Basic information

2004/0079(CNS) CNS - Consultation procedure Directive	Procedure completed
Common system of value added tax (VAT) Amended by 2003/0329(CNS) Amended by 2006/0245(CNS) Amended by 2007/0136(CNS) Amended by 2007/0238(CNS) Amended by 2008/0058(CNS) Amended by 2008/0143(CNS) Amended by 2008/0228(CNS) Amended by 2009/0009(CNS) Amended by 2009/0139(CNS) Amended by 2010/0179(CNS) Amended by 2012/0102(CNS) Amended by 2012/0205(CNS) Amended by 2013/0280(CNS) Amended by 2015/0296(CNS) Amended by 2016/0370(CNS) Amended by 2016/0374(CNS) Amended by 2016/0406(CNS) Amended by 2017/0251(CNS) Amended by 2017/0349(CNS) Amended by 2018/0005(CNS) Amended by 2018/0006(CNS) Amended by 2018/0124(CNS) Amended by 2018/0150(CNS) Amended by 2018/0412(CNS) Amended by 2018/0415(CNS) Amended by 2020/0165(CNS) Amended by 2021/0097(CNS) Amended by 2022/0027(CNS) Amended by 2022/0407(CNS) Amended by 2024/0152(CNS) See also 2008/0181(CNS) **Subject** 2.70.02 Indirect taxation, VAT, excise duties	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	HUDGHTON Ian (Verts/ALE)	21/09/2004

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	The committee decided not to give an opinion.	26/10/2004

Council of the

Council configuration	Meetings	Date

European Union	Economic and Financial Affairs ECOFIN	2766	2006-11-28

European Commission	**Commission DG**	**Commissioner**
	Taxation and Customs Union	

Key events

Date	Event	Reference	Summary
15/04/2004	Legislative proposal published	COM(2004)0246	Summary
15/09/2004	Committee referral announced in Parliament		
18/04/2005	Vote in committee		Summary
21/04/2005	Committee report tabled for plenary, 1st reading/single reading	A6-0097/2005	
10/05/2005	Decision by Parliament	T6-0164/2005	Summary
10/05/2005	Results of vote in Parliament		
28/11/2006	Act adopted by Council after consultation of Parliament		
28/11/2006	End of procedure in Parliament		
11/12/2006	Final act published in Official Journal		

Technical information

Procedure reference	2004/0079(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Recast
Legislative instrument	Directive
Amendments and repeals	Amended by 2003/0329(CNS) Amended by 2006/0245(CNS) Amended by 2007/0136(CNS) Amended by 2007/0238(CNS) Amended by 2008/0058(CNS) Amended by 2008/0143(CNS) Amended by 2008/0228(CNS) Amended by 2009/0009(CNS) Amended by 2009/0139(CNS) Amended by 2010/0179(CNS) Amended by 2012/0102(CNS) Amended by 2012/0205(CNS) Amended by 2013/0280(CNS) Amended by 2015/0296(CNS) Amended by 2016/0370(CNS) Amended by 2016/0374(CNS) Amended by 2016/0406(CNS) Amended by 2017/0251(CNS) Amended by 2017/0349(CNS) Amended by 2018/0005(CNS) Amended by 2018/0006(CNS)

	Amended by 2018/0124(CNS) Amended by 2018/0150(CNS) Amended by 2018/0412(CNS) Amended by 2018/0415(CNS) Amended by 2020/0165(CNS) Amended by 2021/0097(CNS) Amended by 2022/0027(CNS) Amended by 2022/0407(CNS) Amended by 2024/0152(CNS) See also 2008/0181(CNS)
Legal basis	EC Treaty (after Amsterdam) EC 093
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/22016

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A6-0097/2005	21/04/2005	
Text adopted by Parliament, 1st reading/single reading		T6-0164/2005 OJ C 092 20.04.2006, p. 0018-0063 E	10/05/2005	Summary
Document attached to the procedure		B8-0210/2015	08/07/2015	

