

**Opinion of the European Economic and Social Committee on the Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion connected with intra-Community transactions and the Proposal for a Council Regulation amending Regulation (EC) No 1798/2003 to combat tax evasion connected with intra-Community transactions**

COM(2008) 147 final — 2008/0058 (CNS) 2008/0059 (CNS)

(2009/C 100/28)

On 3 April 2008 the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the:

*Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion connected with intra-Community transactions and the*

*Proposal for a Council Regulation amending Regulation (EC) No 1798/2003 to combat tax evasion connected with intra-Community transactions*

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 October 2008. The rapporteur was Mr SALVATORE.

At its 448th plenary session, held on 22 and 23 October 2008 (meeting of 22 October), the European Economic and Social Committee adopted the following opinion by 114 votes to one with one abstention:

## 1. Conclusions and recommendations

1.1. The European Economic and Social Committee welcomes the proposal for a Council Directive amending the common system of value added tax to combat tax evasion connected with intra-Community transactions and the related proposal for a Council Regulation amending Regulation (EC) No 1798/2003.

1.2. The proposed amendments meet the growing demand for simplification, effectiveness and efficiency and forge a clearer link between measures to streamline administrative procedures and the capacity of Member States to combat and curb the problem of intra-Community fraud.

## 2. Introduction

2.1. The proposal to amend the Directive and Regulation under review is the result of lengthy discussions within the EU institutions. Its aim is to provide the relevant authorities with effective, binding instruments with which to eliminate or at least curb fraudulent conduct that is often aimed at distorting the proper functioning of the internal market.

2.2. It should be borne in mind that in the Community context, fraud is an offence that manifests itself in various forms and different fields of activity, ranging from the criminal counterfeiting of alcohol and tobacco, and smuggling, to direct taxation offences, and, most commonly, VAT evasion.

2.3. Particular attention has been given to VAT evasion. In the background is the idea of thoroughly overhauling the current VAT system for intra-Community trade, which, in accordance with the principle of equal treatment of national goods and goods from other EU Member States, is based on the principle of applying tax in the receiving country, i.e. in the Member State in which the purchaser is registered for VAT.

2.4. While this principle — which has in effect governed the transitional arrangements for intra-Community trade — has, on the one hand, enabled goods to move between EU countries untaxed and therefore allowed the free movement of goods, it has also, on the other hand, substantially damaged the EU's financial interests. We need only think of the established practice in the EU of *carousel fraud*, neatly summed up in the 2006 *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee concerning the need to develop a co-ordinated strategy to improve the fight against fiscal fraud* <sup>(1)</sup> with the following definition: 'One typical form of fraud, termed "carousel" fraud, is where transactions within a Member State (on which VAT is charged) are fraudulently combined with intra-Community transactions (on which no VAT is charged between the contracting parties)'.

2.5. The Committee has already addressed this issue on several occasions and provided useful recommendations; these have been duly taken into account in drawing up this opinion <sup>(2)</sup>.

<sup>(1)</sup> COM(2006) 254 final.

<sup>(2)</sup> EESC opinions on the *Proposal for a Council Directive on the common system of value added tax (recast)*, OJ C 74, 23.3.2005, p. 21 and on the *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee concerning the need to develop a co-ordinated strategy to improve the fight against fiscal fraud*, OJ C 161, 13.7.2007, p. 8.

### 3. General comments

3.1. Given the clear need to combat a now widespread phenomenon, estimated to cost between 2 % and 2.5 % of EU GDP, the proposed Council Directive amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion connected with intra-Community transactions, together with the proposed Council Regulation amending Regulation (EC) No 1798/2003 to combat tax evasion connected with intra-Community transactions, backs up the commitment made in a previous, comprehensive communication: *Communication to the Council concerning some key elements contributing to the establishment of the VAT anti-fraud strategy within the EU* <sup>(1)</sup>, clearly setting out the measures to be adopted.

