## Basic information

| | |
|---|---|
| **2012/0205(CNS)**<br><br>CNS - Consultation procedure<br>Directive | Procedure completed |
| Common system of value added tax (VAT): quick reaction mechanism against VAT fraud<br><br>Amending Directive 2006/112/EC 2004/0079(CNS)<br><br>**Subject**<br><br>2.70.02 Indirect taxation, VAT, excise duties<br>8.50.01 Implementation of EU law<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 | CASA David (PPE) | 11/09/2012 |
| | Shadow rapporteur<br>LUDVIGSSON Olle (S&D)<br>JENSEN Anne E. (ALDE)<br>GIEGOLD Sven (Verts/ALE)<br>FOX Ashley (ECR) | |

| Committee for opinion | Rapporteur for opinion | Appointed |
|---|---|---|
| CONT Budgetary Control | The committee decided not to give an opinion. | |
| JURI Legal Affairs | The committee decided not to give an opinion. | |

### Council of the European Union

| Council configuration | Meetings | Date |
|---|---|---|
| Economic and Financial Affairs ECOFIN | 3248 | 2013-06-21 |
| Economic and Financial Affairs ECOFIN | 3205 | 2012-12-04 |
| Economic and Financial Affairs ECOFIN | 3227 | 2013-03-05 |

### European Commission

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

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| 31/07/2012 | Legislative proposal published | COM(2012)0428 | Summary |
| 11/09/2012 | Committee referral announced in Parliament | | |
| 04/12/2012 | Debate in Council | | Summary |
| 22/01/2013 | Vote in committee | | |
| 24/01/2013 | Committee report tabled for plenary, 1st reading/single reading | A7-0014/2013 | Summary |
| 07/02/2013 | Decision by Parliament | T7-0051/2013 | Summary |
| 07/02/2013 | Results of vote in Parliament | | |
| 07/02/2013 | Debate in Parliament | | |
| 05/03/2013 | Debate in Council | | Summary |
| 22/07/2013 | Act adopted by Council after consultation of Parliament | | |
| 22/07/2013 | End of procedure in Parliament | | |
| 26/07/2013 | Final act published in Official Journal | | |

## Technical information

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|---|---|
| **Procedure reference** | 2012/0205(CNS) |
| **Procedure type** | CNS - Consultation procedure |
| **Procedure subtype** | Legislation |
| **Legislative instrument** | Directive |
| **Amendments and repeals** | Amending Directive 2006/112/EC 2004/0079(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/7/10204 |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee draft report | | PE498.155 | 12/11/2012 | |
| Amendments tabled in committee | | PE501.907 | 05/12/2012 | |
| Committee report tabled for plenary, 1st reading/single reading | | A7-0014/2013 | 24/01/2013 | Summary |

| | | | | |
|---|---|---|---|---|
| Text adopted by Parliament, 1st reading/single reading | | T7-0051/2013 | 07/02/2013 | Summary |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(2012)0428 | 31/07/2012 | Summary |
| Commission response to text adopted in plenary | SP(2013)239 | 04/04/2013 | |

**National parliaments**

| Document type | Parliament /Chamber | Reference | Date | Summary |
|---|---|---|---|---|
| Contribution | PT_PARLIAMENT | COM(2012)0428 | 25/10/2012 | |
| Contribution | RO_CHAMBER | COM(2012)0428 | 07/11/2012 | |

**Other institutions and bodies**

| Institution/body | Document type | Reference | Date | Summary |
|---|---|---|---|---|
| EESC | Economic and Social Committee: opinion, report | CES2139/2012 | 14/11/2012 | |

**Additional information**

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

**Final act**

Directive 2013/0042
OJ L 201 26.07.2013, p. 0001 Summary

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

2012/0205(CNS) - 04/12/2012

The Council held a **policy debate** on a proposal for a Directive aimed at enabling immediate measures to be taken in cases of sudden and massive VAT fraud ("quick reaction mechanism").

The Commission's proposal is aimed at speeding up the procedure for authorising Member States to derogate from the provisions of the VAT directive (2006/112/EC), by providing for implementing powers to be conferred on the Commission under a "quick reaction mechanism". Based on Article 113 of the TFEU, the Directive requires unanimity for adoption by the Council, after consulting the European Parliament.

The debate focused on **whether implementing powers under the Directive should be conferred on the Commission or on the Council**.

The Council asked the Permanent Representatives Committee to oversee further work on the proposal, exploring both alternatives, with a view to enabling it to reach an agreement as soon as possible.

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

2012/0205(CNS) - 24/01/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by David CASA (EPP, MT) on the proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards a quick reaction mechanism (QRM) against VAT fraud in the framework of a special legislative procedure (European Parliament consultation).

