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COVER NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers
Proposal for a COUNCIL DIRECTIVE amending Council Directive 2006/112/EC of 28 November 2006 as regards provisions relating to distance sales of goods and certain domestic supplies of goods
– Opinion of the European Economic and Social Committee

Delegations will find attached the abovementioned opinion. Other language versions are available on the following website:

<https://dm.eesc.europa.eu/EESCDocumentSearch/Pages/opinionssearch.aspx>



European Economic and Social Committee

ECO/488

VAT - certain requirements for payment service providers

OPINION

European Economic and Social Committee

Proposal for a Council Directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers

[COM(2018) 812 final – 2018/0412(CNS)]

Proposal for a Council Directive amending Council Directive 2006/112/EC of 28 November 2006 as regards provisions relating to distance sales of goods and certain domestic supplies of goods

[COM(2018) 819 final – 2018/0415(CNS)]

Rapporteur: **Krister ANDERSSON**

Consultation	Council of the European Union, 20/12/2018
Legal basis	Article 113 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	12/04/2019
Adopted at plenary	15/05/2019
Plenary session No	543
Outcome of vote (for/against/abstentions)	209/1/3

1. Conclusions and recommendations

- 1.1 The EESC supports the Commission's objective to introduce further rules ensuring proportionality and enhancing legal certainty for traders operating electronic interfaces, who facilitate the supply of goods to consumers in the EU, especially when they are treated as deemed suppliers.
- 1.2 The EESC further supports the Commission's purpose of establishing regular cooperation with payment providers based on clear legislative provisions. The promising results expected after the implementation of the new measures will ensure more resources both for national and the EU budgets, as well as a simplified level playing field for tax-abiding businesses.
- 1.3 The EESC notes that the regulatory approach embraced by the Commission is consistent with the principle of subsidiarity, given that e-commerce VAT fraud is common to all Member States and that European legislation is the most efficient tool to effectively support Member States in obtaining the information necessary to control VAT cross-border supplies. By contrast, several legislative initiatives carried out at the national level would be unsuitable to effectively address the issues related to VAT fraud and would result in an overcomplicated regulatory scenario.
- 1.4 However, at the same time, the EESC underlines that – from the consumer side – the proposal will imply new exchanges and the processing of VAT-related personal information, now regulated by the General Data Protection Regulation ("GDPR")¹. In this respect, the EESC strongly underlines the importance of fully respecting the provisions of the GDPR and the need to limit the use of data to the sole – and strictly limited – objective of fighting VAT fraud in a manner that is cost-efficient and acceptable to the public at large.
- 1.5 Finally, the EESC recommends that the Commission carry out adequate investments in physical assets and IT to ensure a functional central repository system, noting that the estimated costs of the project could be easily and swiftly covered by the expected results in terms of reducing VAT fraud and the VAT Gap.

2. Proposal of the Commission and general context

- 2.1 The Commission proposal introduces certain requirements for payment service providers to ensure effective cooperation between such providers and tax authorities with a view to improving anti-fraud tools in the field of VAT. The proposal is in line with the VAT e-commerce directive, which has introduced new VAT obligations for online marketplaces and new simplification measures to help businesses comply with VAT obligations through a One Stop Shop ("OSS").
- 2.2 The Commission proposal COM(2018) 819 final introduces further rules that should improve the functioning of the VAT e-commerce package adopted in December 2017, which will enter into force on 1 January 2021. It introduces further clarifications on the VAT treatment of suppliers using an electronic interface to facilitate supplies of goods to consumers in the EU

¹ General Data Protection Regulation - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0679>

when they are considered to be deemed suppliers according to Article 14a(2) of the VAT Directive and thus responsible for the collection and payment of VAT to the tax authorities. In principle, pursuant to Article 369b of VAT Directive 2006/112/EC², the OSS can only be used to declare and pay VAT on cross-border supplies of services and for intra-Community distance sales of goods and not for the domestic supply of goods. However, since suppliers selling goods through the use of an electronic interface may hold a stock of goods in different Member States from which they carry out domestic supplies, this would entail that traders operating such electronic interfaces who become deemed suppliers for these supplies would have to register in all EU Member States, where the original suppliers hold a stock and carry out domestic supplies. Therefore, it is proposed to allow them to also use the OSS for the domestic supplies for which they are treated as deemed supplier according to Article 14a(2) of the VAT Directive. Thus, the simplification of the OSS for electronic interfaces is maintained, avoiding further burdensome procedures for companies. Commission proposal COM(2018) 819 final lays down specific rules needed to support the adoption of a OSS through some targeted modifications to the current legal framework.

