



Brussels, 3.10.2012
COM(2012) 567 final

2012/0272 (NLE)

Proposal for a

COUNCIL DECISION

amending Decision 2009/790/EC authorising 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 tax¹ (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 12 April 2012, 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 17 and 18 July 2012 of the request made by Poland. By letter dated 19 July 2012, 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 2009² 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. This measure is optional for taxable persons.

Poland has now requested an extension of that measure.

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.

¹ OJ L 347, 11.12.2006, p. 1.

² OJ L 283, 30.10.2009, p. 53.

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

From the information provided by Poland, it appears that nearly 70 000 taxable persons 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 0,14%. It is therefore proposed to extend the derogation for another period until the earliest of 31 December 2015 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.

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 Decision aims at continuing 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.

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 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 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 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.

5. OPTIONAL ELEMENTS

Review/revision/sunset clause

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, and in particular Article 291(2) thereof,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁽³⁾, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In a letter registered with the Commission on 12 April 2012, Poland requested authorisation for a measure derogating from Article 285 of Directive 2006/112/EC in order to 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.
- (2) The Commission informed the other Member States by letters dated 17 and 18 July 2012 of the request made by Poland. By letter dated 19 July 2012, the Commission notified Poland that it had all the information necessary to consider the request.
- (3) Under point (14) of Article 287 of Directive 2006/112/EC, 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.
- (4) By 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 tax⁴, Poland was authorised, until 31 December 2012 and as a derogating measure, 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. Given that this higher threshold has resulted in reduced VAT obligations for the smallest businesses, whilst the latter may

³ OJ L 347, 11.12.2006, p. 1.

⁴ OJ L 283, 30.10.2009, p. 53.

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.

- (5) In its proposal of 29 October 2004 for a Council Directive amending Directive 77/388/EEC with a view to simplifying value added tax obligations⁵, 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 Poland is compatible with that proposal.
- (6) From the information provided by Poland, the measure has led to an estimated reduction of the overall amount of budget revenues from VAT of approximately 0,14 %.
- (7) The derogation has no impact on the Union's own resources accruing from VAT.
- (8) Decision 2009/790/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Decision 2009/790/EC the date "31 December 2012" is replaced by the date "31 December 2015".

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels,

*For the Council
The President*

⁵ COM(2004) 728 final.