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Committee on Economic and Monetary Affairs

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13.11.2009

DRAFT REPORT

on the proposal for a Council directive amending Directive 2006/112/EC as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud (COM(2009)0511 – C7-0210/2009 – 2009/0139(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: David Casa

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council directive amending Directive 2006/112/EC as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud (COM(2009)0511 – C7-0210/2009 – 2009/0139(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2009)0511),
 - having regard to Article 93 of the EC Treaty, pursuant to which the Council consulted Parliament (C7-0210/2009),
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0000/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a directive – amending act

Recital 4

Text proposed by the Commission

(4) The pre-defined list, from which Member States may choose, should be restricted to supplies of goods and services which, according to recent experience, are particularly susceptible to fraud. In order to ensure that the introduction of such mechanism may *effectively* be assessed and

Amendment

(4) The pre-defined list, from which Member States may choose, should be restricted to supplies of goods and services which, according to recent experience, are particularly susceptible to fraud. In order to ensure that the introduction of such mechanism may be *effectively* assessed and

that its impact is carefully monitored, Member States should be limited in their choice.

that its impact is carefully monitored, Member States should be limited in their choice ***to goods and services on that pre-defined list.***

Or. en

Amendment 2

Proposal for a directive – amending act Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) When choosing the goods and services to be subject to the mechanism, Member States should select greenhouse emission trading allowances and a maximum of two of the categories listed in Part A of Annex VI A.

Or. en

Justification

Where Member States choose to apply the reverse-charge system, they must include trading greenhouse emission certificates because from 2013 onwards the majority of allowances will be auctioned. Due to the greater amount of allowances traded the potential loss in case of fraud is much bigger. A maximum of two is justified because of the uncertainty how the reverse charge system will effect other areas of trade or shift fraudulent activities to other Member States.

Amendment 3

Proposal for a directive – amending act Recital 7

Text proposed by the Commission

Amendment

(7) In order to assess the effect of the application of the mechanism on fraudulent activities in a transparent manner, evaluation reports by Member States should be based on pre-defined criteria established by Member States. Any such

(7) In order to assess the effect of the application of the mechanism on fraudulent activities in a transparent manner, ***and with a view to ensuring uniform application,*** evaluation reports by Member States should be based on pre-defined criteria

evaluation should clearly assess the level of fraud before and after the application of the mechanism and any shifts in trends of fraudulent activities, including supplies of other goods and services, supplies at the retail level and supplies in other Member States.

established by Member States, ***after consulting the VAT Committee***. Any such evaluation should clearly assess the level of fraud before and after the application of the mechanism and any shifts in trends of fraudulent activities, including supplies of other goods and services, supplies at the retail level and supplies in other Member States.

Or. en

Justification

To be able to properly assess the effects of the application of the reverse charge system, Member States should use harmonised evaluation criteria. The VAT Committee shall help in that respect.

Amendment 4

Proposal for a directive – amending act Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) By July 2014, the Commission should submit a report to the European Parliament and the Council together with appropriate proposals, on the basis of the Member States' evaluation reports, assessing the overall effectiveness and efficiency of the measure applying the mechanism.

Or. en

Justification

The European Parliament and the Council have to be informed about the overall effectiveness and efficiency of the reverse charge mechanism and on the potential proposals that the Commission might intend to make.

Amendment 5

Proposal for a directive – amending act

Article 1 – point 1

Directive 2006/112/EC

Article 199a – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States may, until 31 December 2014 and for a minimum period of two years, introduce and apply a mechanism whereby the VAT due on supplies of the categories of goods and services listed in Annex VI A is payable by the person to whom those goods and services are supplied.

Amendment

1. Member States may, until 31 December 2014 and for a minimum period of two years, introduce and apply a mechanism whereby the VAT due on supplies of the categories of goods and services listed in Annex VI A is payable by the **taxable** person to whom those goods and services are supplied.

Or. en

Justification

The person to pay the tax shall never be the final consumer but rather the last business trader within the chain of commerce.

Amendment 6

Proposal for a directive – amending act

Article 1 – point 1

Directive 2006/112/EC

Article 199a – paragraph 1 – subparagraph 2

Text proposed by the Commission

When choosing which goods and services shall be subject to that mechanism, Member States **are limited to three of the categories listed in Annex VI A of which a maximum of two must be** categories of goods.