- 2.3 The e-commerce sector has witnessed spectacular growth in recent years and consumers can now easily choose between thousands of suppliers, products and brands through their computers or smartphones. However, this opportunity is also exploited by fraudulent businesses in order to avoid their VAT obligations.
- 2.4 More specifically, there are three main cases of cross-border VAT fraud in the area of e-commerce: **i)** intra-EU supplies of goods and services; **ii)** imports of goods from businesses established in a third country for consumers in the Member States; **iii)** supplies of services from businesses established in a third country to consumers in the Member States.
- 2.5 The total VAT loss within the Member States on cross-border supplies of goods has been estimated at around EUR 5 billion per year and, more recently, this estimate was raised to the even more remarkable amount of between EUR 7 and 10 billion. A strong response on behalf of public authorities is therefore needed and should entail, whenever necessary and proportionate, the cooperation of private stakeholders.
- 2.6 The Commission proposal COM(2018) 812 final is aimed at reducing the problem of e-commerce VAT fraud by strengthening the cooperation between tax authorities and payment service providers, since more than 90% of online purchases in the EU are currently carried out through an intermediary. In this respect, the experiences of several Member States have demonstrated that sufficient cooperation between tax authorities and payment service providers can deliver tangible and rapid results in fighting e-commerce VAT fraud.
- 2.7 The proposal will enable tax authorities to collect and exchange the payment information provided via payment service providers, using a central repository system to be developed by the Commission in conjunction with national tax authorities, with the aim of ensuring a uniform approach to data collection and analysis.

²

VAT Directive 2006/112/EC - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006L0112>

- 2.8 In practical terms, a new record-keeping obligation for payment service providers is introduced under Article 243b of VAT Directive 2006/112/EC. The only payment services that are relevant in this respect will be those resulting in a cross-border transfer of funds to the payees – or to the subject acting on behalf of the payees – and only when the payer is located in one of the Member States. In other words, according to the proposal, the "cross-border" concept refers to transactions where the consumer is in a Member State and the supplier is in another Member State or in a third country. Domestic payments are not covered by the Commission proposal.
- 2.9 In order to exclude cross-border fund transfers executed for private reasons and to focus only on payments linked to an economic activity, the payment service providers have to keep records on that payee and make them available to tax authorities only when the total amount of payments received by a given payee exceeds the ceiling of 25 payments in a calendar quarter. Such a threshold was set by taking into account an average value of online shopping orders of EUR 95 which, combined with a minimum amount of 100 payment transactions per year, results in almost EUR 10 000 in yearly sales.
- 2.10 The information to be kept by the payment service providers will identify the payment service provider that is keeping the records, information to identify the payee, and information on the payments received by the payee. The identification information of the payers is not included under the record-keeping obligation of the payment service providers, as it is not necessary to detect fraud. The record-keeping period for the payment service providers will be two years.

3. **General and specific comments**

- 3.1 The EESC supports the Commission's objective in its proposal COM(2018) 819 final to introduce further rules ensuring proportionality and enhancing legal certainty for traders operating electronic interfaces who facilitate the supply of goods to consumers in the EU especially when they are treated as deemed suppliers.
- 3.2 The EESC further supports the Commission's objective of establishing regular cooperation with payment providers based on clear and transparent legislative provisions. The promising results expected after the implementation of the new measures justify the legislative effort of the Commission and will ensure more resources both for national and the EU budgets, as well as a simplified level playing field for tax-abiding businesses.
- 3.3 The Commission proposal follows an extensive consultation with several stakeholders and in particular with payment service providers, other businesses representatives, and tax authorities of the Member State. The EESC commends the Commission's wide gathering of feedback and contributions from public and private players, which were certainly helpful in devising a sound and proportionate legislative proposal.
- 3.4 The EESC notes that the regulatory approach put forward in the proposal is consistent with the principle of subsidiarity enshrined in the Treaties, given that e-commerce VAT fraud is common to all Member States and that European legislation is the most efficient tool to effectively support Member States in obtaining the information necessary to control VAT cross-border supplies. By contrast, several legislative initiatives carried out at the national level would be

unsuitable to effectively address the issues related to VAT fraud and would result in an overcomplicated regulatory scenario.

