



Council of the
European Union

Brussels, 18 May 2018
(OR. en)

8769/18

Interinstitutional File:
2017/0248 (CNS)

LIMITE

FISC 206
ECOFIN 401

NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

No. Cion doc.: 14893/17 FISC 308 ECOFIN 1031 - COM(2017) 706 final

Subject: Amended proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax
– General approach

I. INTRODUCTION

1. On 30 November 2017, the Commission presented an amended proposal for amending Council Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax¹.
2. This initiative is part of the ‘fair taxation package for the creation of a single EU value added tax area’ set out in the Commission roadmap for a more united, stronger and more democratic Union. It aims at tackling cross-border VAT fraud by implementing the Council, European Parliament and European Court of Auditors recommendations and drastically and swiftly improving how tax administrations cooperate between themselves and with other law enforcement bodies.

¹ COM (2017) 706 final. See 14893/17 FISC 308 ECOFIN 1031.

3. The proposal aims at adding measures specifically designed to tackle the main types of cross-border fraud schemes across the EU to Council Regulation (EU) No 904/2010², which is the reference legal basis for administrative cooperation.
4. The main objectives of the proposal are:
 - jointly processing and analysing all relevant data within Eurofisc;
 - improving the operational framework for coordinated checks between Member States;
 - developing the exchange of data between Member States' tax administrations and law enforcement authorities at EU level;
 - tackling fraud involving the dual VAT regime applicable to cars by improving access to vehicle registration data;
 - fighting fraud involving customs procedures 42 and 63.
5. The issues covered by this legislative proposal are high on the EU VAT agenda. In its conclusions of 25 May 2016³, the Council welcomed the Commission Communication "Towards a single EU VAT area – Time to decide" (VAT Action Plan) and took note of the Special Report of the Court of Auditors No. 24: "Tackling intra-Community VAT Fraud: More action needed", as well as of the findings and recommendations set out therein.
6. At this occasion, the Council recalled the Council conclusions of 15 May 2012 "On the Future of VAT", where the Council had emphasised that the EU needs a simpler VAT system, which at the same time is more efficient, more robust, fraud-proof and tailored for single market and had pointed out the following principles and legal considerations, which should be taken into account in furtherance of any future action: cost-efficiency, proportionality, unanimity, data protection legislation, compliance with the subsidiarity principle and full respect for the respective competences of the Union and the Member States.

² Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast).

³ See 9494/16 FISC 86 ECOFIN 509.

7. The Council further agreed that the EU VAT system needed to be modernised and improved with these general objectives in mind, while stressing the importance of keeping the EU's business environment competitive and acknowledging the objectives outlined in the VAT Action Plan, which provide a framework to achieve a Single EU VAT area.
8. Given the utmost importance of robust legal rules which hamper VAT fraud, the Council agreed already in 2016 with the Commission and the Court of Auditors that improving administrative cooperation between tax authorities was of significant importance in the fight against VAT fraud. Therefore, the Council also took note of the Commission's intention to table in 2017 a legislative proposal that would aim at improving the exchange, sharing and analysis of key information and foresee conducting of joint audits.
9. The Commission proposal broadly reflects the Council's request for an improvement of information exchange that would result in a clear improvement of efficiency in the fight against VAT fraud, by proposing ways of addressing legal obstacles and practical limitations that might exist in the EU and in the Member States that prevent from making a qualitative leap in this area in the EU.
10. With a view to addressing the challenges both to customs and tax authorities, the proposal also meets the Council's request to promote co-operation and cover the full range of available means and methods and alignment of procedures, including, *inter alia*, VIES, Eurofisc, feedback procedures and customs procedure 42.
11. The European Parliament has not yet delivered its opinion on this legislative proposal.