Amendment

When choosing which goods and services shall be subject to that mechanism, Member States **shall select trading greenhouse emission trading allowances and a maximum of two of the** categories of goods **listed in Part A of Annex VI A.**

Or. en

Justification

Where Member States choose to apply the reverse-charge system, they must include trading greenhouse emission certificates because from 2013 onwards the majority of allowances will be auctioned. Due to the greater amount of allowances traded the potential loss in case of fraud is much bigger. A maximum of two is justified because of the uncertainty how the reverse charge system will effect other areas of trade or shift fraudulent activities to other Member States.

Amendment 7

Proposal for a directive – amending act

Article 1 – point 1

Directive 2006/112/EC

Article 199a – paragraph 2 – point b

Text proposed by the Commission

(b) introduce appropriate and effective reporting obligations on any taxable person supplying goods or services to which that mechanism applies, as to enable, for each transaction, the identification of that taxable person and the taxable person to whom the supplies are made, of the type of goods or services supplied, and of the tax period and value of these supplies;

Amendment

(b) introduce appropriate and effective reporting obligations on any taxable person supplying goods or services to which that mechanism applies, *so* as to enable, ***on a periodical basis, for each transaction, or on a global transaction basis,*** the identification of that taxable person and the taxable person to whom the supplies are made, of the type of goods or services supplied, and of the tax period and value of these supplies;

Or. en

Justification

To reduce the possibility of fraud being committed, the reporting has to take place within reasonable periods of time so that the authorities are enabled to supervise the movement of goods and services. Reporting obligation for suppliers on a global transaction basis should be permitted in order to minimise the burden for business.

Amendment 8

Proposal for a directive – amending act

Article 1 – point 1

Directive 2006/112/EC

Article 199a – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) impose transaction-based or global reporting obligations on any taxable person receiving goods or services to which that mechanism applies for cross-checking purposes against information submitted by the supplier;

(c) impose **periodical** transaction-based or global reporting obligations on any taxable person receiving goods or services to which that mechanism applies for cross-checking purposes against information submitted by the supplier;

Or. en

Justification

To reduce the possibility of fraud being committed, the reporting has to take place within reasonable periods of time so that the authorities are enabled to supervise the movement of goods and services.

Amendment 9

Proposal for a directive – amending act

Article 1 – point 1

Directive 2006/112/EC

Article 199a – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The evaluation criteria referred to in paragraph 3(b) shall be defined by Member States after consulting the VAT Committee.

Or. en

Justification

To be able to properly assess the effects of the application of the reverse charge system, Member States should use harmonised evaluation criteria. The VAT Committee shall help in that respect.

Amendment 10

Proposal for a directive – amending act

Article 1 – point 1

Directive 2006/112/EC

Article 199a – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. By July 2014, the Commission shall submit a report to the European Parliament and the Council together with appropriate proposals on the basis of the Member States' reports referred to in paragraph 4, assessing the overall effectiveness and efficiency of the measure applying the mechanism.

Or. en

Justification

The European Parliament and the Council have to be informed about the overall effectiveness and efficiency of the reverse charge mechanism and on the potential proposals that the Commission might intend to make.

EXPLANATORY STATEMENT

1. Background

The proposal for a Directive amending Council Directive 2006/112/EC of 28 November 2006 ('VAT Directive') aims at allowing, under certain conditions and modalities, the temporary application of the reverse charge mechanism with a view to combat specific forms of VAT fraud such as the missing trader fraud or the carousel fraud.

The idea of launching a pilot project allowing Member States to introduce a reverse-charge mechanism was raised within the Council in 2007. An analysis was conducted by the Commission in 2008. The Council, however, could not reach any conclusion. In a resolution of 2 September 2008 on a coordinated strategy to improve the fight against fiscal fraud (2008/2033(INI)), the European Parliament also discussed the reverse charge system as an alternative to tackle VAT fraud, whilst being cautious about this issue.

There is currently one Member State which is allowed to apply the reverse charge mechanism until 30 April 2011 on specific goods such as mobile telephones and integrated circuit devices. With the new proposal, this possibility will be opened to all Member States, also for a certain number of sectors and on a temporary basis.

2. The missing trader fraud and the carousel fraud

VAT fraud is a major concern for Member States' revenues and the correct functioning of the internal market. A common and particularly severe form of this fraud is the VAT missing trader fraud and its most serious form, namely the so-called carousel fraud.

Carousel fraud is traditionally organised with goods of low weight and high added value. But recently also a number of suspected cases of fraud in greenhouse emission allowances trading were detected, according to the Commission, in several Member States.

