EUROPEAN
COMMISSION

Brussels, 28.11.2019
COM(2019) 618 final

2019/0271 (NLE)

Proposal for a

# COUNCIL IMPLEMENTING DECISION

**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**

# 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 2 May 2019, Luxembourg requested an authorisation to continue to exempt from VAT taxable persons whose annual turnover is below a certain threshold, as provided for in Article 285 of the VAT Directive, and to increase this threshold from EUR 30 000 to EUR 35 000.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 21 June 2019 of the request made by Luxembourg. By letter dated 24 June 2019, the Commission notified Luxembourg 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 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 the VAT on their inputs.

The possibility of applying special VAT rules including exemptions or graduated tax relief to small undertakings was first introduced by Article 14 of Council Directive 67/228/EEC[2]. Member States which did not make use of the option provided for under that provision were allowed 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, to only exempt from VAT taxable persons whose annual turnover is no higher than EUR 5 000 or the equivalent in national currency. Pursuant to the second paragraph of Article 285 of the VAT Directive, those Member States may also grant graduated tax relief to taxable persons whose annual turnover exceeds the ceiling fixed by them for its application.

Until the end of 2012, Luxembourg exempted from VAT taxable persons whose annual turnover was no higher than EUR 10 000. In parallel, Luxembourg made use of the option pursuant to the second paragraph of Article 285 of the VAT Directive by granting graduated tax relief to taxable persons whose annual turnover was between EUR 10 000 and EUR 25 000.

Subsequently, Luxembourg requested and obtained a derogation pursuant to the first paragraph of Article 285 to apply a turnover threshold of EUR 25 000 as regards the exemption scheme for small businesses whilst at the same time abolishing the application of the graduated tax

---

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. 1303/67).

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).

relief. Council Implementing Decision 2013/677/EU[4] authorised Luxembourg to apply the derogating measure mentioned above until 31 December 2016.

Council Implementing Decision 2017/319/EU[5] authorised Luxembourg to extend the expiry date of the derogating measure to 31 December 2019 and, at the same time, increase the threshold from 25 000 to EUR 30 000.

The present request from Luxembourg to prolong further the expiry date of the derogation while increasing the threshold from EUR 30 000 to EUR 35 000 is based on the same grounds as those presented in the previous requests. In particular, Luxembourg maintains that the derogating measure reduces the administrative burden for small businesses and tax administration alike. In this regard, the derogating measure simplifies the procedure for collecting tax and hence falls within the objectives of the first subparagraph of Article 395 (1) of the VAT Directive.

Luxembourg stresses that the derogation requested is in line with the philosophy of the 2018 Commission proposal on new simplification rules in respect of VAT for small businesses[6], insofar as the proposal allows Member States to set to no higher than EUR 85 000 (or the equivalent in national currency) the annual turnover threshold required for an exemption from VAT.

According to Luxembourg, the special measure pursued would only have a negligible effect on the overall amount of VAT revenue collected at the stage of final consumption (not more than 0.1%), as required by the second subparagraph of Article 395(1) of the VAT Directive.

More specifically, it is reported that in 2017, 105 taxable persons with a turnover of between EUR 10 000 and EUR 30 000 made use of the exemption (against 64 in 2015 and 73 in 2016). For that year, this number corresponds to 0.14% of taxable persons registered for VAT. Luxembourg estimates the maximum loss of VAT revenue due to the exemption at EUR 271 525.60. This amount represented 0.01% of the total amount of VAT receipts for 2017. Luxembourg expects that an increase of the threshold to EUR 35 000 could affect 1106 taxable persons, which would account for 1.5% of taxable persons registered for VAT in 2017. In the hypothesis that none of those taxable persons opted for normal VAT treatment, the revenue loss resulting from an increase of the exemption threshold from EUR 30 000 to EUR 35 000 should not exceed 0.1% of the total VAT revenue.

Based on the information provided by Luxembourg, it appears that the aim of the request to extend 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 and the auditing of small businesses. This could allow the tax administration to focus its control activities towards larger taxable persons. The derogating measure is thus in accordance with the first subparagraph of Article 395(1) of the VAT Directive, which allows Member States to introduce special measures derogating from its

---

4 Council Implementing Decision 2013/677/EU of 15 November 2013 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 316, 27.11.2013, p. 33).

5 Council Implementing Decision 2017/319/EU of 21 February 2017 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 47, 24.2.2017, p. 7).

6 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, COM(2018) 21 final.

provisions in order to simplify the procedure for collecting VAT. In this context, it is noted that the measure is and will remain optional for taxable persons.

As demonstrated by Luxembourg, the derogating measure is not expected to affect significantly the overall amount of its tax revenue collected at the stage of the final consumption. Likewise, it is not expected to adversely affect the Union's own resources accruing from VAT. Therefore, the derogating measure is 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 the request be granted.