- 3.5 The Commission proposal requires payment service providers to keep records of data that they already have at their disposal in order to execute payment transactions, in accordance with the proportionality principle set out in the Treaties and further developed by ECJ case-law. Furthermore, an EU-harmonised obligation for record-keeping and transmission of data to tax authorities will limit the administrative burden on payment service providers, as opposed to the burden of requiring these payment service providers to comply with diverging national approaches.
- 3.6 In this respect, as has been demonstrated by the impact assessment analysis, the harmonisation of reporting obligations in one single format for the transmission of information will reduce compliance costs for payment service providers, who will be able to cooperate in tackling VAT fraud with a reasonable and balanced impact on their daily operational activities.
- 3.7 The threshold of 25 payments per quarter, equal to around EUR 10 000 per year based on an average EU e-commerce transaction value of EUR 95, appears reasonable and proportionate, also considering that, usually, the amount of EUR 10 000 already gives rise to VAT obligations in the Member States. Moreover, such an amount matches the EUR 10 000 threshold for intra-EU supplies introduced by the VAT e-commerce directive. Therefore, the minimum amount of EUR 10 000 seems appropriate in order to strike a balance between the protection of purely private transactions – that have nothing to do with VAT fraud – and the objective of setting up a viable monitoring system to reduce fraud. The EU Commission should, however, monitor developments to ensure the thresholds are appropriate over time and initiate changes if required.
- 3.8 The EESC underlines that, from the consumer side, the proposal will imply new exchanges and the processing of VAT-related personal information, regulated by the General Data Protection Regulation (GDPR), which was recently approved and implemented across Europe with significant compliance costs for EU businesses.
- 3.9 The GDPR gives a broad definition of personal data, including any information on an identified or identifiable natural person who can be identified directly or indirectly. As a consequence, payment information covered by the Commission proposal falls under the scope and the principles applicable to the protection of personal data as laid down in the Charter of Fundamental Rights.
- 3.10 According to the Commission, "only payment information that is necessary to fight e-commerce VAT fraud would be processed under the proposal [...]. The information that would be processed only refers to the recipients of funds (payees) and on the payment transaction itself (amount, currency, date), while information on the consumers paying for goods or services (payers) is not part of the exchange of information. Therefore, that information would not be used for other purposes, such as controlling purchase habits of the consumers [...]. Domestic payments would also be excluded from the scope of the initiative. Finally, the payment information would only be available to the Eurofisc liaison officials of the Member States and only for the time necessary to fight e-commerce VAT fraud".

- 3.11 The EESC strongly underlines the importance of fully respecting the provisions of the GDPR and the need to limit the use of data to the sole – and strictly limited – objective of fighting VAT fraud in a manner that is cost-efficient and acceptable to the public at large. On this point, the EESC calls on the Commission – when collecting feedback from Member States which is due to be completed by the end of 2024 – to carefully check whether the provisions of the GDPR have been fully complied with and whether any cases of such provisions being infringed in Member States can be identified and corrected.
- 3.12 Finally, the EESC recommends that the Commission adapt investment in physical assets and IT in order to ensure a functional central repository system, noting that the estimated costs of the project – EUR 11.8 million to set it up and EUR 4.5 million to run it annually – could be easily and swiftly covered by the expected results in terms of reducing VAT fraud and the VAT Gap, since the total VAT loss relating to cross-border supplies of goods exceeds EUR 5 billion and the total value of online sales in 2017 amounted to around EUR 600 billion.

Brussels, 15 May 2019

Luca Jahier
The president of the European Economic and Social Committee
