

Opinion of the European Economic and Social Committee on the:

‘Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the follow-up to the Action Plan on VAT — Towards a single EU VAT area — Time to act’

(COM(2017) 566 final)

‘Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person’

(COM(2017) 567 final — 2017/0248 (CNS))

‘Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions’

(COM(2017) 568 final — 2017/0249 (NLE))

‘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) 569 final — 2017/0251 (CNS))

(2018/C 237/07)

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Outcome of vote	185/9/7
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The EESC considers that the current EU Value Added Tax (VAT) system is highly fragmented and complex and subsequently reduces and distorts trade and investment by creating unnecessary and extensive administrative burdens and trade barriers for businesses.

1.2. The EESC believes that the VAT system should be aimed at facilitating the proper functioning of the internal market. In particular, the VAT system needs to be less fragmented and more efficiently administered, especially with regard to cross-border trade, and should be modernised in the light of increasing globalisation and digitalisation of the economy.

1.3. The EESC welcomes the European Commission's determination to close the VAT gap, as well as the recent Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law, which provides for the involvement of the European Public Prosecutor's Office in cases of VAT fraud above EUR 10 million.

1.4. The EESC considers that tax authorities should investigate how upcoming technologies can contribute to the fight against VAT fraud. Digital technologies can also be a helpful tool for simplifying the administrative burden on both businesses and tax administrations, bringing the necessary transparency. In particular Member States, should create appropriate fora for the exchange of best practices in revenue collection and on how to develop technologies to facilitate proper tax collection in cross-border trade situations. An in-depth analysis on the possibility of implementing higher VAT rates on luxury goods should be taken into consideration. Efficient refund VAT systems and tax forms and processes should be discussed along with streamlined systems for the exchange of information on fraudsters. The European Commission should contribute to setting up such institutional fora, thereby enhancing growth and reducing revenue losses.

1.5. The EESC believes that a functioning one-stop-shop ('OSS') is a vital part of a destination-based system. The Commission's initiatives, such as the proposed extension of the Mini One-Stop-Shop to all B2C services as well as B2C sales of goods, both intra-Community and from outside the Community, is therefore welcome.

1.6. The EESC calls on all the institutions involved in the process of reforming the VAT system to explore how a common system for both services and goods can be rolled out as quickly as possible, thereby alleviating the foreseeable problems arising from the existence of two systems, one for goods and another for services. Such a development would be considered positive by the EESC insofar it is consistent with the tax neutrality principle.

1.7. The EESC underlines the importance of tax neutrality between different companies, pointing out that VAT payments should not be allowed to adversely affect the liquidity of some businesses. In this respect, importers of goods should be required to pay VAT when the products are actually put on the market and not when such products are merely imported and deposited.

1.8. With regard to the certified taxable person ('CTP'), the EESC notes that the Commission deems this concept to be important for the transition towards a VAT system based on the destination principle and agrees that businesses whose tax reliability is proven should be able to benefit from appropriate simplification measures.

1.9. The EESC draws attention to the fact that since it will take some time for the Member States to agree on CTP and for the majority of companies to be certified, and since the quick fixes outlined in the proposal are so important for the functioning of the VAT system, the EESC would therefore encourage the Member States to adopt the quick fixes for all businesses before CTP is fully developed.

1.10. With reference to certain exemptions for intra-Community transactions included in the proposal amending Implementing Regulation No 282/2011, the EESC notes that the Council's request asking the Commission to simplify and clarify the legal framework on exemptions appears to be a useful tool for reducing fraud and limiting compliance costs for SMEs.

1.11. The EESC considers it important for the Commission to carry out a comprehensive regulatory impact assessment aimed at ascertaining — including in quantitative terms — the practical implications of the action plan on VAT as a whole for individuals, businesses and tax authorities.

1.12. The EESC would again point out that all efforts should be made to implement the definitive VAT system within a reasonable timeframe; otherwise there is a risk that the stated objectives could be compromised or only partially achieved, to the detriment of the internal market and of European companies and consumers.

2. Introduction and background

2.1. With its communication entitled *Towards a single EU VAT area — Time to decide*, published on 7 April 2016, the Commission presented its action plan aimed at modernising the EU VAT system, and announced a number of specific proposals to that end.

2.2. In particular, the action plan provides for: (i) modernising the VAT system, adapting it to the new digital technologies; (ii) making VAT compliance easier for SMEs; (iii) developing an appropriate policy for setting VAT rates; (iv) reducing the VAT gap in the Member States and tackling tax fraud.

2.3. Since cross-border trade in the EU amounts to more than EUR 4,1 trillion (exports) and EUR 3,9 trillion (imports), a functioning VAT system is paramount for all European citizens.

2.4. On 1 December 2016, the Commission published two proposals: one on VAT for cross-border e-commerce ⁽¹⁾ and the other on VAT rates for e-publications ⁽²⁾.

2.5. On 21 December 2016, in order to reduce VAT fraud and responding to requests from some Member States in the Council, the Commission published a proposal on a temporary generalised reverse charge mechanism in relation to supplies of goods and services which exceed EUR 10 000 in value.

