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REPORT FROM THE COMMISSION TO THE COUNCIL

**on the application of Article 263 (1) of Council Directive 2006/112/EC concerning the
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1. INTRODUCTION

In accordance with Article 2 of Council Directive 2008/117/EC of 16 December 2008 the Commission is required to present, on the basis of information provided by the Member States, and no later than 30 June 2011, a report assessing the impact of Article 263(1) of Directive 2006/112/EC on Member States' ability to fight against VAT fraud connected with intra-Community supplies of goods and services as well as on the usefulness of the options provided for in Article 263(1a) to (1c), and, if necessary, to make appropriate proposals.

A first concern of Member States when confronted with fraudulent transactions was that the information contained in the recapitulative statements was available only after 6 months, which was far too late for risk analysis purposes. Therefore, the first initiative taken by the Commission in this field was to submit a proposal to amend the VAT Directive in order to reduce the timeframe for submitting and transmitting the recapitulative statement to 1 month.

The adoption of Directive 2008/117/EC of 16 December 2008 constituted an initial response to the request from the Member States to strengthen the VAT system and to assist them in their efforts to fight VAT fraud. This Directive amended Article 263(1) of Directive 2006/112/EC allowing for a reduction in the statutory time limits for the declaration of cross-border transactions for VAT purposes, together with a reduction in the time limits for the exchange of such information between Member States, so as to enable quicker detection of fraud, in particular as regards "VAT carousels". The Article, which should have been implemented by 1 January 2010 requires that:

As a general rule, as from 1 January 2010, cross-border transactions for VAT purposes will be declared on a monthly basis;

Member States will nevertheless be able to authorise operators with turnover of less than EUR 50,000 (excluding VAT) a quarter for cross-border supplies of goods (optionally, EUR 100,000 up to 31 December 2011) and all service providers to continue to submit recapitulative statements on a quarterly basis.

The Commission's report covers the following major questions:

- To what extent has speeding-up the exchange of information improved Member States' ability to combat VAT fraud, for instance, has it resulted in quicker detection of missing traders or in improved national risk management system?

- Have the option mechanisms set out in article 263 of Directive 2006/112/EC had any impact on the objective of improving Member States' ability to combat VAT fraud while minimising the administrative burdens on businesses in line with the Lisbon Agenda?
- What impact has reducing the time frame for submitting recapitulative statements and the various option mechanisms had on businesses, considering that the Lisbon Agenda aims to minimise administrative burdens on businesses?

In order to allow Member States some time to experience the functioning of the new provisions, the Commission decided to extend the deadline for submitting the report.

2. SOURCES OF INFORMATION USED FOR THE EVALUATION OF THE APPLICATION OF ARTICLE 263(1)

The implementation and the application of Article 263 (1) is a matter of national responsibility for Member States. Consequently this evaluation could only be based on information received from the Member States. In order to gather the necessary information to evaluate the impact of this newly-adopted legislation, the Commission sent two **questionnaires** to the Member States, one prior to the implementation of the new provisions and another one following their implementation. The main goal of the questionnaires was to compare the situation in Member States before the implementation of the reduced timeframes, with the situation in Member States following the implementation of the new legislation. It is important to mention that not all Member States were in a position to apply the new provisions as of 1 January 2010. Furthermore, only 22 Member States replied to the questionnaire and the level of detail of the replies was sometimes insufficient to allow for a proper analysis.

As concerns the impact of the reduction of timeframes and the option mechanism on businesses, the Commission endeavoured to obtain the necessary information through **a study**¹. For this purpose, it has commissioned PwC to perform an expert study with the objective of examining the business perspective. The study was delivered in October 2011 and is available at the Commission website at the following address:

http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm

¹ PricewaterhouseCoopers: *Expert study on the issues arising from a reduced time frame and the options allowed for submitting recapitulative statements - Application of Article 263(1) of Directive 2006/112/EC (amended by Directive 2008/117/EC)*

3. MAIN FINDINGS

3.1. Short description of the way in which Member States have implemented the provisions of the new Article 263 (1) in their domestic legislation²

Under the new Article 263(1) of Directive 2006/112/EC, the general rule is that as from 1 January 2010, recapitulative statements for intra-Community supplies of goods, including deemed supplies, and services are to be drawn up for each calendar month within a period not exceeding one month and in accordance with procedures to be set by the Member States.

The analysis shows that (practical) implementation of Article 263(1) of Directive 2006/112/EC, and especially the options laid down therein, is not uniform.

