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2018/0006 (CNS)

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**

{SWD(2018) 9 final} - {SWD(2018) 11 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

Value added tax (VAT) is a consumption tax, borne ultimately by the final consumer, but which is collected by businesses that supply goods or services. The VAT Directive<sup>1</sup> lays down a series of administrative obligations to ensure that the system functions properly (e.g. VAT registration, invoicing, accounting and reporting). The compliance burden derived from the need to observe these obligations generates a cost for businesses referred to as the ‘compliance cost’. VAT obligations are particularly burdensome for small businesses given that they have more limited resources than large businesses. This leads to small businesses<sup>2</sup> (hereinafter ‘SMEs’) bearing proportionally higher VAT compliance costs than larger businesses.

The VAT Directive therefore sets out several provisions designed to ease the burden on SMEs dealing with VAT. Such provisions are largely contained in Title XII, Chapter 1 of the Directive, ‘Special scheme for small enterprises’ (hereinafter the ‘SME scheme’). These allow Member States to (i) provide for simplified procedures for charging and collecting VAT; and (ii) exempt SMEs with an annual turnover below a certain threshold from charging and deducting VAT (hereinafter the ‘SME exemption’). Simplified VAT obligations are also available in the VAT Directive but outside of the SME scheme. Such measures are optional – Member States can apply them and businesses can avail themselves of them.

The current initiative is part of the reform package announced in the VAT action plan<sup>3</sup>. This was enhanced by the follow-up to this plan<sup>4</sup>, as explained further in the section on consistency with existing policy provisions in the VAT area, and by President Juncker’s letter of intent accompanying the State of the Union Address 2017<sup>5</sup>. However, the review is long overdue for three main reasons.

First, despite the fact that Member States may exempt SMEs from VAT – an option that is widely used – SMEs continue to suffer from disproportionate VAT compliance costs due to how the SME exemption is designed. In particular, SMEs involved in cross-border trade

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<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([OJ L 347, 11.12.2006, p. 1](#))

<sup>2</sup> At EU level, SMEs are generally defined according to the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ([OJ L 124, 20.5.2003, p. 36](#)). With its rules for small enterprises, the VAT Directive however targets businesses operating on a much smaller scale, which under the general definition would be considered as ‘micro-enterprises’ (that is, with turnover up to EUR 2 000 000). Such businesses make up about 98% of all EU enterprises.

<sup>3</sup> 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](#)).

<sup>4</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee — On the follow-up to the Action Plan on VAT — Towards a single EU VAT area — Time to act ([COM\(2017\) 566 final](#)).

<sup>5</sup> State of the Union 2017. Letter of intent to President Antonio Tajani and to Prime Minister Jüri Ratas, 13 September 2017, accessible at [https://ec.europa.eu/commission/sites/beta-political/files/state-union-2017-brochure\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/state-union-2017-brochure_en.pdf). See also Annex I to the Commission Work Programme 2017, COM(2016) 710 final, Strasbourg, 25.10.2016, p. 3, accessible at [https://ec.europa.eu/info/sites/info/files/cwp\\_2017\\_annex\\_i\\_en.pdf](https://ec.europa.eu/info/sites/info/files/cwp_2017_annex_i_en.pdf).

cannot benefit from the SME exemption in Member States other than the one in which they are established. In addition, high VAT compliance costs also stem from the complexity and diversity of rules on VAT obligations across the EU, which SMEs may have to observe when trading cross-border.

Second, the current system has distortive effects on competition on both domestic and EU markets. The SME exemption in one Member State, which is available only to businesses established there, has a negative impact on the competitive situation of those established in other Member States that supply the same market. This issue is set to worsen with the shift towards destination-based taxation under the proposed definitive VAT system; many SMEs may have to charge their customers VAT that differs from that of the Member State in which they are established. The principle of destination-based taxation states that VAT has to be declared and accounted for in the Member State where the customer is established (Member State of ‘destination’) rather than in the Member State where the SME is established (Member State of ‘origin’). This means that (i) there is no level playing field for SMEs to trade within the EU; and (ii) SMEs are discouraged from carrying out cross-border operations and making the most of the opportunities afforded by the single market due to VAT-related obligations in other Member States.

