EUROPEAN COMMISSION

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2010/0213 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

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

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

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

By letter registered with the Secretariat-General of the Commission on 10 December 2009, the Italian Republic requested authorisation to continue to exempt taxable persons whose annual turnover is no higher than EUR 30 000. In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 11 January 2010 of the request made by the Italian Republic. By letter dated 12 January 2010, the Commission notified the Italian Republic that it had all the information necessary to consider the request.

General context

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

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

Because of a significant number of taxable persons with a very low annual turnover, the Italian Republic requested a derogation in 2007 in order to simplify VAT obligations for small traders and to ease the collection of the tax for the national tax administration. Council Decision 2008/737/EC (OJ L 249, 18.9.2008, p. 13) authorised the Italian Republic to exempt, until 31 December 2010, taxable persons whose annual turnover is no higher than EUR 30 000 with the possibility to raise that ceiling in order to maintain that value in real terms. The Italian Republic has now requested an extension of that measure which is optional for taxable persons.

In its proposal for a Directive simplifying VAT obligations of 29 October 2004 (COM(2004)728 final), the Commission included provisions aimed at allowing the Member States to exempt taxable persons whose annual turnover does not exceed a ceiling of EUR 100 000 with the possibility of updating this amount each year.

However, the Council has, as this stage, not yet reached an agreement on that proposal.

From information provided by the Italian Republic, it appears that the application of the measure has lead to an estimated reduction of the overall amount of tax revenue collected at the final stage of consumption of less than 0,2%, which is in line with the estimations made at the time the initial derogation was granted.

It is therefore proposed to extend the derogation for another period until the earliest of 31 December 2013 or the entry into force of a Directive on the annual turnover thresholds below which taxable persons may be exempt from VAT.

Existing provisions in the area of the proposal

In 2004, the Commission made a proposal to increase the annual turnover threshold available to Member States (COM(2004) 728 final) for the exemption from VAT of taxable persons to EUR 100 000.

Consistency with the other policies and objectives of the Union

Not applicable.

CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Not relevant.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

The decision aims at continuing a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 30 000 and therefore has a potential positive impact.

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

LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for the Italian Republic to continue to apply a derogating measure from Directive 2006/112/EC as regards the introduction of a simplification measure for businesses with an annual turnover no higher than EUR 30 000.

Legal basis

Article 395 of the VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

Subsidiarity principle

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

Proportionality principle

The proposal complies with the proportionality principle for the following reason(s).

The Decision concerns an authorisation granted to a Member State upon its own request and does not constitute any obligation.

Given the limited scope of the derogation, the special measure is proportionate to the aim pursued.

Choice of instruments

Proposed instruments: Decision.

Other means would not be adequate for the following reason(s).

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

BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

ADDITIONAL INFORMATION

Review/revision/sunset clause

The proposal includes a sunset clause.

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of […]

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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) In a letter registered by the Commission's Secretariat General on 10 December 2009, Italy requested authorisation for a measure derogating from Article 285 of Directive 2006/112/EC in order to continue to exempt certain taxable persons. Through that measure, those taxable persons would continue to be exempted from certain or all of the obligations in relation to value added tax (VAT) referred to in Chapters 2 to 6 of Title XI of Directive 2006/112/EC.

(2) The Commission informed the other Member States by letter dated 11 January 2010 of the request made by Italy. By letter dated 12 January 2010, the Commission notified Italy that it had all the information necessary to consider the request.

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

(4) By Council Decision 2008/737/EC of 15 September 2008 authorising the Italian Republic to apply a measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax[2], Italy was authorised, as a derogating measure, to exempt taxable persons whose annual turnover is no higher than EUR 30 000 until 31 December 2010. Given that this higher threshold has resulted in reduced VAT obligations for the smallest businesses, whilst taxable persons may still

[1] OJ L 347, 11.12.2006, p.1.
[2] OJ L 249, 18.9.2008, p. 13.

opt for the normal VAT arrangements, Italy should be authorised to apply the measure for a further limited period.

(5) In its proposal for a Council Directive amending Directive 77/388/EEC with a view to simplifying value added tax obligations of 29 October 2004[3], the Commission included provisions aimed at allowing Member States to set the annual turnover ceiling for the VAT exemption scheme at up to EUR 100 000 or the equivalent in national currency, with the possibility of updating that amount each year. The extension request submitted by Italy is compatible with that proposal on which the Council has not yet been able to reach an agreement.

(6) From information provided by Italy, the measure has already led to a estimated reduction of the overall amount of tax revenue collected at the final stage of consumption of less than 0,2%.

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

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 285 of Directive 2006/112/EC, Italy is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 30 000.

Italy may raise that ceiling in order to maintain the value of the exemption in real terms.

Article 2

The scheme referred to in Article 1 shall be optional for taxable persons.

Article 3

This Decision shall apply from 1 January 2011 until the date of entry into force of a Directive amending the amounts of the annual turnover ceilings below which taxable persons may be exempted from VAT, or until 31 December 2013, whichever is the earlier.

3 COM(2004) 728 final.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council
The President