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EUROPEAN COMMISSION

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COM(2010)360 final

2010/0193 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

**authorising the Republic of Latvia to apply a measure derogating from Article 287 of
Council Directive 2006/112/EC on the common system of value added tax**

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Pursuant to Article 395(1) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (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 Secretariat-General of the Commission on 17 February 2010, Latvia requested authorisation to exempt taxable persons whose annual turnover is no higher than EUR 50 000. In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 4 May 2010 of the request made by Latvia. By letter dated 7 May 2010, the Commission notified Latvia that it had all the information necessary to consider the request.

General context

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 can not deduct the VAT on his inputs.

This annual turnover ceiling differs from one Member State to another, particularly according to its date of accession. For Member States that acceded after 1 January 1978, an annual turnover threshold has been fixed by Article 287 of the VAT Directive. The threshold for Latvia was fixed at EUR 17 200 which corresponded with LVL 10 000, calculated in accordance with the conversion rate on the day of accession (Article 287(10) of the VAT Directive).

The Latvian derogation request seeks to simplify the VAT system for small enterprises by introducing this simplification measure for taxable persons with an annual turnover no higher than EUR 50 000. The measure will significantly reduce the burdens on those businesses eligible for the scheme and release them from many of the VAT obligations under the normal VAT arrangements.

The scheme would be optional for taxable persons, and if the threshold is increased, Latvia expects about 60% of the taxable persons eligible (32 494 taxable persons in 2008) to make use of the simplification measure.

According to an analysis carried out by Latvia of VAT declarations of economic operators within the foreseen threshold, the net amount of VAT payable into the national budget of these taxable persons is a negative figure. As a result, the proposed measure would have almost no impact on the overall amount of VAT revenue collected

at the stage of final consumption.

The derogation would run until the earliest of 31 December 2013 or the entry into force of a Directive on the annual turnover threshold below which supplies of a taxable person may be exempt from VAT.

Existing provisions in the area of the proposal

In 2004, the Commission made a proposal to increase the annual turnover threshold available to Member States (COM(2004) 728 final) for the exemption from VAT of taxable persons to EUR 100 000.

Consistency with the other policies and objectives of the Union

Not applicable.

CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

Not relevant.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

The decision aims at introducing a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 50 000 and therefore has a potential positive impact.

Because of the narrow scope of the derogation, and its limited application in time, the scope will in any case be limited.

LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

Authorisation for Latvia to apply a derogating measure from Directive 2006/112/EC as regards the introduction of a simplification measure for businesses with an annual turnover no higher than EUR 50 000.

Legal basis

Article 395 of the VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

Subsidiarity principle

The proposal falls under the exclusive competence of the EU. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reason(s).

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.

Choice of instruments

Proposed instruments: Decision.

Other means would not be adequate for the following reason(s).

Under Article 395 of the VAT Directive 2006/112/EC on the common system of value added tax, derogation from the common VAT rules is only possible with the authorisation of the Council acting unanimously on a proposal from the Commission. A Council Decision is the most suitable instrument since it can be addressed to individual Member States.

BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

ADDITIONAL INFORMATION

Review/revision/sunset clause

The proposal includes a sunset clause.

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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 Article 395(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) In a letter registered by the Commission's Secretariat General on 17 February 2010, Latvia requested authorisation for a measure derogating from Article 287(10) of Directive 2006/112/EC in order to exempt taxable persons whose annual turnover is no higher than EUR 50 000. This will release those taxable persons from certain or all of the VAT obligations referred to in Chapters 2 to 6 of Title XI of the VAT Directive.
- (2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 4 May 2010 of the request made by Latvia. By letter dated 7 May 2010, the Commission notified Latvia that it had all the information necessary to consider the request.
- (3) A special scheme for small enterprises is already available to Member States under Title XII of the VAT Directive. This measure derogates from Title XII of the VAT Directive only insofar as the taxable person's annual turnover threshold for the scheme is higher than that currently allowed for Latvia under Article 287(10) of Directive 2006/112/EC, which is EUR 17 200.
- (4) A higher threshold may significantly reduce the VAT obligations of the smallest businesses, whilst being optional for taxable persons allows businesses to opt for the normal VAT arrangements.
- (5) In its proposal for a Directive simplifying value added tax obligations of 29 October 2004², the Commission included provisions aimed at allowing Member States to set the annual turnover ceiling for the VAT exemption scheme at up to EUR 100 000 or

¹ OJ L 347, 11.12.2006, p.1.

² COM(2004) 728final (OJ C 24, 29.01.2005, p.8).

the equivalent in national currency, with the possibility of updating this amount each year. The request submitted by Latvia is in line with this proposal.

- (6) The derogation 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(10) of Directive 2006/112/EC, the Republic of Latvia is authorised to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 50 000 at the conversion rate on the day of its accession.

Article 2

This authorisation shall expire on the earlier of the date of entry into force of a Directive amending the amounts of the annual turnover ceilings below which taxable persons may qualify for VAT exemption or on 31 December 2013.

Article 3

This Decision is addressed to the Republic of Latvia.

Done at Brussels,

*For the Council
The President*