Council of the EU

Document type	Reference	Date	Summary
Supplementary legislative basic document	06550/2005	18/02/2005	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2004)0246	15/04/2004	Summary
Follow-up document	COM(2009)0325	02/07/2009	Summary
Follow-up document	COM(2012)0605	22/10/2012	Summary
Commission document (COM)	COM(2018)0118	08/03/2018	Summary
Follow-up document	COM(2020)0047	10/02/2020	Summary
Follow-up document	SWD(2020)0029	10/02/2020	
Follow-up document	COM(2024)0307	22/07/2024	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1202/2004 OJ C 074 23.03.2005, p. 0021-0022	15/09/2004	

Additional information

Source	Document	Date
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act

Directive 2006/0112
OJ L 347 11.12.2006, p. 0001-0118 Summary

Common system of value added tax (VAT)

2004/0079(CNS) - 08/03/2018 - Follow-up document

The Commission presented a report on the effects of Articles 199a and 199b of Council Directive 2006/112/EC (VAT Directive) on combatting fraud.

The purpose of the measures foreseen in Articles 199a and 199b is to allow Member States to **quickly tackle problems of the missing trader fraud in intra-Community trade (MTIC)**:

- **in Article 199a** by an option of applying the reverse charge mechanism for listed supplies. It allows Member States to provide that the person liable for payment of VAT on supplies listed in this Article is the taxable person to whom the supply is made (the reverse charge mechanism);
- **in Article 199b** allows Member States to designate the recipient as the person liable for payment of VAT on specific supplies of goods and services as a **Quick Reaction Mechanism** ('QRM') measure to combat sudden and massive fraud liable to lead to considerable and irreparable financial losses.

Both mechanisms are limited in time and shall apply until 31 December 2018.

The MTIC fraud occurs when a trader acquires goods from another Member State exempt from VAT and sells them on including VAT on the invoice to the customer. After having received the VAT amount from the customer such trader disappears before paying the VAT due to the tax authorities. At the same time the customer, acting in good faith or not, can deduct the VAT he paid to the supplier through his VAT return.

This report is based on feedback received from Member States and stakeholders on the effectiveness of sectoral reverse charge in the fight against fraud, as required by the VAT Directive.

The use of the measure included in Article 199a (1) of the VAT Directive: Member States generally consider the measure as a very effective and efficient tool in fighting VAT fraud in the given sectors or in preventing the fraud from appearing.

A number of Member States pointed out that due to the introduction of the reverse charge mechanism the missing trader fraud (MTIC) decreased significantly or disappeared completely in the defined sectors. The introduction of the reverse charge mechanism in the specified sectors helped Member States to significantly **reduce revenue losses** caused by the MTIC fraud and led to improved VAT collection. Next to the elimination of missing traders the measure also contributed to the decrease of the number of traders on the 'black' market and reinstalled fair competition in the sector.

All Member States applying the domestic reverse charge mechanism in emission allowances indicated that it was very efficient for stopping the particularly aggressive fraud. It was pointed out that the market of greenhouse emissions allowances is particularly susceptible to fraud given the high mobility of the allowances and the high amounts at stake whereby the measure enables Member States to prevent such VAT fraud from occurring. It is also considered effective in limiting the forthcoming losses in VAT revenues and therefore, some Member States introduced it as a preventive measure, as there were enough signals indicating fraud risks in the given sector.

Specifically regarding the supplies of **greenhouse emission allowances**, Member States pointed out that the reverse charge was necessary to fight the VAT fraud and to avoid that more losses would have been incurred by the state budgets.

All stakeholders consider that the measure was necessary to fight VAT fraud.

The measure appears to have eliminated fraud in a number of cases, to have decreased the risk of companies becoming part of VAT **carousel fraud** and to have cleaned the sector from inexplicably low prices, recreating a level playing field for honest businesses.

Member States are rather divided on the issue of the shift of fraud to other sectors. Whereas some Member States applying the measure consider that no shift of fraud to other goods or services took place, an equal number of Member States claim that a shift of fraud to other goods or services did take place.