At domestic level, distortions arise because the simplified VAT obligations are linked in principle to the use of the SME exemption, and SMEs outside the exemption (because they have exceeded the turnover threshold or have opted for the normal VAT arrangements) cannot benefit from them. This may result in the ‘threshold effect’, in which SMEs slow their growth to avoid crossing the SME exemption threshold.

Third, the review provides the opportunity to encourage voluntary compliance and therefore help reduce revenue losses due to non-compliance and VAT fraud. While SMEs already find it difficult to comply with domestic VAT obligations, compliance with VAT obligations in other Member States for those involved in cross-border trade is an even more serious obstacle due to the lack of alignment across the EU. The simplified registration and payment system MOSS (Mini One Stop Shop) has addressed these problems in terms of electronic services supplied to final consumers (B2C). Although the e-commerce proposal expands the MOSS to all B2C supplies, there is still a need for further improvement.

There are two more reasons that call for action.

First, the SME scheme is already obsolete, working as it does on the basis of deviations. In its provisions, the VAT Directive itself provides the possibility to depart from the basic SME exemption threshold of EUR 5 000 by expressly setting thresholds for 19 Member States. However, 10 Member States currently rely on derogations from the applicable threshold, and several new requests for derogation have been already submitted.

Second, the SME scheme, which provides for measures to be applied in the Member State where the small enterprises are established, is becoming unsustainable as the VAT system shifts towards destination-based taxation.

As a result, the review aims to create a modern, simplified SME scheme. In particular, it seeks to (i) reduce VAT compliance costs for SMEs both domestically and at EU level; (ii) reduce distortions of competition both domestically and at EU level; (iii) reduce the negative impact of the threshold effect; and (iv) facilitate compliance by SMEs and monitoring by tax administrations.

This is in line with the objectives of this proposal, whose aim is to:

- help create an environment that is conducive to SME growth;
- help create an efficient and robust VAT system with a view to creating a single EU VAT area; and
- contribute to the smooth functioning of a deeper and fairer single market.
- **Consistency with existing policy provisions in the policy area**

The review is part of the VAT action plan setting out ways to modernise the VAT system in order to make it simpler, more fraud-proof and business-friendly. In particular, this proposal complements two other legislative initiatives resulting from the VAT action plan on the shift towards destination-based taxation: (i) the e-commerce proposal, which was adopted in December 2016<sup>6</sup>; and (ii) the definitive VAT system proposal, which was adopted in October 2017<sup>7</sup>. It is also consistent with the VAT place of supply rules for telecommunications, broadcasting and electronically supplied services<sup>8</sup>, which entered into force in 2015.

- **Consistency with other EU policies**

The proposal is consistent with the 2015 single market strategy<sup>9</sup>, where the Commission set out to help SMEs and start-ups grow and to address key difficulties that SMEs face in all phases of their lifecycle – these prevent them from taking full advantage of the single market. It is also in line with EU policies on SMEs, as set out in the 2016 Start-Up Communication<sup>10</sup> and the ‘Think Small First’ principle outlined in the 2008 Small Business Act Communication<sup>11</sup>.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The Directive resulting from this proposal amends the VAT Directive on the basis of Article 113 of the Treaty on the Functioning of the European Union. This provision enables the Council, acting unanimously in accordance with a special legislative procedure and after

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<sup>6</sup> Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods ([COM\(2016\) 757 final](#)).

<sup>7</sup> Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards certain harmonisation and simplification rules within the current value added tax system and introducing the definitive system for the taxation of trade between Member States ([COM\(2017\) 569 final](#)).

<sup>8</sup> Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services ([OJ L 284, 26.10.2013, p. 1](#)); and Council Regulation (EU) No 967/2012 of 9 October 2012 amending Implementing Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons ([OJ L 290, 20.10.2012, p. 1](#)).

<sup>9</sup> 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](#)), p. 4.

<sup>10</sup> 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](#)), p. 4.

<sup>11</sup> 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](#)), p. 4-5 and 7-8.

consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' legislation in the area of indirect taxation.

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

The proposal is consistent with the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union<sup>12</sup>. The main problems that have been identified (high compliance costs, distortive effects etc.) are triggered by the rules of the existing VAT Directive. Simplifying them in order to reduce the compliance burden of SMEs requires the Commission to submit a proposal to amend the VAT Directive. The Member States have very little room for manoeuvre in connection with the Directive. As a result, this proposal will clearly offer value over and above what can be achieved at Member State level.

