

Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Regulation amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax’

(COM(2016) 755 final — 2016/0371 (CNS))

on the

‘Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods’

(COM(2016) 757 final — 2016/0370 (CNS))

and on the

‘Proposal for a Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals’

(COM(2016) 758 final — 2016/0374 (CNS))

(2017/C 345/13)

Rapporteur: **Amarjite SINGH**

Consultation	Council of the European Union, 20.12.2016 and 21.12.2016
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	5.5.2017
Adopted at plenary	5.7.2017
Plenary session No	527
Outcome of vote (for/against/abstentions)	123/1/2

1. Conclusions and recommendations

1.1. The EESC welcomes the package on the modernisation of VAT on cross-border e-commerce, and endorses both its objectives and its focus on addressing the concerns of SMEs. These proposed rules will have a major impact on companies selling goods and services online, allowing them to benefit from fairer rules, lower compliance costs, and a level playing field with non-EU companies. In the long run, the proposals will also help make the EU VAT system future-proof.

1.2. The implementation of the VAT MOSS has had a significant impact on the reduction of compliance costs. However, these savings have not necessarily been experienced to the same extent amongst different-sized businesses. In particular, SMEs have struggled with several compliance elements of the MOSS, and have expressed significant concerns. The EESC has therefore welcomed the fact that the proposed amendments to the MOSS address these concerns.

1.3. Given the success of the VAT MOSS so far in reducing compliance costs for businesses engaged in cross-border trade, its extension to services, other than those currently included, as well as to intra-EU acquisitions and imports of goods, is a natural step forward. Apart from the potential reduction in compliance costs, the extension will also create a level playing field within e-commerce business, which is likely to have a positive impact on SMEs in particular. The extension of the MOSS to goods creates conditions for the possible removal of the Low Value Consignment Relief (LVCR) scheme, which has created a distortion in competition, whereby businesses established outside the EU have a competitive advantage over those established within the EU. The EESC therefore welcomes the proposed extension of the MOSS.

1.4. The amendments to the VAT rates applicable to e-publications rules would eliminate the distinction between physical and non-physical publications, and ensure neutrality in this market. However, whilst welcoming the elimination of this competitive distortion, the EESC is mindful of the risk that such elimination carries for the VAT base. The EESC also notes that the proposed measures are perceived by the European Commission as a prelude to wider reform of the EU VAT rate structure, and it is concerned about the impact that such de-harmonisation would have upon businesses engaging in cross-border trade, particularly SMEs.

2. Background

2.1. The Commission has proposed practical new measures as part of the package on modernising VAT for cross-border business-to-consumers (B2C) e-commerce. The measures are aimed at supporting cross-border e-commerce when it comes to VAT compliance, by removing VAT barriers to online businesses, in particular start-ups and SMEs, as well as combating online VAT evasion by non-EU businesses.

2.2. These measures include in particular:

2.2.1. Amendments to the existing MOSS ('Mini-One-Stop-Shop'), which allows certain businesses to comply with their VAT obligations in any Member State through a digital online portal, hosted by their own tax administration and in their own language. These amendments include the introduction of an intra-EU cross-border VAT threshold and new simplified compliance requirements;

2.2.2. Extension of the existing MOSS to intra-EU supplies of services, other than those to which it currently applies, and to distance sales of goods, both intra-EU and from third-countries;

2.2.3. The removal of current intra-EU distance sales thresholds, as well as VAT exemption for imports of small consignments from outside the EU;

2.2.4. Amendments to existing rules to enable Member States to apply a reduced VAT rate to e-publications, such as e-books and online newspapers, as is already the case with their printed equivalents.

Amendments to the VAT MOSS

2.3. The MOSS system has been fully operational since 1 January 2015, and was set up with the aim of simplifying VAT compliance obligations for businesses engaging in cross-border EU trade. Instead of being required to register, report and pay VAT in each Member State in which they sell their goods or services, the MOSS enables businesses simply to file quarterly EU VAT returns online with their corresponding national authority.

2.4. The proposed amendments were preceded by intensive consultation by the Commission from February to September 2015. The process, which entailed evaluation, consultation, seminars and impact assessments, focused particularly on the impact of the current VAT MOSS rules on SMEs. It revealed specific issues — such as the need for a threshold, use of home-country rules for certain specific VAT obligations like invoicing and record keeping, and audit coordination — as being the main concerns for SMEs, and these are therefore reflected in the proposed amendments.