For instance:

- 17 Member States have implemented the derogation to file recapitulative statements on a quarterly basis and 10 Member States have not implemented the derogation;
- 5 Member States have made the application of the derogation mandatory and 12 have made it optional;
- 2 Member States have a separate recapitulative statement for goods and services while the other 25 Member States have a combined recapitulative statement. In 4 Member States, there may be differences in the reporting periods for intra-Community supplies of goods, including deemed supplies, on the one hand, and services on the other hand;
- 22 Member States require electronic filing (in 10 Member States exceptions however apply) while 5 others provide for optional electronic filing.

A table attempting to summarise this complex situation is set out in Annex 1

3.2. Consequences for the tax administrations

3.2.1. *Impact on the work of the tax administrations*

The majority of Member States confirmed that the data from the recapitulative statements is used in a similar way to that used before the introduction of the monthly reporting period. There is, however, now a higher number of recapitulative statements which are submitted both for goods and for services.

While a number of Member States (such as CY, DE, PL, SK, SI and UK) indicated that they experienced an increase in the administrative burden for the tax administration, due to the fact that the recapitulative statements are now

² The short description is retrieved from the PwC Study.

submitted more frequently, other Member States (e.g. ES) defended this situation on the grounds that it now allows them to spread the workload better over the whole year, thus avoiding bottlenecks every calendar quarter. Another reason provided for the increased workload is the inclusion of services in the recapitulative statement, another innovation arising from the adoption of the VAT package.

The majority of the Member states consider that reducing timeframes could increase the tax administration's efficiency, through faster information exchange, a more efficient risk analysis, more efficient audits and greater benefits for Eurofisc.

It was also highlighted that there is a trend that decisions could now be made more accurately and the need to send information requests had also been reduced.

3.2.2. *Impact on risk analysis*

In general, the Member States reported that, despite the fact that they now receive data from recapitulative statement on a monthly basis, no changes to their risk analysis practices have been made at this stage. The same parameters as before are used in a large number of the Member States. Some Member States (e.g. HU and FI) have announced plans to modernise their risk analysis systems by introducing additional parameters. It was also pointed out that although the same data is used as before, receiving the information quicker enables tax administrations to react more rapidly to anomalies.

As regards data processing time, in general, most Member States answered that no additional resources were required for the risk analysis process as the data coming from the recapitulative statement were already a component of the overall risk assessment of taxpayers. It appears to be difficult to calculate the resources needed for risk analysis purposes only. Further comments received from Member States indicated that sometimes they continue to carry out a risk analysis on a quarterly time period only because it is a very time-consuming activity, while others stated explicitly that the implementation of the reduction of time frames would require tax administrations to allocate more resources, both human and IT, if the benefits of information received on a monthly basis were to be fully utilized.

3.2.3. *Impact on audits*

The data from the recapitulative statement are normally used in the selection phase (selection of audits) and during the audit phase (conducting of audits).

Such data is used for auditing in all Member States. It is an important part of the risk assessment system in general as data from recapitulative statements provide more detailed information about intra-community transactions during a certain period. The general procedure is to match the recapitulative statements with VAT returns and check the validity of VAT numbers through VIES. In cases of risk, preliminary findings from mismatching data in general lead to further investigation, including requests for information to other Member States in case

of IC trade: the sooner this analysis is done, the quicker an audit can be carried out. The reduced time frames have not changed this practice but they have enabled the auditing tax administration to send quicker queries or spontaneous information to the Member State of acquisition.

3.2.4. *Impact on detection of irregularities and fraud*

Although some Member States (such as GR, LT and RO) reported an increase in the number of missing traders detected, a large majority of Member States indicated that it was too early yet to identify whether the reduced timeframe had lead to increased detection of irregularities. No figures in this respect were provided.

It was pointed out that although the detection of irregularities itself had not increased, it was important to note that the reduction in time frame for submitting the recapitulative statement combined with a monthly VAT return had reduced the time period during which a conduit company could operate before being detected.

Furthermore, it was also noted that due to the fact that Member States may opt to continue to apply different reporting periods for the recapitulative statement compared to VAT returns, it was not possible to carry out a systematic check of the data contained in the VAT returns with the data received through the recapitulative statement on a monthly basis.

The role of EUROFISC in more systematic detection of conduit companies was considered useful and the early detection triggered several audits that were started up sooner than would use to be the case. Unfortunately most Member States did not give details of the number of fraud cases detected and the amount of tax involved since the introduction of the new provisions.

Few Member States (namely LT, GR and EE) detected some (potential) fraud cases concerning services, but most of the Member States did not give specific figures on the amount of VAT loss due to fraud related to these cases. It seems to be too early to asses the effectiveness of the introduction of data on services in the recapitulative statements.