Impact on compliance costs: a sectorial reverse charge mechanism adds some complexity to the VAT system of the participating Member State, leading to increased compliance costs for business and increased administrative burden for tax administrations. According to a recent study on the assessment of the optional reverse charge mechanism6, the reverse charge mechanism implies an increase by 43% of compliance costs to businesses.

The majority of Member States consider that compliance costs have increased somewhat as a result of the introduction of the measure. Although the cost increase is considerable, all Member States agree that it has been **largely offset by the benefits**. At the same time, stakeholders are adamant that costs are proportional to benefits obtained.

The assessment of the measure included in Article 199b of the VAT Directive: although it was never used, most Member States consider that it remains a useful tool for exceptional cases of VAT fraud.

Only one Member State pointed out that the measure is not useful, as other measures provided for by the VAT Directive are sufficient.

In conclusion, the Commission considers that the possibilities provided for in Articles 199a and 199b have proved **very useful for Member States as temporary and targeted *ad hoc* measures**. The expiry of the measures, without any alternative, could eventually lead to an increase in VAT fraud, less tax fairness and a loss of state revenue.

The definitive VAT system should solve the problem caused by the exemption from VAT linked to the intra-Community supply of goods, whereby the customer obtains the goods without having to pay VAT to the supplier. In the meantime, the Commission considers it necessary to **extend** both measures until the date of entry into force of the definitive arrangements or for another limited period.

Therefore, the Commission will make an **appropriate legislative proposal** in the second quarter of 2018 prolonging the existing measures.

Common system of value added tax (VAT)

2004/0079(CNS) - 10/02/2020 - Follow-up document

In accordance with Directive 2006/112/EC (the VAT Directive), the Commission presented, on the basis of an independent economic study, an assessment report on the impact of the invoicing rules applicable from 1 January 2013.

The evaluation focused on the invoicing rules of Council Directive 2010/45/EU (Second Invoicing Directive or SID) and in particular on whether they contribute to the four general objectives initially set, namely: (i) reduction of administrative burdens on businesses, (ii) reduction of VAT fraud/impact on control activities, (iii) proper functioning of the internal market and (iv) promotion of SMEs.

Positive assessment of the Directive

The Commission believes that the assessment of the Directive is largely positive, as having effectively supported the simplification and harmonisation of invoicing and e-invoicing rules across the EU. The provisions of the SID remain relevant and appropriate for stakeholders' needs namely clearer, simpler and more harmonised e-invoicing rules.

(1) Reduction of administrative burdens

The biggest impact of the SID on the reduction of administrative burden is due to the higher uptake of unstructured e-invoicing, because of simplifications which encouraged companies to switch from paper invoices to PDFs.

The Directive is estimated to have reduced administrative burdens on companies by EUR 1.04 billion over the 2014-2017 of which about EUR 920 million is to be attributed to the uptake of unstructured invoicing. The micro companies benefited the most from this impact of the SID, given that they adopted the unstructured e-invoices as they were not equipped to deal with structured e-invoicing requirements.

(2) Impact of the internal market

The SID made a positive contribution to the functioning of the internal market, mainly through e-invoicing and cross-border invoicing. The data collected within the study demonstrates that, while in 2014 one in four intra-EU traders issued e-invoices, this number increased to three in four traders in 2018.

In addition, the changes relating to the new rules on applicable invoicing regimes, the uniform time limit for issuing invoices for intra-EU transactions, currency conversion and the simplified content of invoices for cross-border transactions subject to the reverse charge have simplified the use of this regime for cross-border transactions and increased the legal certainty of the invoicing rules applicable to intra-EU transactions.

(3) Tax control

According to tax authorities and stakeholders, the current invoicing rules are well adapted to the needs of tax control activities and the invoicing rules do not allow for much further improvement of tax controls. A possible amendment of the VAT Directive to this effect would have little added value.

(*4) Promotion of SMEs*

SMEs benefited from about 55% of the burden reduction due to the more widespread use of unstructured e-invoicing. The difference in burden reduction, which is still significant, is attributed to large companies as large firms issue a visibly higher number of invoices. The main focus of possible further improvements to promote SMEs would need to be on cash accounting. However, the cash accounting scheme is overall positively assessed by stakeholders and no emerging issues were signalled. In addition, a more radical approach considering only structured e-invoices as a valid document would require amendments to the existing legislation.