II. STATE OF PLAY

12. The Bulgarian Presidency has prioritized work on this file. In its Tax Policy Roadmap, the Bulgarian Presidency committed to seek agreement on the key elements on the basis of the proposal presented by the Commission.⁴ In 2018, five meetings of the Working Party on Tax Questions (WPTQ) took place (24 January, 7 February, 7 March, 13 April and 3 May 2018).
13. On 16 May 2018, at the meeting of the High Level Working Party for taxation (HLWP), delegations could largely support the last compromise texts suggested by the Presidency⁵. However, as some delegations still had reservations on the last compromise text, the Presidency has suggested further changes to the text as set out in the text attached to this note.
14. In the course of the negotiations, Member States deemed it appropriate and necessary, in order to allow for early progress in the field of administrative co-operation in VAT area, to advance the work on the core of this Commission proposal. Therefore, the Council will subsequently continue to work on the elements of the Commission proposal relating to the certified taxable person (namely Article 1(3)(a), Article 1(3)(c), Article 1(9), the relevant parts of Article 3, 2nd subparagraph, and the corresponding recitals (4 to 7)), when discussing the following legislative proposals (the so called "VAT quick-fix proposals"):
 - i) Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States; and the
 - ii) Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions.

⁴ Doc. 5668/18 FISC 37, point 34.

⁵ WK 5584/2018 LIMITE.

Member States also stressed the need to continue to work in the Council on the elements of this Commission proposal relating to the small and medium enterprises (namely Article 1(10), the relevant parts of Article 3, 4th subparagraph, and the corresponding recital (12)), when discussing the Proposal for a Council Directive amending Directive 2006/112/EC as regards the special scheme for small enterprise (the so called "SMEs proposal").

III. KEY OUTSTANDING ISSUES

1. Request for information and for administrative enquiries - Recital 2

15. Recital 2 has been amended in order to define more precisely the purpose of the consultation where, during an administrative enquiry on the territory of the requested Member State, officials from the requesting Member States are present for consultation on that enquiry.

2. Information communicated to the European Anti-fraud Office (OLAF) - Article 49

16. Member States may communicate relevant information to OLAF to enable it to consider appropriate action in accordance with its mandate. However, similarly to the condition of prior agreement referred to in Article 55(4), where that information is received from another Member State, the transmission of the information to OLAF might be subject to the prior agreement of that Member State.

3. Data protection issues - Article 55(5)

17. On 21 March 2018, the European Data Protection Supervisor (EDPS) delivered formal comments on the proposal. Based on those comments, adaptations have been made to Article 55(5) of Regulation 904/2010. In order to enable full compliance with the obligations under the Regulation, the Presidency has suggested that the adoption of restrictions in the area of data protection is mandatory, provided that these restrictions are limited to what is strictly necessary in order to safeguard the objective of fight against VAT fraud.

IV. THE WAY FORWARD

18. In view of reaching an agreement at the upcoming meeting of ECOFIN Council on 25 May 2018, the Presidency tables an updated compromise text, set out in the Annex, which should resolve the key outstanding issues set out in part III of this note.
19. Against this background, the Presidency hopes that the text, set out in Annex to this note (new changes since the HLWP meeting are in bold and underlined), could address the outstanding issues set out above and be acceptable to all delegations, and pave the way to a general approach in ECOFIN Council.
20. The Committee of Permanent Representatives is therefore invited to recommend that the Council, at its forthcoming meeting, reach a general approach on the text of the draft Regulation, on the basis of the Presidency compromise text set out in Annex to this note, with a view to adopting the Regulation at a later date, subject to receiving the opinion of the European Parliament and legal-linguistic revision.

DRAFT

COUNCIL REGULATION

amending Regulation (EU) No 904/2010 and Regulation (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament⁶,

Having regard to the opinion of the European Economic and Social Committee⁷,

Acting in accordance with a special legislative procedure,

Whereas:

⁶ OJ C [...], [...], p. [...].

⁷ OJ C [...], [...], p. [...].

- (1) The current system for the taxation of trade between Member States is based on transitional arrangements introduced in 1993 which have become outdated and prone to fraud in the context of a highly complex value added tax (VAT) system. The Commission put forward a proposal³ setting out the principles for a definitive VAT system for cross-border business-to-business trade between Member States that would be based on the taxation of cross-border supplies in the Member State of destination. Given the fact that it could take several years for the definitive VAT system for intra-Union trade to be fully implemented, short term measures are needed to combat cross-border VAT fraud more effectively and in a more timely manner. Improving and simplifying the administrative cooperation instruments, in particular Eurofisc, is also of significant importance in the fight against VAT fraud in general and to strengthen trust between tax authorities before the definitive VAT regime is introduced.

³ COM(2017) 569 final of 4 October 2017.

