III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

540TH EESC PLENARY SESSION, 23.1.2019-24.1.2019

Opinion of the European Economic and Social Committee on the role of Domestic Advisory Groups in monitoring the implementation of Free Trade Agreements

[COM(2018) 329 final — 2018/0164 (CNS)]

(2019/C 159/05)

Rapporteur: **Krister ANDERSSON**
Co-rapporteur: **Giuseppe GUERINI**

Consultation	Council of the European Union, 11.07.2018
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	20.12.2018
Adopted at plenary	24.01.2019
Plenary session No	540
Outcome of vote (for/against/abstentions)	163/0/2

1. Conclusions and recommendations

1.1. The EESC welcomes the Commission's proposal to replace the transitional VAT system for the taxation of trade between Member States put in place more than 25 years ago and still in force. Going beyond the transitional regime is a crucial step to completing the move to the definitive destination principle-based VAT system for taxing goods in B2B relations and it is an important achievement proving the continuous consolidation of the EU internal market.

1.2. The EESC urges the Commission, once again [1], to explore how a common system for both services and goods can be rolled out as quickly as possible, thereby reducing the foreseeable problems triggered by the existence of two different systems for goods and services. However, the Commission has repeatedly advocated a gradual two-step shift to the new regime, involving goods as a first step and services as a future second step.

1.3. The EESC stresses the importance of continuing the work towards the second step, since treating goods and services in the same way for VAT purposes would be more conducive to growth and more effective against fraud.

1.4. The EESC highlights that, although the Commission proposal is extensive and well drafted, some outstanding questions still remain open. The proposed system would indeed benefit from clear provisions or clarity laying down the rules for bad debt and refunds management within the One-Stop Shop (OSS). Moreover, additional definitions regarding concepts such as 'marketplace' and 'platforms' could be provided and elaborated.

[1] See previous EESC opinions; Action plan on VAT (*OJ C 389, 21.10.2016, p. 43*); VAT reform package (I) (*OJ C 237, 6.07.2018, p. 40*); VAT reform package (II) (*OJ C 283, 10.08.2018, p. 35*).

1.5. The EESC notes that the proposed system will trigger cash flow effects due to VAT on cross-border B2B supplies of goods, resulting in a cash flow income for the seller and a cash flow cost for the buyer. However, the cost of capital will in general be greater, since the time for recovering VAT will always be longer than the time the VAT is held by the seller. Moreover, through the OSS system, a differentiated return period will arise from the Member States' reporting periods, payment time to their local tax authority and the tax authority's efficiency in returning VAT to the country of the buyer.

1.6. The EESC calls for these aspects to be further investigated in order to prevent negative effects on the Single Market and to ensure the certainty and predictability of the new VAT system under construction, thereby reducing compliance costs and administrative burden.

1.7. The EESC asks for clear and proportionate criteria regarding the concept of 'certified taxable person' (CTP) to be implemented across Member States, in order to facilitate the broadest possible access to CTP status. In order to achieve the purpose of the new destination-based regime, it would be beneficial to harmonise the timeframe during which Member States must handle an application to receive the status of CTP. The Member States should process a CTP application promptly in order to enable businesses to continue operating without unnecessary interruptions, delays and administrative burdens due to uncertainty. At the same time, the functioning of CTP status should be carefully monitored by the European Commission to avoid possible abuses and lack of regulatory uniformity, especially during the first months of application.

1.8. The EESC underlines that a functioning OSS is crucial in order to implement the new destination-based system. Without a fully developed OSS, based on home-country audits, scalable simplifications and the ability to offset incurred input VAT from all Member States, any destination-based system will dramatically increase the administrative burden, especially for SMEs.

1.9. The EESC is concerned that the current proposal may turn out to be a prohibitive obstacle for both SMEs and start-ups. The EESC believes that the system of reverse charge should be granted to all cross-border supplies of goods B2B, until the definitive system is fully in place and reimbursement of VAT is done in a timely manner.

1.10. The EESC recommends an adequate investment in IT hardware/software assets to properly develop a solid and reliable OSS able to efficiently manage a considerable amount of sensible information, guaranteeing a swift and secure functioning of the system to the benefit of both European companies and fiscal administrations. Such investments are strategic in order to avoid adverse outcomes during the transition period from the old system to the new one, which will entail significant adaptation costs that should be minimised as far as possible through adequate digitalisation.

