



## EUROPEAN COMMISSION

Brussels, 25.3.2014  
C(2014) 1926 final

*Dear President,*

*The Commission thanks the Bundesrat for its Reasoned Opinion and its Opinion concerning the Commission proposal on the standard VAT return {COM(2013) 721 final} and for its support for the objectives to strengthen the internal market, reduce administrative burden and establish administrative simplification.*

*Regarding the principle of conferral, as laid down in Article 5 of the Treaty on European Union (TEU), the Commission would like to clarify that the area of VAT legislation is regulated by Article 113 of the Treaty on the Functioning of European Union (TFEU), according to which "the Council shall (...) adopt provisions for the harmonisation of legislation concerning turnover taxes (...) to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition". This Article is in no way limited to specific areas of VAT and could include any area of VAT legislation for which there is a need of harmonisation in order to ensure a smooth functioning of the internal market.*

*The 45th recital of the VAT Directive (2006/112/EC) already provides that the obligations of taxable persons should be harmonised as far as possible so as to ensure the necessary safeguards for the collection of VAT in a uniform manner in all the Member States. This is the case both to enable a smooth functioning of the internal market and to ensure the correct collection of VAT, which is an own resource of the EU. Title XI of the VAT Directive therefore already provides for the common rules on VAT obligations, including on VAT returns.*

*This is also clarified in the 45th recital of the VAT Directive which provides that the obligations of taxable persons should be harmonised "as far as possible so as to ensure the necessary safeguards for the collection of VAT in a uniform manner in all the Member States". It is therefore the Commission's view that according to the principle of conferral, it not only had a right but was bound to propose such a harmonisation. This view is further supported by the fact that a list of other procedural requirements (such as invoicing obligations, refunds procedures) is already included in the EU VAT legislation.*

*Regarding the principle of subsidiarity, as laid down in Article 5 of the TEU, the Commission would like to refer to the analysis contained in the Impact Assessment (SWD(2013) 427 final) which has been prepared by it in order to present the proposal and carried out in line with the requirement referred to in Article 5 of the Protocol on the application of the principles of subsidiarity and proportionality. As mentioned in this Impact Assessment, the VAT Directive*

*Mr Stephan WEIL  
President of the Bundesrat  
Leipziger Straße 3 – 4  
D-10117 BERLIN*

*only sets general EU common rules as regards VAT returns. As a consequence VAT returns are very different throughout the EU (from 6 boxes in Ireland to almost 600 boxes in Italy).*

*During the public consultation on the Green paper on the future of VAT, EU business considered the current system with various different VAT returns throughout the EU as a major obstacle to intra-EU trade and expressed an urgent need for a common VAT return form. The Impact Assessment confirmed the importance of this issue and indicated that currently 12 % of businesses submit VAT declarations in other EU Member States and this number is constantly increasing. In the context of the public consultation on the TOP10 most burdensome legislative acts for SMEs (an on-line [questionnaire](#) launched by the Commission as part of policy actions with the objective to minimise the regulatory burden for SMEs and adapt EU regulation to the needs of micro-enterprises (COM(2011) 803 final)), VAT obligations (especially VAT reporting) were considered by business as the most burdensome legislation.*

*The Impact Assessment also indicated that the costs of the current VAT return system amounts to EUR 30 billion whereas the standardisation of the VAT reporting obligations could potentially cut those costs by half – up to EUR 15 billion. The Impact Assessment and the consultations therefore clearly indicate that the national VAT regulations on the VAT obligations create major obstacles for cross border trade. It is clear that those obstacles cannot be removed by national measures and that harmonisation at the EU level is required.*

*As the Bundesrat correctly points out it is however not possible to achieve a single VAT return form due to difference in VAT regulations (such as VAT rates, payment deadlines which are closely related with the national budgetary policies). This is why the option chosen in the Commission's proposal leaves room for different requirements in the different Member States, in line with the principle of subsidiarity.*

*Regarding the principle of proportionality, the Bundesrat fears that after the introduction of the standard VAT return national legislators would no longer be able to decide freely to make use of any substantive law provisions or exceptions stipulated in the VAT Directive as this would be restricted by the standard VAT return. This fear is unfounded. The 26 boxes proposed by the Commission fully cover all the possible arrangements allowed by the VAT Directive; moreover, in Article 251(3) of the proposal the Commission envisages a specific box for the special arrangements or schemes outside the regular VAT arrangements.*

*Another issue that the Bundesrat raises in this regard is that the Proposal fails to achieve a genuine harmonisation and encroaches upon national control procedures. As mentioned above, the Commission has opted for a standard VAT return with built-in flexibility for Member States, precisely because the VAT directive provides for different options for Member States, national VAT rules are different and a single VAT return without any option for Member States is hardly achievable. The Impact Assessment however showed that this proposal (standardisation without a full harmonisation) would lead to almost the same savings as a full harmonisation.*

*The standard optional boxes would indeed allow businesses to rely on the common rules in all Member States and would allow Member States to use the data that is necessary for a specific country situation to combat fraud and conduct risk analysis.*

*By providing Member States options required for their national situation the Commission provides Member States with the tools to achieve their national goals and is therefore fully in line with the principle of proportionality.*

*Regarding the impact of the Proposal on fight against fraud, the Bundesrat took the view that the forms and procedures currently used in Germany may better ensure the monitoring of VAT compliance especially given the short deadline envisaged for the implementation of the proposal. The Commission takes note of the comment made on the deadline for implementation.*

*The Impact Assessment proved that in Member States with more boxes in the VAT return there was also a higher VAT gap. The Commission therefore concludes that a high number of boxes in the VAT return does not help fighting VAT fraud or increasing tax compliance. This is so because modern and efficient tax administrations should use other sources of information (databases from other administrations and registration information, which are often more reliable than VAT returns). In addition, the standardised boxes would help tax administrations better monitoring cross border activities of taxable persons and comparing VAT returns submitted in different Member States. The Commission is therefore convinced that the standard VAT return may serve the purpose of fighting against fraud.*

*The Bundesrat does not agree that the common procedures for correction should be set by making use of the comitology procedure. The Commission does not intend to intervene in national rules regarding corrections of VAT returns which could lead to penalties and calculation of interest. The time during which corrections will be allowed is therefore left to the discretion of Member States. The Commission's goal is merely to standardise the practical procedures regarding corrections so that taxable persons can apply common rules on certain technical aspects such as the box under which a correction should be reported. Due to the technical nature of the exercise, the comitology procedure was chosen as the most appropriate procedure to achieve this.*

*The Commission hopes that these clarifications address the concerns raised by the Bundesrat and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*