3.2.5. *Impact of the options*

Member States were asked whether they had experienced a negative impact as a result of the application of different options by several Member States on their ability to use the received information. From the replies received it appears that the cross-checking exercise between data from the Member State of supply and data from the Member State of acquisition is problematic. Different reporting periods and options applied by other Member States have made faster data matching in the Member State of acquisition more difficult. It is obviously almost impossible to rely on systematic matching on a monthly basis when (part of) the information is only submitted quarterly.

Nevertheless, here it was argued that the options are only available for low risk areas and since everybody was well aware of the options used in the different

Member States, any difficulties that availing of the options might cause should not be exaggerated.

As a conclusion, the replies clearly show that most Member States consider the application of the different options and reporting periods to pose a serious obstacle to speedy and accurate data evaluation. Therefore, the potential benefits arising from the reduction of timeframes cannot be exploited to its full extent.

3.2.6. Conclusion

Overall, Member States still need more time to assess the new situation accurately and provide an in-depth, quantified analysis. Some Member States were also late in implementing the new rules fully, which prevented them to provide more in-depth analysis.

Nevertheless, the new provisions of Article 263 (1) appear to have had a positive effect on the efficiency of anti-fraud activities. The introduction of a reduction in the timeframe for submitting the recapitulative statements and reporting into VIES is considered by Member State as a great improvement in their risk analysis activity. Consequently, quicker information exchange leads to quicker controls and audits.

Applying different thresholds, options and reporting periods is now the biggest obstacle to making fraud detection and risk assessment procedures more efficient. Less divergent application of the rules, both in terms of different reporting periods and divergences between Member States would increase the benefit Member States can make of the reduced timeframe for submitting recapitulative statements.

3.3. Experiences from a business perspective

3.3.1. Preliminary remark

One has to take into account certain limitations and precautions when evaluating the conclusions of the study by the external contractor. In particular, it must be borne in mind that the sample of 23 case study companies is too small to draw firm conclusions. The external contractor has acknowledged that there were no companies in the sample identified that were affected by the options. This because the threshold foreseen in Article 263 (1a) was either exceeded by the companies selected in the sample or the companies had opted not to utilize the possibility for an alternative reporting period.

Furthermore, due to the fact that the VAT package had to be implemented at the same time as the provisions of Article 263(1), it was difficult for business to separate the costs occasioned by the latter from the overall costs resulting from the implementation of the VAT package. It also proved impossible to identify the costs linked to the introduction of the intra-community supplies of services in the recapitulative statements, as bundling supplies with services transactions is common business practice.

Since the external contractor clearly stated that *the quantitative results of the study have an indicative character and should be treated with caution*, the Commission's paper focuses in the next section on the qualitative feedback provided by the case study companies

3.3.2. *Impact on administrative burden and compliance costs*

Based on the study, the qualitative feedback provided by the 23 case-study companies highlights some relevant considerations on the impact of implementing Article 263(1) of Directive 2006/112/EC.

Although monthly submission of recapitulative statements and monthly reconciliation of data are identified as additional administrative burdens, they also motivate companies to carry out more frequent internal controls. This will impact positively on the quality of company data. Looking towards the future, the majority of companies therefore expects a positive balance between administrative costs and advantages in terms of improved data quality and reliability.

The level of automation has a big impact on the perceived complexity and on administrative costs. Introducing automated internal processes involves an important one-time cost for companies because they have to change/update their systems and manage the internal changes. At the same time, companies appreciate that this will result in lower recurring costs over time.

The absence of harmonisation within the EU in terms of submission periods, format and level of detail is particularly burdensome for companies that have multiple locations or registrations across the EU. Participants also suggest that harmonisation of timeframes should be accompanied by harmonisation of filing procedures – i.e. a move towards electronic filing and, particularly, a simple, user-friendly interface that simplifies monthly filing as much as possible.

Companies supplying both intra-Community goods and services or only intra-Community services experience difficulties in gathering complete information to create the recapitulative statements. Especially the addition of services is viewed as a higher level of detail to be provided as compared to before 1 January 2010.

The case-study companies indicate that communications with tax authorities have increased. As more supplies (intra-Community supplies of services) need to be included in more frequent recapitulative statements and corrections are also made more frequently, tax authorities tend to have more questions requiring follow-up by companies than before the implementation of the new legislation.

Summarising the sentiments expressed by the case-study companies, three strands can be identified:

- some businesses tend to perceive the regulatory changes as having a neutral impact on operations, with the notable exception of one-time costs related to updating/changing their system, which are considered a significant cost element;

- other companies indicate a strong preference for the situation as it existed before the implementation of Article 263(1) of Directive 2006/112/EC, suggesting it has led to important new cost factors, although they could not specify whether these costs were mainly driven by the fact that services are now to be included or by the fact that the timeframe for submission was reduced to 1 month;
- a number of companies see the advantages the new situation will have in the future, pointing *inter alia* to enhanced data quality and fewer incidents of tax fraud.