- (2) Carrying out an administrative enquiry is often necessary to combat VAT fraud in particular when the taxable person is not established in the Member States where the tax is due. To ensure the proper enforcement of VAT and to avoid duplication of work and administrative burden of tax authorities and business, where at least two Member States consider that an administrative enquiry into the amounts declared by a taxable person non-established on their territory but taxable therein, is necessary, the Member State where the taxable person is established should undertake the enquiry unless it is able to provide the information requested. The requiring Member States should stand ready to assist the Member State of establishment by taking part actively in the enquiry. **In any case, Officials from the requiring Member States should, where they deem it necessary, have the possibility to be present for consultation on the enquiry in the requested Member State with its officials after having informed them. The purpose of such consultation could be to exchange views and information about the development of the enquiry and to propose and discuss possible actions.** When this is allowed under the legislation of the requested Member State the officials of the requesting Member States **should** ~~shall~~ be able to be present during the administrative enquiry including access to the same premises and documents through the intermediation of the officials of the requested authority as the former might have better knowledge of the facts and circumstances of the case. Where the legislation of the requested Member State contains certain conditions for providing such a presence it **should** ~~shall~~ be assumed that the requested Member State shall undertake the necessary actions to satisfy these conditions.
- (3) Forwarding information without a prior request to the competent authorities of other Member States in accordance with Council Regulation (EU) No 904/2010⁴ should be as simple and effective as possible. It is therefore necessary to allow competent authorities to forward information by means other than the standard forms when they deem other secure means more appropriate and agree to use them or when the information has been received from a third country.

⁴ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).

- (4) The VAT exemption for the imports of goods provided for in Article 143(2) of Directive 2006/112/EC⁵ ('customs procedure 42') is often abused and goods are diverted to the black market without VAT having been paid. It is therefore essential that customs officials when checking whether the requirements for granting the exemption are met, have access to the registry of VAT identification numbers and the recapitulative statements. Furthermore, the information collated by the customs authorities, as part of this procedure, should also be made available to the competent authorities of the Member State where the subsequent intra-Community acquisition must take place.
- (5) In order to tackle fraud arising from the dual VAT regime applicable to cars, Eurofisc liaison officials should be able to access vehicle registration data in an automated way. It would allow them to identify swiftly who has committed the fraudulent transactions and where. Such access should be made available via the European Vehicle and Driving Licence Information System (EUCARIS) software application, whose use is mandatory for Member States under Council Decision 2008/615/JHA⁷ and Council Decision 2008/616/JHA⁸, as regards vehicle registration data.
- (6) In order to ensure uniform conditions for the implementation of the provisions on automated access to information collated by the customs authorities and to vehicle registration data, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁹.

⁵ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁶ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

⁷ Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA (OJ L 210, 6.8.2008, p. 12).

⁸ Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

- (7) For the purpose of ensuring the effective and efficient monitoring of VAT on cross-border transactions, Regulation (EU) No 904/2010 provides for the presence of officials in administrative offices and during administrative enquiries in other Member States. In order to strengthen the capacity of tax authorities to check cross-border supplies, there should be administrative enquiries carried out jointly enabling officials from two or more Member States to form a single team and actively take part in an administrative enquiry carried out jointly.
- (8) In order to combat the most serious cross-border frauds, it is necessary to clarify and strengthen the governance, tasks and functioning of Eurofisc. Eurofisc liaison officials should be able to access, exchange, process and analyse all necessary information swiftly and coordinate any follow-up actions. However, such coordination does not imply a right for requiring any specific enquiry actions from the participating Member State. It is also necessary to strengthen the fight against VAT fraud at Union level, in particular by enabling Eurofisc liaison officials to receive targeted information from Europol and the European Anti-Fraud Office. Therefore, in order to receive relevant information in return held by Europol and the European Anti-Fraud Office, Eurofisc liaison officials should be able to forward to Europol and the European Anti-Fraud Office, as much information as necessary.
- (9) In order to ensure uniform conditions for the implementation of the provisions on Eurofisc, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (10) Organising the forwarding of requests for VAT refunds — pursuant to Article 5 of Council Directive 2008/9/EC¹⁰ offers an opportunity to reduce the administrative burden for the competent authorities to recover unpaid tax liabilities in the Member State of establishment.

² Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ L 44, 20.2.2008, p. 23).