Main shortcomings and ways forward

In some areas, such as the improvement of tax control activities and the promotion of SMEs, the results were positive, but less than they could have been. The evaluation of the invoicing rules revealed a deficiency in the SID and some emerging problems, namely:

(1) Lack of clarity in the system of business controls that create a reliable audit trail

The SID introduced the concept of Business Controls that create a reliable Audit Trail (BCAT) as a mean to prove the e-invoice Integrity and Authenticity. This concept is perceived as still complex, not uniformly interpreted by the tax authorities and poorly applied by economic operators across the EU. Stakeholders see this as a shortcoming of the SID.

Rather than providing such clarifications in the legislative text, the report suggests examining whether it would be easier to clarify the system of business controls establishing a reliable audit trail through the Commission's explanatory notes and the sharing of good practice in Member States. This may be accompanied by some additional clarifications on the legal definition of e-invoices.

(2) Complexity of archiving rules

The Commission considers that it would be difficult to intervene at EU level in this area since it is the Member States that define the detailed requirements for archiving invoices. With the development of digital solutions, the reflection in this area could focus for instance on whether developing a standard for a European cloud service for storage of invoices could be useful.

Another issue that emerged after the adoption of the SID but not resulting from it is the introduction by several Member States of requirements to submit electronic declarations on certain domestic transactions. The Member States introduced such reporting to tackle fraudulent activities. Stakeholders see a risk of dis-harmonisation and increased administrative burdens by the proliferation of such national e-reporting requirements.

Conclusions and future steps

The report notes that the invoicing rules introduced by the SID are assessed as working well by tax authorities and stakeholders and no major issues were identified. In the context of the fight against fraud and given the technological developments and the recent trends in certain Member States on e-invoicing and e-reporting, the Commission together with Member States will explore whether the potential of e-invoicing can be further unveiled at EU level. The Commission will also open a reflection on the e-reporting requirements.

Common system of value added tax (VAT)

2004/0079(CNS) - 01/06/2016 - Follow-up document

The Commission presented a communication in accordance with Article 395 of Council Directive 2006/112/EC.

The Commission recalled that pursuant to Article 395 of Council Directive 2006/112/EC (VAT Directive), the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance. As this procedure provides for derogations from the general principles of VAT, such derogations should be proportionate and limited in scope.

Austria's request: by letter, registered at the Commission on 23 December 2015, Austria requested to be authorised to **introduce a measure derogating from the special margin scheme for travel agents**. With this request, Austria wants to derogate from Article 308 of the VAT Directive, as interpreted by the CJEU, by allowing travel agents to calculate a single profit margin during a year for all the supplies of travel services covered by the special VAT scheme (i.e. when the travel agent is not acting as intermediary).

Court of Justice of the European Union's position (CJEU): the CJEU rules that Article 308 of the VAT Directive does not provide for any possibility of making an overall determination of the taxable amount of the travel agent's profit margins and that, consequently, the taxable amount must be calculated by referring to each single service provided by the travel agent.

Furthermore, the CJEU has ruled that measures, taken in application of Article 395 of the VAT Directive in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance, have to be necessary and appropriate for realising the specific objectives and principles of the VAT Directive.

Commission's position: it therefore follows from this CJEU ruling that derogations under Article 395 of the VAT Directive should only be granted when a particular situation in a Member State requires a specific measure. In addition, the Commission considers that such a derogating measure would give a specific advantage to travel agents established in Austria in comparison to travel agents established in other Member States.

On the contrary, the special scheme for travel agents is implemented everywhere in the EU and the margin is to be calculated in all Member States in the same way; i.e. on each single supply. **Considering a specific derogation to alter a situation which is equally applicable in all Member States would therefore circumvent the normal procedure**, which is the unanimous adoption by the Council after consultation of the European Parliament of an amendment to the VAT Directive upon proposal of the Commission.

