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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

**On a coordinated strategy to improve the fight against VAT fraud in the European
Union**

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1. INTRODUCTION

In May 2006 the Commission presented a Communication¹ with a view to launching at EU level a profound debate on the need for a co-ordinated approach in the fight against fiscal fraud in the internal market. Intense and fruitful discussions followed within the different European institutions, with Member States and business representatives.

The Commission's Communication of 23 November 2007² concerning some key elements contributing to the establishment of the anti-fraud strategy within the EU and the accompanying report on the state of play of the discussions within the Anti Tax Fraud Strategy (ATFS) expert group³ provide a good overview of the follow-up that has been given until then to the 2006 Communication. These documents served as the basis for the Council conclusions of 4 December 2007⁴.

In February 2008 the Commission presented a Communication on its analysis of two more '*far reaching*' measures to change the VAT system in order to fight fraud⁵, namely a system of taxation of intra-Community transactions and a general reverse charge system. The Commission also demonstrated its willingness, under certain conditions, to work out a pilot project in order to establish whether a reverse charge could be an appropriate response to tackle VAT fraud or not.

The following ECOFIN Council could, however, not agree on Conclusions as regards the issues raised in this Communication. In the absence of political agreement on the more '*far reaching*' measures,, the Commission has decided to concentrate its efforts exclusively on the so-called '*conventional*' measures to enhance the traditional methods in the fight against tax fraud.

The objective of the present Communication is to set out a coherent short term action plan and a time schedule for the envisaged actions. This Communication intends also to initiate a reflection on a longer term scale notably about the relation between taxpayers and Tax Administrations and the opportunities offered by IT in that context.

It should be recalled that the Communication presented in 2006 covered all taxes. Subsequent discussions however made it very clear that absolute priority needs to be given to VAT fraud.

This Communication therefore only relates to VAT and the recovery of taxes. This does not mean that no actions will be undertaken in other areas; in particular the Commission will present shortly a proposal in view of strengthening the administrative co-operation arrangements for taxes other than VAT and the harmonised Excises.

¹ COM(2006)254 final, 31.5.2006

² COM(2007)758 final, 23.11.2007

³ SEC(2007)1584, 23.11.2007

⁴ Council Conclusions 4 December 2007, 15698/07 (Presse 270)

⁵ COM(2008)109 final, 22.2.2008 and SEC(2008)249, 22.2.2008

2. NECESSARY COMMUNITY APPROACH

The need to establish an anti-fraud strategy to combat tax fraud at Community level to complement and support national efforts has been recognised by the Council in its conclusions of November 2006 and June 2007⁶. The European Parliament has also expressed its support for an EU fiscal fraud strategy.

An efficient fight against VAT fraud within an internal market requires a common approach both in the legislative field but also on certain aspects of the operational management of the VAT system which until now have been left exclusively to the Member States.

Indeed, operational differences between Member States can provide fraudsters the opportunity to undermine the efficiency of the underlying Community legislative measures by shifting their operations to those Member States that have not implemented these measures in an effective way.

Differences in national procedures are also amplifying considerably business compliance costs. The national procedures put in place for the fulfilment of VAT obligations by electronic means is a good example of this.

When elaborating legislative proposals the Commission carefully balances the need for a Community approach and the respect of national structures and the practices of Tax Administrations. It is essential for the efficiency of the measures proposed that this carefully defined balance is respected and maintained during the whole negotiation process within the institutions.

3. A SHORT TERM ACTION PLAN

The reports already presented by the Commission⁷ on the state of play of the discussions within the Anti Tax Fraud Strategy (ATFS) expert group gave an overview of the different measures that have been analysed.

Guiding principles have been:

- the need of Tax Administrations for quick and accurate information;
- optimising the use that Tax Administrations make of this information;
- enhancing the possibilities to act against fraudsters;
- respecting the needs and expectations of legitimate businesses, in particular not to be exposed to unnecessary administrative burdens leading to additional compliance costs and to have legal certainty guaranteed.

A number of suggested measures have been abandoned because they did not respect these guiding principles.

⁶ Council Conclusions 28 November 2006, 15502/06 (Presse 332) and 5 June 2007, 10319/07 (Presse 126)

⁷ SEC(2007)740, 25.05.2007 and SEC(2007)1584, 23.11.2007

For other measures, it will be essential to find the right balance between these principles which are to a certain extent conflicting.