**Proposal of measures:** Members consider that the **Commission** should, where appropriate, propose any other measure as falling within the scope of the quick reaction mechanism. That measure should be **approved unanimously by the Council after consulting the European Parliament**. The type of measures that could be authorised should be **thoroughly and transparently established** in order to minimise the time necessary for the authorisation of the derogations by the Commission. Any special measure **used** shall be subject to appropriate control measures by the Member States with respect to taxable persons who supply the goods or services to which that measure applies. This procedure shall be completed **within three months**.

The report amends the Commission's proposal so that when a Member State wishes to introduce a measure and sends its application to the Commission, it shall provide not simply the Commission, **but also the competent committees of Parliament and Court of Auditors** with the necessary supporting information. To speed up the process, Members propose that if the Commission considers it does not have all the necessary information, it shall contact the Member State concerned **within two weeks** of receipt of the application (instead of a month, as proposed by the Commission) and specify what additional information is required. They also suggest that the Commission shall also consult the relevant business sector, where appropriate and where possible.

Once the Commission has all the information it considers necessary for appraisal of the request it shall: (a) notify the requesting Member State accordingly; (b) transmit the request, in its original language, to the other Member States; (c) within one month, either authorise the special measure or, if the Commission objects to the requested measure, inform, and provide a **detailed justification** to the Member State concerned, the other Member States, the competent committees of the European Parliament, and the Court of Auditors.

**Reports:** Members introduced an amendment that every **three years**, and for the first time by 1 July 2014, the Commission shall submit to the European Parliament and to the Council a report on the application of the QRM. The report shall, *inter alia*, examine further special measures to be added to the scope of the mechanism and new ways to strengthen cooperation between Member States in the general framework of the mechanism. By 1 January 2014, the Commission shall present a report on how the regular derogation procedure set out in Directive 2006/112/EC could be accelerated. This would be to identify changes to existing structures and routines that would **ensure that the Commission always completes the procedure within five months of receipt of an application** from a Member State. The report shall, if appropriate, be accompanied by legislative proposals.

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

2012/0205(CNS) - 07/02/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 552 votes to 9, with 5 abstentions a legislative resolution on the proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards a quick reaction mechanism (QRM) against VAT fraud in the framework of a special legislative procedure (European Parliament consultation).

Parliament stresses that the enhanced fight against tax fraud and evasion is key to restoring and maintaining the stability and strength of public finances across the Union. It points out that the resulting losses to public finances can negatively affect the conditions of competition and thus the fair and efficient operation of the internal market. These losses should be curbed, in particular during times of fiscal austerity.

**Proposal of measures:** Parliament considers that the **Commission** should, where appropriate, propose any other measure as falling within the scope of the quick reaction mechanism. That measure should be **approved unanimously by the Council after consulting the European Parliament**. The type of measures that could be authorised should be **thoroughly and transparently established** in order to minimise the time necessary for the authorisation of the derogations by the Commission. Any special measure **used** shall be subject to appropriate control measures by the Member States with respect to taxable persons who supply the goods or services to which that measure applies. This procedure shall be completed **within three months**.

The resolution amends the Commission's proposal so that when a Member State wishes to introduce a measure and sends its application to the Commission, it shall provide not simply the Commission, **but also the competent committees of Parliament and Court of Auditors** with the necessary supporting information. To speed up the process, Parliament proposes that if the Commission considers it does not have all the necessary information, it shall contact the Member State concerned **within two weeks** of receipt of the application (instead of a month, as proposed by the Commission) and specify what additional information is required. It also suggests that the Commission shall also consult the relevant business sector, where appropriate and where possible.

Once the Commission has all the information that it considers necessary for appraisal of the request it shall: (a) notify the requesting Member State accordingly; (b) transmit the request, in its original language, to the other Member States; (c) within one month, either authorise the special measure or,

if the Commission objects to the requested measure, inform, and provide a **detailed justification** to the Member State concerned, the other Member States, the competent committees of the European Parliament, and the Court of Auditors.

**Reports:** Parliament introduces an article stipulating that every **three years**, and for the first time by 1 July 2014, the Commission should submit to the European Parliament and to the Council a report on the application of the QRM. The report should, *inter alia*, examine further special measures to be added to the scope of the mechanism and new ways to strengthen cooperation between Member States in the general framework of the mechanism. In another article, it proposes that, by 1 January 2014, the Commission should present a report on how the regular derogation procedure set out in Directive 2006/112/EC could be accelerated. This would be to identify changes to existing structures and routines that would **ensure that the Commission always completes the procedure within five months of receipt of an application** from a Member State. The report should, if appropriate, be accompanied by legislative proposals.

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

2012/0205(CNS) - 05/03/2013

The Council held an **exchange of views** on the way forward for two legislative proposals aimed at combating VAT fraud better and more rapidly.

