

**Opinion of the European Economic and Social Committee on 'Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence effort within the Union framework'**

(COM(2019) 192 final — 2019/0096 (CNS))

(2020/C 47/11)

Rapporteur: **Benjamin RIZZO**

Referral	Council of the European Union, 13.5.2019
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	17.10.2019
Adopted at plenary	30.10.2019
Plenary session No	547
Outcome of vote (for/against/abstentions)	204/2/5

## 1. Conclusions and recommendations

1.1. The EESC recognises the Commission's aim of ensuring equal treatment, for VAT purposes, for armed forces of Member States working together within an EU framework and NATO armed forces employed in the EU, which already benefit from VAT exemption. Having a level playing field in this respect seems reasonable.

1.2. The EESC understands why certain EU structures have been set up since 2000 to administer armed forces deployed within the EU for its security and defence. Now, with a director general in charge of defence, these structures will be better utilised and overseen.

1.3. The EESC understands that the two conditions for the exemption set out in the Commission proposal are that armed forces are deployed outside their own Member State, on the one hand, and that they are involved in a European common defence effort, on the other hand.

1.4. The EESC accepts that there are some areas not covered by the new exemption. These areas concern, in particular, security purposes, humanitarian rescue tasks and cases in which the solidarity clause is evoked. As a consequence the overall VAT exemptions are limited to 'military operations', applying a narrow interpretation of such a concept.

1.5. The EESC suggests that different national tax authorities should have one system under which the new exemptions are implemented. Therefore, it is recommended that the Commission, through its VAT Control Group, set up a dedicated system where the VAT-exempted invoices issued by suppliers to armed forces will need to be inserted in order to benefit from the exemption set out in the Commission proposal. That way, a unified system will be used in all Member States.

1.6. The EESC considers that the information regarding the costs/benefits effects of the exemptions brought about by the Commission proposal should be better calculated, so that a more realistic report on such exemptions can soon become available. This will encourage better and more transparent reporting for Member States and public opinion in general.

## 2. The Commission proposal

2.1. With its proposal for a Council Directive amending Directive 2006/112/EC <sup>(1)</sup> on the common system of value added tax and Directive 2008/118/EC <sup>(2)</sup> concerning the general arrangements for excise duty as regards defence effort within the Union framework, published on 24 March 2019, the European Commission presented its plan to exempt supplies to armed forces from Value Added Tax (VAT) and excise duties when these forces are deployed outside their own Member State and take part in a European defence effort.

2.2. According to Article 2 of Council Directive 2006/112/EC on the common system of value added tax, the scope of VAT includes 'any supply of goods and services for consideration by a taxable person within the territory of a Member State and any importation of goods into the European Union'.

2.3. The Directive singles out a common list of VAT exemptions aimed at ensuring that EU own resources are collected in a uniform manner across Member States. At present, the exemptions list does not include the supply of goods or services for security and defence purposes. Therefore, goods or services supplied to, or goods imported by, armed forces are subject to VAT.

2.4. By contrast, the VAT Directive currently provides for an exemption concerning supplies to the armed forces of any State party to the North Atlantic Treaty, that are involved in a common defence effort outside their own State. Such an exemption was devised to address situations in which *'the circle of revenue and expenditure flow is broken, because VAT on such supplies would normally constitute revenue for the State in which the armed forces are located, rather than their own'*.

2.5. Council Directive 2008/118/EC concerning the general arrangements for excise duty sets forth a similar exemption from excise duty for movements of excise goods for the armed forces of any North Atlantic Treaty Organisation (NATO) member.

2.6. Excise duties under the EU law are applied on alcoholic beverages, manufactured tobacco products and energy products (motor fuels and heating fuels, such as petrol and gasoline, electricity, natural gas and coal). The structure of the taxes and minimum rates are harmonised at EU level.

2.7. While NATO's defence effort has been exempted by both the VAT Directive (since 1977) and the Excise Directive (since 1993), no exemption is currently available for the supplies related to the common defence effort within the EU framework.

2.8. The Common Security and Defence Policy (CSDP) <sup>(3)</sup> — originally established (2000) as the European Security and Defence Policy (ESDP) — is a key instrument for the progressive development of a common Union defence policy. The Lisbon Treaty contributed significantly to developing the CSDP, establishing, inter alia, the European External Action Service (EEAS) in order to support the High Representative for Foreign Affairs and Security Policy in all her duties, including the CSDP.

