



EUROPEAN COMMISSION

*Brussels, 5.6.2018
C(2018) 3535 final*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax {COM(2017) 706 final}.

The Commission welcomes the support of the Bundesrat as regards measures to combat cross-border value added tax fraud, in particular with respect to access to data from vehicle register and expanding arrangements for cross-border cooperation.

The Commission acknowledges the need to comply with the principle of territoriality and to safeguard data exchanged, in particular personal data and trade secrets. Where further cooperation will be required from a Member State, national legislation would nonetheless be applicable and the proposal notably provides for arrangements to be laid down by the Member State concerned.

The proposal would indeed trigger new data and forms of exchange of existing value added tax information (e.g. Transaction Network Analysis), which could include sensitive data. Therefore data collection will be strictly targeted and circumscribed to operators supposedly involved in fraudulent transactions. The data will be kept only for the time necessary for analysis and investigations by national tax authorities empowered to enforce value added tax obligations. They will be used solely to identify potential fraudsters at an early stage and to put an end to fraudulent networks whose purpose is to abuse the value added tax system by perpetrating value added tax fraud. They will be accessed and used by authorised personnel alone.

Exchanges of information with the European Anti-Fraud Office and Europol would contribute greatly to combating the most damaging value added tax fraud, such as missing trader intra-Community schemes and abuses of customs procedure 42, which frequently involve criminal organisations. These organisations take advantage of their international networks to create advanced fraud schemes with the aim of extorting money from the national budgets.

*Mr Michael MÜLLER
President of the Bundesrat
Leipziger Straße 3 – 4
D – 10117 BERLIN*

Cooperation with such law enforcement authorities at the level of the European Union would allow for the cross-checking of Member States' information with criminal records, databases and other information held by the European Anti-Fraud Office and Europol and would help identify the real perpetrators of fraud and their networks. It is worth mentioning that the European Anti-Fraud Office is vested with the mandate to protect the financial interests of the European Union, including customs duties and value added tax own resources, against corruption and other illegal activities.

Concerning the regulatory powers in accordance with Article 58(2) of the proposal in relation to data to be exchanged under Article 17(3), it is to be noted that automatic exchange of information already takes place today under these same regulatory powers. However, the Commission takes due note of the reservation of the Bundesrat in this respect.

As regards the restriction to the rights of data subject in Article 55(5), the Commission takes note of the suggestion to better clarify the level of restriction.

Finally, as regards the Certified Taxable Person, the Commission refers to its reply to the Opinion transmitted by the Bundesrat (Opinion on {COM (2017) 566 final} to {COM (2017) 569 final}, Bundesrat document 661/17, Commission reply C(2018)878 of 20 February 2018).

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

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Pierre Moscovici
Member of the Commission*