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Towards a single EU VAT area - Time to act

Amended proposal for a

COUNCIL REGULATION

**amending Regulation (EU) No 904/2010 as regards measures to strengthen
administrative cooperation in the field of value added tax**

{SWD(2017) 428 final} - {SWD(2017) 429 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

As a broad-based consumption tax, value added tax (VAT) is a major and growing source of tax revenue in the European Union¹. In recent years, however, the VAT system has been unable to keep pace with the globalisation and digitalisation of the economy.

In particular, the current system for the taxation of trade between Member States is still based on ‘transitional arrangements’. In 1967, the commitment was made to establish a definitive VAT system operating within the European Community at that time in the same way as it would within a single country². The need to abolish the fiscal frontiers between Member States by the end of 1992 made it necessary to reconsider the way in which trade in goods was taxed in the European Community. The goal was that goods would be taxed in the country of origin, so that the same conditions that apply to domestic trade would also apply to intra-Community trade, perfectly reflecting the idea of a genuine internal market.

Since the political and technical conditions were not ripe for such a system, transitional VAT arrangements were adopted³. Those arrangements, as far as Business-to-Business (B2B) transactions on goods are concerned, split the cross-border movement of goods into two different transactions: an exempt supply in the Member State of departure of the goods and an intra-Community acquisition taxed in the Member State of destination.

These rules were regarded as temporary and are not without drawbacks since allowing goods to be bought free of VAT increases the opportunity for fraud, while the inherent complexity of the system is not favourable to cross-border trade.

It is estimated that in total about EUR 152 billion was lost in 2015 due to shortcomings in VAT collection, including fraud⁴. Earlier estimates had put the losses due to cross-border fraud alone at EUR 50 billion⁵. Such fraudulent practices distort competition within the single market and prevent it from functioning properly. Moreover, they have serious consequences for Member State budgets and for the European Union (EU) budget, as part of the EU’s own resources is based on VAT.

In its VAT Action Plan of 7 April 2016⁶, the Commission outlined the need to put in place a single European VAT area that could cope with the challenges of the 21st century. A set of

¹ VAT raised slightly more than EUR 1 trillion in 2015. This figure equates to 7 % of EU GDP or 17.6 % of total national tax revenues (Eurostat).

² First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes; Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax.

³ Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ L 376 of 31.12.1991, p. 1).

⁴ CASE & Institute for Advanced Studies, Study and Reports on the VAT Gap in the EU-28 Member States: 2017 Final Report, 2017.

⁵ Ernst and Young, Implementing the ‘destination principle’ to intra-EU B2B supplies of goods, 2015.

⁶ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT – Towards a single EU VAT area – Time to decide (COM(2016) 148).

key measures would be adopted in the short and medium term to modernise the EU VAT system and make it simpler, more fraud-proof and business-friendly.

The Commission announced its intention to propose a definitive VAT system for intra-Union cross-border trade based on the principle of taxation in the Member State of destination of the goods in order to create a robust single European VAT area.

Among the short-term measures, the Commission announced its intention to improve the exchange and analysis of information by tax administrations and with other law enforcement bodies, to strengthen Eurofisc⁷ and to introduce new tools such as joint audits.

The aim was to prepare the implementation of the definitive VAT system and, pending its full implementation, to contain cross-border fraud.

The EU's common system for administrative cooperation between the Member States' tax administrations has been in place for many years. Above all it helps Member States collect the VAT due on cross-border transactions and fight fraud within the single market. However, as the European Court of Auditors has pointed out⁸, the instruments for administrative cooperation and combating VAT fraud in the EU must be put to greater and better use.

In its conclusions of May 2016 on fighting VAT fraud⁹ the Council acknowledged that improving administrative cooperation between tax authorities was of significant importance. It took note of the Commission's intention to table a legislative proposal in 2017 that would aim at improving the exchange, sharing and analysis of key information and envisaged joint audits. The Council called on the Commission to propose ways of addressing legal obstacles and practical limitations in the EU and within the Member States that are holding back a qualitative leap in information exchange. This work should promote cooperation and cover the full range of available means — including, *inter alia*, VIES¹⁰, Eurofisc and feedback procedures — and address the challenges to customs and tax authorities. It also underlined that automatic information exchange was one of the ways forward in the fight against fraud and confirmed that risk assessment and analysis remained a major area for further improvement in the EU.

In November 2016, the European Parliament¹¹ welcomed the VAT Action Plan and supported its measures to reduce the VAT gap and tackle VAT fraud.