In addition, the Commission considers that such a derogating measure would give a **specific advantage** to travel agents established in Austria in comparison to travel agents established in other Member States.

The Commission recalled that it already proposed a new travel agent scheme for VAT purposes in 2002 but that the Council could not agree on the (amended) proposal which was finally withdrawn by the Commission in 2014. Notwithstanding this, the Commission continues exploring the possibilities for, where necessary, improving this scheme taking into account the effects of the above-mentioned CJEU ruling on travel agents. It will shortly launch a **study to evaluate the whole, currently origin-based, travel scheme** (including the method for the calculation of the margin) with the aim, among others, to minimise administrative burdens.

On the basis of the above-mentioned elements, **the Commission objects to the request made by the Republic of Austria.**

Common system of value added tax (VAT)

2004/0079(CNS) - 10/05/2005 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the report by Ian HUDGHTON (Greens/EFA, UK) approving the proposal unamended.

Common system of value added tax (VAT)

2004/0079(CNS) - 15/04/2004 - Legislative proposal

PURPOSE : to recast the Sixth VAT Directive for the sake of clarification without changing the substantive content of the Directive's provisions.

PROPOSED ACT: Council Directive.

CONTENT : the Commission proposes that the Sixth Directive be repealed and replaced with a new act modelled on the Directive in force. The new act proposed incorporates all the amendments made to the Sixth Directive by subsequent acts. It also contains any relevant provisions currently to be found in separate legal acts, and excludes provisions which properly belong in other acts.

In order to improve the drafting quality, the existing text has undergone numerous changes. Although the proposed changes will not affect its substantive content, they do alter the format, with the existing 53 Articles divided into 402 new Articles.

A great many of the changes are the result only of the correction of mistakes in grammar, spelling or punctuation, or of the restructuring of the text (reshuffling and renumbering of articles, paragraphs and so on, entailing adjustment of the internal references) or of the consistent application of purely technical rules of legislative drafting technique. Provisions which have been adjusted in that way are therefore regarded as unchanged.

The proposal also includes a table of contents providing an overview of the restructured text and a detailed correlation table designed to facilitate the changeover to a new act.

Common system of value added tax (VAT)

2004/0079(CNS) - 28/11/2006 - Final act

PURPOSE: to recast the Sixth VAT Directive for the sake of clarification without changing the substantive content of the Directive's provisions.

LEGISLATIVE ACT: Council Directive 2006/112/EC on the common system of value added tax.

CONTENT: the Council adopted a directive recasting the directive on the EU system of value added tax (the "sixth VAT directive") with a view to enhancing clarity, rationality and simplification of legislation in this field.

ENTRY INTO FORCE: 01.01.2007.

TRANSPOSITION: 01.01.2008.

Common system of value added tax (VAT)

2004/0079(CNS) - 02/07/2009 - Follow-up document

Article 11 of Council Directive 2006/112/EC on the common system of value added tax provides the Member States with an option to introduce VAT grouping schemes into their national legislation. A Member State may regard two or more persons established in that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links, as a single taxable person for VAT purposes. Where the VAT grouping option is taken up by a Member State, this is to be considered as a particular national deviation from the normal Community VAT rules.

Given the advantages a VAT grouping scheme can offer to certain taxable persons, the scheme may run counter to the principle of fiscal neutrality and may be a source of fiscal competition between Member States. In view of this, the current divergences between the national VAT grouping schemes involve a potential impact on the internal market and on the basic principles of the Community VAT system. It is therefore essential to make sure that this provision is applied more uniformly.

Against this background, the **aim of this Communication is to explain the Commission's view on how the provisions of Article 11 should be translated into practical arrangements whilst respecting the basic principles of the Community VAT system**.

The Commission invites the Council and the European Parliament to take note of its position on VAT grouping schemes as set out in this Communication with a view to:

- contribute to a more uniform application of Article 11 of the VAT Directive, thereby avoiding negative impacts on the internal market and contradictions with the basic principles of the Communities' VAT system;
- serve as guidelines for Member States when introducing VAT grouping schemes into their national legislation or when amending such schemes.

