EUROPEAN
COMMISSION

Brussels, 10.7.2025
COM(2025) 383 final

2025/0205 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision 2013/805/EU authorising the Republic of Poland to introduce measures derogating from point (a) of Article 26(1) and Article 168 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 25 February 2025, Poland requested an extension of the derogation from Article 26(1), point (a), and Article 168 of the VAT Directive in order to (i) continue to restrict to 50% the right to deduct input VAT on the purchase, intra-Community acquisition, import, hire and lease of motor vehicles which are not used entirely for business purposes and expenditure relating to those vehicles, and to (ii) not treat as supplies of services for consideration the use, by a taxable person or one's employees, of vehicles covered by the above limitation on the right to deduct input VAT for purposes other than business activity conducted by the taxable person.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 10 April 2025 of the request made by Poland. By letter dated 11 April 2025, the Commission notified Poland 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

Conducting inspections to determine the extent to which vehicles are used for business purposes and for other purposes (in particular for private purposes unrelated to business) would create significant difficulties and burdens for both tax authorities and taxable persons and could lead to time-consuming and costly disputes for both parties. In practice, it is sometimes even impossible to verify the actual division of the use of vehicles. It may result in VAT fraud or attempted fraud (such as unreliable record keeping), and consequently a decrease in tax revenue. Because of the number of vehicles used for mixed purposes, tax evasion could be substantial.

Moreover, Poland is dominated by small companies with low turnover (the so-called microenterprises), often sole proprietorships or companies employing only a few workers. These are frequently family businesses. In such small enterprises, there is often no clear separation of company assets from private assets of persons conducting business activity. In such cases, distinguishing between private and business use of motor vehicles is extremely difficult and would require disproportionately large outlays, including those resulting from the need to maintain detailed documentation.

The application of the requested special measures results in reduction of administrative burdens and costs for entrepreneurs. Taxable persons do not have to fulfil a number of burdensome documenting and reporting obligations (e.g. the necessity to keep and report to the tax administration the so-called kilometric data, i.e. a detailed list of kilometres driven in connection with conducted business activity) which sometimes could constitute a disproportionate administrative burden.

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

Businesses are generally in favour of the deduction rules resulting from the requested derogation. The measures adopted under the implementing Decision 2013/805/EU are seen as a successful compromise between the accepted rules and the expensive, time-consuming and inefficient keeping of records proving the actual use of vehicles for business activities. The acceptance of the simplifications resulting from the derogation from the general rules may be evidenced by the fact that taxable persons have adopted such rules for nearly 90% of the vehicles used.

For those reasons the Republic of Poland has been applying a derogation from Articles 26(1)(a) and 168 of the VAT Directive since 1 April 2014. The aforementioned specific measures were extended until 31 December 2019, then until 31 December 2022 by Council Implementing Decision (EU) 2016/1837[2] and Council Implementing Decision (EU) 2019/1594,[3] respectively and then by 31 December 2025 by Council Implementing Decision (EU) 2022/2385[4].

Given the positive impact of the special measure on the administrative burden of taxpayers and tax authorities alike, it is proposed to authorise the extension of the current derogation measure. The authorisation should be valid for another limited period, i.e. until 31 December 2028, in order to allow for a review of the necessity and effectiveness of the derogating measure and the apportionment rate between business and non-business use it is based on. Any extension request should be accompanied by a report which includes a review of the percentage applied and should be sent to the Commission by 31 March 2028.

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

Similar derogations in relation to the right of deduction have been granted to other Member States.[5]

Article 176 of the VAT Directive stipulates that the Council shall determine the expenditure on which the VAT is not deductible. Until then, it authorises Member States to maintain exclusions that were in place under national laws on 1 January 1979 or, in the case of the Member States which acceded to the Community after that date, on the date of their

[2] Council Implementing Decision (EU) 2016/1837 of 11 October 2016 authorising the Republic of Poland to continue to apply measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 280, 18.10.2016, p. 28).

[3] Council Implementing Decision (EU) 2019/1594 of 24 September 2019 amending Implementing Decision 2013/805/EU authorising the Republic of Poland to introduce measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 248, 27.9.2019, p. 71–72).

[4] Council Implementing Decision (EU) 2022/2385 of 6 December 2022 amending Implementing Decision 2013/805/EU authorising the Republic of Poland to introduce measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 315, 7.12.2022, p. 87–88).