Luxembourg's request does not indicate a deadline for the derogation sought. However, derogations from the VAT Directive should normally be limited in time so as to allow for an assessment of their effectiveness and appropriateness. Moreover, as mentioned earlier, the provisions of Articles 281 to 294 of the VAT Directive on the special scheme for small enterprises are currently subject to review. The 2018 proposal on simpler VAT 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 30 June 2022 at the latest.

It is therefore proposed to extend the expiry date of the derogation until 31 December 2022. In the event that a directive is adopted amending Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises and, as a consequence, the relevant national provisions take effect from 1 July 2022, namely before the expiration of the period of validity of the derogating measure on 31 December 2022, this Decision shall cease to apply.

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

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; Poland[9], Estonia[10] and Latvia[11] have been granted a threshold of

[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) 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).

[10] 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).

[11] 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).

EUR 40 000; Croatia[12] and Lithuania[13] a threshold of EUR 45 000; Slovenia[14] a threshold of 50 000; Italy[15] a threshold of EUR 65 000; and Romania[16] a threshold of EUR 88 500.

The measure is also consistent with the 2018 proposal on simpler VAT rules for small and medium-sized enterprises, which is based on the VAT action plan[17] 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.

Derogations from the VAT Directive should always be limited in time so that their effects can be assessed. In the light of the requirements of the 2018 proposal on simpler VAT rules for small enterprises, it is proposed to extend the expiry date of the derogation until 31 December 2022 or the date from which Member States are to apply any national provisions that they are required to adopt in the event that a directive is adopted amending Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises.

The proposed measure is therefore consistent with the provisions of the VAT Directive.

### Consistency with other Union policies

The measure is in line with the 2017 Commission Work Programme[18], which pointed 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, it is consistent with the 2015 single market strategy[19], 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.

---

12 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).

13 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).

14 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).

15 Council Implementing Decision (EU) 2016/1988 of 8 November 2016 amending Implementing 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 (OJ L 306, 15.11.2016, p. 11).

16 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).

17 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.

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 2017 (COM(2016) 710 final).

19 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).

Finally, the measure is in line with EU policies on small and medium-sized enterprises, as set out in the 2016 Start-Up Communication[20], and the 2008 Communication "Think small first" – a "Small Business Act" for Europe"[21] 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.

- **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 Luxembourg and concerns only this particular Member State.

- **Collection and use of expertise**

There was no need for external expertise.

---

[20] 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**)**.

[21] 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).

- **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 35 000. This could have a potential positive impact on the reduction of administrative burden for 1106 taxable persons (which would represent 1.5% of the taxable persons registered for VAT in 2017) and, subsequently, on the tax administration. The budgetary impact in terms of VAT revenue is estimated by Luxembourg at not more than 0.1% of VAT revenue collected.

- **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 Luxembourg will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89.

2019/0271 (NLE)

Proposal for a

# COUNCIL IMPLEMENTING DECISION

## 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

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[22], and in particular the first subparagraph of 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 exercised the option under Article 14 of Second Council Directive 67/228/EEC[23] are able to exempt from value added tax ('VAT') taxable persons whose annual turnover is no higher than EUR 5 000 or the equivalent in national currency.

(2) By Council Implementing Decision 2013/677/EU[24], Luxembourg was authorised to apply a special measure derogating from Article 285 of Directive 2006/112/EC ('the derogating measure') to exempt from VAT taxable persons whose annual turnover was no higher than EUR 25 000. The derogating measure was authorised until 31 December 2016.

(3) Implementing Decision 2013/677/EU was amended by Council Implementing Decision (EU) 2017/319[25] to authorise Luxembourg to exempt from VAT taxable persons whose annual turnover was no higher than EUR 30 000. That authorisation is applicable until 31 December 2019, or until the entry into force of a directive amending Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises, whichever is the earlier. A proposal[26] for such a directive was presented in 2018, but has not yet been adopted.

---

22 OJ L 347, 11.12.2006, p. 1.

23 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. 1303/67).

24 Council Implementing Decision 2013/677/EU of 15 November 2013 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 316, 27.11.2013, p. 33).

25 Council Implementing Decision (EU) 2017/319 of 21 February 2017 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 47, 24.2.2017, p. 7).

26 COM(2018)21 final of 18 January 2018.

(4) By letter registered with the Commission on 2 May 2019, Luxembourg requested authorisation to continue to apply the derogating measure after 31 December 2019 and, at the same time, to increase the threshold from EUR 30 000 to EUR 35 000.

