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2021/0252 (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 Council Directive 2006/112/EC of 28 November 2006 on the common system of valued added tax[1] ('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 1 March 2021, Poland requested authorisation to continue applying the derogating measure consisting in granting a VAT exemption to taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 40 000 until 31 December 2024.

In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letter dated 25 March 2021, and Cyprus on 26 March 2021 of the request made by Poland. The Commission notified Poland by letter dated 29 March 2021 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 or she cannot deduct the VAT on his inputs.

Under Article 287 of the VAT Directive, particular Member States which acceded after 1 January 1978 may exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of the amounts at the conversion rate on the day of their accession as specified in that provision.

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

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. Poland introduced this measure into national tax law in two steps: from 1 January 2010, the exemption threshold was increased to PLN 100 000, and from 1 January 2011, was further raised to PLN 150 000.

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

[1] OJ L 347, 11.12.2006, p.1.

[2] Council Decision 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. 53–54).

[3] Council Implementing Decision 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. 27–28).

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. Poland implemented this measure on 1 January 2017 by raising the threshold for VAT exemption for small enterprises to PLN 200 000 annual turnover. This scheme is currently in force on the basis of Council Implementing Decision (EU) 2018/1919, authorising Poland to apply this derogation until 31 December 2021[6].

An authorisation to continue to use the exemption beyond 2021 for taxable persons whose annual turnover is no higher than the equivalent in PLN of EUR 40 000 would be a significant simplification for persons operating relatively small businesses. Taxable persons covered by this exemption do not have to deduct and pay VAT, be registered for VAT or keep a full detailed record of transactions subject to VAT. Thanks to these simplifications, small business owners can devote more time and resources to developing their business. The derogating measure remains voluntary for taxable persons.

Moreover, the cost of collecting VAT from taxable persons operating businesses with relatively low turnover, resulting from providing taxpayer services to these taxable persons and auditing their tax returns, is disproportionately high in comparison to the amount of tax collected. Accordingly, by applying a VAT exemption to small business owners, the revenue administration may direct more resources towards preventing and combating tax fraud, evasion and avoidance, and towards improving the quality of taxpayer services and the effectiveness of collecting VAT from large-scale business operators.

The measure does not significantly affect the total amount of revenue from VAT or the overall amount of tax revenue collected at the stage of final consumption.

The derogating measure, simplifying the obligations of small operators, is in line with the objectives set out by the European Union for small businesses.

It is therefore appropriate to authorise Poland to apply the derogating measure until 31 December 2024.

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

The derogating measure is in line with the objectives of Directive (EU) 2020/285 amending Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises, which resulted from the VAT action plan[7], and aims to create a modern, simplified scheme for those businesses. In particular, it seeks to reduce VAT compliance costs and distortions of competition both domestically and at EU level, reduce the negative impact of the threshold effect, and facilitate business compliance as well as monitoring by tax administrations.

[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 L 189, 17.7.2015, p. 36–37).

[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. 7–8).

[6] Council Implementing Decision (EU) 2018/1919 of 4 December 2018 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 311, 7.12.2018, p. 32–33).

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

Moreover, the threshold of EUR 40 000 is consistent with Directive (EU) 2020/285, insofar as it allows Member States to set the annual turnover threshold required for an exemption from VAT at a level no higher than EUR 85 000 (or the equivalent in national currency).

Similar derogations, exempting from VAT taxable persons whose annual turnover is below a certain threshold, as provided for in Articles 285 and 287 of the VAT Directive, have been granted to other Member States. The Netherlands[8] has been granted a threshold of EUR 25 000; Italy[9] a threshold of EUR 30 000; Belgium a threshold of EUR 25 000[10], Luxembourg[11] a threshold of EUR 35 000; Latvia[12], Estonia[13] have been granted a threshold of EUR 40 000; Lithuania[14] a threshold of EUR 55 000; Croatia[15] a threshold of 45 000 and Malta[16] a threshold of EUR 20 000; Hungary[17] a threshold of EUR 48 000; Slovenia[18] a threshold of EUR 50 000; and Romania[19] a threshold of EUR 88 500.