1.11. The EESC stresses the need for further cooperation between Member States to fight fraud and continuous analysis on the matter to ensure that the proposed system will not lead to new kinds of fraud and collection losses. A taxation of B2B cross-border transactions will increase the total amount of VAT in the system. This may increase the possibility for other kinds of fraud, leakage and collection losses. A taxable person in a Member State with a high VAT GAP will act as a collector for Member States with a lower VAT GAP.

1.12. The EESC recommends greater collaboration between national fiscal and enforcement authorities in order to make the new destination-based VAT system more effective in terms of both effectiveness against fraud and reliability in favour of European enterprises. Such a collaboration should include, inter alia, an automated exchange of information and data, as well as periodic reports and analytics regarding the functioning of the new regime, especially during the first years of its implementation.

1.13. Finally, the EESC deems that European enterprises would benefit from an extensive communication action carried out by the Commission in order to adequately explain, in clear and practical terms, the main features of the new VAT system, as well as the concrete advantages the VAT reform is expected to deliver in favour of European businesses and their growth.

2. Introduction and background

2.1. Within its Action Plan on VAT adopted in April 2016 ([2]), the European Commission has published a proposal for a Council Directive introducing detailed technical amendments to EU rules on value added tax ('VAT') ([3]). The proposed directive amends some two hundred articles of Council Directive 2006/112/EC of 28 November 2006 ([4]), which will be adapted to introduce the detailed technical measures for the operation of the definitive VAT system for taxing trade between Member States (based on the destination principle).

2.2. The Commission's proposal replaces the transitional arrangements in force since 1 January 1993 and contains detailed provisions for intra-union Business-to-Business (B2B) trade, under which domestic and cross-border transactions of goods would be treated in the same way. Moreover, it serves as the first of the two regulatory steps – one covering goods, the other services – pursued by the Commission in order to achieve a simpler and more fraud-proof definitive VAT system for intra-Union trade.

2.3. The Commission proposal gives rise to important changes to the VAT Directive, with the purpose of bringing the following benefits for businesses and national budgets: i) simplifying how goods are taxed; ii) developing a single online portal for traders ('One Stop Shop'); iii) reducing red tape; iv) establishing the seller as generally responsible for VAT collection.

2.4. The main changes include the elimination of the concept of 'intra-Community acquisition of goods' according to which, for VAT purposes, a trade of goods between businesses is split into two transactions: a VAT-exempt sale in the Member State of origin and a taxed acquisition in the Member State of destination. This will be replaced by the new concept of 'intra-Union supply of goods', according to which a cross-border B2B supply of goods within the Union will give rise to one single transaction for VAT purposes.

2.5. The modifications proposed by the Commission also include: i) a new exception to the general rule according to which the place of supply of an intra-Union supply of goods will be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends; ii) an amendment that determines a single rule for the moment of chargeability of VAT on intra-Union supplies; iii) a new article according to which VAT is to be payable by the person to whom the goods are supplied insofar as that person is a certified taxable person ('CTP'). According to the Commission, the proposal is also expected to reduce cross-border VAT fraud by up to EUR 41 billion per annum.

3. General comments

3.1. The EESC welcomes the Commission's proposal to replace the transitional VAT system for the taxation of trade between Member States put in place more than 25 years ago and still in force. Going beyond the transitional regime is a crucial step to completing the move to the definitive destination principle-based VAT system for taxing goods in B2B relations and it is an important achievement proving the continuous consolidation of the EU internal market.

3.2. The EESC is concerned about the costs for businesses and for SME in particular. They have to adopt their systems to comply with rules for trade both inside and outside Europe. It is paramount that new reporting requirements for VAT do not become part of the proposal or its implementation. Such changes would only increase compliance costs.

3.3. In its previous opinions, the EESC urged the Commission to explore how a common system for both services and goods can be rolled out as quickly as possible, thereby reducing the foreseeable problems triggered by the existence of two different systems for goods and services ([5]). However, the Commission has repeatedly advocated a gradual two-step shift to the new regime.