- (11) Member States may also communicate to the European Anti-Fraud Office relevant information where they consider it appropriate. This would enable the European Anti-Fraud Office to fulfil its mandate to carry out administrative investigations into fraud, corruption and other illegal activities affecting the financial interests of the Union, and to provide assistance to the Member States in order to coordinate their action to protect the financial interests of the Union against fraud.
- (12) The Commission may have access to the information communicated or collected pursuant to Regulation (EU) No 904/2010 only in so far as it is necessary for care, maintenance and development of the electronic systems hosted by the Commission and used by the Member States for the purpose of this Regulation.
- (13) Regulation (EU) 2016/679 of the European Parliament and of the Council¹¹ applies to the processing of personal data for the purpose of Regulation 904/2010. Regulation 45/2001 of the European Parliament and of the Council applies to the processing of personal data by the Union institutions and bodies for the purpose of that Regulation. The fight against VAT fraud is recognised as an important objective of general public interest of both the Union and its Member States. For the purposes of achieving the objectives of Regulation 904/2010, namely the objective to cooperate and to exchange information that helps to effect a correct assessment of VAT, to monitor correct application of VAT, particularly on intra-Community transactions, and to combat VAT fraud, it is appropriate to ~~allow~~ **provide for** specific and limited restrictions by the Member States on certain rights and obligations laid down by Regulation (EU) 2016/679 of the European Parliament and of the Council¹².

¹¹ Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (OJ L 119, 4.5.2016, p. 1).

¹² Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (OJ L 119, 4.5.2016, p. 1).

More specifically, full application of the rights and obligations foreseen in that Regulation would seriously undermine the effectiveness of the fight against VAT fraud as it would in particular allow the data subjects to obstruct ongoing investigations and risk profiling. This would jeopardise official or legal enquiries, analyses, investigations or procedures that are carried out in accordance with Regulation 904/2010. It would also disable the administrative cooperation between the competent authorities which is a key instrument for the purpose of combating VAT fraud. Consequently, restrictions should be **provided** ~~permitted~~ as regards the right for transparent information, the right to receive information where personal data are collected from the data subject, the right to receive information where personal data have not been obtained from the data subject, the right of access by the data subject, the right to erasure, the right to object to processing of personal data and the right concerning automated individual decision-making, including profiling. As the objective pursued, namely the prevention, investigation and detection of VAT evasion and VAT fraud, cannot be achieved by other less restrictive means of equal effectiveness, these restrictions are strictly necessary for the purpose of achieving the specific purpose in question. They are also proportionate in view of the loss of revenue for the Union and the Member States and the crucial importance of making information available in order to combat fraud effectively. The processing and the storage of information collected and exchanged under this Regulation is limited to the objectives of fight against VAT fraud. Information collected and exchanged under this Regulation does not concern sensitive data. It may not be further processed in a way that is incompatible with such purposes, including prohibition to process it for commercial purposes. Regulation 904/2010 already provides detailed conditions concerning the access of the competent national authorities to the data and their subsequent use in order to achieve its general aim provided for under Article 1. The data retention period is limited to what is necessary for the purpose of achieving the objectives pursued.

- (14) As Council Regulation (EU) 2017/2454¹² has also amended Article 17 of Regulation (EU) No 904/2010 with application from 1 January 2021, it is necessary to amend Regulation (EU) 2017/2454 to have correct references to paragraph 1 of Article 17 in paragraph 2 of this Article. As Regulation (EU) 2017/2454 has also amended Annex I of Regulation (EU) No 904/2010 with application from 1 January 2021, it is necessary to amend Regulation (EU) 2017/2454 as Annex I is no longer necessary and therefore should be deleted.
- (15) As the implementation of the provisions on the automated access to the information collated by the customs authorities and to vehicle registration data will require new technological developments, it is necessary to defer their application to allow the Member States and the Commission to carry out those developments.
- (16) Since the objectives of this Regulation – improving the cooperation instruments between Member States and combating cross-border fraud in the field of VAT- cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (17) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) 45/2001 and delivered its formal comments on 21 March 2018.
- (18) Regulation (EU) No 904/2010 and Regulation (EU) 2017/2454 should therefore be amended accordingly,

¹² Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 348, 29.12.2017, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 904/2010

Regulation (EU) No 904/2010 is amended as follows:

(1) Article 7 is amended as follows:

- (a) paragraph 3 is deleted;
- (b) paragraph 4 is replaced by the following:

‘4. The request referred to in paragraph 1 may contain a reasoned request for a specific administrative enquiry. The requested authority shall undertake the administrative enquiry in consultation of the requesting authority where necessary. If the requested authority takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof.

