Common system of value added tax (VAT): conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions

2020/0331(CNS) - 18/12/2020 - Legislative proposal

PURPOSE: to ensure a more uniform application of EU VAT legislation.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: the Commission has currently no implementing powers in respect of Directive 2006/112 /EC (the VAT Directive). The only existing tool which enables it to promote the uniform application of EU VAT rules is an advisory committee set up under the VAT Directive, the "VAT Committee", composed of representatives of the Member States and the Commission.

Since it is an advisory committee, the VAT Committee can currently only agree non-binding guidelines on the application of the VAT Directive, whereas binding implementing measures can only be adopted by the Council on the basis of a Commission proposal.

Experience shows that these guidelines do not always ensure uniform application of the EU VAT legislation. For instance, the VAT Committee has recently failed to reach unanimous guidelines on a number of issues related to the practical application of the provisions of Council Directive (EU) 2018 /1910 (the “Quick Fixes” Directive).

The VAT Committee has also recently failed to reach unanimous guidelines on how the place of supply of a service consisting of an event taking place in several Member States should be determined for VAT purposes.

Diverging interpretations of the terms used in the VAT Directive can lead to instances of double taxation and result in legal uncertainty, additional costs for businesses and distortions of competition. A uniform interpretation of these terms at EU level would facilitate the application of the VAT Directive by tax administrations and businesses.

CONTENT: the proposal aims to confer implementing powers on the Commission to determine the meaning of certain terms used in Directive 2006/112/EC.

The Commission proposes to amend the VAT Directive in order to create a committee which would supervise the adoption of implementing acts by the Commission in certain areas of VAT. Comitology procedures would only be applied in respect of a limited set of implementing rules for those provisions of the VAT Directive for which a common interpretation is required.

The implementing powers in duly justified specific cases, on substantial matters particularly sensitive for Member States, should be assigned to the Council. This would in particular be the case regarding any implementing measures which might be needed regarding the provisions in Title I (“Subject matter and scope”), Title VIII (“Rates”) and Title XIII (“Derogations”) of the VAT Directive.