authorising the Italian Republic to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 151, 14.5.2020, p. 7).

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 2020 - A Union that strives for more (COM(2020) 37 final).

19 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).

20 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 business (COM(2015) 550 final).

21 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).

22 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**)**.

– a "Small Business Act" for Europe'[23] 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 is the only possible legal basis.

• 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, save administrative resources and reduce tax evasion.

• Choice of the instrument

The instrument proposed is a Council Implementing Decision.

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 Romania 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 aims at extending a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 88 500 or the equivalent in national currency. This could have a potential positive impact on the reduction of administrative burden for 241 417 small

[23] 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).

businesses representing 57.15% of the total number of taxable persons registered for VAT purposes and 17.79% of the total number of active taxable persons in Romania for 2019 (until 31 October). Likewise, the derogating measure could significantly reduce the burden of the tax administration in terms of tax collection, thus making it more efficient, while saving administrative resources and reducing tax evasion. The derogating measure is and will remain optional for taxable persons. Taxable persons will still be able to opt for the regular VAT arrangements in accordance with Article 290 of Directive 2006/112/EC. The budgetary impact in terms of VAT revenue for 2019 is estimated by Romania as negligible.

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

The proposal will not have a negative impact on the EU budget because Romania will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89.

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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), the first subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Pursuant to point (18) of Article 287 of Directive 2006/112/EC, Romania 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 2012/181/EU[2], Romania 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 annual turnover was no higher than EUR 65 000. The derogating measure expired on 31 December 2014.

(3) By Council Implementing Decision 2014/931/EU[3], Romania was authorised to continue to apply the derogating measure until 31 December 2017.

(4) By Council Implementing Decision (EU) 2017/1855[4] Romania was authorised 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 88 500 at the conversion rate on the day of its accession. The derogating measure was authorised until 31 December 2020, or until the entry into force of a directive amending the provisions of Articles 281 to 294 of Directive 2006/112/EC, whichever date is the earlier.

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

[2] Council Implementing Decision 2012/181/EU of 26 March 2012 authorising Romania to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 92, 30.3.2012, p. 26).

[3] Council Implementing Decision 2014/931/EU of 16 December 2014 extending the application of Implementing Decision 2012/181/EU authorising Romania to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 365, 19.12.2014, p. 145).

[4] Council Implementing Decision (EU) 2017/1855 of 10 October 2017 authorising Romania to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 265, 14.10.2017, p. 19).

(5) On 18 February 2020, the Council adopted Directive (EU) 2020/285[5] amending Articles 281 to 294 of Directive 2006/112/EC as regards the special scheme for small enterprises and laying down new rules for small enterprises, including the maximum threshold of the Member State's annual turnover of EUR 85 000 or the equivalent in national currency.

(6) By letter registered with the Commission on 14 January 2020, Romania requested authorisation to continue to apply the derogating measure after 31 December 2020.

(7) By letter dated 18 February 2020, the Commission informed the other Member States, pursuant to Article 395(2), the second subparagraph, of Directive 2006/112/EC, of the request made by Romania. By letter dated 19 February 2020, the Commission notified Romania that it had all the information necessary to consider the request.

(8) From the information provided by Romania, it appears that the reasons for the derogating measure remain largely unchanged. The derogating measure is a simplification measure that reduces VAT-related obligations for a number of small enterprises. It also reduces the burden on tax authorities by removing the need to monitor the collection of a small volume of revenues from a larger number of small enterprises. Maintaining the current exemption threshold appears to be an effective way of saving administrative resources and reducing tax evasion.

(9) The derogating measure is and will remain optional for taxable persons. Taxable persons may still opt for the normal VAT arrangements in accordance with Article 290 of Directive 2006/112/EC.

(10) According to information provided by Romania, the derogating measure will only have a negligible effect on the overall amount of the tax revenue of Romania collected at the stage of final consumption.

(11) The derogating measure will not adversely affect the Union's own resources accruing from VAT because Romania will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, Euratom) No 1553/89[6].

(12) Given the potential positive impact of the derogating measure in reducing the administrative burden for small businesses and for the tax authorities, and the lack of any major impact on the total VAT revenue generated, Romania should be authorised to apply the derogating measure for a further period.

(13) 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, according to Directive (EU) 2020/285, Member States are to adopt and publish, by 31 December 2024 the laws, regulations and administrative provisions to comply with Article 1 of that Directive, and apply those provisions from 1 January 2025. It is therefore appropriate to authorise Romania to apply the derogating measure until 31 December 2024.

(14) Implementing Decision (EU) 2017/1855 should therefore be amended accordingly,

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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 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).

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Implementing Decision (EU) 2017/1855, the second paragraph is replaced by the following:

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

Article 2

This Decision is addressed to Romania.

Done at Brussels,

For the Council
The President