The measures that the Commission will propose or implement can be grouped into three categories. A first category aims at preventing potential fraudsters from abusing the VAT system, a second one aims at enhancing the tools for the detection of VAT fraud, and a third category aims at improving the possibilities for the collection of tax lost as a result of fraud and the punishment of fraudsters.

3.1. Measures enhancing tax systems and tax co-operation with a view to the prevention of VAT fraud

3.1.1. *Common minimum standards for the registration and deregistration of taxable persons*

A correct and valid VAT identification number is an essential element in the current VAT arrangements as it determines the applicable rules and obligations notably for intra-Community trade. Both Tax Administrations and business need to rely on correct information about the VAT status of a trader. However, currently this data is not always reliable. Some Member States keep VAT identification numbers valid even where the taxable person concerned is proven to be involved in VAT fraud and has gone missing. Moreover, the moment of registration is also crucial for verifying whether the business will carry out a real economic activity. Fraud can be prevented by making it more difficult for potential fraudsters to present themselves as taxable persons registered for intra-Community trade.

Businesses and Tax Administrations must be able to rely on the information they can obtain on the VAT status of a person. Confidence in the information could be increased by the introduction of minimum standards at EU level for registration and deregistration of taxable persons in VIES. These minimum standards include objective data to be provided by the trader before obtaining a VAT identification number, to the obligation to eliminate the VAT identification number from the VIES database when certain conditions are met and to certain objective criteria that have to be fulfilled during the registration and deregistration procedures. In its conclusions of 4 December 2007, the Council recognised the importance of having up-to-date information on the status of traders for the correct functioning of the VAT arrangements ruling intra-Community trade and supported further work on a common approach to registration and de-registration of traders. The Commission will present a legislative proposal including common minimum standards as envisaged in this paragraph.

3.1.2. *Confirmation of information*

The information concerned needs also to be made available to economic operators in the most efficient way. At present traders can verify the validity of the VAT identification number of their business partners identified for VAT purposes in another Member State. However, only certain Member States provide information about the name and address of that business partner. An agreement has already been reached to ensure that confirmation of the name and address can be obtained electronically for all Member States. This confirmation should also offer more legal certainty to the requesting person as it will be binding for the Tax Administration

concerned. The Commission intends to lay down the detailed arrangements in a legislative proposal.

3.1.3. *Invoicing rules*

Invoicing is a central element in the current VAT system. A legislative proposal aiming at a simplifying, harmonising and modernising the current rules on invoicing should reduce administrative burdens for businesses. Facilitating compliance with these rules will clearly have a fraud preventive effect.

Measures such as common storage periods and harmonised rules concerning the time by which an invoice must be issued can facilitate controls in the Member States. Examples exist today whereby the rules applicable on invoicing are those of the Member State of the customer, for a reverse charge supply, but for the tax control of the supplier, established in another Member States, different rules are applicable.

3.1.4. *Chargeability on intra-Community transactions*

The exchange of information between Member States about intra-Community transactions is a key element in allowing the Member State of purchase to detect relevant supplies. This requires, however, that Member States have the same interpretation as to the chargeability of the VAT for intra-Community supplies and acquisitions of goods to ensure reporting takes place in both Member States at the same time. Different opinions lead to mismatches reducing the usability of the information collected. Such differences undermine the utility of the legislative proposal on reducing timeframes for the recapitulative statements and VAT returns currently being discussed in the Council. The Commission therefore will present a proposal in view of removing these differences.

3.2. **Measures enhancing the efficiency of Tax Administration with a view to the detection of VAT fraud**

The detection of cross-border VAT fraud in the European Union is largely dependant on information about intra-Community transactions. This information is submitted by traders and exchanged between the Member States according to the arrangements set out in 1993. In order to fight against fraud efficiently in the current business environment, the timing, the available information, the targeting of the information, its quality and its treatment have to be enhanced.

3.2.1. *Legislative proposal to combat tax evasion connected to intra Community transactions: reducing timeframes*

In accordance with the Council's conclusions of 5 June 2007 the Commission has already presented in March 2008 a legislative proposal aimed at the reduction of the timeframes for both the reporting of intra-Community transactions by traders and the exchange of information between Tax Administrations⁸. The aim of this proposal is the ensure that Tax Authorities of the destination Member States are informed much quicker than today about intra-Community acquisitions taking place on their territory and therefore have the possibility to act at an earlier stage.