- **Proportionality**

The proposal is consistent with the principle of proportionality as it does not go beyond what is necessary to meet the objectives of the Treaties, in particular the smooth functioning of the single market. In accordance with the subsidiarity test, it is not possible for Member States to address the problems facing SMEs that are triggered by existing VAT rules without a proposal to amend the VAT Directive. The proposed improvements are limited to a small number of VAT provisions that lie at the heart of the problems identified. Section 7.4 of the impact assessment accompanying this proposal contains further details.

- **Choice of the instrument**

A Directive is proposed in order to amend the VAT Directive.

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

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

In preparing the proposal, the rules on SMEs currently provided for in the VAT Directive have been evaluated. The evaluation, which can be found in Annex 8 of the impact assessment accompanying this proposal, is based in particular on a retrospective evaluation of elements of the EU VAT system<sup>13</sup> conducted by an external consultant in 2011 and a study on the SME scheme carried out by another external consultant in 2017.

- **Stakeholder consultations**

The consultation strategy sought to gather feedback from stakeholders on the application of the current VAT provisions for SMEs and to get their views on possible changes to such provisions.

The strategy consisted of (i) a consultation targeting 2 000 small enterprises, which was carried out as part of the 2017 study; (ii) an SME panel consultation conducted by the Enterprise Europe Network<sup>14</sup>, with 1 704 contributions received; (iii) an internet-based open

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<sup>12</sup> Consolidated version of the Treaty on European Union (OJ C 326, 26.10.2012, p. 13).

<sup>13</sup> Final report, London 2011, available at:

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/common/publications/studies/report\\_evaluation\\_vat.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/common/publications/studies/report_evaluation_vat.pdf).

<sup>14</sup> The Enterprise Europe Network (EEN) is a project managed by the European Commission (DG GROW) that helps businesses innovate and grow on an international scale. It is the world's largest

public consultation held over 12 weeks from 20 December 2016 to 20 March 2017, with 113 contributions received<sup>15</sup>; (iv) a workshop held under the auspices of the Fiscalis 2020 Programme and organised in the form of a joint meeting of the Group on the Future of VAT (GFV) and the VAT Expert Group (VEG) to allow business representatives from VEG to participate; and (v) contributions received via the REFIT platform<sup>16</sup>. Spontaneous contributions have also been taken into account.

- **Collection and use of expertise**

The review that this proposal is based on relies mainly on the analysis carried out as part of the 2017 study on the SME scheme. This study assessed how the current VAT rules for SMEs in the VAT Directive function at domestic and EU level. It also developed options for reviewing the current rules and analysed the impact of such options.

In addition, two more studies have fed into this review: the 2016 study on modernising VAT for cross-border e-commerce and the 2011 study involving a retrospective evaluation of elements of the EU VAT system.

- **Impact assessment**

The impact assessment for the proposal was considered by the Regulatory Scrutiny Board on 13 September 2017. The Board issued a positive opinion on the proposal together with some recommendations, which have been taken into account. The opinion of the Board, the recommendations and an explanation of how they have been taken into account are included in Annex 1 of the Staff Working Document accompanying this proposal.

- **Regulatory fitness and simplification**

This initiative is part of the REFIT programme. According to the Commission Work Programme<sup>17</sup>, which outlined the new initiatives to be adopted under that programme in 2017, the SME review was included in the Commission priority<sup>18</sup> *‘A Deeper and Fairer Internal Market with a Strengthened Industrial Base’*.

The proposal delivers on the REFIT-related objectives to (i) reduce the VAT burden on SMEs and tax administrations; and (ii) to reduce distortions at EU level so that SMEs can take full advantage of the single market. In particular, compliance costs for SMEs are expected to be reduced by 18 % under this initiative compared to the baseline scenario outlined in the impact assessment (EUR 56.1 billion per year, compared to EUR 68 billion per year at present). Cross-border trading activities by SMEs within the EU are also expected to increase by 13.5 %. It should also have a positive impact on both voluntary compliance and on business

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support network for SMEs with international ambitions. The network consists of 600 partners in all EU countries and more than 30 non-EU countries.

