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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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

COUNCIL IMPLEMENTING DECISION (EU) 2016/...

of ...

**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**

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, and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 347, 11.12.2006, p.1.

Whereas:

- (1) Point (14) of Article 287 of Directive 2006/112/EC authorises the Republic of Poland ('Poland') to 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) By virtue of Council Decision 2009/790/EC¹, 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 ('the derogating measure'). The derogating measure was subsequently extended by Council Implementing Decision 2012/769/EU² until 31 December 2015 and by Council Implementing Decision (EU) 2015/1173³ until 31 December 2018.

¹ 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).

² 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).

³ 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).

- (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. By means of that increase, an additional number of very small businesses could be exempted from certain or all of the obligations in relation to VAT set out in Chapters 2 to 6 of Title XI of Directive 2006/112/EC. The burden on the tax authorities with regard to the auditing of very small businesses would therefore also be decreased.
- (4) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, 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) The information provided by Poland indicates that potentially 24 000 additional taxable persons could make use of the derogating 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 an increased threshold will further reduce VAT obligations for very small businesses and that those businesses are still able to opt for the normal 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 Decision 2009/790/EC, which ends on 31 December 2018. However, Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises are subject to review, and a directive amending those Articles might therefore enter into force before that date.
- (7) The derogation will have 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) No 1553/89¹.
- (8) Decision 2009/790/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

¹ 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 1

Articles 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 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.'

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels,

For the Council

The President