In the light of reactions to this Communication, the Commission will reflect on whether and when further action will be appropriate. In this Communication, the Commission makes a number of observations concerning:

Need for prior consultation of the VAT Committee: consultation of the VAT Committee is obligatory before introducing a national VAT grouping scheme. The very wording of the provision makes it clear that a VAT grouping scheme can only be implemented after the VAT Committee has been consulted. The Commission takes the view that this must be taken to mean that the obligation to consult the VAT Committee has to be fulfilled prior to the publication of the national rules governing the VAT grouping scheme. The same applies to substantive amendments to existing VAT grouping schemes. In order to give full meaning to this provision, and in particular to allow a genuine discussion in the VAT Committee, such a consultation should take place sufficiently in advance.

The main purpose of the VAT grouping option: a VAT group could be described as a 'fiction' created for VAT purposes, where economic substance is given precedence over legal form. A VAT group is a particular type of taxable person who exists only for VAT purposes. Given that the treatment of a VAT group is considered as a single taxable person, it follows logically that the group can only be identified for VAT purposes by a single VAT number.

Who can form a VAT group: under Article 11, Member States may regard as a single taxable person any persons established in the territory. The Commission examines in particular: (i) the notion of 'persons'; (ii) the notion of a 'person established in the territory of that Member State ' and its interpretation. Moreover, the Commission notes that all activities of the group members have to be included and that national VAT grouping schemes should preclude taxable persons from joining more than one VAT group at a time.

The Commission also considers that the condition of 'financial, economic and organisational links' is to be interpreted as meaning that all three links have to be met during the entire time a VAT group exists and, that any member no longer fulfilling all three links, should be required to leave the VAT group. In addition, the Commission considers that a VAT grouping scheme should be open to all sectors of economic activity.

The rights and obligations of a VAT group: since a VAT group is considered to be a single taxable person, the group is subject to the same rights and obligations as any other taxable person and all the provisions of the VAT Directive apply to it. Moreover, the VAT situation of the group and the treatment of its incoming and outgoing transactions are fully comparable to those of a taxable person with different branches. As regards internal transactions, they should also be deemed to have been carried out by the group for itself. Lastly, when the VAT group becomes a single taxable person, the VAT rights and obligations of the individual members are automatically transferred to the VAT group. Likewise, when a VAT group ceases to exist, the rights and obligations assumed by the group revert to the individual members.

The right of deduction of a VAT group: the right to deduct input VAT is determined on the basis of the transactions of the group as such with third parties. There is scope for significant differences between the Member States as regards the methods used to determine the right to deduct input VAT, which may result in differences in the deductible amount of VAT in Member States.

The Commission notes that a VAT grouping scheme can offer financial advantages to VAT groups which include members with no right of deduction or a right of partial deduction. These advantages can vary depending on the implementing modalities chosen by Member States. Lastly, it is of the utmost importance that Member States take all necessary measures to avoid tax evasion or avoidance, as well as abusive practices, carried into effect through the use of their national VAT grouping schemes. No unjustified advantage or unjustified harm should arise from the implementation of the VAT grouping option.

The Commission invites the Council and the European Parliament to take note of these observations with a view to:

- contributing to a more uniform application of Article 11 of the VAT Directive, thereby avoiding negative impacts on the internal market and contradictions with the basic principles of the Communities' VAT system;
- serving as guidelines for Member States when introducing VAT grouping schemes into their national legislation or when amending such schemes.

Common system of value added tax (VAT)

2004/0079(CNS) - 22/10/2012 - Follow-up document

In accordance with the requirements of Council Directive 2006/112/EC on the common system of value added tax ('the VAT Directive'), the Commission presents a report on the place of taxation of the supply of goods and the supply of services, including restaurant services, for passengers on board ships, aircraft, trains or buses.

The report focuses on the place of taxation of goods for consumption and of services, including restaurant services, supplied to passengers on board ships, aircraft or trains. However, in order to complete the picture of that segment of the market, it also addresses other issues such as the treatment of take-away goods supplied on board, supplies on board buses, as well as exemptions currently applied in this sector.