(5) By letter dated 21 June 2019, the Commission informed the other Member States, pursuant to the second subparagraph of Article 395(2) of Directive 2006/112/EC, of the request that Luxembourg had made. By letter dated 24 June 2019, the Commission notified Luxembourg that it had all the information necessary to consider the request.

(6) From the information provided by Luxembourg, it appears that the reasons for the derogating measure remain largely unchanged. The derogating measure reduces the administrative burden and compliance costs both for small enterprises and for tax authorities and it therefore helps to simplify the procedure for collecting VAT. Luxembourg estimates that an increase in the exemption threshold to EUR 35 000 could affect 1106 taxable persons, which corresponds to 1.5% of taxable persons registered for VAT in Luxembourg in 2017. Such an increase in the threshold would therefore further reduce the administrative burden and compliance costs and help to simplify further the procedure for collecting tax.

(7) 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.

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

(9) The derogating measure with the increased threshold will not adversely affect the Union's own resources accruing from VAT because Luxembourg will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, Euratom) No 1553/89[27].

(10) Given the potential positive impact of the derogating measure in reducing the administrative burden and compliance costs for small businesses and for the tax authorities, and the lack of any major impact on the total VAT revenue generated, Luxembourg should be authorised to continue to apply the derogating measure for a further period and to increase the threshold to EUR 35 000 for that period.

(11) Extension of 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. It is therefore appropriate to authorise Luxembourg to continue to apply the derogating measure until 31 December 2022. However, if the proposal for a directive referred to in recital (3) is adopted and the date from which the national provisions necessary to comply with that directive are to apply is earlier than 31 December 2022, the authorisation should cease to apply when those national provisions become applicable.

(12) Implementing Decision 2013/677/EU should therefore be amended accordingly,

[27] 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*

Articles 1 and 2 of Implementing Decision 2013/677/EU are replaced by the following:

*'Article 1*

By way of derogation from Article 285 of Directive 2006/112/EC, Luxembourg is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 35 000.

*Article 2*

This Decision shall apply until the earlier of the following two dates:

(a) 31 December 2022;

(b) the date from which Member States are to apply any national provisions that they are required to adopt in the event that a directive is adopted amending Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises.'.

*Article 2*

This Decision shall apply from 1 January 2020.

*Article 3*

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels,

*For the Council*
*The President*

**COM (2019) 618**

**Information Note**

**1. Proposal**
Proposal for a council implementing decision 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.

**2. Date of Commission document**
28/11/2019

**3. Number of Commission document**
COM (2019) 618

**4. Number of Council document**
2019/0271

**5. Dealt with in Brussels by**
ECOFIN Council Tax Questions Working Group.

**6. Department with primary responsibility**
Department of Finance

**7. Other Departments involved**
None

**8. Background to, Short summary and aim of the proposal**
Until the end of 2012, Luxembourg exempted taxable persons whose annual turnover was no higher than €10 000 from VAT. At the same time, Luxembourg also granted graduated tax relief to taxable persons whose annual turnover was between €10,000 and €25,000. Subsequently, this threshold was increased to €25,000 and the graduated relief was abolished. At the same time of the abolition of the graduated relief in 2016, the derogation was extended out to 2019, and the threshold was increased to €30,000.

This request from Luxembourg is to prolong the derogation and again increase the threshold, this time to €35,000. Luxembourg maintains that the derogating measure reduces the administrative burden for small businesses and tax administration alike. It has been demonstrated that the derogating measure is not expected to significantly affect the overall amount of tax revenue collected at the stage of the final consumption, or to adversely affect the Union's own resources from VAT.

**9. Legal basis of the proposal**
Article 395 of the VAT Directive.

**10. Voting Method**
Unanimity.

**11. Role of the EP**
Consultation.

**12. Category of proposal**
A request for a derogating measure allowing Luxembourg to exempt from VAT taxable persons whose annual turnover is no higher than €35,000, and prolong this treatment until 31 December 2022.

**13. Implications for Ireland & Ireland's Initial View**
The proposal has no negative implications for Ireland.

**14. Impact on the public**
None.

**15. Have any consultations with Stakeholders taken place or are there any plans to do so?**
This proposal is based on a request made by Luxembourg and concerns only this member state.

**16. Are there any subsidiarity issues for Ireland?**
No.

**17. Anticipated negotiating period**
No negotiation anticipated, will likely pass without discussion.

**18. Proposed implementation date**
1 January 2020.

**19. Consequences for national legislation**
None.

**20. Method of Transposition into Irish law**
N/A.

**21. Anticipated Transposition date**
N/A.

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

**23. Contact name, telephone number and e-mail address of official in Department with primary responsibility**

Nicholas Fitzgerald
Nicholas.fitzgerald@finance.gov.ie
Phone: 076 100 7706

**Date**

**04 December 2019**