Derogations from the VAT Directive should always be limited in time so that their effects can be assessed. In addition, the inclusion of an expiry date of the special measure until 31

[8] Council Implementing Decision (EU) 2018/1904 of 4 December 2018 authorising the Netherlands to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 310, 6.12.2018, p. 25).

[9] 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.11-12).

[10] Council Implementing Decision (EU) 2018/2077 of 20 December 2018 amending Implementing Decision 2013/53/EU authorising the Kingdom of Belgium to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 331, 28.12.2018, p. 222–223).

[11] Council Implementing Decision (EU) 2019/2210 of 19 December 2019 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 332, 23.12.2019, p. 155).

[12] Council Implementing Decision (EU) 2020/1261 of 4 September 2020 amending Implementing Decision (EU) 2017/2408 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 296, 10.9.2020, p. 4–5).

[13] Council Implementing Decision (EU) 2021/358 of 22 February 2021 amending Implementing Decision (EU) 2017/563 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 69, 26.2.2021, p. 4–5).

[14] Council Implementing Decision (EU) 2021/86 of 22 January 2021 authorising the Republic of Lithuania to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 30, 28.1.2021, p. 2–3).

[15] Council Implementing Decision (EU) 2020/1661 of 3 November 2020 amending Implementing Decision (EU) 2017/1768 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 374, 10.11.2020, p. 4–5).

[16] Council Implementing Decision (EU) 2021/753 of 6 May 2021 authorising Malta to apply a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax, and repealing Implementing Decision (EU) 2018/279 (OJ L 163, 10.5.2021, p. 1–2).

[17] Council Implementing Decision (EU) 2018/1490 of 2 October 2018 authorising Hungary to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 252, 8.10.2018, p.38).

[18] Council Implementing Decision (EU) 2018/1700 of 6 November 2018 amending Implementing Decision 2013/54/EU authorising the Republic of Slovenia to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 285, 13.11.2018, p. 78).

[19] Council Implementing Decision (EU) 2020/1260 of 4 September 2020 amending Implementing Decision (EU) 2017/1855 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 296, 10.9.2020, p. 1–3).

December 2024, as requested by Poland, is aligned with the requirements of Directive (EU) 2020/285 on simpler VAT rules for small and medium-sized enterprises. That directive provides for 1 January 2025 as the date on which Member States will have to apply the national provisions, which they are required to adopt, to comply with it.

The proposed measure is therefore consistent with the provisions of the VAT Directive.

- **Consistency with other Union policies**

The Commission has been consistently stressing the need for simpler rules for small enterprises. In this respect, the Commission adopted in March 2020 an SME Strategy for a sustainable and digital Europe[20], where it committed to continue to work to reduce the burden on SMEs. The objective to reduce the regulatory burden for SMEs is one of the pillars of that strategy. This special measure is in line with such objectives, as far as fiscal rules are concerned. It is also consistent with the 2020 Action Plan on fair and simple taxation supporting the recovery strategy[21], which acknowledges that tax compliance costs remain high in the EU, and that compliance costs are typically substantially higher for small than for large companies.

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 it is based, the proposal falls under the exclusive competence of the European Union. Hence, 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. to simplify the tax collection for small taxable persons and for the tax administration.

- **Choice of the instrument**

The instrument proposed is a Council Implementing Decision.

Under Article 395 of the VAT Directive, a derogation from the common VAT rules is only possible upon authorisation by the Council, which is 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.

[20] COM(2020) 103 final.
[21] COM(2020) 312 final.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

No stakeholder consultation has been conducted. The present proposal is based on a request made by Poland and concerns only this particular Member State.

- **Impact assessment**

The proposal for a Council Implementing Decision applying threshold of annual turnover below which taxable persons may be exempted from VAT prolongs the simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 40 000.

Persons whose taxable turnover does not exceed the threshold will not have to register to be identified for VAT purposes, and thus the administrative burden on them will reduce as a result of the measure, since they will not need to keep VAT records or submit a VAT return. There will also be a reduction in the workload for the tax authorities. This will have a potential positive impact on the reduction of administrative burden for taxable persons currently registered for VAT in Poland, and subsequently on the tax administration.