[5] For example: Council Implementing Decision (EU) 2021/1997 of 15 November 2021 amending Implementing Decision (EU) 2018/1994 authorising Croatia to introduce a special measure derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 408, 17.11.2021, p. 1–2); Council Implementing Decision (EU) 2018/1493 of 2 October 2018 authorising Hungary to introduce a special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 252, 8.10.2018, p. 44–46); Council Implementing Decision (EU) 2017/1854 of 10 October 2017 amending Implementing Decision 2014/797/EU authorising the Republic of Estonia to apply a measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 265, 14.10.2017, p. 17–18).

accession. On this basis, there is a number of ‘stand still’ provisions restricting the right to deduct VAT in relation to corporate motor vehicles.

Previous initiatives to establish rules on which categories of expenditure may be subject to a restriction on the right to deduct have failed.[6] Until those rules are harmonised at EU level, derogations such the present one are considered as appropriate.

The proposed measures are therefore consistent with the provisions of the VAT Directive.

- **Consistency with other Union policies**

This measure is consistent with the Commission Communication of 15 July 2020 - Action Plan for Fair and Simple Taxation in Support of Economic Recovery,[7] which highlights the need to support young and innovative companies, which face more administrative complexity than large multinationals and where compliance costs tend to be proportionately much higher for small companies than for large ones. It is also compatible with the Commission's 2017 work programme,[8] which highlights the need to simplify VAT for smaller businesses and with the Commission's 2025 work programme[9] which highlights the implementation and simplification agenda.

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 it is based, 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 aims pursued, i.e. to simplify tax collection and to prevent certain forms of tax evasion or avoidance. Given the potential for businesses to under declare their liability and the burdensome check of mileage data for tax authorities, the 50% restriction would simplify the VAT collection procedure and would prevent tax evasion inter alia through incorrect record keeping.

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6 COM (2004) 728 final – Proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying value added tax obligations (OJ C 24, 29.1.2005, p. 10) withdrawn on 21 May 2014 (OJ C 153, 21.05.2014, p.3).

7 Communication from the Commission to the European Parliament and the Council An Action Plan for Fair and Simple Taxation in Support of Economic Recovery (COM(2020)312 final).

8 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).

9 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 2025 Moving forward together: A Bolder, Simpler, Faster Union. (COM(2025) 45 final).

- **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

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

The Republic of Poland attached a report to its request to extend the above-mentioned special measure. The report included a review of the current restriction on the right to deduct VAT, as provided for in the second paragraph of Article 3 of Council Implementing Decision 2013/805/EU[10], as amended by Article 1 of Council Implementing Decision (EU) 2019/1594[11], and by article 1 of Council Implementing Decision (EU) 2022/2385[12].

A review of the restriction on the right to deduct VAT conducted for the aforementioned report concluded in particular that:

- the special measure has contributed to simplifying the collection of VAT and preventing VAT evasion by eliminating the difficulty for a taxable person to determine the proportion of a vehicle's use for business purposes and for other purposes (mainly private use of business vehicles) that are conducive to avoiding and evading the output tax;
- the special measure has contributed to simplifying tax obligations and reducing administrative burdens on taxable persons (especially in the SME sector) and on the tax administration by significantly reducing the difficulties associated with verifying the correctness of input tax deductions, which often lead to costly and time-consuming administrative and court disputes (for both parties);
- the 50% restriction on the right to deduct input VAT is appropriate, as it corresponds in general to the average private use of a vehicle by a given taxable person (the use of a lower or higher ratio would result in excessive discrepancies between the presumed and actual use of the vehicle for business and private purposes);
- the measure is compatible with the principle of neutrality and does not restrict the right to full deduction of input tax on expenses related to passenger vehicles provided that the taxable person meets certain record-keeping requirements confirming that the vehicle is 100% used for business activity.

[10] Council Implementing Decision 2013/805/EU of 17 December 2013 authorising the Republic of Poland to apply measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 353, 28.12.2013, p. 5, as amended).

[11] Council Implementing Decision (EU) 2019/1594 of 24 September 2019 amending Implementing Decision 2013/805/EU authorising the Republic of Poland to apply measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112/EC on the common system of value added tax (OJ EU L 248 of 27.9.2019, p. 71).