3.3.3. *Potential impact of a more harmonised situation where Member States apply the same time frame without derogations and thresholds*

The potential impact of a more harmonised situation can be estimated to be positive from a qualitative point of view. Indeed companies indicated that they expect harmonisation across European Member States to lower the costs incurred. They also suggest that harmonising the time frames should be accompanied by harmonising the filing procedure – i.e. a move towards mandatory electronic filing in all Member States and, mainly, a simple, user-friendly interface making monthly filing as easy as possible

3.3.4. *Conclusion*

The study concluded that further analysis would be required to weigh the additional one-time cost and the recurring cost for businesses due to the new VAT legislation against the aim and benefits of the new VAT legislation, namely the reduction of the VAT gap through the quicker detection of fraud and decreasing the risk on VAT carousels.

Business would also benefit from this through a reduced risk for being unwillingly involved in and being held liable for VAT fraud. As such it may also help to reduce VAT fraud and unfair competition by fraudulent companies.

Further analysis can be done on how the recurring cost can be decreased by e.g. harmonising the filing procedure through a single, user friendly interface for all Member States and/or through accepting XML files to be uploaded in the same format across all Member States.

4. FINAL COMMENTS

In general, Member States considered that it was too early to evaluate fully the impact of the reduced timeframe for submitting recapitulative statements. The Commission recognises that Member States will need more time to adjust their risk analysis systems and benefit fully from this change in legislation.

Nevertheless, it is clear at this stage that to a large extent, Member States consider the quicker availability of the information contained in the recapitulative statements to represent a real benefit for their ability to identify fraudulent transactions more rapidly. In addition to the quick exchange of

information through the Eurofisc network these new provisions allow Member States to target fraudsters quicker than before.

On the other hand, the option allowing Member States to use different reporting periods is still considered as an obstacle to the measure achieving its full effect in the field of risk assessment and fraud prevention.

From a business perspective it is clear that a reduction in the timeframe for submitting the recapitulative statement leads to more handling costs as the number of statements to be submitted has increased considerably. In addition, this has led to more contacts with the tax administrations, as data has to be corrected or verified more frequently. Having said that, the fact that the information must now be provided more regularly on a monthly basis means that its reliability should increase.

As a general conclusion, the Commission considers this report does not reveal sufficient elements which would at this stage justify a proposal for amending the current provisions. However, if new elements would arise in future the Commission may reconsider amending these provisions.

Figure 1: Application of options

1. No derogation from the monthly recapitulative statement		2. Derogation from the monthly recapitulative statement			
		2a. Derogation optional		2b. Derogation mandatory	
Before ⁽¹⁾ and as from 1 January 2010	As from 1 January 2010	Before ⁽¹⁾ and as from 1 January 2010	As from 1 January 2010	Before ⁽¹⁾ and as from 1 January 2010	As from January 2010
Bulgaria France	Cyprus Estonia Finland Greece Latvia Lithuania Romania Slovenia	Austria Ireland Italy	Belgium Denmark Germany Luxembourg Malta Poland Sweden The Netherlands United Kingdom	Portugal	Czech Republic Hungary Slovakia Spain

(1) Only for goods

Figure 2: separate and combined recapitulative statements

1. Separate recapitulative statement	2. Combined recapitulative statement	
	2a. Periodicity aligned	2b. Different periodicity
France Luxembourg	Austria Belgium Bulgaria Cyprus Czech Republic Denmark Estonia Finland Greece Hungary Sweden	Italy Latvia Lithuania Malta Poland Portugal Romania Slovakia Slovenia Spain
		Germany Ireland The Netherlands United Kingdom

Figure 3: Paper and/or electronic filing of the recapitulative statements

Electronic filing				
1. Mandatory		2. Mandatory but exceptions apply		3. Optional
1a. Before and as from 1 January 2010	1b. As from 1 January 2010 onwards	2a. Before and as from 1 January 2010	2b. As from 1 January 2010 onwards	
Bulgaria Portugal Slovenia Spain	Cyprus ⁽¹⁾ Czech Republic Denmark ⁽¹⁾ Hungary Italy Latvia ⁽²⁾ Malta Slovakia	Austria Belgium France Germany Greece Ireland The Netherlands	Finland Luxembourg Romania	Estonia Lithuania Poland Sweden United Kingdom

(1) Corrective statements can be submitted on paper; (2) On and after 1 January 2011