2.9. The Treaty on European Union (TEU) also includes a mutual assistance clause and allows Member States to strengthen their military by means of 'permanent structured cooperation' (PESCO) <sup>(4)</sup>.

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<sup>(1)</sup> Council Directive 2006/112/EC on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

<sup>(2)</sup> Council Directive 2008/118/EC concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).

<sup>(3)</sup> The common security and defence policy (CSDP) is an integral part of the Union's common foreign and security policy (CFSP)[1]. The CSDP is framed by the Treaty on European Union (TEU). Article 41 outlines the funding of the CFSP and CSDP, and the policy is further described in Articles 42 to 46, in Chapter 2, Section 2 of Title V ('Provisions on the Common Security and Defence Policy'), and in Protocols 1, 10 and 11 and Declarations 13 and 14. The specific role of the European Parliament in the CFSP and CSDP is described in Article 36 of the TEU.

<sup>(4)</sup> The provisions for PESCO are enshrined in Article 46 of the Treaty on European Union (TEU) and Protocol 10 on permanent structured cooperation established by Article 42(6) TEU.

2.10. The EU Military Committee (EUMC) <sup>(5)</sup>, set up in 2001, is the Council's highest military body, directing 'all military activities within the EU framework and advising on the planning and execution of military missions and operations under the CSDP, and on the development of military capabilities'.

2.11. In June 2016, the global strategy for the European Union's foreign and security policy (EUGS) <sup>(6)</sup> laid the ground for further developing the CSDP towards three core priorities: responding to external conflicts and crises, building the capabilities of partners and protecting the Union and its citizens.

2.12. In March 2018, the Commission and the High Representative presented a Joint Communication on the military mobility action plan <sup>(7)</sup>. The action plan recognises the need for 'equal treatment of defence efforts with a view to reducing administrative burden and thus delays and costs in military mobility'.

2.13. More specifically, the Joint Communication states that 'facilitating military mobility also concerns the current Value Added Tax rules. Defence efforts and military mobility, in particular, necessitate a number of supplies such as training, exercise materials, accommodation, provision of food/canteen services, fuel, etc. These supplies are in principle subject to Value Added Tax. In the framework of the Ad Hoc Working Group on Military Mobility, Member States identified the need to ensure that defence efforts are treated equally, in order to reduce the administrative burden, thus avoiding delays and costs for military mobility, and providing Member States with an incentive to cooperate'.

2.14. Following such a request, the Commission proposal under discussion here pursues the alignment of both the VAT treatment and excise exemption of defence efforts in the EU and NATO frameworks as far as possible. According to the proposal, the CSDP activities covered by the exemptions are: i) military missions and operations; ii) battlegroups; iii) mutual assistance. In addition, PESCO and EDA activities will be covered as well.

2.15. It is worth noting that, based on the Commission proposal, supplies to the armed forces and the accompanying civilian staff can only be exempted in case such forces take part in a defence effort carried out for the implementation of a Union activity under the CSDP.

2.16. Therefore, the exemptions do not cover the deployment of armed forces solely for security purposes, for humanitarian and rescue tasks or when evoking the solidarity clause laid down in Article 222 TFEU without defence implications.

2.17. According to a prudential estimation, a value of EUR 530 million — out of a total defence spending of EUR 5,3 billion — can be attributed to outsourced activities that will be covered by the Commission proposal, which could result in a possible loss of VAT revenue for all Member States of around EUR 80 million (assuming an average VAT rate of 18 %).

2.18. With regard to excise duties, energy products and electricity should be the main products subject to exemption. As with VAT, it can be assumed that around 10 % of such costs would be exempt from excise duty in the future. However, there is no available data to provide a basis for quantifying the impact.

2.19. Member States will be required to adopt and publish, by 30 June 2022 at the latest, the laws, regulations and administrative provisions necessary to comply with the new rules, communicating the text of those provisions to the Commission.

### 3. General and specific observations

3.1. The Commission proposal complements the 2016 VAT action plan to modernise the VAT system, achieving a simpler, more fraud-proof and business-friendly model. The above-mentioned modifications regarding the military field are therefore inserted within a wider reform and are going to become part of the new system from the outset. Thus, all the possible issues related to future modifications to a system already in place will be avoided.