<sup>15</sup> The input received from participants and the full report on the results are available on DG TAXUD’s [website](#).

<sup>16</sup> See in particular REFIT Platform, Stakeholder Suggestions, XVIII — Taxation and customs union, available at [https://ec.europa.eu/info/sites/info/files/taxation\\_and\\_customs\\_union.pdf](https://ec.europa.eu/info/sites/info/files/taxation_and_customs_union.pdf).

<sup>17</sup> Annex 1 to the 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](#)), p. 3.

<sup>18</sup> 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](#)), p. 8-9 (priority number 4). The Commission’s priorities are outlined in the [Political Guidelines](#) presented at the start of the Commission’s mandate.

competitiveness. For more information, see sections 6 and 7 of the impact assessment accompanying this proposal.

#### **4. BUDGETARY IMPLICATIONS**

The proposal will have no negative implications for the EU budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Implementation of the proposal will be monitored as part of the responsibilities of the Commission for ensuring that EU VAT legislation is correctly applied. In addition, the Commission and Member States will monitor and evaluate whether this initiative is functioning properly and the extent to which its objectives have been achieved based on the indicators set out in section 8 of the impact assessment accompanying this proposal.

- **Overview of the main provisions in the proposal**

The main provisions of the proposal are as follows:

- (1) opening up the exemption for small enterprises to all EU eligible businesses, whether or not established in the Member State where the VAT will apply and the exemption will be available;
- (2) establishing an updated value for the maximum level of national exemption thresholds;
- (3) introducing a transitional period during which small enterprises that temporarily exceed the exemption threshold will be able to continue using the exemption;
- (4) introducing simplified VAT obligations for both exempt and non-exempt small enterprises.

#### **Detailed explanation of the specific provisions of the proposal**

Points 1 to 7, 13, 17, 19 and 20 of Article 1 propose a number of amendments that relate to updates, technical adjustments and references to the SME exemption in other provisions of the VAT Directive.

Point 8 of Article 1 introduces a new Article 280a to provide definitions of various concepts necessary for applying provisions of the special scheme provided for in Title XII, Chapter 1 of the VAT Directive.

The definition of ‘small enterprises’ helps clarify those provisions and increase the legal certainty for taxpayers. It would cover all enterprises whose Union annual turnover in the single market is no higher than EUR 2 000 000. With reference to their VAT treatment, the introduction of this definition allows for simplification measures targeted at enterprises which, in economic terms, are small even though their turnover exceeds the exemption threshold. The wider category of small enterprises therefore includes enterprises exempted from VAT as well as enterprises eligible for exemption but who opted for the application of

the normal rules or whose turnover exceeds the exemption threshold and who are therefore taxed on the basis of the normal rules.

There are also two definitions of turnover that have been introduced in order to facilitate the application of the national exemption thresholds ('Member State annual turnover') and the eligibility condition applicable to non-established small enterprises ('Union annual turnover').

Points 9, 10 and 16 of Article 1 provide for changes resulting from the elimination of graduated tax relief, which has been found to be a source of complexity and contributes little to reducing the compliance burden of small enterprises. This measure should therefore be removed.

Point 11 of Article 1 amends Article 283(1) as regards the exclusion from the exemption of non-established enterprises. This amendment is necessary to open up the exemption to EU businesses not established in the Member State where they carry out supplies subject to VAT.

Point 12 of Article 1 amends Article 284 to define the new scope of the exemption for small enterprises, which will remain optional for Member States. Member States that decide to implement the SME exemption will have the possibility to set their threshold at the level that reflects best their particular economic and legal context. However, in order to ensure that the scope of the exemption is limited to the smallest enterprises and to limit the possible distortive effects of the exemption, the VAT Directive will set the maximum level of the exemption threshold common to all the Member States. The exemption will be available to all EU eligible businesses, whether or not established in the Member State where they carry out supplies subject to VAT.