Notwithstanding the first subparagraph, an enquiry into the amounts declared or those that should have been declared by a taxable person established in the Member State of the requested authority in connection with supplies of goods or services which are made by this taxable person and which are taxable in the Member State of the requesting authority, may be refused solely on any of the following grounds:

- (a) on the grounds provided for in Article 54(1), assessed by the requested authority in conformity with a statement of best practices concerning the interaction of this paragraph and Article 54(1), to be adopted in accordance with the procedure provided for in Article 58(2);

- (b) on the grounds provided for in paragraphs 2, 3 and 4 of Article 54;
- (c) on the grounds that the requested authority had already supplied the requesting authority with information on the same taxable person as a result of an administrative enquiry held less than two years previously.

Where the requested authority refuses an administrative enquiry referred to in the second subparagraph on the grounds set out in points (a) or (b), it shall nevertheless provide to the requesting authority the dates and values of any relevant supplies made by the taxable person in the Member State of the requesting authority over the previous two years.

- (c) the following paragraph 4a is added:

4a. Where the competent authorities of at least two Member States consider that an administrative enquiry into the amounts referred to in the second subparagraph of paragraph 4 is required and submit a common reasoned request containing indications or evidence of risks of VAT evasion or fraud, the requested authority shall not refuse to undertake that enquiry except on the grounds provided for in Article 54 (1)(b), (2), (3) or (4). In case the requested Member State already possesses the information requested it shall provide this information to the requesting Member States. In case the requesting Member States are not satisfied with the information received, they shall inform the requested Member State to proceed further with the administrative enquiry.

If the requested Member State so requires, officials authorised by the requesting authorities shall take part in the administrative enquiry. Such administrative enquiry shall be carried out jointly and shall be conducted under the direction and according to the legislation of the requested Member State. The officials of the requesting authorities shall have access to the same premises and documents as the officials of the requested authority and, in so far as it is permitted under the legislation of the requested Member State for its officials, be able to interview taxable persons. The inspection powers of the officials of the requesting authorities shall be exercised for the sole purpose of carrying out the administrative enquiry.

Where the requested Member State has not required officials from the requesting Member States, the officials from any of the requesting Member States shall be able to be present for consultation. In so far as it is permitted under the legislation of the requested Member State, the officials from any of the requesting Member States shall be able to be present during the administrative enquiry exercising the powers subject to the provisions of article 28(2).

Where officials from the requesting Member States shall participate or shall be present, the administrative enquiry shall be carried out only when such participation or presence for the purposes of the administrative enquiry is ensured.’;

(2) in Article 13, paragraph 3 is replaced by the following:

‘3. The information shall be forwarded by means of standard forms except in the cases referred to in Article 50 or in specific cases when the respective competent authorities deem other secure means more appropriate and agree to use them.

The Commission shall adopt by means of implementing acts the standard forms. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2)’;

(3) Article 17 is amended as follows:

(a) in paragraph 1, the following point (f) is added :

‘(f) information which it collects pursuant to points (a) and (b) of Article 143(2) of Directive 2006/112/EC, as well as the country of origin, the country of destination, the commodity code, the currency, the total amount, the exchange rate, the item price and the net weight .’;

(b) paragraph 2 is replaced by the following:

‘2. The Commission shall adopt by means of implementing acts the technical details concerning the automated enquiry of the information referred to in points (a) to (f) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;

(c) the following paragraph 3 is added:

‘3. The Commission shall determine by means of implementing acts the data elements of the information referred to in point (f) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;

(4) Article 21 is amended as follows:

(a) the following paragraph 1a is inserted:

‘1a. Every Member State shall grant its officials who check the requirements provided for in Article 143(2) of Directive 2006/112/EC access to the information referred to in points (a) to (c) of Article(17)(1) of this Regulation for which automated access is granted by the other Member States.’;

