

# Stronger administrative cooperation in the VAT field

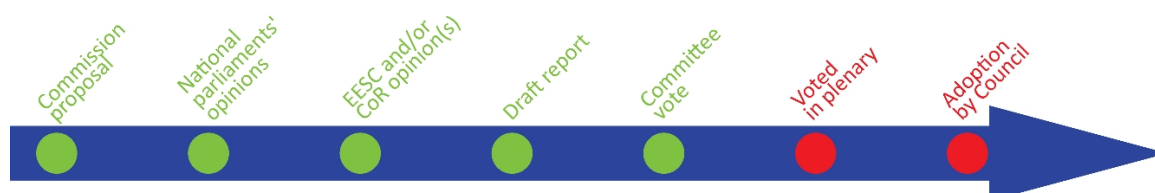
## OVERVIEW

Value added tax (VAT) is an important source of revenue for both national governments and the European budget and, from an economic point of view, a very efficient consumption tax. However, the rules governing intra-Community trade are 25 years old and the current common EU VAT system is vulnerable to fraud. Moreover, businesses doing cross-border trade face much higher compliance costs than those only trading domestically. The administrative burden for national tax administrations is also excessive.

The reform of the system is planned in several consecutive steps and will take some years. In the meantime, the present proposal will change the VAT Administrative Cooperation Regulation (Regulation (EU) No 904/2010). It introduces the concept of the 'certified taxable person' in the VAT Information Exchange System and addresses three types of cross-border fraud: carousel fraud, used car fraud and VAT-free import fraud.

**Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person; 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**

<i>Committee responsible:</i>	Economic and Monetary Affairs (ECON)	<a href="#">COM(2017) 567</a> 4.10.2017
<i>Rapporteur:</i>	Roberts Zile (ECR, Latvia)	<a href="#">COM(2017) 706</a>
<i>Shadow rapporteurs:</i>	Gabriel Mato (EPP, Spain) Olle Ludvigsson (S&D, Sweden) Thierry Cornillet (ALDE, France) Barbara Kappel (ENF, Austria) Miguel Urbán Crespo (GUE/NGL, Spain) Molly Scott Cato (Greens/EFA, United Kingdom)	30.11.2017 (amended proposal) <a href="#">2017/0248(CNS)</a>  Consultation procedure (CNS) – Parliament adopts a non-binding opinion only
<i>Next steps expected:</i>	Vote in plenary	



## Introduction

Since 2016, the European Commission has prepared several packages of proposals to reform the common system of value added tax (VAT). The basis for the current arrangement is the [1967 agreement](#) between the members of the then [European Economic Community](#) to replace all turnover taxes with VAT and to have a common value added tax system. The agreement made the implementation of VAT a precondition for accession for all new Member States. The second milestone in the building of the current system was the [abolition of fiscal frontiers](#), which entered into force in 1993 at the same time as the internal market.

The resulting European Union VAT system was supposed to be a transitional scheme but has lasted 25 years. Now it needs a major overhaul to adapt it to the requirements of a modern economy. The [action plan on VAT](#), launched in April 2016, aims to do that in a gradual way. One of its objectives is to establish a definitive VAT system for business-to-business (B2B) transactions.<sup>1</sup>

This [proposal](#) seeks to build the concept of 'certified taxable person' (CTP) into the [VAT Information Exchange System \(VIES\)](#). In addition, it aims to improve administrative cooperation to address three methods of VAT fraud: [missing trader intra-Community fraud](#) (also called carousel fraud), used car fraud, and VAT-free import fraud related to customs procedures 42 and 63.<sup>2</sup>

## Context

The proposal is part of a package (the October 2017 definitive VAT system package), which is, in turn, the first sub-step on the way to the definitive VAT system for B2B transactions. The objectives of the reform are to:

- tax the sales of goods between EU countries in the same way as domestic sales;
- reduce the VAT gap due to fraud by €40 billion; the total VAT gap is estimated to be €150 billion, of which around €50 billion is owing to fraud;
- make the system more robust and simple; and
- reduce businesses' compliance costs, which are currently 11 % higher for cross-border transactions than for domestic commerce, by €1 billion.<sup>3</sup>

The reform of the definitive VAT system for B2B transactions will be proposed in two legislative steps: the first will address the VAT treatment of intra-EU B2B supplies of **goods** and the second the supply of **services**. The first legislative step is, in turn, split into two sub-steps. The October 2017 definitive VAT system package is the first of these. The second contains the detailed **technical provisions** for the actual implementation of the definitive VAT system and [the proposal](#) was adopted on 25 May 2018. The extension of the definitive VAT system to the supply of services is scheduled to follow the first monitoring exercise of the implementation of the new VAT system for the supply of goods.<sup>4</sup>

The two other proposals included in the October 2017 package are:

1. A 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](#), which lays the cornerstones of the definitive VAT system, establishes the certified taxable person concept and makes three changes to the current VAT system ([legislative procedure 2017/0251 \(CNS\)](#)).
2. A proposal [amending Implementing Regulation \(EU\) No 282/2011 as regards certain exemptions for intra-Community transactions](#), requiring proof of intra-community transport in order to grant an exemption. This proposal is the answer to the fourth change to the current system required by the Council, see below.

