



2017/0251(CNS)

3.5.2018

DRAFT REPORT

on the 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
(COM(2017)0569 – C8-0363/2017 – 2017/0251(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Jeppe Kofod

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

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

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 (COM(2017)0569 – C8-0363/2017 – 2017/0251(CNS))

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2017)0569),
 - having regard to Article 113 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0363/2017),
 - having regard to Rule 78c of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2018),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
 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 substantially amend the Commission proposal;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) In its Single Market Strategy of 2015, the Commission identified the complexity of the current VAT system as one of the major obstacles to the completion of the single market. At the same time, the VAT gap, defined as the difference between the amount of VAT

revenue actually collected and the theoretical amount that is expected to be collected, has been increasing, reaching EUR 151,5 billion in 2015 in the EU-28. This illustrates the need for an urgent and comprehensive reform of the VAT system towards a definitive VAT regime, to facilitate and simplify cross-border intra-EU trade and make the system more fraud-resilient.

Or. en

Amendment 2

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) This would require replacing the current system consisting of an exempt supply in the Member State of departure of the goods and a taxed intra-Community acquisition of goods in the Member State of destination by a system of a single supply taxed in and in accordance with the VAT rates of the Member State of destination. As a rule, the VAT will be charged by the supplier who will be able to verify the applicable VAT rate of any Member State online by means of a web portal. ***However, where the person acquiring the goods is a certified taxable person (a reliable taxpayer recognised as such by Member States), the reverse charge mechanism would apply and the certified taxable person should be liable to VAT on the intra-Union supply.*** The VAT definitive system will also be based on the concept of a single registration scheme (One-Stop Shop (OSS)) for businesses allowing for the payment and deduction of the VAT due.

Amendment

(3) This would require replacing the current system consisting of an exempt supply in the Member State of departure of the goods and a taxed intra-Community acquisition of goods in the Member State of destination by a system of a single supply taxed in and in accordance with the VAT rates of the Member State of destination. As a rule, the VAT will be charged by the supplier who will be able to verify the applicable VAT rate of any Member State online by means of a web portal. The VAT definitive system will also be based on the concept of a single registration scheme (One-Stop Shop (OSS)) for businesses allowing for the payment and deduction of the VAT due.

Or. en

Amendment 3

Proposal for a directive Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) To ensure interoperability, ease of use and future proofing, OSS for businesses should operate with a harmonised cross-border IT system, based on common standards and allowing for automatic retrieval and input of data, for example, through the use of unified standard forms.

Or. en

Amendment 4

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) Given this demand and the fact that **it will take several years for** the definitive VAT system for intra-Union trade to be implemented, these specific measures, intended to harmonise and simplify certain arrangements for businesses, are appropriate.

(6) Given this demand and the fact that the definitive VAT system for intra-Union trade **is yet** to be **duly** implemented, these specific measures, intended to harmonise and simplify certain arrangements for businesses, are appropriate **only in a transitional manner**.

Or. en

Amendment 5

Proposal for a directive Recital 8

Text proposed by the Commission

Amendment

(8) In the current system no distinction is made between reliable and less reliable

(8) In the current system no distinction is made between reliable and less reliable

taxable persons as regards the VAT rules to be applied. The granting of the certified taxable person status on the basis of certain objective criteria should enable the identification of those reliable taxable persons. This status would allow them to benefit from the application of certain *fraud-sensitive* rules not applicable to other taxable persons.

taxable persons as regards the VAT rules to be applied. The granting of the certified taxable person status on the basis of certain objective **and common** criteria should enable the identification of those reliable taxable persons. This status would allow them to benefit from the application of certain *simplified* rules not applicable to other taxable persons.

Or. en

Amendment 6

Proposal for a directive Recital 9

Text proposed by the Commission

(9) Access to the certified taxable person status should be based on criteria harmonised at Union level and therefore certification provided by one Member State should be valid in the whole Union.

