



EUROPEAN COMMISSION

Brussels, 12.12.2018
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REGULATORY SCRUTINY BOARD OPINION

Proposal for a Council Directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers

Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud

{COM(2018) 812 final}

{COM(2018) 813 final}

{SWD(2018) 487 final}

{SWD(2018) 488 final}



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2018)

Opinion

Title: Impact Assessment / Exchange of VAT-relevant payment data

(version of 30 May 2018)*

Overall opinion: POSITIVE

(A) Context

Electronic commerce facilitates business-to-consumer (B2C) cross-border supply. However, e-commerce also creates new possibilities for VAT fraud by dishonest traders located both inside and outside the EU. The e-commerce B2C VAT fraud amounts to an estimated EUR 5 billion annually.

E-commerce B2C VAT fraud is a real challenge for Member States' tax administrations. They have little information to identify the online businesses. This is because the necessary information to assess VAT liabilities is held by payment service providers that are often established in another jurisdiction. The tax administrations do not have the administrative capacity to deal with and exchange between each other the massive volume of information needed to control and fight against e-commerce related VAT fraud.

This impact assessment examines ways to further improve administrative cooperation, detect e-commerce VAT fraud and promote fair competition. It focuses on transmission by payment services providers of VAT-relevant payment data to the tax authorities and mutual exchange or sharing this information among anti-fraud officials of Member States.

(B) Main considerations

The Board notes the clear explanation of the e-commerce related B2C VAT fraud problem.

The Board gives a positive opinion, with a recommendation to further improve the report with respect to the following key aspects:

- (1) The description of the context is not sufficiently clear on the political support behind the initiative and the urgency to act.**
- (2) The baseline does not adequately project the potential impact of other recently adopted or proposed initiatives designed to combat VAT fraud. The differences between the options are not clearly described. As a result, the reasons for their distinct costs and impacts are not evident.**

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

(C) Further considerations and recommendations for improvement

(1) The report could better explain why fraud was not tackled in the e-commerce package, and why the exchange of information on e-commerce fraud remains problematic and limited. It could more convincingly present the political support and calls from the Member States to establish an exchange of VAT payment data. The problem definition needs to make more evident the urgency for the EU to act.

(2) The report should establish a clear baseline. This should represent a no-policy change scenario projecting the potential impact of all recently adopted or proposed initiatives designed to combat VAT fraud through enhanced cooperation and exchange of information between administrative, judicial and law enforcement authorities. The report should also better explain how this initiative complements the Commission's 2017 proposal designed to strengthen administrative cooperation in the field of VAT, as well as actions to tackle third-country fraud (e.g. bilateral cooperation or administrative cooperation under the OECD).

(3) The report should clarify the differences between the options, in particular regarding the kind of information collected and exchanged. It should describe in more detail the different functionalities of the centralised and decentralised systems, also in terms of data availability and processing.

(4) The report could better explain the impact of each option in terms of both benefits and costs. It should better explain why a decentralised system of exchange would cost more and be less beneficial. The costs and burdens for businesses, in particular for the payment service providers, should be analysed and presented in greater depth. The report could draw on the experience of the Member States that already have a similar system to better explain the potential benefits of the initiative. The report could also examine the proportionality of the options in justifying the preferred solution.

(5) The report should better analyse risks to the success of the initiative. It should in particular analyse the degree to which the initiative will address fraud involving third countries. It seems to underestimate associated risks of trade diversion.

(6) The report should better explain what the safeguards are on processing personal data in the case of an EU central repository. It would need to explain whether Regulation 45/2001 still provides suitable protection and how it interacts with the GDPR.

The Board takes note of the quantification of the various costs and benefits associated with the preferred option of this initiative, as assessed in the report considered by the Board and summarised in the attached quantification tables.

Some more technical comments have been transmitted directly to the author DG.

(D) RSB scrutiny process

The lead DG shall ensure that the recommendations of the Board are taken into account in the report prior to launching the interservice consultation.

The attached quantification tables may need to be adjusted to reflect any changes in the choice or the design of the preferred option in the final version of the report.

Full title

Proposals for Council Directive, a Council Implementing Regulation and a Council Regulation on mandatory transmission and exchange of VAT-relevant payment data.

Reference number	PLAN/2017/2023
Date of RSB meeting	27 June 2018

ANNEX: Quantification tables extracted from the draft impact assessment report submitted to the Board on 27 June 2018

(N.B. The following tables present information on the costs and benefits of the initiative in question. These tables have been extracted from the draft impact assessment report submitted to the Regulatory Scrutiny Board on which the Board has given the opinion presented above. It is possible, therefore, that the content of the tables presented below are different from those in the final version of the impact assessment report published by the Commission as the draft report may have been revised in line with the Board's recommendations.)

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	Amount	Comments
Direct benefits		
VAT collection increase		The investment costs of the tax authorities will be radically outweighed by the VAT revenue increase due to the fight against VAT fraud. An initial investment of EUR 180.000 in Finland (where such a system already exists at national level) led to a collection of more than EUR 16 million of VAT collected after targeted controls. As a result of the VAT collection increase, it is expected that the VAT gap will be reduced in the e-commerce sector.
Increased legal certainty for payment providers		Payment service providers will deal with the Member States' tax authorities through harmonised procedures and common reporting standards. This may first lead to a better predictability and less errors. Secondly, this may subsequently lead to some limited costs savings as payment providers will implement standardised IT systems and procedures for reporting in different EU countries.
Indirect benefits		
Level playing field		European businesses , including SMEs , both in the e-commerce and traditional economy, will benefit from the fight against VAT fraud. The number of fraudsters that benefit from unfair competition (thanks to the VAT fraud) is supposed to decrease, thus leading to a more level playing field.
Spill over effect on consumers		Businesses involved in e-commerce VAT fraud usually pay little attention to ensuring a good level of customer support, ensuring the legal guarantee for the products they sell and respecting intellectual property rights. This assumption has been confirmed by some answers in the public consultation. Even though the eviction of fraudsters from the market does not necessarily trigger a positive effect on those issues, there is a reasonable expectation that a number of customers will not be any more victims of poor customer services or the non-respect of intellectual property.

II. Overview of costs – Preferred option						
		Payment service providers		Tax administrations		European Commission
		One-off	Recurrent	One-off	Recurrent	One-off
Transmission	Direct	limited	limited			

payment data	costs						
	Indirect costs		limited				
Storage and exchange of payment data	Direct costs		limited	EUR 7.5 million	EUR 2.9 million (1 year)	EUR 11.8 million	EUR 4.5Million (1 year)
	Indirect costs				limited enforcement costs		