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2018/0366 (NLE)

Proposal for a

# COUNCIL IMPLEMENTING DECISION

**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**

# EXPLANATORY MEMORANDUM

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 Commission on 15 May 2018, Poland requested an authorisation to continue to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 40 000. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 20 July 2018 except from Spain which was informed by a letter dated 23 July 2018. By letter dated 23 July 2018, the Commission notified Poland that it had all the information necessary to consider 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 special schemes for small enterprises, including the possibility of exempting taxable persons below a certain annual turnover. This exemption implies that a taxable person does not have to charge VAT on his supplies and, consequently, he cannot deduct the VAT on his input.

Under Article 287(14) of the VAT Directive, Poland may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 10 000.

By Council Decision 2009/790/EC[1] the Council authorised Poland to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 30 000 until 31 December 2012. By Council Implementing Decision 2012/769/EU[2], the derogation was extended until 31 December 2015 and subsequently by Council Implementing Decision 2015/1173/EU[3] until 31 December 2018. Council Implementing Decision (EU) 2016/2090[4] increased the exemption threshold to the equivalent in national currency of EUR 40 000.

Poland requested an extension of that measure for another limited period. Poland indicated that the reasons for the derogation request remain largely unchanged. The special measure simplifies the burden on business for a higher number of taxable persons who have a limited business activity and stimulates the development of such small businesses. At the same time

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1 Council Decision 2009/790/EC of 20 October 2009 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 283, 30.10.2009, p. 53).

2 Council Implementing Decision 2012/769/EU of 4 December 2012 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 338, 12.12.2012, p. 27).

3 Council Implementing Decision 2015/1173/EU of 14 July 2015 amending Decision 2009/790/EC authorising the Republic of Poland to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 189, 17.7.2015, p. 36).

4 Council Implementing Decision (EU) 2016/2090 of 21 November 2016 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 324, 30.11.2016, p. 7–8).

the measure results in the reduction of the administrative burden on the tax administration by limiting the need to control small taxable persons, which is relatively costly in comparison to the amount of VAT at stake. It also allows strengthening the control activities towards larger taxable persons. The measure is and will remain fully optional for taxable persons.

Given a potential positive impact on the reduction of administrative burden for businesses and tax administration without a major impact on the total VAT revenue, it is proposed to extend the derogation for another limited period, until 31 December 2021. The Commission has recently launched a proposal[5] modifying Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises. It is thus possible that a directive amending those Articles enters into force and sets a date from which Member States are to apply national provisions to implement it. If this date is set before the derogation expires on 31 December 2021, this Decision should cease to apply.

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

Similar derogations have been granted to other Member States. Luxembourg[6] was granted a threshold of EUR 30 000, Estonia[7] a threshold of EUR 40 000, Italy[8] a threshold of EUR 65 000, Croatia[9] a threshold of EUR 45 000, Latvia[10] a threshold of EUR 40 000 and Romania[11] a threshold of EUR 88 500.

Derogations from the VAT Directive should always be limited in time so that their effects can be assessed. Moreover, the provisions of Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises are currently subject to review. As announced in the VAT Action Plan[12], and the 2017 Commission Work Programme[13], the Commission's proposal on the SMEs scheme[14] has recently been presented.

[5] 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, 18.1.2018, COM(2018) 21 final.

[6] 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).

[7] 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).

[8] 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).

[9] 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).

[10] 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).

[11] 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).

[12] Communication from the Commission to the European Parliament, the Council and the European and Social Committee on an action plan on VAT, Towards a single EU VAT area – Time to decide, Brussels, 7.4.2016, COM(2016)148 final.

[13] Commission Work Programme 2017 - Delivering a Europe that protects, empowers and defends, Strasbourg, 25.10.2016, COM(2016)710 final

[14] 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, 18.1.2018, COM(2018) 21 final.

It is therefore proposed to grant the derogating measure until 31 December 2021 or until 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.

- **Consistency with other Union policies**

The measure is in line with the Union's objectives for small businesses, as laid down in the Commission Communication "Think small first" – a "Small Business Act" for Europe"[15] which calls on the Member States to take account of the special features of SMEs when designing legislation and, therefore, to simplify the existing regulatory environment.