The package includes:

- **a proposal for a Directive aimed at enabling immediate measures to be taken in cases of sudden and massive VAT fraud ("quick reaction mechanism");**
- a proposal for a Directive intended to allow Member States to implement, on an optional and temporary basis, a reversal of liability for the payment of VAT on the supply of certain goods and services ("reverse charge mechanism").

A broad majority of Member States indicated that they could support the way forward suggested by the Presidency in the form of a package encompassing both proposals.

In the light of the Council's discussion and the guidance received, the Presidency announced its intention to carry forward work on the compromise package at the level of experts, on the basis of the following guidelines:

1. A Quick Reaction Mechanism (QRM) based on the procedure proposed by the Commission should be considered to facilitate the rapid response necessary for Member States faced with unknown, sudden and massive fraud. The lifetime of the QRM framework will be limited to five years to end-2018 and any renewal of the framework will require a new legislative proposal from the Commission to the Council to be adopted by unanimity.
2. Regarding known fraud, the scope of the existing Reverse Charge Mechanism (RCM) under Article 199a of the VAT Directive should be extended in order to provide the option to Member States to apply this mechanism to transactions in sectors which are already the subject of derogation requests, including mobile phones, integrated circuit devices, game consoles, tablet PCs and laptops, telecommunications services, gas and electricity, and agricultural products; and also to recently identified transactions in the copper sector.
3. The timeframe for the RCM should be aligned with that of the QRM to apply until end-2018 and the necessary technical work in respect of the QRM and the RCM should be concluded with a view to enabling the Council to adopt these legislative proposals by May 2013 at the latest.
4. All Member States should inform the relevant business sectors of decisions granting derogations under the QRM framework in a timely manner.
5. The Commission should clarify the criteria under which a temporary derogation already granted under the QRM framework may qualify for extension as required under the normal (Article 395) procedures. It is important that Member States are not denied the possibility of accessing that derogation under Article 395.
6. The desire of Member States and the Commission to speed-up the existing procedures under Article 395 of the VAT Directive with a view to reducing the timescale involved in granting derogations in general should be taken into account. The Presidency notes the Commission’s commitment in this regard.
7. The Presidency also welcomes the commitment from the Commission to progress the delivery of a “Robust, Resilient and Fraud Proof VAT system” as outlined in its Communication on the Future of VAT with a view to facilitating the prevention of VAT fraud rather than having to rely on derogatory arrangements to deal with its often serious consequences.
8. Lastly, greater co-operation in the sharing of best administrative practice among Member States in enhancing the effectiveness of measures against the risk of VAT fraud should be encouraged.

The Presidency remains open to **explore any concrete proposals** by Member States supporting the objectives of the package, in particular in delivering the requisite speed to tackle sudden and massive fraud. It remains the aim of the Presidency to seek adoption of the legislative proposals by the Council **before the end of June 2013**.

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

2012/0205(CNS) - 22/07/2013 - Final act

PURPOSE: to prevent sudden and massive VAT fraud that often has an international dimension.

LEGISLATIVE ACT: Council Directive 2013/42/EU amending Directive 2006/112/EC on the common system of value added tax, as regards a Quick Reaction Mechanism against VAT fraud.

CONTENT: specific sudden and massive forms of tax fraud have recently developed especially via the use of electronic means which facilitate rapid illegitimate trade on a large scale.

Recent experience has demonstrated that the procedure provided for in Article 395 of Directive 2006/112/EC is not able to respond quickly enough to requests by Member States for urgent measures. A rapid and exceptional response to further instances of sudden fraud is best guaranteed by a Quick Reaction Mechanism special measure consisting of the option to apply for a short period a reverse charge.

This Directive seeks to **incorporate, within the "VAT" Directive, a "Quick Reaction Mechanism" (QRM)** which, in very specific situations, will permit Member States to take immediate measures in the event of sudden and massive VAT fraud. The procedure is the following:

- a Member State wishing to introduce a QRM special measure as provided for in paragraph 1 shall send a notification to the Commission using the standardised form established in accordance with paragraph 4 and at the same time send it to the other Member States. The Member State shall provide the Commission with the information indicating the sector concerned, the type and the features of the fraud, the existence of imperative grounds of urgency, the sudden and massive character of the fraud and its consequences in terms of considerable and irreparable financial losses. The Commission may request additional information;
- once the Commission has all the information it considers necessary, the Commission shall have a brief period (one month) to confirm whether it will or will not issue an objection, taking into account the views of the other Member States.

Before 1 January 2018, the Commission shall present to the European Parliament and to the Council an overall assessment report on the impact of the QRM.

ENTRY INTO FORCE: 15/08/2013.

The QRM is an exceptional and temporary mechanism: it shall only apply until 31 December 2018.

# 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.