The action plan on VAT also includes:

- a package to adapt legislation to e-commerce, which was partially adopted by the Council on 5 December 2017;
- a [proposal](#) to modernise VAT for SMEs (adopted by the European Commission on 18 January 2018); and
- a [proposal](#) to reform the system of VAT rates (adopted by the European Commission on 18 January 2018).

## Existing situation

The current common VAT system is a transitional system governed largely by three pieces of legislation:

- Council Directive 2006/112/EC on the common system of value added tax (the [VAT Directive](#)),
- Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax (the [VAT Administrative Cooperation Regulation](#)), and
- Council Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (the [VAT Implementing Regulation](#)).

According to this body of legislation, a cross-border transaction of goods consists of two parts: the supply of goods in the Member State of departure that is exempt from VAT and the acquisition of goods liable to VAT in the Member State of destination. Both the supplier and the acquirer of the goods have to inform the tax authorities of their respective Member State about the transaction, but this does not occur in all cases.<sup>5</sup> The current system is therefore quite vulnerable to fraud in the three following circumstances.

1. The acquirer can subsequently sell the VAT-free goods before paying the VAT to the tax authorities, charge the VAT to its customer and disappear. This manoeuvre is an example of missing trader intra-Community fraud.
2. There is a dual system for the cross-border trade of cars: if the car is new, the above-described mechanism applies and the VAT is calculated on the total price of the new car. If the car is used, the VAT base is the profit margin.
3. Customs procedures 42 and 63 allow the import of goods free of VAT to a Member State if the goods have another Member State as the immediate destination. VAT is paid in the final destination country.

Moreover, [Article 9 of the VAT Directive](#) defines the concept of a taxable person as a person who engages independently in economic activity, without distinguishing whether the person is a reliable taxpayer or not. Taxable persons are identified with a VAT identification number, which is granted by national tax authorities and stored in national databases. The validity of any VAT number can be checked via the [VAT Information Exchange System \(VIES\)](#).

Under the VAT Directive rules for cross-border trade, the acquirer is obliged to be registered for VAT purposes, to inform the supplier of their VAT identification number and to declare the acquisition of the goods to the tax authorities of their country. The supplier, in turn, must submit a recapitulative statement of the transaction, including the VAT number of the acquirer, which is sent to and included in the VIES. The tax authorities of the Member State of destination can thus cross-check the information provided by the two parties. In practice, these obligations only work as a formality since

Member States are not able to refuse the exemption. The tax authorities can only fine the fraudsters or impose administrative sanctions on them if they do not fulfil the requests.<sup>6</sup>

## Parliament's starting position

Parliament set out its position in its resolutions of 13 October 2011 on [the future of VAT](#) and of 24 November 2016 entitled [Towards a definitive VAT system and fighting VAT fraud](#). In 2011, Parliament called on the European Commission to present a proposal to address the modernisation of the VAT system and on Member States to enhance cooperation to fight VAT fraud and reduce the VAT gap, while recognising the need for rapid changes in legislation to prevent fraud and address the loss of tax revenue.

In 2016, Parliament welcomed the Commission's announcement to propose a definitive VAT system by 2017 and supported the objective of making it simple, fair, robust, efficient and less susceptible to fraud, emphasising that a simple VAT system with few exemptions would ease the proper functioning of the digital single market. Moreover, it noted that the certified taxable person concept was an essential component of this model.

## Council starting position

In its [conclusions](#) on the future of VAT of 15 May 2012, the Council supported the European Commission's objective of a '[simpler, more efficient and neutral, robust and fraud-proof](#)' EU VAT system and acknowledged the need to simplify the current system in order to reduce compliance costs and administrative burdens both for businesses and for national tax administrations.

In its [conclusions](#) of 25 May 2016, it agreed on the need to improve administrative cooperation between national tax administrations, including by reinforcing the automatic exchange of information. Also, it underlined that it was 'possible and necessary' to improve the current system in the short term.

Finally, and considering that the reforms needed to achieve the definitive VAT system would take some time, in its [conclusions](#) of 8 November 2016, it asked the Commission to present proposals to amend the current VAT system with regard to the following four aspects:

- (1) require that the person acquiring the goods in the case of intra-EU supply has a valid VAT identification number in order to be granted an exemption;
- (2) propose uniform criteria and appropriate legislative improvements to increase legal certainty around the VAT treatment of chain transactions, including triangular transactions;
- (3) modify the current VAT rules in order to allow the ongoing simplification of the rules regarding call-off stock arrangements at national level to be applied more uniformly in the EU; and
- (4) unify criteria for the documentation needed to claim an exemption in intra-Community supply.