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<sup>(5)</sup> The European Union Military Committee (EUMC) is the highest military body set up within the Council (COUNCIL DECISION of 22 January 2001 setting up the Military Committee of the European Union).

<sup>(6)</sup> Shared vision, common action: a stronger Europe – a global strategy for the European Union's foreign and security policy.

<sup>(7)</sup> Improving Military Mobility in the European Union, Joint Communication to the European Parliament and the Council (JOIN(2017) 41 final)

3.2. The Commission proposal changes the current list provided by Directive 2006/112/EC, bringing about a new exemption. Such a substantial modification is aimed at allowing a sort of 'level playing field', from a VAT perspective, with regard to the NATO operations, on the one side, and the operations carried out under a common framework by Member State military forces, on the other. Consistency will therefore be achieved and the scope of exemption will be similar for Union and NATO defence efforts.

3.3. The EESC notes that the current exemptions for NATO defence activities, which are already framed and limited in scope, will not be extended, since a mere alignment in favour of military operations carried out under a common framework will be put in place.

3.4. The choice of drafting the new Directive provisions to mirror the existing paragraphs referring to the armed forces of NATO is consistent with the Commission final aim of achieving an equal treatment between such operations and the military efforts carried out under a common EU framework.

3.5. The EESC notes that there will be no negative implications for the EU budget, as the own resource based on gross national income (GNI) compensates for any expenditure not covered by traditional own resources and the VAT own resource. The non-collected VAT own resources from certain Member States will be compensated by all Member States through the GNI own resource.

3.6. The proposal is in line with the subsidiarity principle, given that the EU legislation is better suited than several national rules to coordinate the applicability of VAT to specific military operations across the internal market. Member States were consulted in the Group on the future of VAT and broadly confirmed the need to act at EU level, thereby justifying the choice of a Directive proposal.

3.7. The proposal also seems consistent with the principle of proportionality, as it does not go beyond what is necessary to meet the objectives of the Treaties linked to the progressive framing of a common defence policy under the CSDP. Such a long-term and ambitious objective is supported by the EESC.

3.8. The choice of maintaining consistency between VAT and excise duties, addressing both the exemptions within a single proposal, seems reasonable and able to justify one of the rare occasions in which excise duties and VAT are jointly regulated within EU legislation.

3.9. However, the EESC suggests that the scope of application of the exemption that will be granted both in the VAT and excise duty systems should be better specified. It is indeed strategic to precisely fix the specific perimeter of such an exemption in order to ensure certainty of the law and predictability of the VAT and excise duty systems.

3.10. As for the need for clarity and predictability of the law, it is worth noting that the exemptions granted will be mainly applied and evaluated, from different perspectives, by national suppliers operating in the military field and by national tax authorities. The national tax authorities will instruct national suppliers operating in the military field how to construct their VAT invoices to the military.

3.11. In this respect, the EESC recommends that the Commission issue detailed implementation rules — by means of an explanatory note or guidelines issued by the VAT Committee — for national tax authorities and enterprises to avoid technical complications within Member States. The previous practice related to the NATO exemption could certainly be useful in order to provide some initial guidelines.

3.12. The EESC finally underlines that a new exemption mechanism — such as the one set forth in the Commission proposal — certainly requires adequate control mechanisms in order to supervise its concrete implementation. The EESC therefore suggests that the Commission develop and launch a system via the Commission VAT control group for an adequate system to be introduced in all Member States to control the new exemption scheme, aimed at collecting, when it is possible and viable, all the relevant practical information from national tax authorities.

3.13. Such a system might contribute to an effective and, at the same time, transparent implementation of the new exemption, also allowing the development of an accurate *ex post* impact assessment analysis. Thus, a common platform could be adopted by Member States, creating one system that will be followed by all Member States rather than different systems in different countries.

3.14. It is recommended that a more detailed and effective cost estimation be undertaken to understand the effect of this VAT exemption, as these are part of the taxes paid by the general public and more transparency is recommended. It is also apparent that in major natural disasters the cost of this exemption could be much greater.

Brussels, 30 October 2019.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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