Main problems identified: the report is concerned about divergence of application between Member States. It is apparent that **exemptions are applied differently by Member States** and that some rules are not entirely respected or are understood differently. The difference in application is the main cause of complexity, and results in an increase in administrative burdens for business and can also create distortions of competition. Problems have been identified with certain concepts to be found in Articles 37 and 57 of the VAT Directive with Member States are applying these concepts in different ways.

In particular, it appears that there are situations where the national provisions implementing Articles 37 and 57 do not cover all three means of transport (ships, aircraft and trains). The report describes the problems in detail and also describes the situation on the cruise industry, where those consulted consider that the rules are particularly complicated and suggested that all on-board supplies of goods and services should be exempted.

The Commission draws attention to:

- **the patchwork of exemptions**: one group of Member States exempts goods for consumption on board ships, aircraft or trains as provided for in Article 37(3) of the VAT Directive. However, at least two Member States also allow exemption of on-board supplies of goods made whilst within the territory of the Community, but outside the Community section, which is not authorised by Article 37(3) of the VAT Directive. Furthermore, it appears that eight Member States also exempt services supplied to passengers on board ships, aircraft or trains, in particular restaurant and catering services. The Commission considers that Article 37 only allows an exemption of the supply of goods for consumption on board ships, aircraft or trains carried out during the Community section;

- **the definition of 'the Community section'**: in at least three Member States, the definition of the Community section is not entirely clear. Typically, certain elements of the definition are missing, e.g. there is no definition of the point of departure and/or the point of arrival, or the definition used is only a partial one. In one Member State , there is no definition of the Community section at all. In five Member States, the onboard supply of goods and services is taxable to a different extent outside their territory, regardless of where – inside or outside the Community section – they should have been taxed in accordance with the rules. Council Implementing Regulation (EU) No282/2011 has provided some clarification, but this differentiation remains complicated and leaves the door open to misinterpretation and inconsistency;

- **the definition of restaurant and catering services**: whilst a clear definition has been available since 1 July 2011, the Commission cannot rule out the possibility that further clarification will be needed, particularly in order to align the VAT Implementing Regulation with the recent case law;

- **the understanding of notions of 'stopover' and 'non-scheduled stops'**: divergences are observed between Member States in relation to the treatment of stopovers in comparison to the first point of embarkation or the last point of disembarkation of passengers within the EU. In at least ten Member States, the dividing line seems not to be correct.

The way ahead: the Commission states that the goods and services it covers are typical consumer products on which VAT is normally charged when they are supplied within the territory of the EU. As a matter of principle, the fact that the same goods and services are supplied on board certain means of transport **cannot be a sufficient justification for exempting those supplies within the EU from VAT**.

The future treatment of the transactions involved should be consistent with the guiding principles of VAT strategy set out in the Commission's Communication on the future of VAT particularly the need to increase the efficiency of the tax by broadening the tax base, but also the need for simple rules.

Given that the main purpose of VAT is to raise revenues and to tax consumption, the Commission is of the opinion that **the actual taxation of supplies of goods and services taking place on board transportation should be an objective to be pursued in the future**. Removing the exemption would also be in line with the need to make the tax systems more efficient. The Commission is aware that stakeholders (in particular, representatives of the cruise industry) indicate that it is desirable for them to keep the optional VAT exemption, as they fear a negative economic, social and environmental impact.

The Commission will verify which kind of clarifications could be agreed with Member States in order to address the current uncertainties. It will also assess whether **infringement procedures** should be undertaken for some Member States.

Even if the complexities can be solved, it is questionable whether the current rules laid down in the VAT Directive are satisfactory for ensuring the taxation of the transactions at stake in a simple, efficient and robust way. The Commission considers the application of these rules would still be complex for businesses and, in many cases, difficult or even impossible to control for tax authorities.

In the Commission's view, a change in the taxation of supplies on board means of transport giving rise to consumption in the EU cannot be achieved for the supplies on board alone, without putting these questions in the broader perspective of the design of a simpler and more neutral VAT framework for passenger transport activities in general.

