



EUROPEAN COMMISSION

*Brussels, 17.12.2018
C(2018) 8418 final*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax (VAT) as regards the introduction of the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States {COM(2018) 329 final}.

This proposal is part of a reform package, announced in the Action Plan on value added tax {COM(2016) 148 final}, adopted by the Commission on 7 April 2016. The aim of this plan is to create a robust single European value added tax area for which a simpler and fraud-proof definitive value added tax system for intra-Union trade will be set up. The main objective of the proposal is to make the European value added tax system more robust by treating cross-border transactions in the same way as domestic transactions. This would be achieved by establishing the principle that value added tax would effectively be charged on business-to-business cross-border supplies of goods.

The Commission takes seriously the concerns expressed by the Bundesrat as regards new forms of fraud that could arise under the rules proposed by the Commission. The Commission also takes note of the fact that the Bundesrat is sceptical about the estimated reduction in cross-border value added tax fraud. It would like to point out that the proposal would put an end to the inbuilt weaknesses of the current value added tax system for cross-border trade whereby dishonest businesses can take advantage of seemingly value added tax free goods by passing them on cheaply, and then not pay the value added tax due to their government. This phenomenon, known as Missing Trader Intra-Community fraud, leads to lost revenues of around 50 billion euros a year for the Member States of the European Union – money that should be going towards public investment in hospitals, schools and roads. Closing the loophole in the value added tax system that provides unscrupulous businesses the opportunity to simply pocket the full amount of value added tax and disappear would dramatically reduce this type of fraud.

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Furthermore, the Commission also takes seriously the concerns expressed by the Bundesrat as regards the administrative burdens generated by the proposed reform for taxable persons. The Commission proposes a 'One Stop Shop' mechanism that would make it simpler for companies that sell cross-border to deal with their value added tax obligations. Such one-stop shop has already been proven to be effective (i.e. ensuring tax is better collected) and efficient (i.e. reducing administrative burden for businesses) in the context of telecommunication, broadcasting and electronically supplied services. The one-stop shop will be extended in scope with the new rules on value added tax on electronic commerce that the Council adopted on 5 December 2017 {Council Directive (EU) 2017/2455}. Traders will be able to make declarations and payments using a single online portal in their own Member State. They will no longer be obliged to register for value added tax purposes in Member States where they are not established. Businesses trading cross-border currently suffer from 11% higher compliance costs compared to those trading only domestically. Simplifying and modernising value added tax should reduce these costs by an estimated 1 billion euros.

As far as the issue of a certified taxable person is concerned, the Commission is aware that further clarification of these criteria is needed in order to ensure a uniform application by the tax authorities of the Member States. These clarifications would be included in an Implementing Regulation.

As regards the obligation for the taxable persons to submit recapitulative statements on cross-border supplies of goods, the Commission takes the view that this issue is directly linked to the solidity of the criteria for obtaining the certified taxable person status. By ensuring that only trustworthy taxable persons obtain the certified taxable person status, keeping at the same time detailed reporting obligations for supplies to these trustworthy taxable persons in view of monitoring their compliance would be a disproportionate administrative burden.

As regards the need for technical updates of the Commission's proposal on the special scheme for small enterprises in view of ensuring coherence between that proposal and the present proposal, the Commission agrees with the Bundesrat that this should be dealt with by the Council in the course of the negotiations on both files.

Regarding Article 94(2) of Directive 2006/112/EC, the Commission is of the opinion that this question should be dealt with in the context of the discussions in Council on the Commission's proposal on value added tax rates {COM(2018)20 final}.

Regarding the continuation of all reverse charge mechanisms until 30 June 2025, the Commission proposal would ensure a status-quo as far as supplies of services is concerned. Maintaining the status-quo for supplies of goods would however be incoherent with the fundamental concept of the reform, i.e. the equal treatment of domestic and cross-border supplies of goods. Moreover, since the proposed reform provides the fundamental response to Missing Trader Intra-Community fraud as far as goods are concerned, there is no longer a need for a reverse charge mechanism for the supplies of goods.

As regards the capacity of tax administrations to ensure the monitoring of taxable persons that have liabilities on their territory without being established there, the Commission is of the opinion that the current Administrative Cooperation arrangements provide already a range of instruments that can be used in this respect. However, the Commission has already indicated in the explanatory memorandum to the present proposal its intention to revisit these arrangements in view of aligning the cooperation between Member States to the proposed changes to the value added tax system for intra-Union cross-border supplies of goods. This proposal would be made sufficiently in time for allowing its adoption and implementation at the date of entry into force of the present proposal.

The proposal is currently being discussed within the legislative process involving both the European Parliament and the Council.

The Commission hopes that the clarifications provided in this reply 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*