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From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Council Directive amending Directive 2006/112/EC as regards conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of that Directive [COM(2020) 749 final - 2020/0331 (CNS)] - Opinion of the European Economic and Social Committee

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

<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/vat-new-implementing-powers-commission>

ECO/543

VAT – new implementing powers for the Commission

OPINION

European Economic and Social Committee

**Proposal for a Council Directive amending Directive 2006/112/EC as regards conferral of
implementing powers to the Commission to determine the meaning of the terms used in certain
provisions of that Directive**

[COM(2020) 749 final - 2020/0331 (CNS)]

Rapporteur: **Christophe LEFÈVRE**

Referrals	Council of the European Union, 7/1/2021
Legal basis	Article 113 of TFEU
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	13/04/2021
Adopted at plenary	27/04/2021
Plenary session No	560
Outcome of vote (for/against/abstentions)	226/2/6

1. Conclusions and recommendations

- 1.1 The EESC supports the general objective pursued by the Commission proposal, since ensuring legal certainty and predictability with regard to the VAT Directive is crucial to creating a level playing field across Member States and to further promoting the single market.
- 1.2 The ongoing divergences between Member States, with regard to both the interpretation and implementation of the VAT Directive, are undoubtedly harmful to the single market, as pointed out by the Commission. The EESC therefore urges swift and effective action in this respect.
- 1.3 More uniformity of the VAT rules could indeed reduce compliance costs and be conducive to growth for all enterprises operating in the EU and, especially, for SMEs working on a transnational basis, as they are more impacted by regulatory differences between Member States.
- 1.4 Discrepancies with regard to the application of the VAT rules can bring about significant adverse distortions across the internal market and, as a consequence, negative social effects which should be prevented by ensuring more consistency in the application of the existing rules.
- 1.5 However, the EESC cannot refrain from noting that the Commission proposal, and in particular the proposed outline of issues to be addressed under the new set of rules might come up against significant resistance from many Member States, which could likely raise "principled objections" to the Commission proposal.
- 1.6 The EESC therefore calls for the consideration of other measures able to improve the single market as early as possible. In the current political environment, the EESC suggests that the Commission, as a first step, consider improving and strengthening the existing advisory Committee on VAT and its decision-making process, in order to enhance the unsatisfactory degree of uniformity of VAT rules across Member States.
- 1.7 Moreover, the EESC considers it useful to duly trace heterogeneous applications and implementations of agreed VAT rules at national level. It is important to make the existing differences transparent, clear and public in order to improve uniformity under the current regulatory framework.
- 1.8 This approach might result in an effective system of "peer pressure", making it much harder for Member States to deviate from consolidated interpretations and implementation practices to the detriment of the internal market.
- 1.9 The EESC furthermore considers it important that the Commission carry out impact assessments of any differences in the implementation or interpretation of agreed VAT rules in any Member State. The impact assessments should be made public, duly discussed and followed up within the VAT committee.
- 1.10 The EESC would finally like to draw attention to some possible unwanted effects of the new proposal. The proposed implementing role for the Commission, in relation to some of the main concepts within the VAT Directive, could make it difficult to distinguish between the scope of the Commission's new powers, on one hand, and what will actually constitute a modification of the VAT Directive, on the

other. Such uncertainty might possibly prevent the achievement of the necessary unanimous agreement to modify the VAT Directive within the Council in the future.

2. The Commission proposal

- 2.1 The legislative proposal under examination points out that the Commission has currently no implementing powers with regard to the VAT Directive. In this respect, the only available tool to implement the Directive's provisions is the Advisory Committee set out in Article 398.
- 2.2 The Advisory Committee is made up of representatives of the Member States and of the Commission, and it is in charge of examining matters relating to the application of EU VAT provisions raised by the Commission or by a Member State. The Advisory Committee can currently only agree non-binding guidelines on the application of the VAT Directive, while binding implementing measures can be adopted by the Council, based on a Commission proposal.
- 2.3 According to the Commission, the existing guidelines do not always ensure a uniform application of the EU VAT legislation, also due to the demonstrated difficulties in reaching unanimous guidelines within the Advisory Committee. As to the matter at hand, the Commission lists several examples of failures to reach a unanimous agreement on rules and principles concerning the strategic provisions and concepts contained in the VAT Directive.
- 2.4 The Commission further argues that such discrepancies might result in several adverse outcomes including: i) a risk of double taxation or no taxation, ii) legal uncertainty and a lack of predictability and iii) additional costs for businesses. In this respect, although useful, the Case law of the European Court of Justice (ECJ) would not be, according to the Commission, an optimal solution to avoid all of the uncertainties stemming from the VAT Directive provisions.
- 2.5 Therefore, in order to improve legal certainty and predictability, the legislative proposal envisages empowering the Commission to adopt implementing acts in certain areas covered by the VAT Directive, as well as the creation of a committee that will oversee the Commission's new powers.
- 2.6 The proposed implementing role of the Commission will focus on those specific areas and concepts related to EU VAT that require uniform application and where more certainty and predictability are needed. The Council, in turn, will keep its implementing powers outside of the Commission's prospective remit.
- 2.7 In particular, the new rules maintain that the Commission, by means of implementing acts, will determine the meaning of the terms used in the following areas/concepts of the VAT Directive: i) taxable persons for the purposes of VAT; ii) transactions that are taxable for VAT purposes; iii) the place of taxable transaction; iv) chargeable event and the chargeability of VAT; v) taxable amount of VAT; vi) exemptions from VAT; vii) deductions from VAT; viii) obligations of taxable persons and certain non-taxable persons and ix) special schemes of the tax.
- 2.8 The legal ground of the proposal is Article 113 TFEU, which enables the Council – acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Economic and Social Committee – to adopt provisions for the harmonization of Member States' rules in the area of indirect taxation.