- (b) in paragraph 2, point (e) is amended as follows:
- (i) points (i) and (ii) are replaced by the following:
- ‘(i) access is in connection with an investigation into suspected fraud or is to detect fraud;
- (ii) access is through a Eurofisc liaison official, as referred to in Article 36(1), who holds a personal user identification for the electronic systems allowing access to this information. ;
- (ii) point (iii) is deleted;
- (c) the following paragraph 2a is inserted:
- ‘2a. With respect to the information referred to in Article 17(1)(f), the following details shall be accessible:
- (a) the VAT identification numbers issued by the Member State receiving the information;
- (b) the VAT identification numbers of the importer or of his tax representative who supplies the goods to persons holding a VAT identification number referred to in point (a);
- (c) the country of origin, the country of destination, the commodity code, the total amount and the net weight of the imported goods followed by an intra-Community supply of goods from each person referred to in point (b) to each person holding a VAT identification number referred to in point (a);

(d) the country of origin, the country of destination, the commodity code, the currency, the total amount, exchange rate, the item price and the net weight of the imported goods followed by an intra-Community supply of goods from each person referred to in point (b) to each person holding a VAT identification number issued by another Member State under the following conditions:

(i) access is in connection with an investigation into suspected fraud or is to detect fraud;

(ii) access is through a Eurofisc liaison official, as referred to in Article 36(1), who holds a personal user identification for the electronic systems allowing access to this information.

The values referred to in points (c) and (d) shall be expressed in the currency of the Member State providing the information and shall relate to each single administrative document submitted.’;

(d) the following paragraph 3 is added:

‘3. The Commission shall determine by means of implementing acts the practical arrangements as regards the conditions provided for in point (e) of paragraph 2 of this Article in order to enable the Member State providing the information to identify the Eurofisc liaison official accessing the information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;

(e) paragraph 3 is replaced by the following:

‘3. The Commission shall determine by means of implementing acts the practical arrangements as regards the conditions provided for in point (e) of paragraph 2 and in point (d) of paragraph 2a of this Article in order to enable the Member State providing the information to identify the Eurofisc liaison official accessing the information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;

(5) the following Article 21a is inserted:

Article 21a

1. Every Member State shall grant the competent authority of any other Member State automated access to the following information in relation to national vehicle registrations:

(a) identification data relating to vehicles;

(b) identification data relating to the owners and the holders of the vehicle in whose name the vehicle is registered, as defined in the law of the Member State of registration.

2. Access to the information referred to in paragraph 1, shall be granted under the following conditions:

(i) access is in connection with an investigation into suspected VAT fraud or is to detect VAT fraud;

(ii) access is through a Eurofisc liaison official, as referred to in Article 36(1), who holds a personal user identification for the electronic systems allowing access to this information.

3. The Commission shall determine by means of implementing acts the data elements and the technical details concerning the automated enquiry of the information referred to in paragraph 1 of this Article and the practical arrangements as regards the conditions provided for in paragraph 2 of this Article in order to enable the Member State providing the information to identify the Eurofisc liaison official accessing the information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;

(6) Article 24 is replaced by the following:

"Where, for the purposes of Articles 17 to 21a, the competent authorities of the Member States exchange information by electronic means, they shall take all measures necessary to ensure compliance with Article 55.

Member States shall be responsible for all necessary developments to their systems to permit the exchange of that information using the CCN/CSI network or any other similar secure network used to exchange the information referred to in Article 21a by electronic means .";

(7) the title of CHAPTER VII is replaced by the following:

‘PRESENCE IN ADMINISTRATIVE OFFICES AND DURING ADMINISTRATIVE ENQUIRIES AND ADMINISTRATIVE ENQUIRIES CARRIED OUT JOINTLY ;

(8) Article 28 is amended as follows:

(a) the following paragraph 2a is inserted:

‘2a. By agreement between the requesting authorities and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authorities may, with a view to collecting and exchanging the information referred to in Article 1, take part in the administrative enquiries carried out in the territory of the requested Member State. Such administrative enquiries shall be carried out jointly by the officials of the requesting and requested authorities and shall be conducted under the direction and according to the legislation of the requested ~~authority~~ **Member State**. The officials of the requesting authorities shall have access to the same premises and documents as the officials of the requested authority and, in so far as it is permitted under the legislation of the requested Member State for its officials, be able to interview taxable persons.

Where it is permitted under the legislation of the requested Member State the officials of the requesting Member States shall exercise the same inspection powers as those conferred on officials of the requested Member State.

