



The Parliament of Romania  
Senate

Bucharest, 14 February 2018

Courtesy translation

**OPINION of the ROMANIAN SENATE  
on the amended Proposal for a COUNCIL REGULATION on amending the Regulation  
(EU) No. 904/2010 on measures to strengthen administrative cooperation in the field of  
value added tax - COM (2017) 706 final**

The Romanian Senate, pursuant to art. 67, art. 148 (2) and (3) of the Romanian Constitution and the Protocol no.2 annexed to the Treaty of Lisbon amending the Treaty on European Union and the Treaty on the Functioning of the European Union, signed in Lisbon in 13<sup>th</sup> December 2007, has examined the **amended Proposal for a COUNCIL REGULATION on amending the Regulation (EU) No. 904/2010 on measures to strengthen administrative cooperation in the field of value added tax - COM (2017) 706 final**.

Having in view the report of the Committee for European Affairs from 1<sup>st</sup> February 2018, **the Romanian Senate**, issued on 12 February 2018 an OPINION, as follows:

1. **Considers that the proposal for a Regulation complies with the principle of subsidiarity**, since VAT fraud is often linked to cross-border transactions within the single market or is committed by traders established in member states other than the one in which the tax is due. This has a negative impact on the functioning of the single market and leads to significant losses to the EU budget, for which only taking action at Union level would provide superior added value compared to actions that can be taken at member state level.

**The proposal for a regulation also respects the principle of proportionality in terms of legal form**, since all proposed measures are directed to the needs of the member states and, although having a positive effect on the level of VAT fraud, do not entail additional costs for businesses and administrations, with the exception of the measures which require IT development activities.

(2) **Supports** the efforts of the VAT Action Plan aimed at strengthening the instruments of administrative cooperation in the field of VAT, in particular Eurofisc, as a means of strengthening the trust between tax authorities and limiting cross-border fraud.

(3) **Considers** that:

- not under all circumstances cooperation between the two states is necessary to resolve a request for an administrative inquiry and the decision on the settlement procedure must be left up to the requested member state {in the context of Article 1 (1) (b) (4) [...] “The requested authority shall carry out the administrative inquiry in coordination with the requesting authority”};

- the tax authorities should have access to data on all imports made in the European Union, in order to verify the fulfillment of the declaratory and payment obligations, in the context where the implementation in the member states of the import procedure with the postponement of the VAT payment at customs (expense account payment) can lead to an extended fraud phenomenon. In addition, **it considers** that the tax authorities should also have access to data on all exports from the European Union, as the customs authorities place too little importance on export controls (since they do not represent a direct risk from the point of view of taxes and duties), and these are used in carousel frauds to lose track of goods that are subsequently returned to the European Union;

- the last provision of Article 1 (16), second subparagraph, is very difficult to apply, as the member state of repayment does not have access to information on the judicial system and procedures of the member state of establishment;

- it is appropriate to make the most rapid exchange of information, but it should be stipulated clearly and concisely how the information is to be transmitted in order to ensure the confidentiality and security of the information transmitted (concerning the exchange of information without prior request, provided for in Article 13). At the same time, it is necessary to specify the way in which these applications are kept in order to ensure the transmission of statistics on the use of the cooperation instruments, according to the provisions of art. 49 of the Regulation;

- that joint audits are difficult to put into practice. Following such a joint audit where the inspectors of the requesting member state effectively participate in the audit, with the same tasks as the inspectors in the requested state, the taxpayer’s documents are analyzed and a joint audit report is submitted, implicitly amending the primary legislation (in particular Tax Procedure Code) and the secondary legislation (normative acts referring to the types of controls and the documents to be drawn up - Minutes, Tax Inspection Report (TIR), Taxation Decisions, Precautionary measures, Minutes of detection and sanctioning of contraventions (MDSC), etc., the way of challenging the joint audit report, other normative acts);

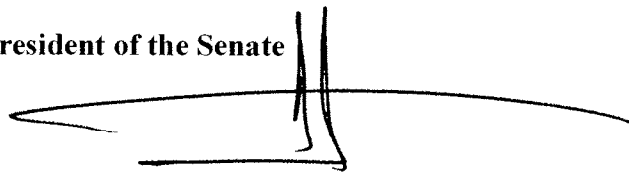
- it is necessary to establish standard procedures at the level of the European Union defining the indicators on the basis of which the attestation status is established;

- a periodic reassessment is required to early detect the possible changes in taxpayers’ behavior.

(4) With regard to Article 1 (1) (b), “(4) [...] Member States shall ensure the establishment of the necessary mechanisms between those requesting authorities and the requested authority, through which the officials authorized by the requesting authorities

participate in the administrative inquiry conducted on the territory of the requested authority [...]”, **proposes the reformulation:** “Member States shall ensure that necessary mechanisms are in place between the requesting authority or authorities and the requested authority” or repositioned in the current wording as a new paragraph. The reasoning stems from the fact that the current wording and the inclusion in the same paragraph of the first sentence “where the competent authorities of at least two member states consider that an administrative inquiry is necessary, the requested authority does not refuse to carry out this investigation”, it is understood that joint administrative inquiries may only be carried out when there are several requesting states and one requested state. Where there is only one requesting state and the requested state does not refuse the investigation, there should be a possibility of a joint investigation.

**p. President of the Senate**

A handwritten signature in black ink, consisting of a long horizontal stroke with a small loop at the end, and a vertical stroke intersecting it near the right side.

**Adrian ȚUȚUIANU**