According to Poland, at 31 December 2019, 4 014 354 companies (excluding natural persons operating individual agricultural holdings only) were registered in the National Official Business Register (REGON). Poland's population at the time was 38 382 576.

The number of companies which declared that they were operating a business with anticipated staff numbers of up to nine persons was 3 853 900. This accounts for 96% of all companies. The data clearly confirms that micro-entities predominate in Poland.

The estimated annual impact of the continued application of the increased exemption threshold in the amount of PLN equivalent of EUR 10 000 provided for in Article 287, point (14), of Directive 2006/112/EC to EUR 40 000, if all entitled taxable persons made use of this voluntary exemption, would amount to approximately PLN 1.6 billion, which corresponds to approximately 0.9% of the state budget revenue from VAT in 2019. We would like to highlight that Poland has been applying the higher exemption threshold for over 10 years – from 1 January 2017 in the amount of PLN equivalent of EUR 40 000 (PLN 200 000).

According to the data available for 2019, the VAT exemption would cover around 300 694 taxable persons whose turnover falls between EUR 10 000 and EUR 40 000. The effect is negligible.

- **Fundamental rights**

The proposal does not have any consequences for the protection of fundamental rights

4. BUDGETARY IMPLICATIONS

Following entering into force of Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax[22], there will

[22] Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 165, 11.5.2021, p. 9–14).

be no compensation calculation carried out by Poland as of VAT own resource statement for the financial year 2021 onwards.

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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 of Article 395(1), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Pursuant to Article 287 point (14), of Directive 2006/112/EC, Poland may 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) Council Decision 2009/790/EC[2] authorises Poland to introduce a special measure derogating from Article 287 of Directive 2006/112/EC to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 40 000 ('the derogating measure').

(3) By Council Implementing Decision (EU) 2018/1919[3], Poland was authorised to continue applying the derogating measure until 31 December 2021 or until the entry into force of a directive amending the provisions of Articles 281 to 294 of Directive 2006/112/EC, whichever date is earlier.

(4) By letter of 1st March 2021, Poland submitted a request to the Commission for an authorisation to continue to apply the derogating measure [consisting in granting a VAT exemption to taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 40 000] until 31 December 2024.

(5) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, except Cyprus, by letter dated 25 March 2021, and Cyprus by letter dated 26 March 2021, of the request made by Poland. The Commission notified Poland by letter dated 29 March 2021 that it had all the information necessary to consider the request.

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1 OJ L 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. 53–54).

3 Council Implementing Decision (EU) 2018/1919 of 4 December 2018 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 311, 7.12.2018, p. 32).

(6) The derogating measure is in line with the objectives of Commission Communication "Think small first" – a "Small Business Act" for Europe[4].

(7) Based on information provided by Poland, the derogating measure will only have a negligible impact on the overall amount of tax revenue of Poland collected at the stage of final consumption. Taxable persons may still opt for the normal VAT arrangements.

(8) Following entering into force of Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax[5], there will be no compensation calculation carried out by Poland as of VAT own resource statement for the financial year 2021 onwards.

(9) Given the potential positive impact of the derogating measure in reducing the administrative burden and costs for small businesses, Poland should be authorised to apply the derogating measure for a further period.

(10) Council Directive (EU) 2020/285[6] amended Articles 281 to 294 of Directive 2006/112/EC as regards the special scheme for small enterprises and laying down new rules for small enterprises, including the maximum threshold of Member State annual turnover of EUR 85 000 or the equivalent in national currency.

(11) The authorisation to apply the derogating measure should be limited in time. The time limit should be sufficient to allow the effectiveness and appropriateness of the threshold to be evaluated. Moreover, according to Directive (EU) 2020/285, Member States are to adopt and publish, by 31 December 2024, the laws, regulations and administrative provisions necessary to comply with Article 1 of that Directive, and apply those provisions from 1 January 2025. It is therefore appropriate to authorise Poland to apply the derogating measure until 31 December 2024.

(12) 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 31 December 2024.”

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4 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - “Think Small First” - A “Small Business Act” for Europe, Brussels, 25.6.2008, COM(2008)394 final.

5 Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 165, 11.5.2021, p. 9–14).

6 Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13–23).

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels,

For the Council
The President