2.6. In October 2017, the European Commission published a further package of measures in the area of VAT. This package comprises: (i) a proposal to amend the current VAT Directive 2006/112/EC, introducing the notion of a CTP, as well as some corrective measures ⁽³⁾; (ii) measures to lay the foundations for a gradual transition to the principle of taxation in the Member State of destination and the responsibility of the supplier as a general rule ⁽⁴⁾; (iii) a proposal amending Implementing Regulation No 282/2011 to harmonise and simplify the rules on proving the intra-Community transport of goods for VAT exemption purposes ⁽⁵⁾; (iv) a proposal amending the regulation on administrative cooperation between national authorities on VAT ⁽⁶⁾.

2.7. Specifically, the Commission has presented four ‘quick fixes’ in order to decrease the administrative burden on businesses in the current system. These four quick fixes are: (i) simplification of VAT rules for companies moving goods from one Member State to another where they are to be stored before being supplied to a customer who is known in advance; (ii) simplification and harmonisation of rules regarding chain transaction situations; (iii) simplification of the proof of transport of goods between two Member States. These simplifications are limited to CTP businesses. A fourth quick fix, regarding the VAT number of commercial partners recorded in the electronic EU VAT number verification system (VIES), will be available to CTP and non-CTP businesses.

2.8. Looking ahead, the Commission intends to gradually replace the current transitional arrangement for the taxation of trade between Member States with a definitive agreement based on the principle of taxing the goods in the country of destination through a series of legislative measures and progressive adjustments.

3. General comments: combating fraud, and cooperation between national authorities

3.1. The current VAT system is highly fragmented and complex and subsequently reduces and distorts trade and investments by creating unnecessary and extensive administrative burdens and trade barriers for businesses.

3.2. The EESC believes that the EU VAT system should be aimed at facilitating the proper functioning of the internal market. In particular, the EU VAT system needs to be less fragmented and more efficiently administered, especially with regard to cross-border trade, and should be modernised in the light of increasing globalisation and digitalisation of the economy.

3.3. At the same time, the Committee shares the Commission’s view that VAT fraud constitutes a significant problem — as shown by the figures estimating the loss of revenue due to fraud at EUR 151 billion — in respect of which practical and increasingly effective measures must be taken to reduce illegal practices, without however undermining the consolidation of the single market ⁽⁷⁾.

⁽¹⁾ COM(2016) 757 final.

⁽²⁾ COM(2016) 758 final.

⁽³⁾ COM(2017) 567 final.

⁽⁴⁾ COM(2017) 566 final.

⁽⁵⁾ COM(2017) 568 final.

⁽⁶⁾ COM(2017) 569 final.

⁽⁷⁾ See EESC opinion on VAT — *Derogation — reverse charge*, particularly points 1.2 — 3.2 (OJ C 288, 31.8.2017, p. 52).

3.4. The EESC welcomes the European Commission's determination to close the VAT gap, as well as the recent Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law, which provides for the involvement of the European Public Prosecutor's Office in cases of VAT fraud above EUR 10 million.

3.5. It is therefore important to prioritise the objective of ensuring a truly internal market and combating fraud by delivering tangible results in this area without delay through closer cooperation between tax authorities with regard to the exchange of information and the development of databases and platforms for the exchange of data between the various national authorities in support of an efficient enforcement of the tax rules. In particular, the EESC urges the Commission and the national tax authorities to cooperate more closely and intensely on a daily basis to ensure that the requirements of an internal market are met and to reduce administrative costs for both businesses and tax authorities. Additionally, the European Commission and tax authorities should, in cooperation with organised civil society and other stakeholders, investigate how upcoming technologies can contribute to the fight against VAT frauds, since new technologies can be a helpful tool for simplifying the administrative burden on businesses and tax administrations, as well as for bringing the necessary transparency.

3.6. The EESC underlines the need for Member States to create appropriate fora for the exchange of best practices in revenue collection and on how to develop technologies to facilitate proper tax collection in cross-border trade situations. In particular, efficient refund VAT systems and tax forms and processes should be discussed along with efficient systems for the exchange of information on fraudsters. The European Commission should contribute to setting up such institutional fora, thereby enhancing growth and reducing revenue losses.

4. Destination principle and rates

4.1. As stated in its opinion on the *Action plan on VAT*⁽⁸⁾, the EESC believes that the overhaul of the current system should result in a definitive VAT system that is not only clear, robust and comprehensive, but also proportionate in relation to businesses, and adapted to the fast pace of change in the economy and markets.

4.2. In this context, the Committee endorses the proposal to opt for the country of destination principle as the basis for the definitive VAT system, as it is expected to create a more level playing field for all suppliers in the same national market and result in less distortion of the EU market.

4.3. A functioning OSS is a vital part of a destination-based system. The Commission's initiatives, such as the proposed extension of the Mini-One-Stop-Shop to all B2C services as well as B2C sales of goods, both intra-Community and from outside the Community, is therefore welcome. Without a fully functioning 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.