This initiative is part of the 'fair taxation package for the creation of a single EU value added tax area' set out in the roadmap for a more united, stronger and more democratic Union¹². It aims at tackling cross-border VAT fraud by implementing the Council, European Parliament and European Court of Auditors recommendations and drastically and swiftly improving how tax administrations cooperate together and with other law enforcement bodies.

Such measures would prepare the ground for full implementation of the definitive VAT regime. On 4 October 2017, the Commission presented a series of legislative proposals to implement the first step of the definitive VAT system whereby the VAT treatment of intra-

⁷ Eurofisc is a network of national tax officials for quick and multilateral exchanges of targeted information on VAT fraud.

⁸ Special report no 24/2015: Tackling intra-Community VAT fraud: More action needed, http://www.eca.europa.eu/Lists/ECADocuments/SR15_24/SR_VAT_FRAUD_EN.pdf.

⁹ <http://www.consilium.europa.eu/en/press/press-releases/2016/05/25-conclusions-vat-action-plan/>.

¹⁰ The VAT Information Exchange System (VIES) allows Member States to exchange information on cross-border supplies and taxable persons identified for VAT purposes.

¹¹ European Parliament resolution of 24 November 2016 on towards a definitive VAT system and fighting VAT fraud (2016/2033(INI).

¹² https://ec.europa.eu/commission/sites/beta-political/files/state-union-2017-brochure_en.pdf.

Union B2B supplies of goods would be settled¹³. Another set of proposals will be presented next year.

The three main types of cross-border fraud are still the most widespread and most significant across the EU: ‘carousel fraud’ (or missing trader intra-Community fraud — MTIC fraud); used car fraud; and fraud involving customs procedures 42 and 63.

MTIC fraud occurs when a fraudster purchases goods or services from another Member State free of VAT but then charges VAT when he resells them; he pays no VAT to the tax authorities (while the buyer can deduct it). The European Court of Auditors and Europol have estimated that MTIC fraud could account for EUR 40 to 60 billion of annual VAT revenue losses and that 2 % of organised crime groups could be behind 80 % of the fraud.

Due to the dual VAT regime applicable to cars (‘margin scheme’ or normal arrangements), trading in cars is often subject to VAT fraud. The easiest way to commit fraud is to sell recent or new means of transport (for which the whole amount is taxable) as second-hand goods (for which only the margin is taxable).

Lastly, the scheme for importing goods free of VAT (customs procedures 42 and 63), implemented to ease trade where the goods are immediately delivered to a business in another Member State, is often abused and the goods diverted to the black market without VAT having been paid. This type of fraud sometimes occurs with the fraudulent undervaluation of the goods to avoid customs duties. There were 8.5 million import transactions with a VAT exemption in 2015, with a total value of EUR 74 billion.

This initiative would add measures specifically designed to tackle these fraud schemes, to Council Regulation (EU) No 904/2010¹⁴, the reference legal basis for administrative cooperation and the fight against VAT fraud.

- **Consistency with existing policy provisions in the policy area**

Regulation (EU) No 904/2010 lays down the conditions under which the Member States’ competent authorities cooperate with each other and with the Commission to ensure compliance with VAT rules within the single market. The VAT Action Plan seeks to bolster VAT administrative cooperation instruments, in particular Eurofisc, as a means of strengthening trust between tax authorities before the definitive VAT regime comes into play. Pending that, such measures will also help contain cross-border fraud.

- **Consistency with other Union policies**

Fighting tax fraud and evasion to help secure national and EU revenues and prevent distortion of competition has been a top Commission priority in recent years. This Commission’s political guidelines¹⁵ call for more strenuous efforts to combat tax evasion and tax fraud, using means such as improved administrative cooperation between tax authorities. These priorities are directly reflected in the VAT Action Plan.

This initiative goes hand in hand with other VAT initiatives and would play an important role in securing the success of the most ambitious proposal — implementing the definitive VAT regime. Additionally, MTIC fraud is one of the ten crime areas that Europol and the Council

¹³ COM(2017) 567, 568 and 569, 4.10.2017.

¹⁴ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast).

¹⁵ Political Guidelines for the next European Commission: https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en_0.pdf.

have identified as top priorities for the European Union for the period 2018-2021¹⁶. A similar approach has been taken for the 2014-2017 period. Also of relevance are:

- the entry into force of Directive (EU) 2017/1371, which will cover serious EU-wide VAT fraud¹⁷; and
- Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')¹⁸, adopted on 12 October 2017 by twenty Member States¹⁹. This independent and decentralised EU body will be responsible for investigating and prosecuting crimes against the EU budget, such as fraud, corruption, or cross-border VAT fraud above EUR 10 million.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for this initiative is Article 113 of the Treaty on the Functioning of the European Union (TFEU). Here the Council, acting unanimously, shall adopt provisions for the harmonisation of Member States' rules on indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the single market and to avoid distortion of competition.