In a traditional VAT system, on internal sales between business to business (B2B), the supplier charges VAT from his customer and then pays this VAT to the Treasury. The customer in this case can reclaim this VAT (the "input VAT") from the Treasury. Effectively it is the final consumer who bears the VAT charge, since he, as non-taxable person, cannot reclaim input VAT from the Treasury. However, in the course of B2B intra-Community trade, and in line with the current transitional VAT system, no VAT is charged from the supplier and, therefore, the goods circulate VAT-free from one Member State to another Member State.

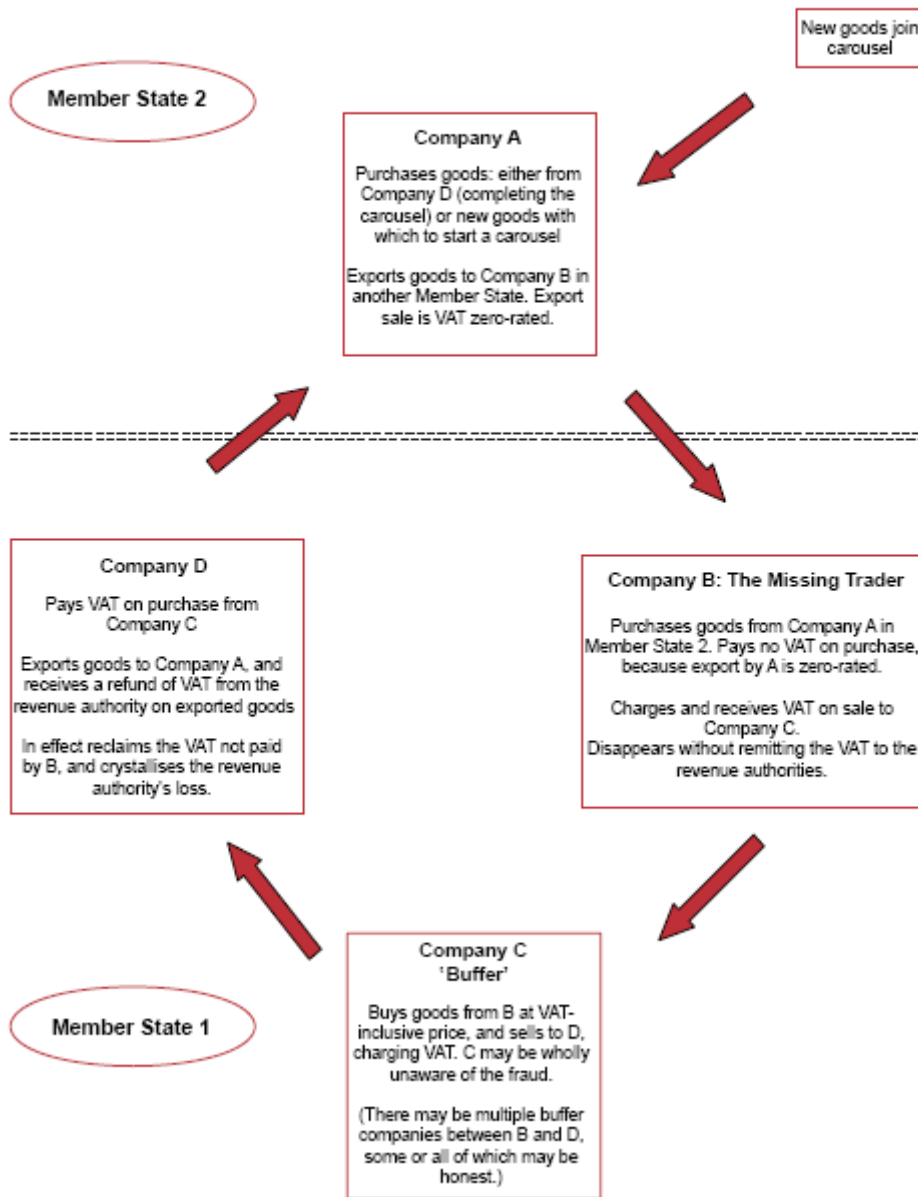
The missing trader fraud takes place when the supplier charges and receives VAT from his customer on an intra-Community sale and 'disappears' later on, without paying the VAT to the Treasury. If the same goods within a series of transactions circulate several times between Member States, with a "missing trader" charging VAT every time, but not paying this VAT to the Treasury, the latter may forego several times the amount of tax on a single good. Hence the term "carousel" for this type of fraud

The fraud mechanism can in a simplified model be described as follows: A company (B) acquires goods from a Company A which is established in a different Member State from the State where this company is established. In line with the applicable rules, Company B does not pay VAT to his supplier (Company A). Subsequently, Company B makes a domestic supply for which it charges VAT to his customer (Company D). However, Company B does not pay the VAT to the Treasury and disappears (missing trader). The customer (Company D) claims a refund of the VAT it paid to Company B. Consequently, the financial loss is for the Treasury which has to refund to the customer (Company D) an amount of VAT which the Treasury never collected from the supplier (Company B). Subsequently, Company C may declare an exempt intra-community supply to Company A and, in its turn, Company A may make an exempt intra-community supply to Company B, and the fraud pattern resumes (“carousel fraud”).

