



EUROPEAN  
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2015/0118 (NLE)

Proposal for a

**COUNCIL IMPLEMENTING DECISION**

**amending Decision 2009/790/EC in order to authorise Poland to extend the application  
of a special measure derogating from Article 287 of Directive 2006/112/EC on the  
common system of value added tax**

## **EXPLANATORY MEMORANDUM**

### **1. 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<sup>1</sup> (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 23 December 2014, Poland requested an authorisation to continue to exempt 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. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 6 February 2015 of the request made by Poland. By letter dated 9 February 2015, the Commission notified Poland 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 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 at the conversion rate on the day of its accession.

In 2009, Poland requested a derogation in order to simplify VAT obligations for small traders and to ease the collection of the tax for the national tax administration. By Council Decision 2009/790/EC of 20 October 2009<sup>2</sup> 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 Decision 2012/769/EU<sup>3</sup> the derogation was extended until 31 December 2015. This measure is optional for taxable persons. Poland has now requested an extension of that measure.

From the information provided by Poland, it appears that 103 617 taxable persons with turnover between 10 000 and 30 000 EUR benefited from VAT exemption as a result of the application of the measure and it has led to an estimated reduction of the overall amount of the state budget revenues from VAT of approximately 0,32% in 2013.

It is therefore proposed to extend the derogation for another period until the earliest of 31 December 2018 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**

Similar derogations have been granted to other Member States.

#### **Consistency with the other policies and objectives of the Union**

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

<sup>2</sup> OJ L 283, 30.10.2009, p. 53–54.

<sup>3</sup> OJ L 338, 12.12.2012, p. 27–28.

The measure is in line with the Union's objectives for small businesses, as laid out in Commission Communication "Think small first" – a "Small Business Act" for Europe" (COM(2008) 394 of 25 June 2008)

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **Consultation of interested parties**

Not relevant.

### **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 operating with an annual turnover no higher than the equivalent in national currency of EUR 30 000 and therefore has a potential positive impact on the reduction of administrative burden for more than 100 000 taxable persons compared to only 0.32% expected reduction of the total VAT revenue.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **Summary of the proposed action**

Authorisation for Poland to continue to apply a derogating measure from the VAT Directive as regards a simplification measure for businesses with an annual turnover no higher than the equivalent in national currency of EUR 30 000 at the conversion rate on the day of its accession.

### **Legal basis**

Article 395 of the VAT Directive.

### **Subsidiarity principle**

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

### **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

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: Council Implementing Decision.

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. Moreover, a Council Implementing Decision is the most suitable instrument since it can be addressed to individual Member States.

#### **4. BUDGETARY IMPLICATION**

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. OPTIONAL ELEMENTS**

The proposal includes a sunset clause.

Proposal for a

## **COUNCIL IMPLEMENTING DECISION**

**amending Decision 2009/790/EC in order to authorise Poland to extend the application of a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>4</sup>, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 287(14) of Directive 2006/112/EC authorises Poland to exempt from 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<sup>5</sup>, Poland was authorised, until 31 December 2012 and as a derogation, 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.
- (3) By Council Implementing Decision 2012/769/EU<sup>6</sup> the derogatory measure provided for in Council Decision 2009/790/EC was extended until 31 December 2015.
- (4) In a letter registered with the Commission on 23 December 2014, Poland requested authorisation for a further extension of the measure derogating from Article 287(14) of Directive 2006/112/EC in order that it could continue to exempt from value added tax (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 accession. Through that measure, those taxable persons would continue to be exempted from certain or all of the obligations in relation to VAT referred to in Chapters 2 to 6 of Title XI of Directive 2006/112/EC.
- (5) The Commission informed the other Member States by letters dated 6 February 2015 of the request made by Poland. By letter dated 9 February 2015, the Commission notified Poland that it had all the information necessary to consider the request.
- (6) From the information provided by Poland, 103 617 taxable persons benefited from the application of the measure and it has led to an estimated reduction of the budget revenues from VAT of approximately 0,32 % in 2013.

<sup>4</sup> OJ L 347, 11.12.2006, p. 1.

<sup>5</sup> Council Decision 2009/790/EU 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).

<sup>6</sup> Council Implementing Decision 2012/769/EC of 4 December 2012 (OJ L 338, 12.12.2012, p. 27).

- (7) Given that this higher threshold has resulted in reduced VAT obligations for the smallest businesses, whilst the latter 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. The derogation has no impact on the Union's own resources accruing from VAT.
- (8) Decision 2009/790/EC, as amended by Decision 2012/769/EU, should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Article 2 of Decision 2009/790/EC, as amended by Article 1 of Decision 2012/769/EU, is amended as follows:

"Article 2

This Decision shall take effect on the day of its notification.

It shall apply from 1 January 2016 until 31 December 2018".

*Article 2*

This Decision is addressed to the Republic of Poland.

Done at Brussels,

*For the Council  
The President*