([2]) COM(2016) 148 final.
([3]) COM(2018) 329 final.
([4]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).
([5]) See previous EESC opinions; Action plan on VAT (OJ C 389, 21.10.2016, p. 43); VAT reform package (I) (OJ C 237, 6.07.2018, p. 40); VAT reform package (II) (OJ C 283, 10.08.2018, p. 35).

3.4. Thus, before including services, the Commission and national fiscal authorities will be able to assess the results of the new destination-based VAT system in terms of: i) effectiveness in fighting frauds; ii) compliance costs for European companies; iii) management of the new framework by tax authorities.

3.5. The EESC hopes that the choice of a progressive and slower transition to the new VAT regime could allow, in the near future, the construction of a unique and efficient definitive system covering both goods and services. During the gradual implementation it may be possible to profitably learn from the first operational outcomes delivered by the new regime only with regard to goods.

3.6. However, it should be noted that the definitive VAT system has been an awaited second step from the transitional system for over 25 years. The EESC therefore stresses the importance of continuing the work towards the second step. Should goods and services be treated in the same way, the VAT system would be more conducive to growth and robust against fraud.

3.7. Although the proposal is extensive, the EESC would like to highlight the fact that some outstanding questions still remain. For instance, the proposed system would benefit from clear provisions or further clarity laying down the rules for bad debt, refunds management within the OSS, payments on account and definitions of 'marketplace', 'platforms', etc. These uncertainties, together with a negative cash-flow, will prompt business to take action to minimise the risks. The EESC wants these aspects to be investigated further in order to prevent negative effects on the Single Market.

3.8. From a different perspective, it is worth noting that European enterprises would benefit from an extensive communication action carried out by the Commission in order to adequately explain, in clear and practical terms, the main features of the new VAT system, as well as the concrete advantages the VAT reform is expected to deliver in order to support European businesses and their growth.

3.9. A taxation of B2B cross-border transactions will increase the total amount of VAT in the system. This may increase the possibility for other kinds of fraud, leakage and collection losses. A taxable person in a Member State with a high VAT GAP will act as a collector for Member States with a lower VAT GAP. Therefore, the EESC stresses the need for further cooperation between Member States to fight fraud and continuous analysis on the matter to ensure that the proposed system will not lead to new kinds of fraud and collection losses.

4. **Main amendments to Directive 2006/112/EC**

4.1. The current subdivision of a goods transaction in two parts for VAT purposes – an exempt supply in the departure jurisdiction of the goods and an 'intra Community acquisition' taxed in the destination State – will be replaced by a single transaction named 'intra-Union supply of goods', where the word 'Community' is replaced by the word 'Union' ([6]).

4.1.1. The shift to a single transaction is necessary to achieve the new VAT system based on the destination principle and it will presumably simplify the administrative management of the single trades. On the other hand, the elimination of the reference to the 'European Community' in the entire text of Directive 2006/112/EC is a necessary textual adaptation in light of the new institutional formulation embedded in the Lisbon Treaty, which refers to 'European Union'.

4.1.2. The definition of 'intra-Union supply of goods' refers to 'a supply of goods carried out by a taxable person for a taxable person or for a non-taxable legal person whereby the goods are dispatched or transported, by or on behalf of the supplier or the person acquiring the goods within the Union, from one Member States to another Member State' ([7]).

4.1.3. It is important to note that such a comprehensive notion will not cover: i) the supply of goods with assembly or installation with or without trial runs; ii) the supply of goods exempted under Articles 148 or 151 of Directive 2006/112/EC; and iii) goods covered by the flat rate schemes for farmers ([8]). Such transactions, when performed cross border, do not currently give rise to intra-Community supplies and acquisitions and the new text confirms this specific regime.

([6]) Modifications to Article 2 – 4 of Directive 2006/112/EC.
([7]) COM(2018) 329 final, p. 6.
([8]) Modifications to Article 14 of Directive 2006/112/EC.

4.1.4. The EESC considers the above-mentioned exemptions as useful confirmations of provisions already included in Directive 2006/112/EC with regard to specific listed goods and therefore able to guarantee the consistency and certainty of VAT rules across the single market during the initial implementation of the new system.