- 2.9 According to the proposal, the assignment of implementing powers to the Commission will not rule out a general control by Member States on the Commission's exercise of those powers.
- 2.10 A dedicated Committee is established by the new rules. The provisions on the composition of and chairperson for the committee are directly laid down in Article 3 of the Comitology Regulation.

3. General and specific comments

- 3.1 The EESC welcomes and supports the general objective pursued by the Commission proposal. Ensuring legal certainty and predictability with regard to the VAT Directive is of paramount importance for creating a level playing field and promoting a single market.
- 3.2 The current divergences between Member States, as far as implementing acts are concerned, are harmful to the single market, as pointed out by the Commission. Moreover, the regulatory framework is made even more complicated by the fact that not only implementing acts might diverge, but also the interpretation of VAT Directive rules and concepts in the first place.
- 3.3 More uniformity of the VAT rules could indeed reduce compliance costs and be conducive to growth for all enterprises operating on the internal market and, especially, for SMEs working on a transnational basis. The consolidation of the internal market itself might substantially benefit from more consistency across Member States in the field of VAT.
- 3.4 There are numerous examples of harmful differences in the implementation of agreed VAT rules. For instance, there is no shared consensus and interpretation on whether a "warehouse" is a "fixed establishment of a taxable person or otherwise" or on the meaning of the expression "supplier who dispatches or transports the goods either himself or through a third party acting on his behalf", under article 36a(3) of the VAT Directive.
- 3.5 The EESC points out that discrepancies in the application of the VAT rules can bring about significant adverse distortions across the internal market and, as a consequence, negative social effects which are unacceptable and should be prevented by ensuring more consistency in the application of the existing VAT rules.
- 3.6 However, the EESC cannot refrain from noting that the Commission proposal might come up against significant obstacles, posed by several Member States, in relation to agreeing which issues should be dealt with under the new set of rules and the existing rules concerning a change to VAT directives. The EESC therefore calls for the consideration of other measures that could enhance the single market as early as possible.
- 3.7 In the current political environment, the EESC suggests that the Commission, as a first step, consider improving the existing Advisory Committee on VAT. The Committee could be enhanced and made more effective, thus keeping a significant role for Member States and improving the current unsatisfactory degree of uniformity.
- 3.8 The EESC considers it useful to duly trace heterogeneous applications and implementations of agreed VAT rules at national level. It is important to make differences transparent, clear and public in order to

enhance uniformity under the current regulatory framework. Despite all the constraints and shortcomings described by the Commission, the Advisory Committee has nevertheless developed significant experience in dealing with complex matters regarding the VAT Directive.

- 3.9 The EESC suggests a "peer pressure" approach. Such an approach could be effective, making it much harder for Member States to deviate and create obstacles to a well-functioning single market. Member States would have to explain why a deviation in implementation has been made. The EESC believes that Member States should not oppose transparency and accountability.
- 3.10 The EESC furthermore considers it important that the Commission carry out impact assessments of any differences in the implementation or interpretation of agreed VAT rules in any Member State. The impact assessments should be made public and discussed and followed up in the VAT committee.
- 3.11 Following this line of reasoning, the motivation to deviate from common rules and the agreed implementation of them could be challenged, while the proportionality and subsidiarity principle would be respected.
- 3.12 The EESC would finally like to draw attention to some possible unwanted effects of the new proposal. The implementing role for the Commission, with regard to some of the more relevant concepts contained in the VAT Directive, could make it difficult to distinguish between the scope of the Commission's new powers, on one hand, and what will actually constitute a modification of the VAT Directive, on the other. Such uncertainty might possibly make it more difficult to reach the unanimous agreement needed to modify the VAT Directive within the Council in the future.

Brussels, 27 April 2021

Christa Schweng
The president of the European Economic and Social Committee