3.2. In fact, the Commission's approach had already emerged from the above communication, which pointed out that *'Notwithstanding its commitment to complete an analysis of potential changes to the VAT system, the Commission sees no contradiction in continuing in parallel a debate on the so-called conventional measures. Providing the tax authorities with more modern and efficient tools for combating tax fraud is an objective to be pursued in any event, independently of the decisions which will be taken on the more far reaching measures'*.

3.3. Given the medium-term shelving of the proposal to make substantial changes to the VAT system, including the idea of radically changing the system of VAT collection, the Committee welcomes the Council initiative to introduce less ambitious, though effective amendments to current VAT legislation.

3.4. The Committee welcomes the proposed amendments; it points out that these specific adjustments to the VAT Directive meet the objectives of increased simplification and efficiency established inter alia during the preparatory work on the proposal. The amendments also forge a clearer link between measures to streamline administrative procedures and the capacity of Member States to combat and curb this transnational problem.

3.5. More specifically, the commitment set out in the explanatory memorandum accompanying the proposed Directive, to reduce 'the interval between the time at which a transaction takes place and the time at which the information is made available to the Member State' — i.e. to reduce to one month the period for declaring intra-Community transactions in the recapitulative statements, together with the proposal to reduce from three months to one month the period for transmission of this information between Member States — gives legal expression to the drive against creating disproportionate red tape. This must, however, be matched by greater investigative capacity and better risk management on the part of Member State tax authorities, in their bid to combat Community fraud.

3.6. Legal clarity, simplification of obligations and greater administrative cooperation would seem to characterise the other provisions amending Council Directive 2006/112/EC.

3.7. One such provision, in addition to the increased frequency of declarations, is the proposal to include among the information collected to combat tax evasion, data on intra-Community acquisitions of goods and services from a supplier established in another Member State for which the customer is liable for VAT. Another is the provision that purchasers or customers carrying out such transactions for an amount higher than EUR 200 000 will be obliged to submit their VAT returns monthly. There is also the amendment harmonising the rules for charging VAT on services in order to make sure that transactions are declared by the vendor and the purchaser during the same period.

3.8. In the Committee's view, these last regulatory provisions in particular encapsulate the *raison d'être* of the proposal to amend the Directive, striking a balance between the need for additional obligations, the reasons for cutting administrative costs (only a small number of businesses would be affected) and the provision of additional information by the financial authorities.

3.9. In other words, more frequent trade data transmission would have to be balanced by the capacity of tax authorities to handle much larger volumes of information, leading to more efficient cooperation mechanisms.

### 4. Specific comments

4.1. The Committee endorses the amendment to Article 250(2), which allows companies to submit VAT returns electronically. As well as reducing the margin of error in the filing of tax returns, this provision will cut costs for both the companies and the authorities.

4.2. It also approves the derogation for companies which would only occasionally or exceptionally fall within the scope of the amended provisions.

4.3. The Committee also welcomes the new Article 251(f), whereby VAT returns would now cover the acquisition of services as well as goods. This will enable more effective assessment of the exchanged information and help to prevent VAT evasion in the area of services.

<sup>(1)</sup> COM(2007) 758 final.

4.4. While it cannot be considered a complete deterrent, reducing the tax period to one month is certainly a considerable improvement. The aim is to harmonise the rules for charging VAT on services to enable the information submitted by the vendor and the purchaser to be properly cross-checked.

4.5. The corollary to these VAT return rules is the new timescale for submitting recapitulative statements.

4.6. Equally important is the subsequent provision authorising such data to be transmitted electronically.

4.7. The requirement for Member States to draw up a table correlating national transposition provisions with the Directive itself is a useful step. It is clearly intended as a more thorough means of checking the extensive range of information currently provided by companies to tax authorities, partly in view of the various forthcoming changes.

4.8. Finally, it should be pointed out that the amendment of the Directive necessitates corresponding amendments to the relevant Regulation.

Brussels, 22 October 2008.

The President  
of the European Economic and Social Committee  
Mario SEPI

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