4.4. The EESC underlines the importance of tax neutrality between different companies, pointing out that VAT payments should not be allowed to adversely affect the liquidity of some businesses. In this respect, importers of goods in specific national markets should be required to pay VAT when the products are actually put on the market and not when such products are merely imported and deposited waiting for their subsequent commercialisation.

4.5. As regards the first phase of the action plan, which focuses on certain supplies of goods, the Committee calls on all the institutions involved in the process of reforming the VAT system to explore how a common system for services and goods can be rolled out as quickly as possible, thereby alleviating the foreseeable problems arising from the existence of two systems, one for goods and the other for services.

4.6. This is particularly relevant given that in the digital economy, the dividing line between goods and services has become increasingly fuzzy and likely to change further in the current environment in which technology is evolving at a much greater pace than the rules developed by the relevant institutions. The EESC therefore calls on the European Commission to take into consideration and possibly address this matter within the ongoing reform of the VAT system.

⁽⁸⁾ OJ C 389, 21.10.2016, p. 43.

4.7. The EESC considers that the VAT rates policy pursued by the Commission and aimed at giving Member States greater flexibility on reduced rates should, in principle, be compatible with the country of destination principle, given that under this system there is likely to be less distortion of trade.

4.8. Giving Member States greater freedom to set their own rates must not, however, lead to the system as a whole becoming fragmented or excessively complex. Therefore, a proportionate approach needs to be taken, leading to a clear and predictable implementation framework, in the interests in particular of SMEs and in order to reduce compliance costs for economic operators in general ⁽⁹⁾.

4.9. It follows that the number of exceptions allowed should be limited to specific and properly justified cases, so as to ensure a uniform and predictable regulatory framework.

4.10. With regard to possible exceptions, the Committee considers that the objective of supporting social innovation and strengthening the European social pillar embraced by the Commission could justify reduced rates for social enterprises and the social services sector, based on the specific initiatives that Member States will decide to undertake to this end within the new legal framework regulating VAT.

4.11. It is important that an online information tool be set up to allow businesses to keep track of the different rate systems of the 28 Member States. This tool has to be easily accessible, reliable and preferably in all EU languages.

5. The certified taxable person

5.1. With regard to the CTP, the EESC notes that the Commission deems this concept to be important for the transition towards a VAT system based on the destination principle and agrees that businesses whose tax reliability is proven should be able to benefit from appropriate simplification measures.

5.2. While the CTP and its use of reverse charge may have the potential to offer substantial relief for businesses, we believe that in order for businesses, and SMEs in particular, to be able to apply for this concept, it is essential that harmonised, clear and proportionate criteria and rules be implemented across the Member States to facilitate the broadest possible access to CTP status.

5.3. Since it will take some time for Member States to agree on CTP and for the vast majority of companies to be certified, and since the quick fixes outlined in the proposal are so important for the functioning of the VAT system, the EESC would encourage Member States to adopt the quick fixes for all businesses before CTP is fully developed.

5.4. The EESC also agrees that, in order to make the best use of the status of CTP properly developed electronic storage systems need to be established, which should be easily accessible to national tax authorities.

5.5. However, given the current wording of the Commission's proposal, it is not possible to put forward a more thorough and detailed assessment of this concept, since it is still vague, and it is not clear what the practical implications of implementing it will be.

5.6. At this stage, the EESC would thus simply point out that the instrument of CTP should be backed up by clear and transparent implementation criteria. In this respect, it is worth noting that setting criteria similar to those regulating the Authorised Economic Operator might result in reduced access to the CTP system and the quick fixes, involving only a tiny minority of the business community. The CTP system risks being accessible to very few businesses.

5.7. This concept must be subject, particularly in the first phase of implementation, to careful monitoring by the European Commission, to prevent the benefits generated by the use of the CTP concept in terms of tax simplification and ease of compliance being outweighed by a loss of legal certainty and regulatory uniformity in the internal market.

⁽⁹⁾ See the EESC opinion on the *Action plan on VAT*, (OJ C 389, 21.10.2016, p. 43), points 3.1.6 and 3.1.7.

5.8. With reference to the proposal amending Implementing Regulation No 282/2011 as regards certain exemptions for intra-Community transactions, the EESC notes that the Council's request that the Commission clarify and simplify the legal framework on exemptions appears to be a useful tool for reducing fraud and limiting compliance costs for SMEs.

6. Next steps and final comments

6.1. In general, the EESC considers it important for the Commission to carry out a comprehensive regulatory impact assessment aimed at ascertaining — including in quantitative terms — the practical implications of the action plan on VAT as a whole for individuals, businesses and tax authorities.

6.2. Finally, the EESC notes — with reference to its previous opinion on the *Action plan on VAT* ⁽¹⁰⁾ — that it is important to implement all of the various parts of the action plan as an indivisible whole.

6.3. The Committee would again point out that all efforts should be made to implement the definitive VAT system within a reasonable timeframe; otherwise, there is a risk that the stated objectives could be compromised or only partially achieved, to the detriment of the internal market and the European companies operating within it.

Brussels, 14 March 2018.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽¹⁰⁾ OJ C 389, 21.10.2016, p. 43.