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EUROPEAN COMMISSION

Brussels, 23.3.2011
COM(2011) 134 final

2011/0057 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

**authorising the Republic of Lithuania to apply a measure derogating from Article 287 of
Council 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 (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 at 19 November 2010, Lithuania requested authorisation to exempt taxable persons whose annual turnover is no higher than EUR 45 000. In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 21 January 2011 of the request made by Lithuania. By letter dated 25 January 2011, the Commission notified Lithuania 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 inputs.

This annual turnover ceiling differs from one Member State to another, particularly according to its date of accession. For Member States that acceded after 1 January 1978, an annual turnover threshold has been fixed by Article 287 of the VAT Directive. The maximum threshold for Lithuania was fixed at EUR 29 000, calculated in accordance with the conversion rate on the day of accession (Article 287(11) of the VAT Directive).

The Lithuanian derogation request seeks to simplify the VAT system for small enterprises by introducing this simplification measure for taxable persons with an annual turnover no higher than EUR 45 000. The measure will significantly reduce the burdens on those businesses eligible for the scheme and release them from many of the VAT obligations under the normal VAT arrangements. The system would be optional for taxable persons.

On the basis of information provided by Lithuania, the impact on the overall amount of tax revenue collected at the stage of final consumption will be negligible.

The derogation would run from 1 January 2012 until the earliest of 31 December 2014 or the entry into force of a Directive on the annual turnover threshold below which supplies of a taxable person 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 with the possibility of updating this amount each year.

Consistency with the other policies and objectives of the Union

Not applicable.

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 decision aims at introducing a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 45 000 and therefore has a potential positive impact for businesses.

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

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for Lithuania 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 45 000.

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 EU. The subsidiarity principle therefore does not apply.

Proportionality principle

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

The implementing 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 2006/112/EC on the common system of value added tax, 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.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget

5. OPTIONAL ELEMENTS

The proposal includes a sunset clause.

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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 tax¹ ('the VAT Directive'), and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Commission on 19 November 2010, Lithuania requested authorisation for a measure derogating from Article 287(11) of the VAT Directive in order to exempt taxable persons whose annual turnover is no higher than EUR 45 000. This measure will release those taxable persons from certain or all of the value added tax (VAT) obligations referred to in Chapters 2 to 6 of Title XI of the VAT Directive.
- (2) In accordance with the second subparagraph of Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 21 January 2011 of the request made by Lithuania. By letter dated 25 January 2011, the Commission notified Lithuania that it had all the information necessary to consider the request.
- (3) A special scheme for small enterprises is an option which is already available to Member States under Title XII of the VAT Directive. The measure derogates from Title XII of the VAT Directive only insofar as the taxable person's annual turnover threshold for the scheme is higher than that currently allowed for Lithuania under Article 287(11) of the VAT Directive, which is EUR 29 000.
- (4) A higher threshold for the special scheme is a simplification measure as it may significantly reduce the VAT obligations of the smallest businesses, whilst that special scheme is optional for taxable persons and allows businesses to opt for the normal VAT arrangements.
- (5) In its proposal for a Directive simplifying value added tax obligations of 29 October 2004², the Commission included provisions aimed at allowing Member States to set the annual turnover

¹ OJ L 347, 11.12.2006, p. 1.

² COM(2004) 728final (OJ C 24, 29.1.2005, p. 8).

ceiling for the VAT exemption scheme at up to EUR 100 000 or the equivalent in national currency, with the possibility of updating this amount each year. The request submitted by Lithuania is in line with this proposal.

- (6) The derogation will have no impact on the Union's own resources accruing from VAT and will only have a negligible effect on the overall amount of the tax revenue of the Member State collected at the stage of final consumption,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 287(11) of Directive 2006/112/EC, the Republic of Lithuania is authorised to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 45 000 at the conversion rate on the day of its accession to the European Union.

Article 2

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

It shall apply from 1 January 2012 until the date of entry into force of a Directive amending the amounts of the annual turnover ceilings below which taxable persons may qualify for VAT exemption or until 31 December 2014, whichever date is earlier.

Article 3

This Decision is addressed to the Republic of Lithuania.

Done at Brussels,

*For the Council
The President*