For any small enterprise able to avail itself of the exemption in a Member State where it is not established, two conditions must be met: (i) the enterprise's annual turnover in that Member State ('Member State annual turnover') should be below the exemption threshold applicable there; and (ii) its overall turnover in the single market (Union annual turnover) should not be higher than EUR 100 000. The latter eligibility condition should prevent abuse by large enterprises that, in the absence of the overall EU turnover threshold, would be able to benefit from the SME exemptions in several Member States (e.g. if their turnover in each Member State were below the applicable SME exemption threshold) despite having a large overall turnover.

In order to ensure the effective control of application of the conditions of the exemption, the Member State in which a business availing itself of the exemption in other Member States is established must collect all relevant information on its turnover. Therefore, where a small enterprise avails itself of the exemption in Member States other than that in which it is established, the Member State of establishment will have to ensure the accurate declaration of the Union annual turnover and the Member State annual turnover by the small enterprise and will inform the tax authorities of the other Member States concerned in which the small enterprise carries out its supplies.

Point 14 of Article 1 modifies Article 288 to clarify which transactions should be taken into account while calculating the annual turnover, serving as a reference for applying the exemption to small enterprises.

Point 15 of Article 1 inserts a new Article 288a, which introduces a transitional period for small enterprises making use of the SME exemption whose turnover exceeds the exemption threshold in a given year. Such enterprises are allowed to continue using the SME exemption for that one year, provided that their turnover does not exceed the applicable SME threshold by more than 50 % in that year. The provision reflects two endpoints to this transitional



period, which act as a safeguard against the abuse of this measure: time-related (1 year) and turnover-related (exceeding the applicable exemption threshold by more than 50 %).

Point 18 of Article 1 introduces a new Section 2a on simplification measures for both exempt and non-exempt enterprises. The new subsection 1 integrates a number of simplified obligations for exempt enterprises into the exemption scheme (registration, invoicing, keeping of accounts and VAT returns). In addition, Member States retain the possibility to release exempt small enterprises from other obligations referred to in Articles 213 to 271.

The new subsection 2 provides for a set of simplified obligations for small enterprises that do not benefit from the SME exemption. Such enterprises could be both those eligible for exemption but opting for taxation on the basis of the general rules and those with turnover above the exemption threshold but lower than EUR 2 000 000, who therefore qualify as small enterprises in the sense of the newly introduced definition. As exempt enterprises cannot deduct the input VAT, the exemption would not really address the concerns of all eligible enterprises. In particular, small enterprises supplying goods and services to other taxable persons may prefer to be taxed on the basis of the general rules. Reducing the VAT compliance costs for such enterprises is therefore linked to simplifying their VAT obligations rather than to the exemption itself.

Member States should therefore also define a set of simplified VAT obligations for non-exempt small enterprises. Such a set should include simplified registration, simplified record keeping and longer tax periods, which would result in less frequent filing of VAT returns. Non-exempt small enterprises should also be able to opt for the application of normal tax periods.

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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2006/112/EC<sup>3</sup> allows Member States to continue to apply their special schemes to small enterprises in accordance with common provisions and with a view to closer harmonisation. However, those provisions are outdated and do not reduce the compliance burden of small enterprises as they were designed for a common system of value added tax (VAT) based on taxation in the Member State of origin.
- (2) In its VAT action plan<sup>4</sup>, the Commission announced a comprehensive simplification package for small enterprises aimed at reducing their administrative burden and helping create a fiscal environment to facilitate their growth and the development of cross-border trade. This would entail a review of the special scheme for small enterprises as outlined in the Communication on the follow-up to the action plan on VAT<sup>5</sup>. The review of the special scheme for small enterprises constitutes therefore an important element of the reform package set out in the VAT action plan.
- (3) The review of this special scheme is closely linked to the Commission's proposal setting out the principles for a definitive VAT system for cross-border business-to-business trade between Member States on the basis of the taxation of cross-border

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ L 347, 11.12.2006, p. 1.

<sup>4</sup> 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 of 7.4.2016).

<sup>5</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the follow-up to the Action Plan on VAT — Towards a single EU VAT area — Time to act (COM(2017) 566 final of 4.10.2017).

supplies of goods in the Member State of destination<sup>6</sup>. The VAT system's shift towards destination-based taxation has identified that a number of the current rules are not suited for a destination-based tax system.