4.2. The notion of intra-Union supply of goods is supplemented by a specific insertion in Directive 2006/112/EC concerning the 'place of supply of goods', which determines the Member State in which VAT is due. The existing general rules in this respect are confirmed, but with a new exception ([9]) according to which 'the place of supply of an intra-Union supply of goods shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends' ([10]).

4.2.1. The EESC supports the idea behind both the regulatory choices of the Commission, since they are clearly aimed at developing the new destination-based system and keeping extensive exceptions, based on the State of origin principle, could harm the consistency of the new VAT framework, reducing the predictability of the law and possibly increasing both compliance costs for enterprises and administrative burden for fiscal authorities.

4.2.2. Nonetheless, it is important to further analyse the cash flow effects of the proposed system. Today, there are no cash flow effects due to VAT on cross-border B2B supplies of goods. The proposed system will, on the contrary, result in a cash flow income for the seller and a cash flow cost for the buyer ([11]).

4.2.3. However, the cost of capital will in general be greater since the time for recovering VAT will normally be longer than the time the VAT is held by the seller. This is due to the fact that many Member States tend to postpone VAT refunds. The cost of capital will vary depending on the Member States' reporting periods, payment time to their local tax authority and the tax authority's efficiency in refunding VAT to the buyer. The cost of capital is especially a concern for small Member States with high export figures.

4.2.4. Such implications on the cash flow and liquidity of European enterprises should be adequately considered by both the European and national fiscal authorities and addressed in efficient ways, avoiding delays in refunds and the connected costs. Changes in supply chains, due to cash flow effects, risk hampering intra-union trade and may hinder the fulfilment of the Single Market.

4.3. The principle stating that VAT shall be payable by any taxable person carrying out a taxable supply of goods remains a cornerstone of the VAT system, except for some listed exceptions already included in Article 193 Directive 2006/112/EC, which are now supplemented by a new derogation under Article 194(a). Pursuant to such a derogation, in the event that the supplier is not established in the State where VAT is due, VAT shall be payable by the person to whom the goods are supplied insofar as it is a certified taxable person ('CTP') ([12]).

4.3.1. With regard to the CTP, the EESC understands the idea behind enabling businesses whose tax reliability is proven to benefit from appropriate simplification measures. However, as noted in opinion ECO/442 VAT Reform Package (I), the concept of CTP should be backed up by clear and transparent implementation criteria able to allow businesses, and SMEs in particular, to benefit from the status of CTP.

4.3.2. The Committee underlines the fact that it is important, in order to achieve the expected benefits, to enable a taxable person who transfers composite supplies to apply the provided simplifications on all parts of a transaction. By forcing a fictive division of the transaction, the intended simplification risks becoming a complication.

([9]) Set forth by Article 35a, Directive 2006/112/EC.

([10]) COM(2018) 329 final, p. 7.

([11]) If the seller has to pay the VAT before having received the amount from the buyer, the seller will experience a negative cash-flow and therefore a cost.

([12]) Modifications to Articles 193, 194a, Directive 2006/112/EC.

4.3.3. In this respect, it is crucial that harmonised, clear and proportionate criteria are implemented across Member States to facilitate the broadest possible access to CTP status. At the same time, the functioning of CTP status should be carefully monitored by the European Commission to avoid possible abuses and lack of regulatory uniformity, especially during the first months of application.

4.3.4. In order to achieve the purpose of the regime it would be beneficial to harmonise the timeframe during which Member States must handle an application to receive the status of a CTP. The Member States should process a CTP application promptly in order to enable businesses to continue to operate without unnecessary interruptions, delays and administrative burdens due to uncertainty.

4.3.5. Furthermore, the EESC is concerned that the current proposal may turn out to be a prohibitive obstacle for both SMEs and start-ups. The EESC believes that the system of reverse charge should be granted to all cross-border supplies of goods B2B, until the definitive system is fully in place and reimbursement of VAT is done in a timely manner.

4.4. The elimination of recapitulative VAT statements with regard to goods proposed by the Commission is in line with the new VAT framework pursued, which re-installs the self-policing character of VAT. On the other hand, the confirmation of recapitulative statements for services is consistent with the Commission's choice to implement the action plan in two different steps ([13]).

