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From: General Secretariat of the Council
To: Delegations

Subject: OPINION of the European Economic and Social Committee

- Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax [COM(2018) 20 final - 2018/0005 (CNS)]
- Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises [COM(2018) 21 final - 2018/0006 (CNS)]
- 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 [COM(2017) 706 final - 2017/0248 (CNS)]
- Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, with regard to the obligation to respect a minimum standard rate [COM(2017) 783 final - 2017/0349 (CNS)]

Delegations will find attached the abovementioned opinion. This opinion is available in all language versions at:

<https://dm.eesc.europa.eu/EESCDocumentSearch/Pages/opinionsresults.aspx?k=ECO%2F445>



European Economic and Social Committee

ECO/445
VAT reform package (II)

OPINION

European Economic and Social Committee

Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax
[COM(2018) 20 final - 2018/0005(CNS)]

Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises
[COM(2018) 21 final - 2018/0006 (CNS)]

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
[COM(2017) 706 final - 2017/0248 (CNS)]

Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, with regard to the obligation to respect a minimum standard rate
[COM(2017) 783 final - 2017/0349 (CNS)]

Rapporteur: **Petru Sorin DANDEA**

Consultation	Council of the European Union, 15/12/2017, 09/01/2018, 05/02/2018
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	26/03/2018
Adopted at plenary	23/05/2018
Plenary session No	535
Outcome of vote (for/against/abstentions)	198/5/10

1. Conclusions and recommendations

- 1.1 The EESC welcomes the Commission's proposal and recommends that it be swiftly adopted and implemented by the Member States, given the fact that the excessive fragmentation of the VAT system within the internal market places unjustified obstacles in the way of small businesses' development.
- 1.2 The EESC endorses the Commission's objective of ensuring that the measures included in this package are for the benefit of the final consumer. The EESC considers, however, that the reduced rates and exemptions applied under Article 98(1) and (2) of proposal for a Directive 2018/0005 (CNS) should be applied primarily for the purpose of achieving a general-interest objective in a consistent way. Such an objective is sometimes pursued (for instance, in the case of social care and education services) by intermediate bodies, which are not final consumers. Furthermore, the EESC considers that the system should, by increasing the thresholds, be accessible not only to micro-enterprises but to small and medium-sized businesses as well.
- 1.3 While the EESC agrees with the Commission's proposal to establish a "negative list" of goods and services to which the reduced rates provided for in the proposal for a directive cannot be applied, it points out that this list should not unduly curb Member States' freedom to establish reduced rates for certain general-interest goods. The Member States should also be permitted to continue to apply reduced rates to products subject to reduced rates under existing derogations stated in the current Directive 2006/112/EC.
- 1.4 The Commission considers that the reduced rate system should not be applied to goods and services that constitute an intermediate input. The EESC considers that this approach creates difficulties of interpretation, such as when it comes to the management of complex services, especially services provided by networks of businesses, clusters and consortia. Thus, ambiguous interpretations may arise when payment for a service provided by a company within a group goes to the parent company, which then re-invoices the company that provided the service. If, in this situation, the same preferential rate is not applied, there will be a cost increase which, ultimately, albeit indirectly, will affect the end user.
- 1.5 The EESC believes that the ambitious objectives set by the Commission in this legislative package can only be achieved if the Member States make the necessary efforts to adopt the definitive VAT system within a reasonable period of time.
- 1.6 The EESC agrees with the Commission's proposal to allow Member States to use two reduced rates of a minimum of 5%, as well as one reduced rate lower than 5%, and considers that they should be applied to certain classes of goods and services, as is the case in some Member States. The EESC recommends that the Member States continue to apply reduced rates to certain classes of goods and services of general interest. Moreover, the EESC considers that the Member States should put forward a list of goods and services to which reduced VAT rates may be applied, in order to support SMEs' access to the internal market. An in-depth analysis on the possibility of implementing higher VAT rates on luxury goods should be taken into consideration.
- 1.7 The EESC would draw the Member States' attention to key aspects of the VAT system as applied to organisations and associations providing assistance to disadvantaged people. They are usually unable to recover large sums due to the VAT, which significantly undermines their ability to assist people in

disadvantaged groups. That is why the Committee recommends that the EU institutions and the Member States exempt these organisations from the VAT regime. The Committee also considers that lawyers working on a pro bono or pro deo basis should not be subject to VAT, provided that such activities generate little to no income for them.

