Value added tax (VAT): administrative cooperation and combating fraud. Recast

2009/0118(CNS) - 18/08/2009 - Legislative proposal

PURPOSE: to recast Regulation (EC) No 1798/2003 on administrative cooperation in the field of value added tax, with a view to giving Member States the means to combat crossborder VAT fraud more effectively.

PROPOSED ACT: Council Regulation.

BACKGROUND: the Council has repeatedly stressed the need for a common approach to combating tax fraud, and in particular VAT fraud, to supplement and support national efforts. At present, administrative cooperation in the field of VAT is governed by Council Regulation (EC) No 1798/2003.

In May 2006, the Commission adopted a Communication concerning the need to develop a coordinated strategy to improve the fight against fiscal fraud. On 1 December 2008, it adopted a Communication (COM(2008)0807) establishing a short-term action programme for the introduction of legislative measures which would strengthen the tax authorities' capacity to prevent and detect VAT fraud (in particular, "carousel" fraud) as well as to recover taxes in the event of fraud. Several of the measures set out in that action programme are included in this proposal.

In its resolution of 2 September 2008 on a coordinated strategy to improve the fight against fiscal fraud, the European Parliament stressed that the Member States cannot combat crossborder fraud in isolation and called on the Commission to propose mechanisms to promote cooperation between Member States. In particular, it invited the Commission to submit proposals on the automated access by all other Member States to certain non-sensitive data held by Member States concerning their own taxable persons (business sector, certain data concerning turnover), and on the harmonisation of the procedures for the registration and deregistration of persons liable for VAT to ensure the swift detection and de-registration of fake taxable persons. It stressed that Member States must take responsibility for keeping their data up to date, in particular as regards deregistration and the detection of fraudulent registrations. This proposal covers these points.

IMPACT ASSESSMENT: this proposal concerns exchanges between tax authorities and will have no impact on economic operators. Thus, it has not been the subject of a formal impact assessment. The consequences of this proposal will affect Member States' tax authorities. The Member States are in a better position than the Commission to evaluate its precise impact.

CONTENT: as part of the coordinated strategy to improve the fight against VAT fraud, the purpose of this proposal is to recast Council Regulation (EC) No 1798/2003 on administrative cooperation and combating fraud in the field of value added tax. The most important changes are as follows:

Eurofisc: the proposal provides for the establishment of a common structure (Eurofisc) which will provide a faster cooperation mechanism for dealing with very large-scale or new fraud patterns. This structure will make possible multilateral, swift and targeted exchange of information so that Member States can respond adequately and in a coordinated fashion to combat any new kinds of fraud that emerge. It will be able to draw on jointly organised risk analysis.

Joint responsibility for the protection of tax receipts: the proposal provides that Member States' responsibility in the field of administrative cooperation is extended to protect the VAT revenue of all Member States.

Direct access to databases: tax authorities store a large amount of information regarding their own taxpayers in their databases. Rapid access to this information can be very useful to other Member States in order to detect cross-border fraud schemes. The proposal grants tax authorities of other Member States a direct access to a defined set of information contained in these databases.

Quality of data: the proposal establishes a framework to guarantee the quality of the information in the databases by laying down common rules on the information to be collected and the checks to be carried out when a VAT identification number is registered in the database. The Regulation specifies the cases in which certain information must be deleted from the databases. It also includes provisions under which Member States are mutually responsible for any erroneous information in their databases or failures to update such information in good time.

Information to taxpayers: in order to prevent them from being caught involuntarily in fraud schemes, taxpayers will benefit from an enhanced and secure system of validation of their counterparts' VAT number and identity. Users are also given guarantees concerning the reliability and use of such information.

Note that the proposal leaves the following elements of Council Regulation (EC) No 1798/2003 unchanged:

- the organisation of the departments responsible for administrative cooperation in the Member States;
- the mechanism for requesting information and specific enquiries;
- the request for administrative notification;
- the principle of officials being present in the administrative departments of another Member State and at simultaneous controls;
- the provisions on services supplied by electronic means and telecommunications and radio broadcasting services;
- the provisions on the refund of VAT to taxable persons established in another Member State;
- the principle of the provisions on relations with third countries;
- the limitations on some of the rights and obligations provided for in Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

BUDGETARY IMPLICATIONS: the proposal has no implications for the Community budget.