Amendment

(9) Access to the certified taxable person status should be based on criteria harmonised at Union level and therefore certification provided by one Member State should be valid in the whole Union. ***The Commission should therefore present implementing regulations and comprehensive guidelines, which should be closely aligned to the definitions of the Authorised Economic Operator under the EU Customs Code, to ensure uniform implementation and compliance across Member States.***

Or. en

Amendment 7

Proposal for a directive Recital 10

Text proposed by the Commission

(10) Certain taxable persons covered by particular arrangements excluding them from the general VAT rules, ***or who only***

Amendment

(10) Certain taxable persons covered by particular arrangements excluding them from the general VAT rules should not be

occasionally carry out economic activities, should not be granted the certified taxable person status as far as those particular arrangements or occasional activities are concerned. Otherwise the smooth application of the proposed changes could be disrupted.

granted the certified taxable person status as far as those particular arrangements or occasional activities are concerned. Otherwise the smooth application of the proposed changes could be disrupted.

Or. en

Amendment 8

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The EU VAT cross-border ruling pilot project should be the basis for a fully developed Union tool to prevent VAT tax disputes and to resolve cases of intra-Union cross-border disputes in VAT cases. National mechanisms will continue to apply for internal VAT tax disputes between the tax payer concerned and the national tax authority.

Or. en

Amendment 9

Proposal for a directive Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) This Directive provides for provisional arrangements prior to the adoption by Member States of a definitive system for the taxation of trade between Member States, and should be accompanied by corresponding implementing regulations and guidelines. This Directive, implementing regulations and guidelines should enter into force at

the same time.

Or. en

Amendment 10

Proposal for a directive Recital 13 c (new)

Text proposed by the Commission

Amendment

(13c) A mechanism should be established to ensure a transparent and direct information system which automatically notifies tax payers of updates and changes in the VAT rates of Member States. Such a mechanism should be based on harmonised standards and reporting forms, ensuring uniform reporting and data retrieval across Member States. Member States should be obliged to ensure that all information regarding their national VAT rates are correct and up to date. Member States should furthermore ensure that any changes to national VAT rates are notified via such a system within a reasonable time of their adoption and in any case before the changes become applicable.

Or. en

Amendment 11

Proposal for a directive Article 1 – paragraph 1 – point 1 Directive 2006/112/EC Article 13a – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

Where the applicant is a taxable person who has been granted the status of an authorised economic operator for customs

Where the applicant is a taxable person who has been granted the status of an authorised economic operator for customs

purposes, the criteria in paragraph 2 shall be deemed to have been met.

purposes **only**, the criteria in paragraph 2 shall be deemed to have been met.

Or. en

Amendment 12

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2006/112/EC

Article 13a – paragraph 2 – point a

Text proposed by the Commission

(a) the absence of any serious infringement or repeated infringements of taxation rules and customs legislation, **as well as of any** record of serious criminal offences relating to **the** economic activity **of the applicant**;

Amendment

(a) the absence of any serious infringement or repeated infringements of taxation rules and customs legislation **in the last three years of economic activity or no** record of serious criminal offences relating to **his or her** economic activity;

Or. en

Amendment 13

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2006/112/EC

Article 13a – paragraph 2 – point a b (new)

Text proposed by the Commission

Amendment

(ab) the absence of any record of serious criminal offences relating to the economic activity of the applicant, such as, but not limited to:

(i) serious criminal offences relating to the economic activity of the applicant;

(ii) money laundering;

(iii) bankruptcy (insolvency) fraud;

(iv) bribery and corruption;

(v) fraud;

- (vi) *cybercrime;*
- (vii) *participation in a criminal organisation;*
- (viii) *direct or indirect involvement in terrorist activities (e.g. carrying out any business or other activities that promote or assist the internationally recognised terrorist groups);*

Or. en

Amendment 14

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2006/112/EC

Article 13a – paragraph 2 – point b

Text proposed by the Commission

(b) the demonstration by the applicant of a high level of control of his operations and of the flow of goods, either by means of a system managing commercial and, where appropriate, transport records, which allows appropriate tax controls, or by means of a reliable or certified internal audit trail;

Amendment

(b) the demonstration by the applicant of a high level of control of his operations and of the flow of goods, either by means of a system managing commercial and, where appropriate, transport records, which allows appropriate tax controls, or by means of a reliable or certified internal audit trail, ***in accordance with the implementing regulations and guidelines to be published by the Commission;***

Or. en

Amendment 15

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2006/112/EC

Article 13a – paragraph 2 – point c

Text proposed by the Commission

(c) evidence of financial solvency of the applicant, which shall be deemed to be

Amendment

(c) evidence of financial solvency of the applicant ***during the last three years,***

proven either where the applicant has good financial standing, which enables him to fulfil his commitments, with due regard to the characteristics of the type of business activity concerned, or through the production of guarantees provided by insurance or other financial institutions or by other economically reliable third parties.

which shall be deemed to be proven either where the applicant has good financial standing, which enables him to fulfil his commitments, with due regard to the characteristics of the type of business activity concerned, or through the production of guarantees provided by insurance or other financial institutions or by other economically reliable third parties. ***The applicant shall possess a bank account in a financial institution established in the Union.***

Or. en

Amendment 16

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2006/112/EC

Article 13a – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Where the applicant has been denied the status of an authorised economic operator in accordance with the Union Customs Code during the last three years, the applicant shall not be granted the status of a certified taxable person.