- 1.8 The EESC recommends that the Member States provide the institutions responsible for combating VAT fraud with the human, financial and logistical resources they need, in order to ensure proper implementation of the provisions of the regulation, as proposed by the Commission. Moreover, the EESC thinks it would be useful for the Member States to explore possibilities for making better use of digital technology in the fight against VAT fraud and in promoting voluntary compliance through greater transparency in EU VAT legislation.

2. **European Commission proposal**

- 2.1 In April 2016, the European Commission published an action plan¹ to modernise the EU VAT system. The Commission proposal contains three proposals for a directive² and one proposal for a regulation³ as part of continuing efforts to implement the plan.
- 2.2 The three proposed directives propose to amend Directive 2006/112/EC on the common system of value added tax. The proposed amendments concern the special scheme for small and medium-sized enterprises, the minimum VAT rates and compliance with a minimum standard rate.
- 2.3 The EU's rules on VAT date back more than two decades and are based on the principle of origin. The Commission is seeking to modernise these rules and create a definitive VAT system for cross-border business-to-business sales of goods, based on the principle of taxation in the Member State of destination.
- 2.4 The Commission proposal is seeking to establish equal treatment of Member States, providing for one reduced rate not subject to a minimum, and two reduced rates no lower than 5%. Furthermore, the Commission is proposing that the minimum standard VAT rate of at least 15% will continue to apply.
- 2.5 The Commission considers that the reduced rate system should not be applied to goods and services that constitute an intermediate input, in the case of intra-EU trade. Moreover, the Commission is proposing that the measures included in this package be for the benefit of the final consumer.
- 2.6 The proposal for a regulation proposes to amend Council Regulation (EU) No 904/2010, which contains measures to strengthen administrative cooperation in the field of value added tax. The main changes proposed include exchanges of information without prior request, joint audits, procedures to refund VAT to taxable persons not established in the Member State of refund, strengthening Eurofisc with a joint risk analysis capacity and the possibility to coordinate enquiries and cooperate with OLAF (the European Anti-Fraud Office) and Europol for disclosure of serious VAT fraud cases and the

¹ COM(2016) 148 final – Action Plan on VAT – Towards a single EU VAT area – Time to decide.

² COM(2017) 783 final – Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, with regard to the obligation to respect a minimum standard rate.

³ COM(2017) 706 final – 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.

EPPO (the European Public Prosecutor's Office), updating the conditions governing the exchange of information, and sharing customs procedures 42/63 and vehicle registration data with tax authorities⁴.

3. General and specific comments

- 3.1 Given the excessive fragmentation of the VAT system at Member State level and its ineffectiveness in relation to fraud, as well as the obstacles that it poses for small businesses as regards trade and investment, the EESC welcomes the Commission's proposal and recommends that it be swiftly adopted and implemented by the Member States.
- 3.2 The Commission considers that the reduced rate system should not be applied to goods and services that constitute an intermediate input. However, this approach creates difficulties of interpretation, such as when it comes to the management of complex services, especially services provided by networks of businesses, clusters and consortia. Thus, ambiguous interpretations may arise when payment for a service provided by a company within a group goes to the parent company, which then re-invoices the company that provided the service. If, in this situation, the same preferential rate is not applied, there will be a cost increase which, ultimately, albeit indirectly, will affect the end user.
- 3.3 The Commission proposes that, in future, the VAT system be based on the country of destination principle. The EESC believes that this should be an important step towards the definitive EU VAT system and encourages the Commission and the Member States to speed up this process and provide clarity in the definition of various goods and services.
- 3.4 The Commission is proposing to keep the minimum standard rate of VAT at 15%. The EESC wishes to draw attention to the fact that, for most Member States, VAT is one of the main sources of revenue for the public budget, and therefore supports the Commission's proposal.
- 3.5 Most Member States apply reduced VAT rates to foodstuffs, medicines and books, as well as to some essential services such as health and social care services. The EESC agrees with the Commission's proposal to allow Member States to use two reduced rates of a minimum of 5%, as well as one reduced rate lower than 5%, and considers that they should be applied to certain classes of goods and services, as is the case in some Member States. The use of these reduced rates increases the need to inform SMEs that also operate outside the domestic market. An in-depth analysis on the possibility of implementing higher VAT rates on luxury goods should be taken into consideration.
- 3.6 The Commission points out that the new system, based on the country-of-destination principle, could lead to distortions of competition for certain goods or services. To prevent this, the Commission proposes to establish a "negative list", based on the statistical classification of products and services, to which the standard VAT rate would apply. While the EESC agrees with the Commission's proposal and underlines the obligation of Member States to follow such a list, the EESC points out that it is important when the list is decided upon, that it does not unduly curb Member States' freedom to establish reduced rates for certain products of general interest. The Member States should also be permitted to continue to apply reduced rates to products subject to reduced rates under existing

⁴ For more information, see: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0069> and http://europa.eu/rapid/press-release_ECA-11-47_en.htm

derogations stated in the current Directive 2006/112/EC. The negative list proposed by the European Commission (Annex IIIa) should therefore take into account well-established rules in the Member States. In any case, it should be clear that this reduced VAT rate can be maintained on the provision of labour-intensive services, particularly by SMEs.