## Preparation of the proposal

The European Commission launched the debate in 2010 with the [green paper](#) 'On the future of VAT – Towards a simpler, more robust and efficient VAT system', followed by a [consultation](#) that resulted in more than 1 700 contributions from national tax authorities, stakeholders and academia. These contributions fed into a second [communication](#) 'On the future of VAT – Towards a simpler, more robust and efficient VAT system tailored to the single market', which set out the desirable features of the definitive system and the priorities for the next years. The dialogue with Member States and stakeholders continued in the Group on the Future of VAT (GFV) and the VAT Expert Group (VEG). In April 2016, the Commission included this work in the new [communication](#) 'On an action plan on VAT – Towards a single EU VAT area – Time to decide' and got positive feedback from the Council, the Parliament and the Economic and Social Committee. In view of the position of those institutions and after [a second public consultation](#) that lasted from 2 March 2017 to 31 May 2017

and included an evaluation of the current framework and a specific questionnaire for tax administrations, the Commission started the process of improving administrative cooperation.

The Commission adopted a first proposal on 4 October 2017 (COM(2017) 567) and then amended its proposal on 30 November 2017 (COM(2017) 706).

## The changes the proposal would bring

The [proposal](#) to amend the VAT Directive (COM(2017) 569) defines the concept of certified taxable person in its new article 13a. The introduction of this concept aims to make possible a gradual transition to the definitive VAT system and to ease the implementation of the modifications to the current system requested by the Council. The certified taxable person will have access to a number of simplification rules regarding those transactions more vulnerable to fraud, such as call-off stock arrangements and chain transactions.<sup>7</sup> Moreover, when the acquirer is a certified taxable person (CTP), it will be possible during the period of transition to the definitive system to use the reverse charge mechanism, i.e. the acquirer will be responsible for paying the VAT to the tax authorities of the destination country. This proposal amends Articles 17 and 31 of the VAT Administrative Cooperation Regulation, to allow information about the CTP status of taxable persons to be saved in the national databases and retrieved via the VAT Information Exchange System (VIES).

This proposal introduces joint audits as a new cooperation instrument. Amendments to Article 7 in Chapter II (Exchange of information on request) and Article 13 in Chapter III (Exchange of information without prior request) establish the procedure for administrative enquiries and joint audits and the means by which information will be exchanged (by standard forms and other means). Amendments to Chapter VII set up the rules regarding the presence of officials of different Member States in administrative enquiries and joint audits.

Several amendments to Article 21 in Chapter V (Storage and exchange of specific information) will allow for a quicker exchange of information between customs authorities and national authorities regarding fraud around the importation of goods and customs procedures 42 and 63. In addition, a new article 21a states that Member States must grant other Member States automated access to information about vehicle registration.

Changes to Articles 33 to 37 in Chapter X reinforce the role of [Eurofisc](#). The provisions clarify how the joint processing and analysis of data will be done within Eurofisc. New technologies, such as transaction network analysis (TNA), a software developed by the European Commission, will be able to detect suspicious operations at an early stage. Moreover, Eurofisc will be able to coordinate joint administrative enquiries, forward information about VAT fraud to Europol and the European Anti-Fraud Office (OLAF) and disclose fraud cases to the European Public Prosecutor's Office (EPPO). Finally, Eurofisc's access to the VIES will be easier.

An amendment to Article 48 in Chapter XII will simplify the procedure for VAT refund to taxable persons not established in the Member State of refund.

Article 49 in Chapter XIII covers relations with the Commission. It will be amended to require Member States participating in EPPO to inform it about VAT fraud cases involving activity in two or more Member States for a total damage of at least €10 million.

Finally, an amendment to Article 55 will adapt the regulation to the new personal data protection rules established by Regulation (EU) 2016/79 and an amendment to Article 58 will adapt it to Regulation (EU) 182/2011, which establishes how Member States check the Commission's exercise of its implementing powers.

## Advisory committees

In its July 2016 [opinion](#) on the action plan on VAT the European Economic and Social Committee (EESC) stated that the implementation of the definitive VAT system should happen 'within a

reasonable time-frame', also regarding services, and supported the new system based on the destination principle.

Work on this proposal was done under the VAT reform package (II). The [opinion](#) was prepared by a study group with six members, including the rapporteur Petru Sorin Dandea and the president Krister Andersson, and was adopted on 23 May 2018. The EESC agrees with the Commission about involving OLAF and the EPPO in investigating cross-border VAT fraud together with Eurofisc. In addition, it recommends that Member States strengthen their administrative capacity and make better use of digital technologies in order to fight VAT fraud while improving voluntary compliance.

