Council of the
European Union

Brussels, 11 November 2015
(OR. en)

13923/15

Interinstitutional File:
2015/0256 (NLE)

FISC 146

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	6 November 2015
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2015) 552 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION amending Implementing Decision 2013/53/EU authorising the Kingdom of Belgium to introduce 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(2015) 552 final.

Encl.: COM(2015) 552 final

EUROPEAN
COMMISSION

Brussels, 6.11.2015
COM(2015) 552 final

2015/0256 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision 2013/53/EU authorising the Kingdom of Belgium to introduce 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 (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 letters registered with the Commission on 15 July 2015 and 20 August 2015, Belgium requested an authorisation to continue to exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 25 000. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 3 September 2015 of the request made by Belgium. By letter dated 4 September 2015, the Commission notified Belgium that it had all the information necessary to consider the request.

• General context

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 the VAT on his input.

Under Article 285 of the VAT Directive, Member States which did not make use of Article 14 of Council Directive 67/288/EEC[1], can exempt taxable persons whose threshold is no higher than EUR 5 000. As Belgium did not make use of this option, this resulted in the application of a particularly low threshold which in 2012 corresponded to EUR 5 580.

In 2012, Belgium requested a derogation in order to simplify VAT obligations for small traders and to ease the collection of the tax for the national tax administration. By Council Implementing Decision 2013/53/EU of 22 December 2013[2], the Council authorised Belgium to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000 until 31 December 2015. This measure is optional for taxable persons. Belgium has now requested an extension of that measure.

Although authorised to apply the exemption up to a turnover of EUR 25 000, Belgium applied in practice, and as first step, a lower threshold of EUR 15 000 as from 1 April 2014. From the information provided by Belgium, this first change of the threshold resulted in 2014 in an increase of 18 942 taxable persons exempt from VAT under the SME scheme (from 79 190 to 98 132 or 23,9%). In relation to the total number of taxable persons, this represents an increase from 7,4% to 11,4%. As from the introduction of this threshold, the budgetary impact of the measure was 0,0074% of the total VAT revenues in 2014. Extrapolated for the whole year 2014, the impact would correspond to 0,0188% of the total VAT revenues.

[1] OJ 71, 14.4.1967, p. 1303/67.
[2] OJ L 22, 25.1.2013, p. 13.

On the basis of this experience, Belgium considers that the derogating measure has brought simplification, both for taxable persons and for the tax administration, and would therefore like to increase the threshold up to the initial maximum of EUR 25 000 as from 2016. In Belgium's view, this should reduce the administrative burden for an additional number of small businesses who, as mentioned, would remain entitled to opt for continuing the application of the normal VAT rules. At the same time, the impact of the measure on the overall amount of the VAT revenue collected at the stage of final consumption would remain negligible.

Since Belgium does not request a threshold which goes beyond what was previously already authorised, the derogation can be extended without the need to change its content. It is therefore proposed to extend the derogation for another period until the earliest of 31 December 2018 or the entry into force of a Directive on the annual turnover thresholds below which taxable persons may be exempt from VAT.

Consistency with existing policy provisions in the policy area

Similar derogations have been granted to other Member States. Poland[3] was granted a threshold of EUR 30 000, Lithuania[4] a threshold of EUR 45 000, Latvia[5] and Slovenia[6] a threshold of EUR 50 000, Italy[7] and Romania[8]a threshold of EUR 65 000.

- **Consistency with other Union policies**

The measure is in line with the Union's objectives for small businesses, as laid out in Commission Communication ' "Think small first" – a "Small Business Act for Europe" '[9].

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 395 of the VAT Directive.

---

3 Council implementing Decision 2015/1173/EU of 14 July 2015 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 189, 17.7.2015, p. 36).

4 Council implementing Decision 2014/795/EU of 7 November 2014 extending the application of 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 330, 15.11.2014, p. 44).

5 Council implementing Decision 2014/796/EU of 7 November 2014 authorising the Republic of Latvia to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 330, 15.11.2014, p. 46).

6 Council Implementing Decision 2013/54/EU of 22 January 2013 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 22, 25.1.2013, p.15).

7 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).

8 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).

9 COM(2008) 394 of 25 June 2008

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

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

- **Proportionality**

The proposal complies with the proportionality principle for the following reasons.

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.

- **Choice of the instrument**

Proposed instruments: Council Implementing Decision.

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

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

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Not relevant.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for a Council Implementing Decision aims at continuing for another three years a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 25 000 and therefore has a potential positive impact on the reduction of administrative burden for businesses and 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 scope will in any case be limited.

4. BUDGETARY IMPLICATIONS

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

5. OTHER ELEMENTS

The proposal includes a sunset clause; an automatic time limit which is set at 31 December 2018 for this derogation.

2015/0256 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision 2013/53/EU authorising the Kingdom of Belgium to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[10], and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Under Article 285 of Directive 2006/112/EC, Member States, which have not made use of Article 14 of the 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[11], may exempt taxable persons whose annual turnover is no higher than EUR 5 000. Belgium has requested that this threshold be increased to EUR 25 000.

(2) By Council Implementing Decision 2013/53/EU[12], Belgium was authorised, until 31 December 2015 and as a derogation, to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000. Through that measure, those taxable persons would be exempted from all or some of the obligations in relation to VAT referred to in Chapters 2 to 6 of Title XI of Directive 2006/112/EC. In practice, Belgium did not make use of the maximum authorised threshold but applied, as from 1 April 2014, a threshold of EUR 15 000.

(3) By letters registered with the Commission on 15 July 2015 and 20 August 2015, Belgium requested again authorisation to apply an exemption threshold of EUR 25 000.

(4) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 3 September 2015 of the request made by Belgium. By letter dated 4 September 2015,

---

10 OJ L 347, 11.12.2006, p. 1.

11 OJ 71, 14.4.1967, p. 1303/67.

12 Council Implementing Decision of 22 January 2013 authorising the Kingdom of Belgium to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 22, 25.1.2013, p. 13–14).

the Commission notified Belgium that it had all the information necessary to consider the request.

(5) From information provided by Belgium, an additional 18 942 taxable persons benefited from the application of the increased threshold of EUR 15000 and it has led to an estimated reduction of the budget revenues from VAT of approximately 0,0188% in 2014.

(6) Given that the applied threshold has resulted in reduced VAT obligations for the smallest businesses, whilst the latter may still opt for the regular VAT arrangements in accordance with Article 290 of Directive 2006/112/EC, Belgium should be authorised to apply a threshold of EUR 25 000 as it may further reduce the VAT obligations for small businesses; thereby corresponding to the objectives of Commission Communication entitled ' "Think Small First" — A "Small Business Act" for Europe'.[13]

(7) According to Belgium, the derogating measure will only have a negligible effect on the overall amount of the tax revenue at the stage of final consumption.

(8) The derogating measure will have no adverse impact on the Union's own resources accruing from VAT because Belgium will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89.

(9) Implementing Decision 2013/53/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In the second paragraph of Article 2 of Implementing Decision 2013/53/EU, the date '31 December 2015' is replaced by the date '31 December 2018'.

Article 2

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels,

For the Council
The President

[13] COM(2008) 394 of 25 June 2008