Or. en

Amendment 17

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2006/112/EC

Article 13a – paragraph 4 – point a

Text proposed by the Commission

Amendment

(a) those of the Member State where the applicant has established his business;

(a) those of the Member State where the applicant has established his business

as defined in the proposal of 25 October 2016 for a Council Directive on a Common Corporate Tax Base (CCTB)^{1a} and in the proposal of 25 October 2016 for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)^{1b}, as well as in the proposal of 21 March 2018 for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence^{1c} and in the proposal of 21 March 2018 for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services^{1d};

^{1a} COM(2016)0685 final.

^{1b} COM(2016)0683 final.

^{1c} COM(2018)0147 final.

^{1d} COM(2018)0148 final.

Or. en

Amendment 18

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2006/112/EC

Article 13a – paragraph 5

Text proposed by the Commission

5. Where the application is refused, the grounds for refusal shall be notified by the tax authorities to the applicant together with the decision. Member States shall ensure that the applicant is granted a right of appeal against any decision to refuse an application.

Amendment

5. Where the application is refused, the grounds for refusal shall be notified by the tax authorities to the applicant together with the decision. Member States shall ensure that the applicant is granted a right of appeal against any decision to refuse an application. ***An appeal procedure harmonised at the Union level shall be established by 1 June 2020 by means of an implementing regulation.***

Or. en

Amendment 19

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2006/112/EC

Article 13a – paragraph 6

Text proposed by the Commission

6. The taxable person who has been granted the status of certified taxable person shall inform the tax authorities without delay of any factor arising after the decision was taken, which may affect or influence the continuation of that status. The tax status shall be ***withdrawn*** by the tax authorities where the ***criteria set out in paragraph 2 are no longer met.***

Amendment

6. The taxable person who has been granted the status of certified taxable person shall inform the tax authorities without delay of any factor arising after the decision was taken, which may affect or influence the continuation of that status. The tax status shall be ***reassessed*** by the tax authorities where the ***situation of the taxable person has changed.***

Or. en

Amendment 20

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2006/112/EC

Article 13a – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. A taxable person who has been refused the status of a certified taxable person, or who on his or her own initiative has informed the tax authority that he or she no longer meets the criteria set out in paragraph 2, may no earlier than six months from the date of the refusal or withdrawal re-apply for a certified taxable person status provided that all relevant criteria are met.

Or. en

Amendment 21

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2006/112/EC

Article 13a – paragraph 6 b (new)

Text proposed by the Commission

Amendment

6b. *A certified taxable person who ceases to have a VAT identification number shall have his or her status as a certified taxable person withdrawn automatically.*

Or. en

Amendment 22

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2006/112/EC

Article 138a – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) 'intermediary operator' shall mean a supplier in the chain other than the first supplier, who dispatches or transports the goods, himself or by a third party on his behalf;

(b) 'intermediary operator' shall mean a supplier in the chain other than the first supplier **or the last receiver/customer**, who dispatches or transports the goods, himself or by a third party on his behalf;

Or. en

Amendment 23

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2006/112/EC

Article 243 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Every certified taxable person to whom goods are supplied under the call-off stock arrangements referred to in Article 17a

Every certified taxable person to whom goods are supplied under the call-off stock arrangements referred to in Article 17a

shall keep a register of those goods.

shall keep a *digitalised* register of those goods *accessible to tax authorities.*'

Or. en

Amendment 24

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2006/112/EC

Article 262 – paragraph 1 – introductory part

Text proposed by the Commission

1. Every taxable person identified for VAT purposes shall submit a recapitulative statement of the following:

Amendment

1. Every taxable person identified for VAT purposes shall submit a recapitulative statement *to the competent tax authority* of the following:

Or. en

Amendment 25

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2006/112/EC

Article 262 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The information referred to in paragraph 1 shall be accessible to all involved tax authorities via the VIES system.