## National parliaments

The [subsidiarity deadline](#) for national parliaments to submit comments on the proposals was set at 30 January 2018. No reasoned opinions were sent. The Czech Senate, the German Bundesrat and the Romanian Senate made contributions.

The [Czech Senate](#) requests clarification about joint controls and administrative inquiries and considers that 'national tax administrations should have an effective tool to reduce the risk of overuse of joint controls by the tax authorities of another Member State'.

The [Bundesrat](#) is of the opinion that data exchange with the European Anti-Fraud Office (OLAF) in cases of VAT fraud is not possible owing to a lack of powers and criticises the inclusion of data exchange with Europol. Moreover, it is worried that some provisions (notably Articles 55 (5) and 58 (2)) violate fundamental rights.

The [Romanian Senate](#) considers that the decision on procedures relating to administrative inquiries must be left up to the requested Member State and that tax authorities should have data not only on imports to the EU but also on exports from the EU to avoid carousel fraud. Moreover, it finds that some provisions, such as those concerning repayments and joint audits, are difficult to put into practice.

## Stakeholders' views<sup>8</sup>

To date, no major stakeholder has presented its position on the Commission proposal.

## Legislative process

In the European Parliament, the proposal is following the consultation procedure and was assigned to the Economic and Monetary Affairs Committee (ECON) (Rapporteur: Roberts Zile, ECR, Latvia). The Legal Affairs Committee (JURI) was the committee for opinion, but decided not to give an opinion.

The [European Data Protection Supervisor](#) made [formal comments](#) on the proposal on 6 March 2018 and suggested several changes to improve data protection.

On 19 June 2018, ECON committee adopted its [report](#) on the amended proposal of the European Commission. The rapporteur and the shadow rapporteurs agreed on 41 amendments to the original proposal. The changes seek, on one hand, to improve the balance between the need for a better flow of information between EU and national authorities so as to fight VAT fraud and the protection of personal data and privacy. On the other hand, they attempt to reconcile the interests of the requested and the requesting authorities in establishing more effective inspection mechanisms. Finally, they provide for a two-way communication mechanism between Eurofisc and Europol.

In the Council, the proposal was discussed in the 'Working Party on Tax Questions (Indirect Taxation)', which held several meetings between January 2018 and June 2018. The Bulgarian Presidency set this proposal as a priority and the Council reached a [general approach](#) on the presidency compromise text on 22 June 2018.

The European Parliament is expected to vote on the proposal during its July plenary session.

## EP SUPPORTING ANALYSIS

Remáč M., [Definitive VAT system and fighting VAT fraud](#), Implementation Appraisal, EPRS, European Parliament, October 2017.

## OTHER SOURCES

[Certified Taxable Person](#), European Parliament, Legislative Observatory (OEIL).

Crawford I., Keen M. and Smith S., [Value Added Tax and Excises](#), in [Dimensions of Tax Design – The Mirrlees Review](#), Institute for Fiscal Studies, Oxford University Press, 2010.

James K., [The Rise of the Value-Added Tax](#), Cambridge Tax Law Series, Cambridge University Press, 2015.

## ENDNOTES

- <sup>1</sup> The action plan on VAT includes other reforms beside those relating to B2B commerce. A reform of VAT for e-commerce was adopted in December 2017 and more proposals regarding VAT rates and the taxation of SMEs are being examined.
- <sup>2</sup> The concept of 'certified taxable person' will be created by the amendment to the VAT Directive that is currently being examined.
- <sup>3</sup> The VAT gap was estimated in a 2017 [report](#) on the VAT gap in the 28 EU Member States for the European Commission (Directorate-General for Taxation and the Customs Union (DG TAXUD)). The estimation of VAT fraud and compliance costs was made in a 2015 [study](#) for DG TAXUD.
- <sup>4</sup> More details about the timing of the VAT reform can be found in the 2017 European Commission [communication](#) 'On the follow-up to the Action Plan on VAT – Towards a single EU VAT area – Time to act', COM(2017) 566.
- <sup>5</sup> See the explanatory memorandum in [COM\(2017\) 569](#), pp. 10-11.
- <sup>6</sup> See the explanatory memorandum in [COM\(2017\) 569](#), pp. 10-11.
- <sup>7</sup> A 'call-off stock transaction' is a cross-border transaction where a supplier sends the goods to a stock of their own property located in the Member State of the acquirer, in order to make them available for the acquirer. The transfer of rights is at the moment the acquirer takes the goods out of the stock. A 'chain transaction' is defined as successive supplies of the same goods by means of a single intra-Community transport operation between two Member States.
- <sup>8</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

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