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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	7 October 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 644 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION amending Decision 2013/678/EU authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax

Delegations will find attached document COM(2016) 644 final.

Encl.: COM(2016) 644 final

EUROPEAN
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Brussels, 7.10.2016
COM(2016) 644 final

2016/0314 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Decision 2013/678/EU authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Reasons for and objectives of the proposal

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[1] (hereafter 'the VAT Directive'), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures for derogation from the provisions of that Directive in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

By letter registered with the Commission on 5 April 2016, the Italian Republic requested authorisation to continue to exempt from VAT taxable persons below a turnover threshold of EUR 65 000. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 21 June 2016 of the request made by the Italian Republic. By letter dated 22 June 2016, the Commission notified the Italian Republic that it had all the information necessary to consider the request.

Consistency with existing policy provisions in the policy area

Chapter 1 of Title XII of the VAT Directive allows for the possibility for Member States to apply special schemes for small enterprises, including the possibility of exempting taxable persons below a certain annual turnover. This exemption implies that a taxable person does not have to charge VAT on his supplies and, consequently, he cannot deduct VAT on his inputs.

This measure was first introduced in accordance with the provisions of Article 14 of Council Directive 67/228/EEC[2]. However, those Member States which did not make use of the option provided for under that provision could subsequently, according to Article 24(2)(b) of Directive 77/388/EEC[3] now recast as the first paragraph of Article 285 of the VAT Directive, only exempt taxable persons from VAT whose annual turnover is no higher than EUR 5 000. The Italian Republic did not make use of the option provided by Article 14 of Council Directive 67/228/EEC.

Because of a significant number of taxable persons with a very low annual turnover, the Italian Republic requested a derogation in 2007 in order to simplify VAT obligations for small businesses and to ease the collection of the tax for the national tax administration by exempting taxable persons whose annual turnover is no higher than EUR 30 000. This derogation was authorised by Council Decision 2008/737/EC[4] until 31 December 2010,

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1 OJ L 347, 11.12.2006, p. 1.

2 Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes - Structure and procedures for application of the common system of value added tax (OJ 71, 14.4.1967, p. 1303).

3 Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1).

4 Council Decision 2008/737/EC of 15 September 2008 authorising the Italian Republic to apply a measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 249, 18.9.2008, p. 13).

subsequently extended by Council Decision 2010/688/EU[5] until 31 December 2013 and then until 31 December 2016 by Council Decision 2013/678/EU[6] which, in addition, increased the maximum authorised exemption threshold to EUR 65 000 of annual turnover. The Italian Republic has now requested that the measure, which is optional for taxable persons, be extended until 31 December 2019. The Italian Republic has also requested the Commission to consider an extension until 31 December 2022.

From information provided by the Italian Republic it appears that the impact of the measure on tax revenue collected at the final consumption stage will be negligible.

Derogations are normally granted for a limited time as to allow an assessment whether the special measure is appropriate and effective. Moreover, it should be noted that the provisions of Articles 281 to 294 of Directive 2006/112/EC on special scheme for small enterprises are currently subject to review. As announced in the VAT Action Plan[7], the Commission's proposal in the form of a comprehensive simplification package is due to be presented by the end of 2017.

It is therefore proposed to extend the derogation for another period until the earliest of 31 December 2019 or the entry into force of a Directive amending the provisions of Directive 2006/112/EC on special scheme for small enterprises. Due to the ongoing review, the extension of the derogation until 31 December 2022 should not be considered. Taxable persons should continue to be able to opt for the normal VAT arrangements.

Consistency with other Union policies

The derogation requested is in line with the objectives of the Commission Communication *“Think Small First” – A “Small Business Act” for Europe*[8], which calls on the Member States to take account of the special features of SMEs when designing legislation and, therefore, to simplify the existing regulatory environment. Moreover, no problems have been identified in the application of the measure, nor in monitoring of the businesses it covers.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 395 of the VAT Directive.

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

Considering the provision of the VAT Directive on which the proposal is based, the subsidiarity principle does not apply.

5 Council Implementing Decision 2010/688/EU of 15 October 2010 authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 294, 12.11.2010, p.12).