- (4) In order to address the issue of the disproportionate compliance burden faced by small enterprises, simplification measures should be available not only to enterprises that are exempt under the current rules, but also to those considered small in economic terms. For the purposes of the simplification of the VAT rules, enterprises would be considered 'small' if their turnover qualifies them as micro enterprises under the general definition provided for in Commission Recommendation 2003/361/EC<sup>7</sup>.
- (5) The special scheme for small enterprises currently only allows for an exemption to be granted to enterprises established in the Member State in which the VAT is due. This has a negative impact on competition for non-established enterprises in the single market. To address this and to avoid further distortions, as a result of the shift towards destination-based taxation, small enterprises established in Member States other than that in which the VAT is due should also be allowed to benefit from the exemption.
- (6) Small enterprises may only benefit from the exemption where their annual turnover is below the threshold applied by the Member State in which the VAT is due. In setting their threshold, Member States should abide by the rules on thresholds laid down by Directive 2006/112/EC. Those rules, most of which were put in place in 1977, are no longer suitable.
- (7) To simplify things, a number of Member States have been authorised to apply a threshold higher than that authorised under Directive 2006/112/EC on a temporary basis. As it is not appropriate to continue modifying general rules using measures granted by way of derogation, the rules on thresholds should be updated.
- (8) Member States should be left to set their national threshold for the exemption at the level that suits their economic and political conditions best, subject to the upper threshold provided for under this Directive. In this regard, it should be clarified that where Member States apply different thresholds, this would need to be based on objective criteria.
- (9) The annual turnover threshold, which is the basis for the exemption under this special scheme, consists only of the combined value of supplies of goods and services made by a small enterprise in the Member State where the exemption is granted. Distortions of competition could arise where an enterprise, not established in that Member State, could benefit from such an exemption regardless of the turnover it generates in other Member States. In order to mitigate such distortions in competition and as a revenue safeguard, only those enterprises whose Union annual turnover is below a certain threshold should be eligible for exemption in a Member State where they are not established.
- (10) In order to ensure that small enterprises are not discouraged from developing their business and to ensure a gradual transition from exemption to taxation, small

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<sup>6</sup> Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards certain harmonisation and simplification rules within the current value added tax system and introducing the definitive system for the taxation of trade between Member States (COM(2017) 569 final of 4.10.2017).

<sup>7</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

enterprises whose turnover does not exceed a certain limit should be allowed to continue benefitting from the exemption for a limited period of time.

- (11) In order to reduce the compliance burden on small enterprises, their obligations should also be simplified. Given that the need for obligations varies and largely depends on whether small enterprises are exempt from VAT, different sets of simplified obligations should be put in place.
- (12) Where an exemption applies, small enterprises availing themselves of the exemption should, at a minimum, have access to simplified VAT registration, invoicing, accounting and reporting obligations.
- (13) Furthermore, in order to ensure compliance with conditions for exemption granted by a Member State to enterprises not established there, it is necessary to require prior notification of their intention to use the exemption. Such notification should be made by the small enterprise to the Member State where it is established. That Member State should thereafter, based on the information declared on the turnover of that enterprise, provide that information to the other Member States concerned.
- (14) In addition to granting an exemption from VAT, the special schemes also allow for graduated tax relief. Graduated tax relief is a source of complexity and contributes little to reducing the compliance burden of small enterprises. This measure should therefore be removed.
- (15) To reduce the compliance burden of small enterprises that are not exempted, Member States should be required to simplify VAT registration and record keeping and to prolong tax periods so as to provide for less frequent filing of VAT returns.
- (16) To help small enterprises that encounter difficulties in paying VAT to the competent authority because they have not yet received payment from their customers, Member States may, under an optional scheme, allow taxable persons to use a cash accounting scheme to account for VAT. This scheme should be modified to bring it into line with the definition of small enterprises.
- (17) The objective of this Directive is to reduce the compliance burden of small enterprises, which cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level. As a result, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in Article 5, this Directive does not go beyond what is necessary in order to achieve these objectives.
- (18) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>8</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (19) Directive 2006/112/EC should therefore be amended accordingly,

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<sup>8</sup> OJ C 369, 17.12.2011, p. 14.