2.5. Under the proposed rules, a new intra-EU cross-border VAT threshold of EUR 10 000 will be introduced. For companies operating online, whose cross-border sales fall below the threshold, these sales will be treated as domestic sales, with VAT paid to their own tax administration. In terms of compliance, the requirement for two pieces of evidence to be provided by suppliers of electronics services with a turnover of less than EUR 100 000 has been relaxed. In addition, online sellers will be allowed to apply home-country rules in areas such as invoicing and record keeping, thus facilitating VAT compliance, and new coordinated audits will be introduced, preventing these sellers from being subject to separate national audit requests.

Extension of the VAT MOSS

2.6. At present the MOSS applies solely to telecommunications, broadcasting and electronically supplied services. Under the proposed amendments, application of the MOSS would be extended to other intra-EU supplies of services, as well as to distance sales of goods, both intra-EU and from third-countries. Under the proposed rules, this extension would be phased in after the amendments to the existing MOSS rules come into force, with entry into force proposed for 1 January 2021.

2.7. The proposed extension of MOSS to imported goods ordered online will dramatically simplify VAT collection. The Commission believes, therefore, that this extension creates the conditions for the repeal of the small consignment relief scheme, also known as the LVCR, under which the importation of goods of negligible value not exceeding a total value of up to EUR 22, will be exempt from VAT. The proposal therefore envisages the removal of this exemption as of 1 January 2021.

Amendments to VAT rates on e-publications

2.8. Under the current rules, Member States have the option to tax publications on any means of physical support at a reduced VAT rate. However, the VAT Directive prevents Member States from applying the same VAT rates to e-publications as currently apply to physical publications. This view has been confirmed by the Court of Justice in a series of recent judgments, in the context of the application of reduced rates to e-publications by several Member States ⁽¹⁾.

2.9. Under the proposed rules, Member States will be allowed to align VAT rates for e-publications on the current VAT rates for printed publications, regardless of which rate they apply. This proposal comes after consideration of the different options for bringing the treatment of e-publications in line with that of physical publications, and would allow Member States to apply reduced rates below the 5 % minimum, where they apply a rate below that minimum to physical books.

2.10. The above proposals would amend three legislative instruments, namely:

— Directive 2006/112/EC of 28 November 2006 on a common system for Value Added Tax (VAT Directive) ⁽²⁾;

— Regulation (EU) No 904/2010 of 7 October 2010 on administration cooperation and combating fraud in the field of value added tax ⁽³⁾;

— Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods ⁽⁴⁾.

2.11. The overall package is estimated to increase Member States' VAT revenues by 2021 by EUR 7 billion annually, and to reduce administration burdens for businesses by EUR 2,3 billion annually.

3. General Comments

3.1. VAT is one of the main sources of revenue for EU Member States, currently representing over 20 % of those revenues, an increase of over 10 % since 1995 ⁽⁵⁾. The comparative relevance of the tax for Member States' revenues increased in the wake of the economic and financial crisis, as they turned to VAT policy to address budgetary concerns. Between 2008 and 2014, twenty-three Member States increased VAT rates and/or broadened the VAT base ⁽⁶⁾. VAT plays a significant and increasing role in the sustainability of Member States' public finances, and the preserve of welfare expenditure.

⁽¹⁾ Cases C-219/13 K Oy, C-479/13 Commission v France, C-502/13 Commission v Luxembourg and C-390/15 RPO.

⁽²⁾ OJ L 347, 11.12.2006, p. 1.

⁽³⁾ OJ L 268, 12.10.2010, p. 1.

⁽⁴⁾ OJ L 292, 10.11.2009, p. 5.

⁽⁵⁾ R. de la Feria, 'Blueprint for Reform of VAT Rates in Europe' (2015) Intertax 43(2), 154-171.

⁽⁶⁾ Ibid.

3.2. It is crucial that the VAT base is protected from both potential instances of fraud, and its own erosion through the extensive use of reduced rates. In 2014 the VAT gap in the EU-27 was estimated to be EUR 159,5 billion, 14 % of total VAT revenue ⁽⁷⁾. Whilst the VAT gap includes VAT loss due for example to error, bankruptcies and avoidance, evasion is its main component. VAT base erosion in the EU-27 is also high, with nearly 50 % of all consumption untaxed or taxed at lower rates of VAT.

3.3. The EESC therefore welcomes the package on the modernisation of VAT on cross-border e-commerce, and endorses both its objectives and its focus on addressing the concerns of SMEs. These proposed rules will have a major impact on companies selling goods and services online, allowing them to benefit from fairer rules, lower compliance costs, and a level playing field with non-EU companies. In the long run, the proposals will also help make the EU VAT system future-proof.