Here is a scheme showing how the carousel fraud operates:

MTIC Fraud

FIGURE 1
A Basic MTIC Fraud⁶



There are concrete figures showing the extent of the missing trader and carousel fraud as compared to VAT fraud. The UK estimates that the missing trader and carousel fraud accounts for 16 to 24 per cent of the total amount of VAT fraud.

It is important to put this figures against the more general background of the VAT gap. The Commission recently released a study stating that the VAT gap varies between 90 and 113 billion EUR in the period 2000-2006. For 2006, this represents 12% of the theoretical VAT liability with important national differences.

3. The particular risks of carousel fraud in the framework of the European Union Emission Trading Scheme (ETS)

The transfers of allowances within the ETS between taxable persons, which take place electronically exclusively, are considered as a supply of services and basically are taxable at the place where the recipient is established. The traders purchase carbon credits from other member States VAT-free sources and then sell them to businesses in their Member State at a VAT-inclusive price. Missing traders do not pay the VAT to the Treasury. This situation and the following calendar showing that the majority of exchanges is going to take place from 2013, could create doubts as to the proper functioning of the ETS. That is why the Commission proposes to take swift action by including the allowances in the list of supplies to which a (domestic) reverse charge system could be applied.

Currently and until 2012 the ETS, about 90 - 95 % of the allowances are granted to the main polluters by the national governments. 5 - 10 % of the allowances are auctioned within the Kyoto trading system. From 2013 onwards, the majority of allowances will be auctioned. The operators within the ETS may reassign or trade their allowances by several means such as:

- privately, moving allowances between operators within a company and across national borders
- over the counter, using a broker to privately match buyers and sellers
- trading on the spot market of one of Europe's climate exchanges.

Hence the need to respond quickly to the risks of fraud, before the carbon market is fully developed.

4. The Commission proposal

The proposal allows Member States until 31 December 2014 and for a minimum period of two years to introduce and apply a reverse-charge system for supplies of defined categories of goods and of allowances to emit greenhouse gases. The reverse-charge mechanism allows a VAT registered firm selling goods to another VAT registered firm not to charge VAT. The tax is only collected by a firm which is selling on the product to a final consumer or a non-VAT registered firm. All of the tax due on the product is concentrated in the last trader. In so far as the customer does not pay VAT he can not claim a reimbursement and therefore no opportunity for Carousel fraud exists anymore.

The proposal limits to three the categories of goods and services that may be subject to this mechanism, a maximum of two having to be categories of goods. Prior the application of the reverse-charge system, Member States are required to introduce and implement measures, including reporting obligations on any taxable person, to ensure the follow-up of the reverse-charge system, to monitor and avoid fraudulent activities and to allow for a proper assessment of the results of the application of this system. Member States have to inform the Commission about these measures and have to report to it concerning the system's overall effectiveness and efficiency.

5. The Rapporteur assessment

The Rapporteur supports the Commission's proposal. Nevertheless, the Rapporteur considers that certain aspects of the proposal should be modified as follows:

- it should be made clearer that the application of the optional reverse-charge mechanism shall only target business to business relationship involving taxable persons.
- In terms of goods and services subject to that mechanism, and once a Member State decides to use the option, the reverse-charge should be mandatory for allowances to emit greenhouse gases, as swift and coordinated action among Member States is essential in this area.
- Regarding reporting obligations by taxable persons, and in order to minimise the administrative burden for businesses, Member States should have the option either to require a transaction-by-transaction reporting or a global transaction reporting. In addition, for reasons of comparability and treatment of information received by the Commission, the Rapporteur suggests that the VAT Committee should be consulted by Member States when defining the evaluation criteria that will be used to assess the efficiency of the system and its potential impacts on the development of fraudulent activities.
- Finally, the Commission should report to the European Parliament and the Council on the effectiveness and efficiency of the application of the reverse-charge system by July 2014.

With this proposals, the rapporteur wishes to reinforce the safety the ETS allowances vis-à-vis fraudsters, whilst at the same time reducing the administrative burden on honest business. Furthermore, the rapporteur considers that the Parliament should be fully informed of the outcome of this temporary implementation of the reverse-charge mechanism.