Common system of value added tax (VAT): quick reaction mechanism against VAT fraud

2012/0205(CNS) - 31/07/2012 - Legislative proposal

PURPOSE: to amend Directive 2006/112/EC on the common system of value added tax as regards a quick reaction mechanism against VAT fraud.

PROPOSED ACT: Council Directive.

BACKGROUND: specific forms of **sudden and massive fraud phenomena in the VAT area have recently appeared** (e.g. carousel and missing trader fraud) especially through the use of electronic means, which facilitate rapid illegitimate trade on a large scale. These phenomena very often have an international dimension. When confronted with new forms of trade (e.g. internationally tradable services), **Member States are not in a position to individually counter these (intangible) fraud circuits which involve several countries at the same time.**

Council Directive 2006/112/EC on the common system of value added tax allows Member States to apply for derogation from that Directive in order to prevent certain forms of tax evasion or avoidance. Authorisation of such derogation requires a proposal from the Commission and its adoption by the Council. Recent experience has demonstrated that **the process for granting derogations is not always flexible enough to ensure a prompt and suitable reaction to requests by Member States**. A recent example is the estimated loss of EUR 5 billion between June 2008 and December 2009 in relation to the greenhouse gas emission allowances trade.

Accordingly, it is **necessary to establish a new procedure for granting derogations.**

IMPACT ASSESSMENT: the proposal is mainly of a procedural nature. Its purpose is to speed up, in cases of urgency, the already existing possibility for Member States to obtain an authorisation to derogate from the provisions of the VAT Directive.

Generally, it is not possible to estimate the quantitative impact the QRM could have compared to the current derogation procedure, as this would obviously always depend on the specific case.

LEGAL BASIS: Article 113 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the purpose of the proposal is to provide a procedure in the VAT Directive which, in very specific situations, would provide a legal basis for Member States to take immediate measures. This would be called the **Quick Reaction Mechanism** ('QRM').

The purpose of the QRM is not to replace the current derogation system. Its scope is limited to massive and sudden fraud situations in specific economic sectors in a particular Member State that cannot be stopped through traditional control and enforcement means and which would lead to irreparable losses.

In order to ensure that decisions can be adopted much more quickly than under the current procedures, it is proposed that the Commission **make use of implementing powers in Article 291 of the TFEU** so to ensure a correct implementation of the VAT Directive, and to prevent budget losses and violations of the principles of fair taxation.

For the adoption of implementing decisions authorising an anti-fraud derogation measure to the Member State concerned, use would be made of the examination procedure, as explicitly provided regarding taxation in Regulation (EU) No 182/2011 (the 'Comitology Regulation'). In conjunction with this article, **the Commission will adopt immediately applicable acts on the duly justified grounds of urgency.**

In terms of procedure:

- Member States will send an application to the Commission outlining their intention of introducing a derogation measure on the basis of the QRM system. The exceptional circumstances of the fraud situation should be explained in detail so as to justify the application of the QRM. The Commission shall ask for additional information when required;

- once all the necessary information is available, the Commission will either authorise the measure or inform the Member State concerned of its refusal within one month.

As to the content of the derogations which could be authorised under the QRM, it is proposed to define and agree a list of anti-fraud measures. **The only anti-fraud measure currently specified in the proposal is the reverse charge mechanism**, under which the taxable recipient becomes liable for the payment of the VAT instead of, as a general rule, the supplier of the goods or services. Other measures would have to be determined by the Council, acting unanimously upon a proposal from the Commission, so that these measures are established before being considered as part of any QRM request.

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