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2006/112/EC is amended as follows:

- (1) in Article 2(1)(b), point (i) is replaced by the following:
  - '(i) a taxable person acting as such, or a non-taxable legal person, where the vendor is a taxable person acting as such who is not eligible for the exemption for small enterprises provided for in Article 284 and who is not covered by Articles 33 or 36;'
- (2) Article 139 is amended as follows:
  - (a) the first subparagraph of paragraph 1 is replaced by the following:

'The exemption provided for in Article 138(1) shall not apply to the supply of goods carried out by taxable persons who are covered by the exemption for small enterprises provided for in Article 284.'
  - (b) paragraph 2 is replaced by the following:

'2. The exemption provided for in Article 138(2)(b) shall not apply to the supply of products subject to excise duty by taxable persons who are covered by the exemption for small enterprises provided for in Article 284.'
- (3) Article 167a is amended as follows:
  - (a) the second paragraph is replaced by the following:

'Member States which apply the optional scheme referred to in the first paragraph shall set a threshold for taxable persons using the scheme within their territory, based on the annual turnover of the taxable person calculated in accordance with Article 288. That threshold may not be higher than EUR 2 000 000 or the equivalent in national currency.'
  - (b) the third paragraph is deleted;
- (4) in Article 220a(1), the following point (c) is added:
  - '(c) where the taxable person is a small enterprise as defined in Article 280a.'
- (5) in Article 270, point (a) is replaced by the following:
  - '(a) the total annual value, exclusive of VAT, of their supplies of goods and services does not exceed by more than EUR 35 000, or the equivalent in national currency, the amount of the annual turnover which is used as a reference for application of the exemption for small enterprises provided for in Article 284;'
- (6) in Article 272(1), point (d) is deleted;
- (7) in Article 273, the second paragraph is replaced by the following:

'The option referred to in the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3 or to impose additional obligations on small enterprises over and above those laid down in Section 2a in Title XII, Chapter 1.'
- (8) in Title XII, Chapter 1, the following Section -1 is inserted:

## **'Section -1 Definition**

### *Article 280a*

For the purposes of this Chapter, the following definitions shall apply:

- (1) 'small enterprise' means any taxable person established within the Community whose Union annual turnover is no higher than EUR 2 000 000 or the equivalent in national currency;
  - (2) 'Member State annual turnover' means the total annual value of supplies of goods and services, exclusive of VAT, made by a taxable person within that Member State;
  - (3) 'Union annual turnover' means the total annual value of supplies of goods and services, exclusive of VAT, made by a taxable person within the territory of the Community.';
- (9) the heading of Section 2 of CHAPTER 1 of TITLE XII is replaced by the following:  
**'Exemptions'**;
- (10) Article 282 is replaced by the following:

### *'Article 282*

The exemptions provided for in this Section shall apply to the supply of goods and services by small enterprises.';

- (11) in Article 283(1), point (c) is deleted;
- (12) Article 284 is replaced by the following:

### *'Article 284*

1. Member States may exempt the supply of goods and services made within their territory by small enterprises established in that territory whose Member State annual turnover, attributable to such supplies, does not exceed a threshold fixed by those Member States for the application of this exemption.

Member States may fix varying thresholds for different business sectors based on objective criteria. However, those thresholds shall be no higher than EUR 85 000 or the equivalent in national currency.

2. Member States that have put in place the exemption for small enterprises shall also exempt the supplies of goods and services in their own territory made by enterprises established in another Member State, provided that the following conditions are fulfilled:

- (a) the Union annual turnover of that small enterprise does not exceed EUR 100 000;
- (b) the value of the supplies in the Member State where the enterprise is not established does not exceed the threshold applicable in that Member State for the granting of the exemption to enterprises established in that Member State.

3. Member States shall take appropriate measures to ensure that small enterprises benefiting from the exemption satisfy the conditions referred to in paragraphs 1 and 2.

4. Prior to availing itself of the exemption in other Member States, the small enterprise shall notify the Member State in which it is established.