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COM(2008)147 final, 17.3.2008

3.2.2. *Exemption of VAT at importation*

The abuse of the exemption of VAT at importation where followed by an intra-Community supply or transfer, has been identified as a weakness of the current rules in detected VAT fraud schemes. Indeed, neither the information to be exchanged between the customs and Tax Administrations of the importing country are properly organised nor is relevant information efficiently transmitted to the following Member State. Therefore, the Commission will propose harmonised rules at Community level for the application of this exemption.

3.2.3. *Enhancing cooperation between Member States*

The Commission is currently preparing a report evaluating the functioning of administrative cooperation. This will be the first report since the new Regulation for VAT administrative cooperation came into force in 2004.

This report will concentrate on the elements which have been newly introduced with the aim of improving administrative cooperation. Where information is of major importance for an effective control in another Member State it should be exchanged automatically, this being a major objective of the 2004 Regulation. This report provides an opportunity to review these elements and if necessary, to amend them in order to improve their effectiveness.

In addition several actions have been undertaken under the Fiscalis program to ensure exchange of best practice and cooperation in terms of control. In the area of auditing the Commission is working on the development and improvement of tools for e-auditing. The Commission also tries to encourage the Member States to make more use of the possibility of multilateral controls, supported by a guide that was drafted to assist auditors and coordinators when using this control tool. Furthermore, project groups have been initiated to examine topics that are related to the quality of information exchanged between Member States, to share best practises in risk analysis and management (also supported by a manual) and the abuse of cash registers. Seminars and workshops have been organised to enable Member States to share experiences and knowledge in the field of combating VAT fraud.

Administrative co-operation is indeed a key feature of the current VAT system which cannot be managed by Member States in isolation. The Commission acknowledges that such co-operation is demanding on staff resources and, consequently, that less demanding ways and best practices should be developed. .

3.2.4. *Automated access to data*

The Commission would like to highlight that, at the moment, even to obtain basic information about traders established in other Member States, requests have to be sent to competent authorities of other Member States. In practice this process is time-consuming and often the deadlines for replying are not respected. Therefore, the Commission will propose establishing a sound legal framework for allowing a competent authority of one Member State to have automated access to specific data available in the database of another Member State which relates to the identification and activities of a taxable person. It is expected that on one hand such an automated access will reduce the number of requests and therefore reduce the use of human

resources and on the other hand will speed up the information exchange. Obviously, such access to a database cannot include sensitive information e.g. about price practices etc.

3.2.5. *EUROFISC*

Another promising approach is the creation of a European network, called Eurofisc, for closer operational cooperation between Member States in the fight against VAT fraud. Eurofisc's primary tasks would be to provide a multilateral early warning mechanism for combating VAT fraud that can hopefully develop to some kind of common risk assessment for intra-Community transactions, to coordinate the exchange of information and the work of participating Member States in acting on warnings received, as it has been already implemented by the Eurocanet network created by the Belgian Tax Administration and supported by the Commission/European Anti-Fraud Office.

The Council in its conclusions of 7 October 2008⁹ has agreed on the main characteristics of such a network. The Commission is participating in this debate with great interest and is working on a proposal to create a sound legal base for such a network.

3.3. **Measures enhancing Tax Administration capacity to collect and recover taxes**

The Commission will propose measures to enhance the possibilities for Tax Administrations to recover VAT losses in cross border cases. Moreover, it will encourage Member States to take action at a judicial level against fraudsters on their territory whose intervention led to VAT losses in another Member State.

3.3.1. *Joint and several liability*

The supplier's obligation to report his intra-Community transactions is designed in order to provide the Member State of the customer with information about taxable transactions on its territory. Non-compliance with these reporting obligations deprives that Member State of information which could have led to the detection of a VAT fraud.

It should be noted that the provision for joint and several liability already exists in the VAT Directive but so far its use by Member States has been limited to domestic transactions. Therefore, it can be justified to consider the noncompliance with the reporting obligation in relation with cross-border transactions as a reason to hold the operator jointly and severally liable for tax losses occurred in the Member State that had no possibility to take action against fraud in the absence of the relevant information.