The inspection powers of the officials of the requesting authorities shall be exercised for the sole purpose of carrying out the administrative enquiry.

By agreement between the requesting authorities and the requested authority, and in accordance with the arrangements laid down by the requested authority, the participating authorities may draft a common enquiry report.’;

(b) paragraph 3 is replaced by the following:

‘3. The officials of the requesting authority present in another Member State in accordance with paragraphs 1, 2 and 2a must at all times be able to produce written authority stating their identity and their official capacity.’;

(9) Article 33 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. In order to promote and facilitate multilateral cooperation in the fight against VAT fraud, this Chapter establishes a network for the swift exchange, processing and analysis of targeted information on cross-border fraud between Member States and for the coordination of any follow-up actions (‘Eurofisc’).’;

(b) paragraph 2 is amended as follows:

(i) point (b) and (c) are replaced by the following:

‘(b) carry out and coordinate the swift multilateral exchange and the joint processing and analysis of targeted information on cross-border fraud in the subject areas in which Eurofisc operates (‘Eurofisc working fields’);

(c) coordinate the work of the Eurofisc liaison officials as referred to in Article 36(1) of the participating Member States in acting on warnings and information received;’;

(ii) the following point (d) is added:

" (d) coordinate participating Member States’ administrative enquiries of fraud identified by the Eurofisc liaison officials as referred to in Article 36(1) without the power to require Member States to carry out administrative enquiries.";

(10) in Article 34, paragraph 2 is replaced by the following:

‘2. Member States having chosen to take part in a Eurofisc working field shall actively participate in the multilateral exchange and the joint processing and analysis of targeted information on cross-border fraud between all participating Member States and in the coordination of any follow-up actions. ’

(11) Article 35 is replaced by the following:

‘Article 35

The Commission shall provide Eurofisc with technical and logistical support. The Commission shall not have access to the information referred to in Article 1, which may be exchanged over Eurofisc, except in the circumstances provided for in Article 55(2).’;

(12) Article 36 is amended as follows:

(a) the following paragraph 1a is inserted:

‘1a. The liaison officials of the Member States shall designate a Eurofisc chairperson among the Eurofisc liaison officials, for a limited period of time.

The liaison officials of the Member States shall:

(a) agree on the establishment and termination of Eurofisc working fields;

(b) examine any issues relating to the operational functioning of Eurofisc;

(c) assess, at least on a yearly basis, the effectiveness and efficiency of the operation of Eurofisc activities;

(d) approve the annual report, referred to in Article 37.’

(b) paragraph 2 is replaced by the following:

‘2. The liaison officials of the Member States participating in a particular Eurofisc working field (‘participating Eurofisc liaison officials’) shall designate a Eurofisc working field coordinator, among the participating Eurofisc liaison officials, for a limited period of time.

Eurofisc working field coordinators shall:

(a) collate the information received from the participating Eurofisc liaison officials as agreed by the working field participants and shall make all information available to the other participating Eurofisc liaison officials; this information shall be exchanged by electronic means;

(b) ensure that the information received from the participating Eurofisc liaison officials is processed and analysed together with the relevant targeted information on cross-border fraud communicated or collected pursuant to this Regulation, as agreed by the participants in the working field, and shall make the result available to all participating Eurofisc liaison officials;

(c) provide feedback to all participating Eurofisc liaison officials;

(d) submit an annual report on the activities of the working field to the liaison officials of the Member States.

(c) the following paragraphs 3, 4 and 5 are added:

‘3. Eurofisc working field coordinators may request relevant information from Europol and the European Anti-Fraud Office (‘OLAF’). For this purpose and as agreed by the working field participants they may send them as much information as necessary in order to receive the requested information.

4. Eurofisc working field coordinators shall make the information received from Europol and OLAF available to the other participating Eurofisc liaison officials; this information shall be exchanged by electronic means.

5. Eurofisc working field coordinators shall also ensure that the information received from Europol and OLAF, is processed and analysed together with the relevant targeted information communicated or collected pursuant to this Regulation, as agreed by the working field participants, and shall make the results available to the participating Eurofisc liaison officials.’

(13) Article 37 is replaced by the following:

‘Article 37

The Eurofisc chairperson shall submit an annual report on the activities of all of the working fields to the Committee referred to in Article 58(1).