4.4.1. The EESC supports the changes put forward by the Commission to allow Member States to simplify the obligation to submit recapitulative statements, since simplification will hopefully reduce red tape and operative costs for European companies. It nevertheless stresses that such simplification measures should be devised properly to avoid wrongdoing by businesses, considering not least that the achievement of a simpler system could be substantially favoured by an increased use of electronic invoices within national fiscal systems.

4.4.2. The current special scheme for intra-Union distance sale of goods and for services supplied by taxable persons within the EU, but not in the member States of consumption, is subject to substantial changes in order to implement the principle of a single registration scheme for declaration, payment, and deduction of tax.

4.5. Starting from 1 January 2021, a taxable person registered in its identification State will be able to electronically submit quarterly mini one-stop-shop (MOSS) VAT returns regarding supplies of services and intra Union distance sales to non-taxable persons in another Member State (State of consumption), along with the VAT due ([14]).

4.5.1. The Member State of identification will then transmit the returns along with the VAT paid to the Member State of consumption, avoiding the need for these taxable persons to be registered in the Member State of consumption.

4.5.2. The scope of transactions covered by such a mechanism is increased and extended from B2C transactions to B2B transactions (objective extension) and made available also for taxable persons established outside the EU that appoint an intermediary within the EU, which become liable for the VAT payment and corresponding obligations (subjective extension).

4.5.3. Taxable persons utilising the scheme shall submit monthly One Stop Shop (OSS) VAT returns when their annual turnover is over EUR 2 500 000.

4.5.4. The possibility to exercise VAT deduction, as well as to obtain refunds of VAT credit from a Member State within the OSS, allows the efficient concentration in a single venue of several VAT obligations to be carried out by both taxpayers and fiscal administrations.

([13]) Modifications to Articles 262 – 271, Directive 2006/112/EC.
([14]) Modifications to Articles 358 – 369, Directive 2006/112/EC.

4.5.5. The Committee notes that it is positive that the new scheme including deduction will be simplified by allowing the taxable person to pay the sum of the net amount of VAT ([15]) in each of the Member States of taxation.

4.5.6. On the other hand, the possibility of deduction increases the need for legal certainty and the completeness of the information available for fiscal authorities and thereby justifies the Commission proposal to complement the one stop shop VAT return with additional information, including: i) the total amount of VAT that has become chargeable on supplies of goods and services for which the taxable person as recipient is liable to pay the tax and on the importation of goods where the Member State exercises the option under the second paragraph of Article 211; ii) the VAT for which deduction is made; iii) amendments relating to previous tax periods; and iv) the net amount of the VAT to pay or to be refunded or credited.

4.5.7. A functioning OSS is a vital part of a destination-based system. Without a fully developed OSS, based on home-country audits, scalable simplifications and the ability to offset incurred input VAT from all Member States, any destination-based system will dramatically increase the administrative burden, especially for SMEs.

4.5.8. The first operational outcomes of the MOSS in force since 1 January 2015 for telecommunication, broadcasting and electronic services and due to be extended to all e-commerce B2C transactions ([16]) should be taken sufficiently into consideration in order to achieve a solid and fully functioning OSS with an extended and significant scope of application based on the concrete outcomes delivered so far by such a tool when applied to specific sectors or industries.

4.5.9. Finally, the EESC recommends an adequate investment in IT hardware/software assets to properly develop a solid and reliable OSS able to efficiently manage a considerable amount of sensible information, guaranteeing a swift and secure functioning of the system to the benefit of both European companies and fiscal administrations. Such investments are strategic in order to avoid adverse outcomes during the transition period from the old system to the new one, which will entail significant adaptation costs that should be minimised as far as possible through adequate digitalisation.

Brussels, 24 January 2019.

The president
of the European Economic and Social Committee
Luca JAHIER

([15]) VAT due minus VAT deductible.

([16]) Allowing businesses supplying telecommunication services, television and radio broadcasting services and electronically supplied services to non-taxable persons in Member States where they do not have an establishment to account for the VAT due on such supplies via a web-portal in the Member State where they are identified.