Amendments to the VAT MOSS

3.4. The gradual implementation of the VAT MOSS, the last stage of which came into force on 1 January 2015, was one of the most significant amendments to the EU VAT system since the abolition of fiscal frontiers in 1993. The system allows businesses operating in various Member States to select one Member State, their home state, as their single contact point for VAT identification, for submission of VAT returns and for payment of VAT due in all Member States.

3.5. An assessment of the implementation of the VAT MOSS, carried out by the European Commission, confirms that the measure has had a significant impact on the reduction of compliance costs. The MOSS has saved businesses EUR 500 million — an average of EUR 41 000 per business — compared to the alternative of direct registration and payment, which represents a 95 % reduction in those costs.

3.6. However, these savings have not necessarily been experienced to the same extent amongst different-sized businesses. Consultations carried out by the Commission indicate that SMEs, although they would potentially benefit from the reduction in registration requirements, have in practice struggled with several compliance elements of the MOSS. These difficulties have been felt more acutely by SMEs established in Member States where the VAT registration threshold is highest, such as the UK.

3.7. The EESC has welcomed the fact that the proposed amendments to the MOSS address these concerns.

Extension of the VAT MOSS

3.8. Extension of the MOSS has been regarded by the European Commission as a high priority since 2011 ⁽⁸⁾. Given the success of the MOSS so far in reducing compliance costs for businesses engaged in cross-border trade, its extension to services, other than those currently included, as well as to intra-EU acquisitions and imports of goods, is a natural step forward.

3.9. Apart from the potential reduction in compliance costs, the extension will also create a level playing field within e-commerce business, which is likely to have a positive impact on SMEs in particular. The extension will remove the discrepancy between e-commerce businesses which can avail themselves of the MOSS under current rules, and those which are also engaged in cross-border e-commerce, but which, due to the nature of the services or goods they supply, could not until now avail themselves of the same compliance benefits. The extension will also benefit e-commerce businesses engaged in a variety of cross-border trade, which until now have been subject to two sets of compliance obligations, namely those under the MOSS and those under the normal regime, and will now be subject to just one set of rules under the MOSS.

⁽⁷⁾ CASE, Study and Reports on the VAT Gap in the EU-28 Member States: 2016 Final Report, TAXUD/2015/CC/131, 2016.

⁽⁸⁾ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT — Towards a simpler, more robust and efficient VAT system tailored to the single market (COM(2011) 851 final of 6 December 2011).

3.10. The extension of the MOSS to goods creates conditions for the possible removal of the LVCR scheme. Whilst this scheme represented welcome simplification in the past, the volume of goods benefiting from the scheme reportedly grew by 286 % in the 1999-2013 period, probably explained by the increase in individuals' online shopping ⁽⁹⁾. This growth has led in turn to an increase in foregone VAT revenue in all Member States.

3.11. The LVCR scheme has also created a distortion in competition, whereby businesses established outside the EU have a competitive advantage over those established within the EU. This competitive advantage has also led to two further unwanted consequences, namely the abuse of the LVRC scheme, and distortions to trade and import patterns.

3.12. The EESC therefore welcomes the proposed extension of the MOSS.

Amendments to VAT rates on e-publications

3.13. The list of products which may be subject to reduced rates of VAT, as set-out in the VAT Directive, dates back to 1992. Technological and consumer behaviour developments in the last twenty-five years have resulted in many legal difficulties regarding interpretation of the items included in that list. These legal difficulties have resulted in extensive litigation at CJEU level.

3.14. In several recent judgments the CJEU has concluded that the items included in the list of physical publications could not be extended to e-publications through legal interpretation. Thus, only legal amendments to the existing rules in the VAT Directive could achieve such an aim.

3.15. The proposed rules would eliminate the distinction between physical and non-physical publications, and ensure neutrality in this market. However, whilst welcoming the elimination of this competitive distortion, the EESC is mindful of the risk that such elimination carries for the VAT base. The inclusion of e-publications in the list of items that can be subject to a reduced rate will result not only in an immediate loss of revenue, but may create the opportunity for the argument to be made that other items should equally be included in the list, thus further eroding the base. In addition, extension of the application of reduced rates below the 5 % minimum to e-publications, where those rates apply to physical books, may give rise to further requests for application of rates below that minimum. Such a development would undermine the existence of a minimum rate, resulting also in further erosion of the base.