Such an approach will have two consequences. It should lead to a substantial increase in the quality of the reporting which is a key feature for control. Moreover, by providing this additional tool to tax authorities, the setting up of fraud schemes becomes more complicated.

⁹ Council Conclusions 7 October 2008, 13784/08 (Presse 279)

3.3.2. *Recovery of taxes*

The Commission will present a proposal which intends to improve the capacity of Member States in cross border collection of taxes. Uniform instruments permitting enforcement or precautionary measures should reduce the administrative burden for the authorities concerned and allow quicker reactions which are crucial for the success of such co-operation.

3.3.3. *Shared responsibility for the protection of all Member States revenues*

The ECOFIN Council of 4 December 2007 invited the Member states to put in place, at national level, appropriate legislation in order to ensure a comparable protection in terms of sanctions and criminal proceedings against VAT fraudsters, regardless of whether the committed fraud leads to losses of revenue on their own territory or on the territory of other Member States.

A number of Member States have given a follow up to this invitation and started internal discussions on this issue. Other Member States did not take any action until now.

The Commission insists on the need to have in all Member States appropriate protection of all VAT revenue independently of the Member State to which it is due. It will continue to monitor the follow up in the various Member States and will not hesitate to make necessary proposals in case a co-ordinated and voluntary action is not leading to appropriate results.

3.4. **A set of legislative proposals**

The implementation of most measures set out above requires proposals from the Commission for which the European Parliament and the European Economic and Social Committee need to be consulted and for which a debate within the Council is needed for adoption by unanimity.

Considering the variety of measures needed and the necessity to modify several pieces of EU legislation, the Commission has decided to present these measures in three packages depending on the principal legal text that needs modification taking also into account the urgency of measures and the advancement of the preparatory works.

As already mentioned above, a first legislative proposal was presented in March 2008 regarding the reduction of timeframes in order to speed up the exchange of information between Member States.

The first set of upcoming proposals focuses on the collection and *recovery of taxes* in cross border situations¹⁰.

A second package relates to the strengthening of administrative cooperation between Member States.¹¹ The proposals require substantial changes to the existing

¹⁰ The proposed measure relate to "Joint and several liability" (par. 3.3.1), condition for VAT exemption at importation (par.3.2.2) and "Recovery of taxes" (par.3.3.2).

Regulation 1798/2003. Further changes may result from the report the Commission is due to make on the functioning of administrative cooperation. Since these changes are numerous and in order to improve the coherence in its legislative framework, the Commission considers it more appropriate to propose a complete recast of the Regulation.

The third package of legislative proposals will contain certain anti-fraud aspects, but will be aimed more generally at improving the functioning of the VAT system and in particular invoicing provisions.

4. REFLECTIONS GOING BEYOND THE IMMEDIATE PROPOSALS

Technological developments have, in recent years, altered the way in which businesses and Tax Administrations communicate. Most Member States allow, or in certain cases require, declarative obligations to be fulfilled by electronic means. A number of Member States have made progress in the area of e-auditing, but legal as well as administrative barriers still obstruct its further development. These advances however often have limited impact as they are constrained by the established traditional framework for the relationship between taxpayers and the tax authorities which involves reporting at regular intervals and occasional audits. It is fair to say that generally the management of the VAT system in the EU has not kept pace with the developments in information technology.

A number of countries outside Europe have indeed already progressed further and have implemented procedures whereby information is exchanged - either in real time or on a daily basis – between taxpayers and tax authorities thus improving control tools considerably.

Certain Member States are exploring new ways of dealing with taxpayers and are having discussions with businesses about compliance and monitoring of activities, with the aim of reducing the involvement of the Tax Authority and decreasing the administrative burden for businesses. There is both an opportunity to build on established models and the need to prevent a further complication for business as a result of VAT requirements becoming more and more divergent. The Commission would therefore strongly suggest to Member States to co-ordinate their IT developments.

Although the management of the VAT system is primarily the responsibility of the Member States, it is in the interest of both traders and tax authorities that this reflection is carried out at an EU level. The Commission is more than willing to launch and coordinate the discussions on this longer term approach. It would be crucial for the success of such work to get all parties concerned actively involved in this process from the start and that everyone participates with an open mind.