The Commission shall adopt by means of implementing acts the procedural arrangements in relation to Eurofisc. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;

(14) in paragraph 1 of Article 48, the following subparagraphs are added:

‘Where the Member State of establishment becomes aware that a taxable person making a request for refund of VAT, in accordance with Article 5 of Directive 2008/9/EC, has tax liabilities in that Member State of establishment, it may request the consent of the taxable person for the transfer of the VAT refund directly to this Member State in order to discharge the outstanding tax liabilities. Where the taxable person consents to this transfer, the Member State of establishment shall inform the Member State of refund of the amount regarding which the consent is obtained and the Member State of refund on behalf of the taxable person shall transfer this amount to the Member State of establishment. The Member State of establishment shall inform the taxable person whether the amount transferred amounts to either a full or a partial discharge of the tax liability in accordance with its national law and administrative practices. However the transfer of the VAT refund to the Member State of establishment shall not affect the right of the Member State of refund to recover the liabilities that the taxable person has in the latter Member State.

Where the tax liabilities in the Member State of establishment are disputed, the transfer of the refund amounts can be used by the Member State of establishment as a retention measure, with the consent of the taxable person, in so far as an effective judicial review is ensured in that Member State.’

(15) the title of CHAPTER XIII is replaced by the following:

‘RELATIONS WITH THE COMMISSION AND OTHER INSTITUTIONS, BODIES,
OFFICES AND AGENCIES OF THE UNION’;

(16) in Article 49, the following paragraph 2a is added:

‘2a.

The Member States may communicate to the European Anti-fraud Office relevant information to enable it to consider appropriate action in accordance with its mandate.

Where that information was received from another Member State, the latter may require that the transmission of the information be subject to its prior agreement’;

(17) Article 55 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Persons duly accredited by the Security Accreditation Authority of the Commission may have access to this information only in so far as it is necessary for care, maintenance and development of the electronic systems hosted by the Commission and used by the Member States to implement this Regulation.’;

(b) paragraph 5 is replaced by the following:

‘5. All storage, processing or exchange of information referred to in this Regulation is subject to the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council(*) and Regulation (EC) No 45/2001 of the European Parliament and of the Council (**). However, Member States **shall** ~~may~~ for the purpose of the correct application of this Regulation, restrict the scope of the obligations and rights provided for in Articles 12, 13, 14, 15, 17, 21 and 22 of Regulation (EU) 2016/679. Such restrictions shall be limited to what is strictly necessary in order to safeguard the interests referred to in Article 23(1)(e) of that Regulation, in particular to:

(a) enable the competent authorities of the Member States to fulfil their tasks properly for the purposes of this Regulation; or

(b) avoid obstructing official or legal enquiries, analyses, investigations or procedures for the purposes of this Regulation and to ensure that the prevention, investigation and detection of tax evasion and tax ~~avoidance~~ **fraud** is not jeopardised.

The processing and storage of information referred to in this Regulation shall be carried out only for the purposes referred to in Article 1(1) of this Regulation and the information shall not be further processed in a way that is incompatible with those purposes. The processing of personal data on the basis of this Regulation for any other purposes, such as commercial purposes, shall be prohibited. The storage periods of this information shall be limited to the extent necessary to achieve those purposes. The storage periods of the information referred to in Article 17 of this Regulation shall be determined as per the limitation periods provided for in the legislation of the Member State concerned but no longer than ten years. ’;

(*) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(**) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.01.2001, p. 1).

(18) in Article 58, paragraph 2 is replaced by the following:

‘2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council(*) shall apply.’;

(*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(19) Annex I is deleted.

Article 2

Amendments to Regulation (EU) 2017/2454

Article 1 of Regulation (EU) 2017/2454 is amended as follows:

(1) point 5 is replaced by the following:

‘(5) in Article 17, paragraph 2 is replaced by the following:

‘2. The Commission shall adopt by means of implementing acts the technical details concerning the automated enquiry of the information referred to in points (a) to (f) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2)’;

(2) point 8 is deleted.

Article 3

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Points (a), (b) and (c) of point (3) of Article 1, points (a), (c) and (e) of point (4) of Article 1, and points (5), (6) and (14) of Article 1 shall apply from 1 January 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council

The President