Where a small enterprise avails itself of the exemption in Member States other than that in which it is established, the Member State of establishment shall take all measures necessary to ensure the accurate declaration of the Union annual turnover and the Member State annual turnover by the small enterprise and shall inform the tax authorities of the other Member States concerned in which the small enterprise carries out a supply.';

(13) Articles 285, 286 and 287 are deleted;

(14) Article 288 is replaced by the following:

*'Article 288*

The annual turnover serving as a reference for applying the exemption provided for in Article 284 shall consist of the following amounts, exclusive of VAT:

- (1) the value of supplies of goods and services, in so far as they would be taxed were they supplied by a non-exempt taxable person;
- (2) the value of transactions which are exempt, with deductibility of the VAT paid at the preceding stage, pursuant to Articles 98 and 138;
- (3) the value of transactions which are exempt pursuant to Articles 146 to 149 and Articles 151, 152 and 153;
- (4) the value of real estate transactions, financial transactions as referred to in points (b) to (g) of Article 135(1), and insurance and reinsurance services, unless those transactions are ancillary transactions.

However, disposals of the tangible or intangible capital assets of an enterprise shall not be taken into account for the purposes of calculating turnover.';

(15) the following Article 288a is inserted:

*'Article 288a*

Where during a subsequent calendar year the Member State annual turnover of a small enterprise exceeds the exemption threshold referred to in Article 284(1), the small enterprise shall be able to continue to benefit from the exemption for that year, provided that its Member State annual turnover during that year does not exceed the threshold set out in Article 284(1) by more than 50%.';

(16) in Article 290, the second sentence is deleted;

(17) Articles 291 to 294 are deleted;

(18) in Title XII, Chapter 1, the following Section 2a is inserted:

**'Section 2a  
Simplification of obligations for small enterprises**

**Subsection 1  
Exempt small enterprises**

#### *Article 294a*

For the purposes of this Subsection 'exempt small enterprise' means any small enterprise benefitting from the exemption in the Member State in which the VAT is due as provided for in Article 284(1) and (2).

#### *Article 294b*

Member States may release exempt small enterprises established in their territory that are carrying out only transactions within that Member State from the obligation to state the beginning of their activity pursuant to Article 213 and to be identified by means of an individual number pursuant to Article 214.

Where this option is not exercised or where small enterprises are required to state the beginning of their activity and be identified, Member States shall put in place a simplified procedure for the identification of such small enterprises by means of an individual number.

#### *Article 294c*

Member States shall release exempt small enterprises from the obligation to issue an invoice pursuant to Article 220.

Member States shall not impose an obligation on exempt small enterprises to issue an invoice pursuant to Article 221.

#### *Article 294d*

Member States may release exempt small enterprises from certain or all obligations on accounting laid down in Chapter 4 of Title XI.

Where Member States require invoices to be stored, they may not impose further requirements on exempt small enterprises in addition to those provided for in national law in areas other than VAT and relating to record keeping.

#### *Article 294e*

Member States may release exempt small enterprises from the obligation to submit a VAT return laid down in Article 250.

Where this option is not exercised, Member States shall allow such exempt small enterprises to submit a simplified VAT return to cover the period of a calendar year. However, small enterprises may opt for the application of the tax period set in accordance with Article 252.

#### *Article 294f*

Member States may release exempt small enterprises from certain other or all obligations referred to in Articles 217 to 271.

### **Subsection 2 Non-exempt small enterprises**



#### *Article 294g*

Member States shall put in place a simplified procedure to allow small enterprises not benefiting from the exemption provided for in Article 284 to obtain an individual identification number in order to comply with Article 214.

#### *Article 294h*

Notwithstanding Articles 244 to 248a, Member States shall determine simplified obligations relating to the storage of invoices by small enterprises.

#### *Article 294i*

For small enterprises the tax period to be covered in a VAT return shall be the period of a calendar year. However, small enterprises may opt for application of the tax period set in accordance with Article 252.

#### *Article 294j*

Notwithstanding Article 206, Member States shall not require interim payments to be made by small enterprises.';

- (19) in Article 314, point (c) is replaced by the following:
- '(c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Article 284 and involves capital goods;';
- (20) in Article 334, point (c) is replaced by the following:
- '(c) another taxable person, in so far as the supply of goods, carried out by that taxable person in accordance with a contract under which commission is payable on a sale, is covered by the exemption for small enterprises provided for in Article 284 and involves capital goods;'.

#### *Article 2*

1. Member States shall adopt and publish, by 30 June 2022 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall communicate to the Commission the text of those provisions without delay.  
They shall apply those provisions from 1 July 2022.  
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 3*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*