Or. en

Amendment 26

Proposal for a directive

Article 1 – paragraph 1 – point 7 a (new)

Directive 2006/112/EC

Title XIV – Chapter 2 a (new)

(7a) The following Chapter is inserted in Title XIV:

'Chapter 2a

VAT dispute resolution mechanism

Article 398a

1. A VAT dispute resolution mechanism shall be set up by 1 June 2020 to resolve disputes between Member States of claimed/filed/suspected erroneous cross-border VAT payments, and applied where the Mutual Agreement Procedure does not lead to a result within two years.

2. The VAT dispute resolution mechanism shall be composed of Member States' competent authorities.

3. The VAT dispute resolution mechanism shall not preclude the application of national legislation or provisions of international agreements where it is necessary to prevent tax evasion, tax fraud or abuse.'

Or. en

Amendment 27

Proposal for a directive

Article 1 – paragraph 1 – point 7 b (new)

Directive 2006/112/EC

Title XIV – Chapter 2 b (new)

(7b) The following Chapter is inserted in Title XIV:

'Chapter 2b

Automated notification mechanism

Article 398b

An automated notification mechanism shall be set up by 1 June 2020. That

mechanism shall ensure automatic notifications to tax payers on changes and updates to the VAT rates of Member States. Such automatic notifications shall be activated before the change becomes applicable and at the latest five days after the decision has been taken.'

Or. en

Amendment 28

Proposal for a directive Article 2 – paragraph 1 – subparagraph 2

Text proposed by the Commission

They shall apply those provisions from 1 January 2019.

Amendment

They shall apply those provisions ***together with the implementing regulations and guidelines*** from 1 January 2019.

Or. en

EXPLANATORY STATEMENT

This proposal, presented by the Commission in October 2017, introduces a series of fundamental principles or ‘cornerstones’ for the future definitive VAT system, and four ‘quick fixes’ to improve the day-to-day functioning of the current VAT system, tackling the VAT identification number, chain transactions, call-off stock situations and proof of intra-Community supply.

According to the impact assessment accompanying the work on establishing a definitive VAT system, the changes and cornerstones here proposed, is a vital step in reducing cross-border VAT fraud by upwards of EUR 41 billion and at the same time reducing compliance costs for businesses by EUR 1 billion. These cornerstones will be followed later this year by another proposal that will lay down detailed technical provisions needed to operate the definitive VAT system.

This proposal also notably introduces the new concept of a certified taxable person (CTP), in analogy to the ‘authorised economic operator’ in the EU Customs Code. A business can apply to its national tax authority and become a CTP by proving compliance with pre-defined criteria such as regular payment of taxes, internal controls, and proof of solvency. Once certified, the company will be considered a reliable tax-payer. Both the CTP and the companies that do business with CTPs will have access to a number of simplified procedures for the declaration and payment of cross-border VAT. The status of CTP will be mutually recognised by all EU Member States.

Your rapporteur fully welcomes this proposal by the Commission, including the ‘cornerstones’ for a definitive VAT system, the ‘quick fixes’ and the introduction of the new ‘certified taxable person’.

In his proposed amendments, your rapporteur calls upon the Commission to further clarify and specify the concept and criteria for a CTP, via future implementing regulations and comprehensive guidelines, and to closely align it with the criteria for Authorised Economic Operator-status under the EU Customs Code.

Furthermore, your rapporteur calls for the introduction of a VAT dispute resolution mechanism to resolve disputes between Member States. This will be established based on the current EU VAT cross-border ruling pilot project within the EU VAT Forum, and operate alongside national mechanisms for internal VAT tax disputes between tax payers and their national tax authority. Thereby providing a functioning VAT dispute resolution mechanism that can ensure mutual trust between Member States in cases of dispute.

In order to ensure smooth, efficient future-proof operation of the definitive VAT system, your rapporteur proposes the introduction of an automated notification mechanism. This mechanism must be able to provide automatic notifications to tax payers on changes and updates in applicable VAT rates of Member States, and underscores the necessity that such a mechanism must be based on open and standardised data formats and fields, so that interoperability can be ensured.

Finally your rapporteur urges Member States in the Council to adopt and implement this proposal as soon as possible, in order to reduce administrative burden for European businesses and to reduce the VAT gap in the EU.