6 Council Implementing Decision 2013/678/EU of 15 November 2013 authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 316, 27.11.2013, p. 35).

7 Communication from the Commission to the European Parliament, the Council and the European and Social Committee on an action plan on VAT, Towards a single EU VAT area – Time to decide, Brussels, 7.4.2016, COM(2016)148 final.

8 COM(2008) 394 of 25 June 2008.

- **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 VAT obligations for small businesses and to ease the collection of the tax for the national tax administration.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Other means would not be adequate for the following reason:

Under Article 395 of Council Directive 2006/112/EC, derogation from the common VAT rules is only possible upon authorisation of the Council acting unanimously on a proposal from the Commission. A Council Implementing Decision is the most suitable instrument since it can be addressed to an individual Member State.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Not relevant.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The decision aims at continuing a simplification measure providing for exemption from VAT for businesses operating below an annual turnover of EUR 65 000. This significantly reduces administrative burden for SMEs and tax authorities. On the other hand, less VAT would be paid. It should also be noted that the simplified regime is optional.

Because of the narrow scope of the derogation, and its limited application in time, the impact will in any case be limited.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the budget of the Union because Italy will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, EURATOM) 1553/89[9].

5. OTHER ELEMENTS

The proposal includes a sunset clause.

[9] 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).

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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[10], and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Decision 2008/737/EC[11], Italy was authorised, as a derogating measure, to exempt taxable persons whose annual turnover is no higher than EUR 30 000 until 31 December 2010. The application of this derogation was subsequently extended until 31 December 2013 by Council Decision 2010/688/EU[12] and until 31 December 2016 by Council Decision 2013/678/EU[13] which, in addition, increased the maximum authorised exemption threshold to EUR 65 000 of annual turnover.

(2) In a letter registered with the Commission on 5 April 2016 Italy requested authorisation for a measure derogating from Article 285 of Directive 2006/112/EC in order to continue to exempt certain taxable persons whose annual turnover falls below EUR 65 000. Through that measure, those taxable persons would be exempt from value added tax (VAT).

(3) The Commission informed the other Member States by letter dated 21 June 2016 of the request made by Italy. By letter dated 22 June 2016 the Commission notified Italy that it had all the information necessary to consider the request.

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10 OJ L 347, 11.12.2006, p. 1.

11 Council Decision 2008/737/EC of 15 September 2008 authorising the Italian Republic to apply a measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 249, 18.9.2008, p. 13).

12 Council Implementing Decision 2010/688/EU of 15 October 2010 authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 294, 12.11.2010, p.12).

13 Council Implementing Decision 2013/678/EU of 15 November 2013 authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 316, 27.11.2013, p. 35).

(4) A special scheme for small enterprises is already available to Member States under Title XII of Directive 2006/112/EC. The extended measure derogates from Article 285 of that Directive in its application to Italy only insofar as the annual turnover threshold for the scheme is higher than the EUR 5 000 threshold.

(5) The derogation requested is in line with the objectives of Commission Communication "Think small first" – a "Small Business Act" for Europe" of 25 June 2008[14].

(6) Given that this derogating measure has resulted in reduced VAT obligations for smaller businesses, Italy should be authorised to apply the measure for a further limited period. Taxable persons should still be able to opt for the normal VAT arrangements.

(7) Derogations are normally granted for a limited time as to allow an assessment whether the special measure is appropriate and effective. Moreover, the provisions of Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises are subject to review. The derogation requested should, therefore, be limited in time and accompanied by a sunset clause.

(8) From information provided by Italy, the increased threshold will have a negligible impact on the overall amount of tax revenue collected at the final stage of consumption.

(9) The derogation has no impact on the Union's own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

In Decision 2013/678/EU Article 2 is replaced by the following

“*Article 2*

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

This Decision shall apply from 1 January 2017 until the entry into force of a Directive amending the provisions of Articles 281 to 294 of Directive 2006/112/EC on special scheme for small enterprises, or until 31 December 2019, whichever is the earlier.”

Article 2

This Decision is addressed to the Italian Republic.

[14] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - “Think Small First” - A “Small Business Act” for Europe, Brussels, 25.6.2008, COM(2008)394 final.

Done at Brussels,

For the Council
The President