## 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 the proposal 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 aim pursued, i.e. simplification for an additional number of small taxable persons and for the tax administration.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 395 of Council Directive 2006/112/EC, a derogation from the common VAT rules is only possible upon authorisation of the Council 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**

This proposal is based on a request made by Poland and concerns only this Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for a Council Implementing Decision aims at continuing for another three years a simplification measure which removes many of the VAT obligations for businesses

15 COM(2008)394 of 25 June 2008.

operating with an annual turnover no higher than the equivalent in national currency of EUR 40 000 and therefore has a potential positive impact on the reduction of administrative burden for businesses and tax administration without a major impact on the total VAT revenue. Because of the narrow scope of the derogation and its limited application in time, the impact of the measure will in any case be limited.

## 4. BUDGETARY IMPLICATIONS

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

## 5. OTHER ELEMENTS

The proposal includes a sunset clause; an automatic time limit.

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**COUNCIL IMPLEMENTING DECISION**

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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) Point (14) of Article 287 of Directive 2006/112/EC authorises Poland to exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 10 000 at the conversion rate on the day of its accession.

(2) By Council Decision 2009/790/EC[2], Poland was authorised, until 31 December 2012, to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 30 000 at the conversion rate on the day of its accession. The authorisation to apply that special measure was subsequently extended by Council Implementing Decision 2012/769/EU[3] until 31 December 2015 and by Council Implementing Decision (EU) 2015/1173[4] until 31 December 2018. Council Implementing Decision (EU) 2016/2090[5] increased the exemption threshold to the equivalent in national currency of EUR 40 000.

(3) By letter registered with the Commission on 15 May 2018, Poland requested an authorisation to continue to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 40 000.

(4) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission transmitted the request of Poland to other Member

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1 OJ 347, 11.12.2006, p. 1.

2 Council Decision 2009/790/EC of 20 October 2009 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 283, 30.10.2009, p. 53).

3 Council Implementing Decision 2012/769/EU of 4 December 2012 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 338, 12.12.2012, p. 27).

4 Council Implementing Decision (EU) 2015/1173 of 14 July 2015 amending Decision 2009/790/EC authorising the Republic of Poland to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L189, 17.7.2015, p. 36).

5 Council Implementing Decision (EU) 2016/2090 of 21 November 2016 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 324, 30.11.2016, p. 7).

States by letter dated 20 July 2018 except from Spain to which the request was transmitted by letter of 23 July 2018. By letter dated 23 July 2018, the Commission notified Poland that it had all the information necessary to consider the request.

(5) From the information provided by Poland it appears that the reasons for the derogation request remain largely unchanged. It simplifies the burden on business for a higher number of taxable persons who have a limited business activity. It also results in the reduction of the administrative burden on the tax administration by limiting the need to control small taxable persons, which is relatively costly in comparison to the amount of VAT at stake. The measure is fully optional for taxable persons.

(6) Given that the higher threshold has resulted in reduced VAT obligations for the small businesses, whilst such businesses may still opt for the regular VAT arrangements in accordance with Article 290 of Directive 2006/112/EC, Poland should be authorised to apply the measure for a further limited period until 31 December 2021.

(7) As Articles 281 to 294 of Directive 2006/112/EC governing the special scheme for small enterprises are subject to review, it is possible that a directive amending those Articles will enter into force setting a date from which Member States are to apply national provisions before the period of validity of the derogation expires on 31 December 2021. If that happens, this Decision should cease to apply.

(8) The derogation has no impact on the Union's own resources accruing from VAT because Poland is to carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, Euratom) No 1553/89[6].

(9) Decision 2009/790/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Article 2 of Decision 2009/790/EC is replaced by the following:

'*Article 2*

This Decision shall apply from 1 January 2010 until the earlier of the following two dates:

(a) 31 December 2021;

(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 governing the special scheme for small enterprises.'

*Article 2*

This Decision shall apply from 1 January 2019.

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6 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).

*Article 3*

This Decision is addressed to the Republic of Poland.

Done at Brussels,

*For the Council*
*The President*