## Basic information

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|---|---|
| **2009/0118(CNS)**<br><br>CNS - Consultation procedure<br>Regulation | Procedure completed |
| Value added tax (VAT): administrative cooperation and combating fraud. Recast<br><br>Repealing Regulation (EC) No 1798/2003 2001/0133(CNS)<br>Amended by 2016/0371(CNS)<br>Amended by 2017/0248(CNS)<br>Amended by 2018/0413(CNS)<br>Amended by 2022/0409(CNS)<br><br>**Subject**<br><br>2.70.02 Indirect taxation, VAT, excise duties<br>2.80 Cooperation between administrations<br>8.70.04 Protecting financial interests of the EU against fraud | |

## Key players

### European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| ECON Economic and Monetary Affairs | GARCÍA-MARGALLO Y MARFIL José Manuel (PPE) | 15/09/2009 |

| Committee for opinion | Rapporteur for opinion | Appointed |
|---|---|---|
| JURI Legal Affairs | GERINGER DE OEDENBERG Lidia Joanna (S&D) | 02/09/2009 |

### Council of the European Union

| Council configuration | Meetings | Date |
|---|---|---|
| Economic and Financial Affairs ECOFIN | 3020 | 2010-06-08 |
| Justice and Home Affairs (JHA) | 3034 | 2010-10-07 |

### European Commission

| Commission DG | Commissioner |
|---|---|
| Taxation and Customs Union | ŠEMETA Algirdas |

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| 18/08/2009 | Legislative proposal published | COM(2009)0427 | Summary |

| | | | |
|---|---|---|---|
| 07/10/2009 | Committee referral announced in Parliament | | |
| 17/03/2010 | Vote in committee | | Summary |
| 25/03/2010 | Committee report tabled for plenary, 1st reading/single reading | A7-0061/2010 | |
| 05/05/2010 | Decision by Parliament | T7-0091/2010 | Summary |
| 05/05/2010 | Results of vote in Parliament | | |
| 07/10/2010 | Act adopted by Council after consultation of Parliament | | |
| 07/10/2010 | End of procedure in Parliament | | |
| 12/10/2010 | Final act published in Official Journal | | |

## Technical information

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|---|---|
| **Procedure reference** | 2009/0118(CNS) |
| **Procedure type** | CNS - Consultation procedure |
| **Procedure subtype** | Recast |
| **Legislative instrument** | Regulation |
| **Amendments and repeals** | Repealing Regulation (EC) No 1798/2003 2001/0133(CNS)<br>Amended by 2016/0371(CNS)<br>Amended by 2017/0248(CNS)<br>Amended by 2018/0413(CNS)<br>Amended by 2022/0409(CNS) |
| **Legal basis** | Treaty on the Functioning of the European Union TFEU 113 |
| **Other legal basis** | Rules of Procedure EP 165 |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | ECON/7/00772 |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee draft report | | PE430.982 | 11/12/2009 | |
| Amendments tabled in committee | | PE438.380 | 29/01/2010 | |
| Committee report tabled for plenary, 1st reading/single reading | | A7-0061/2010 | 25/03/2010 | |
| Text adopted by Parliament, 1st reading/single reading | | T7-0091/2010 | 05/05/2010 | Summary |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(2009)0427 | 18/08/2009 | Summary |
| Commission response to text adopted in plenary | SP(2010)3805 | 24/06/2010 | |

| | | | |
|---|---|---|---|
| Follow-up document | COM(2014)0071 | 12/02/2014 | Summary |
| Follow-up document | SWD(2014)0039 | 12/02/2014 | |

| Additional information | | |
|---|---|---|
| Source | Document | Date |
| National parliaments | IPEX | |
| European Commission | EUR-Lex | |

| Final act | |
|---|---|
| Regulation 2010/0904<br>OJ L 268 12.10.2010, p. 0001 | Summary |

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

2009/0118(CNS) - 12/02/2014 - Follow-up document

The Commission presented a report on the application of Council Regulation (EU) no 904/2010 concerning administrative cooperation and combating fraud in the field of value added tax.

As mentioned in the coordinated strategy to improve the fight against VAT fraud set out in the recent Commission Communication presenting an Action Plan to strengthen the fight against tax fraud and tax evasion, Member States can only address tax fraud and tax evasion effectively if they work together. **Improving administrative cooperation between Member States' tax administrations is therefore a key objective** of the Commission's strategy in this area.

**Main conclusions and recommendations**: the report highlighted areas where administrative cooperation still can be intensified, by making greater use of the improved possibilities offered by the Regulation 904/2010:

- overall, there must be a **quicker reply to requests for information**, since the lateness of the replies is a critical issue;
- some Member States still refrain from participating in automatic exchange of information on non-established taxable persons and new means of transport, although they consider the information to be very useful. This is very problematic and the Commission therefore intends to strengthen the close monitoring of developments in this field;
- **feedback**, provided spontaneously or on request, is an approach that must be encouraged in the context of good cooperation and best practices, as it is the best way to inform tax officials that their work was (to a certain extent) beneficial. In order to achieve this, management should improve training of tax auditors;
- all Member States should introduce measures to keep the **VIES database up-to-date**. This will, in combination with the reduction of timeframes, lead to a reliable and updated VIES system, that will make data on intracommunity transactions available as quick as possible. The Commission will monitor the correct application of automated access and provide more details on the usefulness and effectiveness of this tool;
- Member States should promote the presence of officials in administrative offices and **participation in administrative enquiries** in another Member State. This tool is hardly used by the Member States;
- it is necessary that the Member States renew their engagement as regards **multilateral controls** (MLCs), and the obstacles to multilateral controls identified in this report must be overcome. An increase to around 75 MLC's for 2014 should be achieveable especially since this would entail only an average of around 3 Multilateral controls per Member State. **Belgium has set-up a pilot project** designed to step up the fight against VAT fraud will be further discussed in the Eurofisc platform;
- **joint audits** (two or more countries joining together to form a single audit team to examine an issue(s) / transaction(s) of one or more related taxable persons (both legal entities and individuals) with cross-border business activities) are an instrument that should be further developed through a Fiscalis project group based on the experience gained in the **pilot project set up by the Netherlands and the United Kingdom**. If required, the Commission will take the initiative to provide for a legal basis to use the tool at EU-level;

- within **Eurofisc** (a newly introduced quick cooperation mechanism created to deal with large scale or new fraud patterns) common risk analysis and an effective feedback mechanism would be an appropriate response to the need to have more targeted information available and to make better use of the information that is already available in the network;
- coordinated approach at EU level to put in place **administrative cooperation arrangements with third countries** in the area of VAT is necessary. The Commission intends to submit a proposal to obtain the authorisation of the Council to start negotiations with certain third countries for a bilateral agreement on administrative cooperation at the beginning of 2014.

**Mini-one-stop-shop**: as from 1 January 2015, an optional mini One Stop Shop (MOSS) will be introduced as a simplification measure for certain traders. The preparatory legal and practical work is almost in place. The Commission has also set up a Fiscalis project group (FPG 86) to look at audit and control issues in the context of the MOSS.

In conclusion, the Commission is willing to support any initiative that would enhance cooperation and to take legal action whenever this proves necessary. However, Member States must show the political willingness necessary to follow this path.

Cross-border cooperation is indeed the sole adequate response to cross-border VAT fraud and Member States need to **prioritise where they allocate resources to** in the current difficult economic climate.

The Commission will report back on the progress made by Member States in the fields identified in this report. In light of the seriousness of the problem of VAT fraud, it will not await the next report to be provided only by end 2018, but has the intention to provide, **by the end of 2015, an evaluation of the state of play** to the Standing Committee on Administrative Cooperation (SCAC), focused on the efforts done by Member States in order to overcome the shortcomings listed in this report and to further enhance cross border cooperation in the field of VAT.

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

2009/0118(CNS) - 08/06/2010

The Council reached political agreement on a draft regulation aimed at enabling the Member States to step up their efforts to combat fraud with regard to value-added taxation (VAT) *doc. 10730/10*.

The draft regulation sets up Eurofisc, a network of national officials to detect and combat new cases of cross-border VAT fraud.

The regulation will be adopted without discussion at a forthcoming Council meeting, once the text has been finalised.

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

2009/0118(CNS) - 07/10/2010 - Final act

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.

LEGISLATIVE ACT: Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax.

CONTENT: the Council adopted a regulation aimed at enabling the member states to step up their efforts in combating fraud with regard to value-added taxation (VAT).

This Regulation recasts Regulation (EC) No 1798/2003 and lays down the conditions under which the competent authorities in the Member States responsible for the application of the laws on VAT are to cooperate with each other and with the Commission to ensure compliance with those laws.

To that end, it lays down rules and procedures to enable the competent authorities of the Member States to cooperate and to exchange with each other any information that may help to effect a correct assessment of VAT, monitor the correct application of VAT, particularly on intra-Community transactions, and combat VAT fraud. In particular, it lays down rules and procedures for Member States to collect and exchange such information by electronic means.

More specifically, the Regulation aims to:

- enhance the **databases** on VAT-taxable persons and their intra-Community transactions through the inclusion in those databases of a range of information on the taxable persons and their transactions;
- clearly define the **conditions for the exchange of**, and the automated access of Member States to, **electronically stored data**;
- provide for **information exchange without prior request** by specifying the categories for which an automatic exchange needs to be established in order to facilitate this exchange;
- provide a framework for the **provision of feedback**: where a competent authority provides information, it may request the competent authority which receives the information to give feedback thereon;
- provide for the possibility of **simultaneous controls** by Member States and of the presence of officials of one Member State in the territory of another Member State, within the framework of administrative cooperation.

In order to promote and facilitate multilateral cooperation in the fight against VAT fraud, a decentralised network without legal personality, to be called **Eurofisc**, should be established within the framework of this Regulation for all the Member States, to promote and facilitate multilateral and decentralised cooperation permitting targeted and swift action to combat specific types of fraud.

Within the framework of Eurofisc, Member States shall:

- establish a multilateral early warning mechanism for combating VAT fraud;
- coordinate the swift multilateral exchange of targeted information in the subject areas in which Eurofisc will operate (hereinafter 'Eurofisc working fields');
- coordinate the work of the Eurofisc liaison officials of the participating Member States in acting on warnings received.

ENTRY INTO FORCE: 01/11/2010.

APPLICATION: 01/01/2012.

# 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.

# 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.