3.16. The EESC also notes that the proposed measures are perceived by the European Commission as a prelude to wider reform of the EU VAT rate structure ⁽¹⁰⁾. Whilst two options are currently under consideration, this wider reform would generally give Member States further freedom and flexibility in the application of reduced rates, by effectively de-harmonising VAT rates.

3.17. The EESC is concerned about the impact that such de-harmonisation would have upon businesses engaging in cross-border trade, particularly SMEs, which would find it difficult to determine VAT rates applying to their products across the EU.

3.18. The EESC is also mindful of the fact that TFEU Article 113, which constitutes the legal basis for approving EU VAT legislation, only confers competence upon the EU institutions to approve VAT-harmonising legislation, with the aim of establishing and improving the Internal Market.

⁽⁹⁾ E&Y, Assessment of the Application and Impact of the VAT Exemption for Importation of Small Consignment, Specific Contract No 7, TAXUD/2013/DE/334, Final Report, May 2015.

⁽¹⁰⁾ European Commission, Open public consultation on the reform of VAT rates (proposal for a Council Directive amending Directive 2006/112/EC on the Common system of value added tax as regards the rules governing the application of VAT rates).

4. Specific comments

Amendments to the VAT MOSS

4.1. For SMEs established in countries with a high threshold, implementation of the MOSS has resulted in them having to register for VAT and comply with VAT obligations for the first time. With many at the risk of being put out of business by the resulting new compliance costs, a group of micro-businesses, a large number of which were established in the UK, has set up a pressure group ⁽¹¹⁾, with the aim of alerting the EU institutions and the UK tax authorities to their concerns.

4.2. Setting a threshold of EUR 10 000 allowing SMEs to opt to use the VAT rules of their own country until they reach the threshold is welcome and will, undoubtedly, simplify operations for small and part time businesses. However, whilst welcoming this accommodation for micro-businesses the EESC is mindful that fledgling and growing businesses could quickly surpass this threshold.

Extension of the VAT MOSS

4.3. Significant abuse of the LVRC has been reported in the UK (through the Channel Islands) and Finland (from the Aland Islands), with companies relocating their operations outside the EU in order to avail themselves of the scheme ⁽¹²⁾. This abuse creates a further competitive disadvantage for companies within the EU, and particularly for SMEs, which tend to be more significantly affected. In 2010, a group was set up by UK-based SMEs to campaign against the alleged abuse of the LVCR in the Channel Islands ⁽¹³⁾.

4.4. More recently, another group set up by UK-based SMEs, entitled VAT Fraud ⁽¹⁴⁾ has drawn attention to problems of alleged fraud perpetrated online by non-EU traders, and linked to the LVCR scheme. Whilst the fraud pertains to goods of a value which falls outside the scheme, it is alleged that the existence of the scheme creates obstacles to VAT enforcement, as customs officials have difficulty determining which supplies fall within the scheme.

4.5. The LVCR scheme has also reportedly affected trade patterns and importation behaviour amongst consumers in several Member States, namely Slovenia, Germany, Sweden, Denmark and the UK ⁽¹⁵⁾.

Amendments to VAT rates on e-publications

4.6. Underlying the legal difficulties regarding interpretation of the items included in the list of items which can be subject to a reduced rate lies a fundamental dilemma for the EU VAT system: whether to eliminate potential distortions in competition by extending the scope of the list of items which can be subject to a reduced rate, further eroding the base; or whether to continue to limit the scope of those items, protecting the tax base, but allowing distortions to competition.

4.7. The CJEU adopts a casuistic approach to such interpretative difficulties. However, in judgments concerning the inclusion of e-publications in that list the Court has concluded that its scope cannot be extended to those items, thereby adopting a strict legal interpretation of the rules.

Brussels, 5 July 2017.

The President
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Georges DASSIS

⁽¹¹⁾ Entitled EU VAT Action (www.euvataction.org).

⁽¹²⁾ E&Y, Assessment of the Application and Impact of the VAT Exemption for Importation of Small Consignment, Specific Contract No 7, TAXUD/2013/DE/334, Final Report, May 2015.

⁽¹³⁾ Entitled RAVAS — Retailers Against VAT Avoidance Schemes (www.ravas.org.uk).

⁽¹⁴⁾ www.vatfraud.org

⁽¹⁵⁾ E&Y, Assessment of the Application and Impact of the VAT Exemption for Importation of Small Consignment, Specific Contract No 7, TAXUD/2013/DE/334, Final Report, May 2015.