- 3.7 Given that the new VAT scheme for small businesses proposed by the Commission is aimed at helping SMEs, enabling them to benefit from the opportunities provided by the single market, the EESC considers that the thresholds proposed in Article 284(1) and Article 284(2)(a) should be better correlated with the turnover threshold set in Article 280a(1). In other words, while the Commission proposal sets the annual turnover threshold up to which micro-enterprises may benefit from the exemptions provided for in the proposal for a directive at EUR 85 000. The threshold for the volume of cross-border sales is EUR 100 000, which means that the proposed system is mainly applicable to micro-enterprises. The EESC feels that the thresholds should be set at levels that ensure that SMEs are also covered by the new system. Moreover, the measures aimed at SMEs should also be applicable to social economy enterprises, especially where such enterprises provide social care and education services. The EESC also believes that additional measures are needed to enable SMEs to benefit from the reduced administrative burden which, under the system proposed by the Commission, would apply only to micro-enterprises.
- 3.8 The EESC considers that, in order to support SMEs' access to the EU internal market, Member States should draw up a list of goods and services to which reduced VAT rates apply. The list should be available to the business sector at central EU level.
- 3.9 The EESC welcomes the simplifications proposed by the Commission in respect of registration and reporting obligations pertaining to small businesses and considers that these measures will help them to develop more quickly and facilitate their access to the single market.
- 3.10 Therefore, while agreeing with the Commission's objective of ensuring that the measures included in this package are for the benefit of the final consumer, the EESC considers that the reduced rates and exemptions applied under Article 98(1) and (2) of proposal for a Directive 2018/0005 (CNS) should be applied primarily for the purpose of achieving a general-interest objective in a consistent way. Such an objective is sometimes pursued (for instance, in the case of social care and education services) by intermediate bodies, which are not final consumers. Furthermore, and in order to facilitate access for all to legal defence, it is important to provide for a reduced rate of VAT for services provided by lawyers defending disadvantaged people.
- 3.11 The EESC recognises that the legislation included in the second package does not comprise a comprehensive approach to the field of VAT. Nonetheless, the Committee would draw the Member States' attention to key aspects of the VAT system as applied to organisations and associations providing assistance to disadvantaged people. They are usually unable to recover large sums due to the VAT, which significantly undermines their ability to assist people in disadvantaged groups.
- 3.12 The Commission has proposed a deadline of 2022 for transposition of the directive. The EESC recommends that the Commission and Member States consider a shorter implementation period, given that the new scheme is intended to facilitate trade for small businesses and open up new opportunities for them in the single market. The EESC proposes that the Commission launch, in cooperation with

the Member States, a major media information campaign to promote the new VAT system and its requirements.

- 3.13 In view of the fact that Member States lost a total of EUR 152 billion in VAT revenues in 2015, the EESC agrees with the measures proposed by the Commission in its proposal for a regulation on administrative cooperation. Involving OLAF and the EPPO in investigating cross-border VAT fraud, alongside Eurofisc, will make it easier to detect fraud at Member State level.
- 3.14 The EESC recommends that the Member States provide the institutions responsible for combating VAT fraud with the human, financial and logistical resources they need, in order to ensure proper implementation of the provisions of the regulation, as proposed by the Commission. Moreover, the EESC thinks it would be useful for the Member States to explore possibilities for making better use of digital technology in the fight against VAT fraud and in improving voluntary compliance.
- 3.15 The EESC reiterates its proposal to set up a forum⁵ for the purposes of exchanging best practices in revenue collection and looking at ways to bolster Member States' administrative capacity to combat VAT fraud in the area of cross-border transactions, as well as improving the functioning of the internal market. The Commission should set up this forum.
- 3.16 The EESC points out that the ambitious objectives set by the Commission in this legislative package can only be achieved if the Member States make the necessary efforts to adopt the definitive VAT system within a reasonable period of time.

Brussels, 23 May 2018

Luca JAHIER

The president of the European Economic and Social Committee

⁵ See EESC opinion on the *VAT reform package (I)*, EESC-2017-05392-00-00-AC-TRA.