¹¹ The proposed measures relate to "Automated access to data (par. 3.2.4), "Confirmation of name and address of taxpayers in VIES" (par. 3.1.2), "Common minimum standards for registration and deregistration in VIES" (par. 3.1.1), "Shared responsibility for the protection of all Member States Revenues" (par. 3.3.3) and "EUROFISC" (par. 3.2.5).

The Commission would therefore suggest creating an ad hoc group involving tax authorities and representatives of large as well as small and medium enterprises. The objective of this ad hoc group would be to examine how the use of IT tools could improve the relationship between taxpayers and tax authorities in terms of VAT obligations, audit, and communication in general to their mutual benefit and to which extent an agreement on the collection of core data would be feasible – notwithstanding the possibility to ask for extra data when necessary.

The exact mandate as well as the working methodology – use of subgroups working on specific themes - will have to be decided at a later stage in agreement with all parties concerned. What is important at this stage is that Member States as well as business representatives agree to put in the necessary expertise and resources in order to give this exercise a chance of success.

This need for a longer term approach will be one of the topics of the upcoming seminar organised by the Dutch tax authorities on VAT fraud planned for the end of January 2009. It will provide an opportunity for Member States, representatives of businesses and the Commission to have a first exchange of views on this issue.

Moreover, this work is important in the context of the commitment of both Member States and Commission to reduce administrative burdens for business of which VAT constitutes a large part.

5. CONCLUSION

The short term action plan set out above is the concrete result of two years of extensive discussions with Member States. It provides a global approach with the aim of enhancing the tools for Tax Administrations for tackling VAT fraud at different stages in the process.

The Commission will take its responsibility by submitting these legislative proposals in due time. It is conscious that a number of these proposals are quite substantial and touch on the difficult balance between burdens on business and effective tax administration; a sensitive issue that may provoke an extensive debate when the Commission tables its concrete proposals.

Moreover, certain long established administrative practices will need to be changed and Member States will have to show the necessary flexibility and willingness to adapt. Certain measures such as the automated access to data will require significant work at a technical level for which Member States must be prepared to put the necessary resources.

When looking at each of the abovementioned measures separately, it is clear that none of them represents the "one" single and global solution for eliminating VAT fraud.

Each individual measure should bring added value but it is only their implementation as a whole which will provide to the tax authorities an adequate framework for combating VAT fraud.

The success of the anti-fraud strategy at EU level will finally depend on what will be adopted by the Council and how quickly these measures afterwards will be put into practice. The main responsibility will therefore lie in the hands of the Member States.

Nevertheless, the Commission does not consider this action programme to be the final product but sees it as a first major step in a coordinated approach to tackling VAT fraud in the EU. In the view of the Commission, these efforts have to be continued and it calls upon all other parties concerned to continue participating in this exercise as actively as they have done until now.

Annex 1: Legislative proposals

Proposal presented in March 2008

Measure	Necessary changes in legislation
Reducing timeframes (3.2.1.)	VAT Directive 2006/112/EC and Regulation 1798/2003

A first set of proposals

Measures	Necessary changes in legislation
Joint and Several Liability (3.3.1.)	VAT Directive 2006/112/EC and potentially an Implementing Regulation
Fixing the conditions for the VAT exemption at importation (3.2.2.)	VAT Directive 2006/112/EC and potentially an Implementing Regulation
Mutual assistance in Recovery (3.3.2.)	New Regulation

A second set of proposals.

Measures	Necessary changes in legislation
Automated access to data (3.2.4.)	Recast of Regulation 1798/2003
Confirmation of name and address of taxpayers in VIES (3.1.2.)	Recast of Regulation 1798/2003
Common minimum standards for registration and deregistration in VIES (3.1.1.)	Recast of Regulation 1798/2003 and potentially an Implementing Regulation
Shared responsibility for the protection of all Member States Revenues (3.3.3.)	Recast of Regulation 1798/2003
EUROFISC (3.2.5.)	Recast of Regulation 1798/2003

A third set of proposals.

Measures	Necessary changes in legislation
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Invoicing rules (3.1.3.)	VAT Directive 2006/112/EC
Chargeability on Intra-Community transactions (3.1.4.)	VAT Directive 2006/112/EC