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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) …/…

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 tax[1], and in particular of Article 395(1), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

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

Whereas:

(1) Pursuant to Article 287, point (14), of Directive 2006/112/EC, the Republic of Poland ('Poland') is allowed 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) Council Decision 2009/790/EC[1] 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) Council Implementing Decision (EU) 2018/1919[2] authorised Poland 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 registered with the Commission on 1 March 2021, Poland submitted a request to the Commission for authorisation to continue to apply the derogating measure until 31 December 2024 ('the request').

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[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 (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).

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

(6) The derogating measure is in line with the objectives of the Commission communication of 25 June 2008 entitled '"Think small first" – a "Small Business Act" for Europe'.

(7) According to 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 will still be able to opt for the normal VAT arrangements.

(8) Following the entry into force of Council Regulation (EU, Euratom) 2021/769[1], there will be no compensation calculation carried out by Poland with regard to the VAT own-resource statement for the financial year 2021 onwards.

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

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1 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).

(10) Council Directive (EU) 2020/285[1] amended Articles 281 to 294 of Directive 2006/112/EC as regards the special scheme for small enterprises, 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, Directive (EU) 2020/285 requires Member States to adopt and publish, by 31 December 2024, the laws, regulations and administrative provisions necessary to comply with Article 1 of that Directive, and to 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:

[1] 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).

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.’.

Article 2

This Decision shall take effect on the date of its notification.

Article 3

This Decision is addressed to the Republic of Poland.

Done at …,

For the Council

The President