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

2009/0118(CNS) - 05/05/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 539 votes to 11, with 75 abstentions, a legislative resolution amending, under the consultation procedure, the proposal for a Council regulation on administrative cooperation and combating fraud in the field of value added tax (Recast).

The main amendments were as follows:

Processing of personal data: in light of the European Data Protection Supervisor’s opinion of 30 October 2009, Members consider that the processing of personal data is only acceptable if it is necessary for achieving the objectives of the regulation. Within the framework of application of this Regulation, the Member States and the Commission shall ensure respect for the rights and obligations laid down 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 and Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Parliament stipulates that the processing of personal data shall only be allowed with the **sole aim of ensuring that there is no breach of the VAT legislation** and where it is deemed necessary in order to monitor intra-Union purchases of goods or provisions of services which are subject to taxation in the Member State concerned. In addition, it proposes limiting the risks associated with automatic access to databases which could include personal data.

A new recital stresses that in obtaining such automatic access to non-sensitive data, an appropriate level of protection, a limited storage period of the data exchanged and due accountability of the data keeper institution or body, in order to prevent mismanagement or leakage of data, should be ensured.

The guarantees contained in the EU legislation on data protection also apply to relations with third countries.

Feedback: Members consider that a more explicit procedure for the reporting on the quality of information exchanged in feedback is required. The aim is to improve quality of feedback provided by an authority, rather than increasing the administrative burden.

Eurofisc: the amendments aim to clarify the fact that Eurofisc will operate on the basis of an EU-wide approach and to specify the Commission's role in its operations. It shall be made up of officials appointed by the competent authorities of the Member States. According to Members, Eurofisc should have an open and transparent structure and it should therefore be made clear that not only the administrative committee set up by the Commission is to have the right to examine its reports but also the Member States and the European Parliament.

The European Parliament recalls that in its resolution of 4 December 2008 it called for the introduction of Eurofisc and recalled the paramount necessity for sharing existing national best practices in the fight against cross-border VAT fraud with a view to introducing both appropriate incentives for due diligence by Member States in relation to VAT, and rewards for honest taxpayers.

Inventive mechanism: in order to investigate VAT fraud with more efficiency in the Union, Members propose an incentive mechanism which shall be designed for the recovery of cross-border tax claims by distributing a fair proportion of the collected unpaid VAT between the Member State recovering the tax claims and the requesting Member State.

Administrative cooperation: the Member States, **the European Parliament** and the Commission shall examine and evaluate how the arrangements for administrative cooperation provided for in this Regulation are working. In particular, the Member States shall conduct audits of the operation of those arrangements. The Commission shall pool the Member States' experience with the aim of improving the operation of those arrangements and shall regularly report to the Member States and the European Parliament on the results. It is important that the Commission should be responsible for providing assistance and expert opinions to help the Member States to attain the objectives.

Exchange of information: it is desirable for Member States to exchange and receive data reports of the highest possible quality, and these should meet with standards for transparency. With a view to improving the exchange of information between the various national authorities, it is proposed to monitor cases where a Member State has refused to transmit information or has failed to authorise an administrative inquiry.

European Data Protection Supervisor: where the implementing provisions of this regulation are liable to affect the processing of personal data, it will be desirable to obtain the opinion of the European Data Protection Supervisor.