In order to ensure such consistency, a legislative proposal in this field should be adopted, together with the proposals that will be made for passenger transport activities, following a comprehensive impact assessment. These proposals should ensure that the actual taxation of the supplies on board means of transport is simple and neutral.

Moreover, there is an acute need to make the rules less complex than is currently the case, and the obligations to be fulfilled by the operators should also be as light as possible. However, everything depends on the choice that will be made on the taxation system as such.

If the rules adopted mean that operators are liable to pay tax in Member States where they are not established, the case for a form of **one stop shop (OSS)** to simplify compliance would clearly have to be examined. As the Communication on the future of VAT pointed out, such a measure could only be considered after 2015, based on the experience from the mini one stop shop that will be implemented for telecommunications, radio and television broadcasting and electronic services supplied by non-established suppliers to non-taxable persons (final consumers).

The Commission feels that **the issues linked with supplies on board means of transport should be addressed in conjunction with passenger transport activities** where a more neutral and simpler VAT framework for passenger transport activities will be proposed. These issues are closely related and the types of challenges and difficulties being faced are similar.

The Commission therefore considers that it is not opportune to accompany the present report with specific legislative proposals. It invites the institutions to express their views.

Common system of value added tax (VAT)

2004/0079(CNS) - 27/11/2013 - Follow-up document

This **Council implementing Decision** intends to authorise Poland to introduce measures derogating from Articles 26(1)(a) and 168 of Directive 2006/112 /EC on the common system of value added tax.

General context: **Article 168** of Directive 2006/112/EC provides that a taxable person is entitled to deduct the VAT charged on purchases made for the purpose of his taxed transactions. **Paragraph 1 point (a) of Article 26 of that Directive** requires the use of goods forming part of the assets of a business for non-business purposes to be a supply of services for a consideration if the VAT on the purchase of those goods was eligible for deduction.

In the case of motor vehicles, this system can be difficult to apply for a number of reasons, notably because it is difficult to identify accurately the split between business and non-business use. Where records are kept, they add an additional burden to both the business and the administration in maintaining and checking them. The number of vehicles concerned means that even small-scale individual evasion has the capacity to grow into significant sums.

As an alternative to the system set out in the Directive, Poland has requested that it is allowed to limit the initial deduction to a set percentage and in turn relieve businesses from accounting for VAT on the private use. Poland is currently authorised on the basis of Council Implementing Decision 2010 /581/EU to restrict to 60 % the right to deduct VAT on the purchase, intra-Community acquisition, import, hire or lease of certain motor vehicles other than passenger cars, up to a maximum of PLN 6 000. That Decision shall expire on 31 December 2013.

Proposed action: the proposal aims to **authorise Poland to apply a measure derogating** from Article 168 of Directive 2006/112/EC so as to restrict the right of a taxable person to deduct VAT on the purchase, hire, rent or lease of certain motorised road vehicles and expenditure related thereto when the vehicle is not used exclusively for business purposes and the expenditure is not entirely related to the taxable person’s business. **The restriction is set at a flat rate of 50%.**

Where the right to deduct has been limited, a derogation from point (a) of paragraph 1 of Article 26 of Directive 2006/112/EC will relieve the taxable person from accounting for tax on the non-business use of that vehicle. The measure is restricted to vehicles under a certain seating capacity and under a certain total weight.

The proposed restriction **shall not apply to motor vehicles with a total maximum weight of more than 3 500 kilograms or motor vehicles with more than nine seats** including the driver's seat. This mainly restricts the field of application to passenger cars, vans, pick-ups and motorbikes.

This Decision shall **apply as of 1 January 2014**. **It shall expire on 31 December 2016**. Any request for the extension of the measures provided for in this Decision shall be submitted to the Commission no later than 1 April 2016. Such request shall be accompanied by a report which includes a review of the percentage restriction applied on the right to deduct VAT on the basis of this Decision.

The derogation will only have a negligible effect on the overall amount of tax collected at the stage of final consumption and will not adversely affect the European Union’s own resources accruing from VAT.