[12] Council Implementing Decision (EU) 2022/2385 of 6 December 2022 amending Implementing Decision 2013/805/EU authorising the Republic of Poland to introduce measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 315, 7.12.2022, p. 87–88).

- **Stakeholder consultations**

No stakeholder consultation has been conducted. The present proposal is based on a request made by Poland and concerns only this particular Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal aims at simplifying the procedure for charging VAT and at preventing VAT evasion. It has, therefore, a potential positive impact for both businesses and administrations. The special measure has been identified by Poland as the most appropriate solution and is comparable to other past and present derogations granted to other Member States.

- **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.

5. OTHER ELEMENTS

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

The proposal includes a sunset clause which is set at 31 December 2028.

In case Poland considers a further extension of the special measure beyond 2028, it should submit to the Commission an extension request accompanied by a report including a review of the percentage limit by 31 March 2028.

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THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 168 of Directive 2006/112/EC establishes a taxable person's right to deduct value added tax ('VAT') charged on supplies of goods and services received by them for the purposes of their taxed transactions. Article 26(1), point (a), of that Directive lays down that, when a business asset is put to use for the private purposes of the taxable person or their staff or, more generally, for purposes other than those of their business, this is to be considered as a service for consideration which, subsequently, is subject to VAT.

(2) By Council Implementing Decision 2013/805/EU[2] Poland was authorised, until 31 December 2025, to limit to 50% the right to deduct VAT on the purchase, intra-Community acquisition, importation, hire, or leasing of certain motorised road vehicles and expenditure related thereto, where such vehicles are not entirely used for business purposes, and to relieve the taxable person from having to treat non-business use of such vehicles as a supply of services in accordance with Article 26(1), point (a), of Directive 2006/112/EC (the 'special measures').

(3) Council Implementing Decision 2013/805/EU is to expire on 31 December 2025.

(4) By letter registered with the Commission on 25 February 2025, Poland requested authorisation to continue to apply the special measures, for a further period until 31 December 2028, ('the request').

(5) In accordance with Article 3, second paragraph, of Implementing Decision 2013/805/EU, Poland submitted to the Commission, together with the request, a report on the application of the special measures, including a review of the percentage limitation applied on the right to deduct VAT. Based on that information, Poland maintains that a rate of 50% is still appropriate. It also considers that the derogation

[1] OJ L 347, 11.12.2006, p. 1. ELI: http://data.europa.eu/eli/dir/2006/112/oj.

[2] Council Implementing Decision 2013/805/EU of 17 December 2013 authorising the Republic of Poland to introduce measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 353, 28.12.2013, p. 51).

from the requirement in Article 26(1), point (a) of Directive 2006/112/EC is still necessary to avoid double taxation. Those special measures are justified by the need to simplify the procedure for collecting VAT and to prevent evasion resulting from incorrect record keeping and false tax declarations.

(6) In accordance with Article 395(2), second subparagraph of Directive 2006/112/EC, the Commission transmitted the request made by Poland to the other Member States, by letter dated 10 April 2025. By letter dated 11 April 2025, the Commission notified Poland that it had all the information necessary for appraisal of the request.

(7) The application of the special measures beyond 31 December 2025, will only have a negligible effect on the overall amount of the tax revenue that Poland collects at the stage of final consumption and will not adversely affect the Union's own resources accruing from VAT.

(8) It is therefore appropriate to extend the authorisation set out in Implementing Decision 2013/805/EU. The extension of the special measures should be limited in time to allow for an evaluation of its effectiveness and of the appropriate percentage limitation applied on the right to deduct VAT.

(9) In the case that Poland considers that the special measures are necessary beyond the date of expiry of Implementing Decision 2013/805/EU, and in order to ensure timely examination of any request to extend the special measures, that request should be accompanied by a report on the application of the special measure, including a review of the percentage applied and should be submitted to the Commission by 31 March 2028.

(10) Implementing Decision 2013/805/EU should be therefore amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 3 of Implementing Decision 2013/805/EU is replaced by the following:

'Article 3

This Decision shall expire on 31 December 2028.

Any request for an extension of the authorisation provided for in this Decision shall be submitted to the Commission by 31 March 2028. Such request shall be accompanied by a report, including a review of the percentage limitation applied on the right to deduct VAT on the basis of this Decision.'.

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels,

For the Council
The President