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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2016) 665 final.

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Brussels, 20.10.2016
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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 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 1 June 2016, Poland requested an authorisation to exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 40 000. In accordance with Article 395(2) of the VAT Directive, the Commission informed the other Member States by letters dated 22 September 2016 of the request made by Poland. By letter dated 23 September 2016, the Commission notified Poland 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 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. By Council Implementing Decision 2012/769/EU³, the derogation was extended until 31 December 2015 and again, by Council Implementing Decision 2015/1173/EU⁴, until 31 December 2018.

Poland has now requested to be authorised to raise the exemption threshold from EUR 30 000 to EUR 40 000 for the remaining period of the current derogation. Via this demand, Poland wants to simplify the burden on business for a higher number of taxable persons who have a limited business activity and to stimulate the development of such small businesses. At the

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).

³ Council Implementing Decision 2012/769/EU 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).

⁴ Council Implementing Decision 2015/1173/EU 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).

same time, Poland wants to reduce the burden on the tax administration by limiting the need to control small taxable persons, which is relatively costly in comparison to the amount of VAT at stake, and to strengthen its control activities towards larger taxable persons. It is in this context to be noted that the measure is and will remain fully optional for taxable persons.

The derogation measure is currently applicable until 31 December 2018. It is appropriate to maintain this end date. Derogations from the VAT Directive should always be limited in time so that their effects can be assessed. Moreover, the provisions of Articles 281 to 294 of the VAT Directive on a special scheme for small enterprises are currently subject to review. As announced in the VAT Action Plan⁵, the Commission's proposal in the form of a comprehensive simplification package is due to be presented by the end of 2017. A Directive, amending the provisions of the VAT Directive on a special scheme for small enterprises, might therefore enter into force before the above-mentioned date.

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

Similar derogations have been granted to other Member States. Belgium⁶ and Luxemburg⁷ were granted a threshold of EUR 25 000, Lithuania⁸ a threshold of EUR 45 000, Latvia⁹ and Slovenia¹⁰ a threshold of EUR 50 000, Italy¹¹ and Romania¹² a threshold of EUR 65 000.

- **Consistency with other Union policies**

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 Europe¹³ which calls on the Member States to take account of the special features of SMEs when designing legislation and, therefore, to simplify the existing regulatory environment.

⁵ Communication from the Commission to the European Parliament, the Council and the European and Social Committee on an action plan on VAT, Towards a single EU VAT area – Time to decide (COM(2016)148 final of 7.4.2016).

⁶ Council Implementing Decision (EU) 2015/2348 of 10 December 2015 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 330, 16.12.2015, p. 51).

⁷ Council Implementing Decision 2013/677/EU of 15 November 2013 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 316, 27.11.2013, p. 33).

⁸ Council Implementing Decision 2014/795/EU of 7 November 2014 extending the application of Implementing Decision 2011/335/EU authorising the Republic of Lithuania to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 330, 15.11.2014, p. 44).

⁹ Council Implementing Decision 2014/796/EU of 7 November 2014 authorising the Republic of Latvia to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 330, 15.11.2014, p. 46).

¹⁰ Council Implementing Decision 2013/54/EU of 22 January 2013 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 22, 25.1.2013, p. 15).

¹¹ Council Implementing Decision 2013/678/EU of 15 November 2013 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 316, 27.11.2013, p. 35).

¹² Council Implementing Decision 2014/931/EU of 16 December 2014 extending the application of Implementing Decision 2012/181/EU authorising Romania to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax (OJ L 365, 19.12.2014, p. 145).

¹³ COM(2008) 394 of 25 June 2008.

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 the proposal is based, 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. simplification for an additional number of small taxable persons and for the tax administration.

- **Choice of the instrument**

Proposed instrument: Council Implementing Decision.

Under Article 395 of Council Directive 2006/112/EC, derogation from the common VAT rules is only possible upon authorisation of the Council 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.

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

- **Stakeholder consultations**

This proposal is based on a request made by Poland and concerns only this Member State.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The proposal for a Council Implementing Decision aims at extending 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 40 000 and has therefore a potential positive impact on the reduction of administrative burden for an additional 24 000 taxable persons and, subsequently, on the tax administration. The budgetary impact in terms of VAT revenue for Poland is estimated at PLN 300 million.

4. BUDGETARY IMPLICATIONS

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.

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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 tax¹⁴, and in particular Article 395 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/EC¹⁵, 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. By Council Implementing Decision 2012/769/EU¹⁶, the derogatory measure provided for in Council Decision 2009/790/EC was extended until 31 December 2015 and again extended by Council Implementing Decision 2015/1173/EU¹⁷ until 31 December 2018.
- (3) In a letter registered with the Commission on 1 June 2016, Poland requested authorisation to increase that threshold from EUR 30 000 to EUR 40 000. Through that measure, an additional number of small taxable persons could 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. The burden on the tax administration to audit very small businesses would therefore also be decreased.

¹⁴ OJ L 347, 11.12.2006, p.1.

¹⁵ 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).

¹⁶ Council Implementing Decision 2012/769/EU 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).

¹⁷ Council Implementing Decision 2015/1173/EU 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).

- (4) The Commission informed the other Member States by letters dated 22 September 2016 of the request made by Poland. By letter dated 23 September 2016, the Commission notified Poland that it had all the information necessary to consider the request.
- (5) From the information provided by Poland, potentially 24 000 additional taxable persons could make use of this measure in order to reduce their VAT obligations. The budgetary impact in terms of VAT revenue has been estimated by Poland at PLN 300 million.
- (6) Given that a higher threshold will result 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 increased threshold for the remaining application period of Council Decision 2009/790/EC; which is until 31 December 2018. However, the provisions of Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises are subject to review and a Directive, amending these provisions of the VAT Directive, might therefore enter into force before the above-mentioned date.
- (7) The derogation has no impact on the Union's own resources accruing from VAT because Poland will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC EURATOM) 1553/89¹⁸.
- (8) Decision 2009/790/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 and 2 of Decision 2009/790/EC are replaced by the following:

'Article 1

By way of derogation from Article 287 of Directive 2006/112/EC, the Republic of Poland is authorised to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 40 000 at the conversion rate on the day of its accession.

Article 2

This Decision shall apply until the entry into force of a Directive amending the provisions of Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises, or until 31 December 2018, whichever is the earlier.'

¹⁸ Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9).

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels,

*For the Council
The President*