COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.8.2009
COM(2009) 435 final

Proposal for a

COUNCIL DECISION

authorising the Republic of Poland 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

Article 395 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('VAT Directive') provides that the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures derogating from the provisions of that Directive, in order to simplify the procedure for collecting value added tax (VAT) or to prevent certain forms of tax evasion or avoidance.

In a letter registered by the Commission's Secretariat-General on 22 June 2009, the Republic of Poland ('Poland') requested authorisation to apply a special measure derogating from Article 287 of the VAT Directive in order to exempt, from 1 January 2010, taxable persons whose annual turnover is no higher than EUR 30 000.

In accordance with Article 395(2) of the VAT Directive, by letter dated 22 June 2009 the Commission informed the other Member States of the request made by Poland. By letter dated 3 July 2009, the Commission notified Poland that it had all the information it considered necessary for appraisal of the request.

Title XII, chapter 1 of the VAT Directive provides for the possibility of Member States applying special schemes for small enterprises, including an optional exemption scheme for taxable persons whose annual turnover is below a certain ceiling.

This annual turnover ceiling differs from one Member State to another, particularly according to date of its accession.

Member States which acceded before 1 January 1978 and which have exercised the option under Article 14 of Council Directive 67/288/EEC of 11 April 1967 allowing them to introduce such a scheme may retain it (cf. Article 284(1) of the VAT Directive). Those Member States which, at 17 May 1977, exempted taxable persons whose annual turnover was less than the equivalent in national currency of 5 000 European units of account at the conversion rate on that date, may raise that ceiling up to EUR 5 000 (cf. Article 284(2) of the VAT Directive) while Member States which exempted taxable persons whose annual turnover was equal to or higher than that amount may raise that ceiling in order to maintain the value of the exemption in real terms (cf. Article 286 of the VAT Directive).

Member States which have not exercised the option may exempt taxable persons whose annual turnover is no higher than EUR 5 000 or the equivalent in national currency (cf. Article 285 of the VAT Directive).

Member States which acceded after 1 January 1978 may exempt taxable persons whose annual turnover is no higher than the amount set on the day of their accession. Varying from one Member State to another, this ceiling is equal to the equivalent in national currency at the conversion rate on the day of their accession of the amounts referred to, for each Member State, in Article 287(1) – (16) of the VAT Directive.

Under Article 287(14) 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 at the conversion rate on the day of its accession.

In support of its request to increase this ceiling to EUR 30 000, Poland states, in particular, that such an increase would allow it to simplify administrative procedures for a larger number of small enterprises, thus alleviating administrative burdens on more of these enterprises and contributing to their development. It also notes that the cost to the State of levying VAT among such taxable persons is high compared with the revenue collected.

It points out that such a measure would have only a negligible effect on the overall amount of VAT revenue collected at the final consumption stage. Of the 360 000 taxable persons newly eligible for the scheme, Poland estimates that approximately 90 000 could opt for it, representing a loss of revenue of some PLN 500 million, or 0.4% of expected tax revenue from VAT in 2010.

It should be noted that 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 or the equivalent in national currency, with the possibility of updating this amount each year.

Bearing in mind the provisions of Article 395 of the VAT Directive and the arguments put forward by Poland, the Commission believes that the derogation requested meets the conditions laid down in that Article, and, in particular, that it simplifies the procedure for levying the tax. Consequently, and also bearing in mind the background information set out above, the Commission has no objection to this request and therefore believes it must present the corresponding proposal to the Council.

The Commission is of the opinion, however, that the period of application of this derogation should be limited in order to assess regularly, based on the relevant information provided by Poland, whether the grounds for applying it today continue to obtain. It also believes that this derogation should in any case cease to apply once the harmonised rules proposed by the Commission in this field enter into force.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

The purpose of this proposal for a decision is to extend the application of a measure to simplify the levying of VAT to a larger number of small enterprises. It would therefore have a positive impact particularly on those small enterprises and the Member State in question. There was no need to consult external experts or interested parties nor to assess the impact of this decision. The impact will in any case be limited because of the narrow scope and limited period of application of the derogation.

3. LEGAL ELEMENTS OF THE PROPOSAL

The purpose of the proposed decision is to allow Poland to apply a special measure derogating from Article 287 of the VAT Directive in order to exempt, from 1 January 2010, taxable persons whose annual turnover is no higher than EUR 30 000 instead of EUR 10 000.

The legal basis of this decision is Article 395 of the VAT Directive, which was adopted pursuant to Article 93 of the Treaty establishing the European Community. Under this Article, a Member State wishing to apply special measures derogating from the said Directive must obtain an authorisation from the Council, which will take the form of a Council Decision. Since it is an implementing measure involving the harmonisation of legislation on turnover taxes, the principle of subsidiarity has been adhered to.

The proposal complies with the principle of proportionality and therefore does not go beyond what is necessary to achieve the objective of simplification, because it extends the scope of the tax exemption scheme applicable in Poland to a very limited extent by involving only a limited number of additional small enterprises which, moreover, can opt for this scheme or otherwise. Accordingly, it derogates from the principles of the VAT Directive only to a limited and appropriate extent.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

The proposal provides that the period of application of the decision shall expire automatically on the date of entry into force of provisions establishing harmonised rules for all Member States for the tax exemption scheme for small enterprises.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

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

Having regard to the proposal from the Commission[2],

Whereas:

(1) In a letter registered by the Commission's Secretariat-General on 22 June 2009, the Republic of Poland requested authorisation to apply a special measure derogating from Article 287 of Directive 2006/112/EC in order to exempt, from 1 January 2010, 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.

(2) In accordance with Article 395(2) of Directive 2006/112/EC, by letter dated 22 June 2009 the Commission informed the other Member States of the request made by the Republic of Poland. By letter dated 3 July 2009, the Commission notified the Republic of Poland that it had all the information it considered necessary for appraisal of the request.

(3) Title XII, chapter 1 of Directive 2006/112/EC provides for the possibility of Member States applying special schemes for small enterprises, including an optional exemption scheme for taxable persons whose annual turnover is below a certain ceiling.

(4) Under Article 287(14) of Directive 2006/112/EC, the Republic of Poland may exempt 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.

(5) By increasing this ceiling to EUR 30 000, the Republic of Poland will be able to simplify administrative procedures for a larger number of small enterprises, confining itself to those enterprises with the lowest turnover, and thus contributing to their development.

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1 OJ L 347, 11.12.2006, p. 1.

2 OJ C , p. .

(6) In its proposal for a Directive simplifying value added tax obligations of 29 October 2004 (COM(2004) 728 final)[3] 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 or the equivalent in national currency, with the possibility of updating this amount each year. The request submitted by the Republic of Poland is in line with this proposal.

(7) The derogation presented will have no impact on the European Communities' own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 287 of Directive 2006/112/EC, the Republic of Poland is authorised 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.

Article 2

This Decision shall apply from 1 January 2010 until the date of entry into force of the provisions of a directive amending the amounts of the annual turnover ceilings below which taxable persons may qualify for exemption, but in any case until 31 December 2012 at the latest.

Article 3

This Decision is addressed to the Republic of Poland.

Done at Brussels,

For the Council
The President

[3] OJ C 24, 29.1.2005, p. 10.