• Subsidiarity

Member States are primarily responsible for VAT management, collection and checks. However, VAT fraud is often linked to cross-border transactions within the single market or involves traders established in other Member States than the one where the tax is due. It adversely affects how the single market functions and causes serious losses to the EU budget.

Under Article 113 of the TFEU, the Council shall adopt provisions to harmonise legislation concerning indirect taxes to ensure the establishment and the functioning of the internal market and avoid distortion of competition. The result has been EU cooperation instruments designed above all to organise the exchange of information between tax administrations, as well as supporting common audit activities and the establishment of the Eurofisc network.

The VAT Action Plan calls for more effective instruments, in particular a stronger role for Eurofisc, and new ways of collaboration and cooperation with a sound legal basis. This

¹⁶ Council Conclusions of 18 May 2017 on setting the EU's priorities for the fight against organised crime and serious international crime between 2018 and 2021 (<http://www.consilium.europa.eu/en/meetings/jha/2017/05/18/>). The Council Conclusions defined also the following priority: "(6) To disrupt the capacity of OCGs and specialists involved in excise fraud and missing Trader Intra Community (MTIC) fraud". This priority will be implemented through two Operational Action Plans: Excise fraud and MTIC fraud. Experiences gained from the Excise/MTIC priority in the previous Policy Cycle should be duly taken into account.

¹⁷ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.

¹⁸ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO').

¹⁹ The Member States participating in enhanced cooperation are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia, and Spain. To date, Hungary, Malta, Netherlands, Poland, and Sweden decided not to take part in this initiative, while Denmark, Ireland and the United Kingdom do not to participate on the basis of Protocols no. 21 and respectively 22.

cannot be done solely at Member State level or using non-legislative instruments. Acting at EU level would offer value over and above what can be achieved nationally.

- **Proportionality**

The proposal is largely based on the existing legal framework and adds to it only where the framework needs strengthening. All measures proposed are targeted according to Member States needs, and while having positive effects on the VAT fraud level would not entail any additional costs for business and administrations except for the measures under which IT developments would be necessary. Even in these instances, the associated development costs would remain limited.

Therefore, the new provisions would not go beyond what is strictly necessary to make administrative cooperation instruments more effective in combating cross-border VAT fraud.

- **Choice of the instrument**

A Council Regulation is needed to amend current Regulation (EU) No 904/2010.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

In drawing up the current proposal, an evaluation of the use of the EU framework for administrative cooperation and combating VAT fraud provided for in Regulation (EU) No 904/2010 was carried out²⁰.

Overall, the Member States take a positive view of the legal and practical framework implemented with Regulation (EU) No 904/2010. The vast majority consider that it has helped improve administrative cooperation between them. Exchanges of information on request, automated access to information, Eurofisc and multilateral controls are viewed as the Regulation's most effective instruments.

However, Member States continue to see drawbacks, in particular with Eurofisc, which has not yet reached its full potential. There is an apparent need to develop new instruments or new ways of cooperating. In particular, Member States support options such as Transaction Network Analysis (TNA) software to jointly process and exchange VAT data within Eurofisc²¹. There is also room to further develop automated exchange of information or access to new sets of data. In this context, Member States are particularly interested in access to customs data or car registration information.

Exchanging information with EU law enforcement authorities remains a sensitive area for the Member States. According to them, participation in Eurofisc working field meetings or spontaneous exchanges of intelligence between Eurofisc, Europol and OLAF seem to be better avenues for improving cooperation between authorities involved in fighting VAT fraud at EU level than granting Europol and OLAF automated access to VIES or Eurofisc data.

Improving administrative cooperation on VAT would be fully consistent with other EU policies currently under development. This is particularly true of Directive (EU) 2017/1371

²⁰ Commission Staff Working Document – Impact Assessment accompanying this proposal.

²¹ Eurofisc officials will use TNA to exchange and jointly process VAT data. TNA will be able to detect and visualize at an early stage suspicious networks.

and Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the EPPO. All this demonstrates that several common initiatives at EU level have similar objectives: improving cooperation between law enforcement and judicial authorities and finding new ways of combating the most severe threats to tax revenues.

- **Stakeholder consultations**

In drawing up the current proposal and assessing the current arrangements, the Commission sought the opinion of the tax authorities in the Member States and of the public — in particular on possible ways of improving administrative cooperation to address cross-border fraud.

Most Member States would support joint processing of data in Eurofisc (TNA) and the introduction of measures to fight fraud involving customs procedures 42 and 63. Access to car registration data also received support from most Member States.

Other stakeholders such as business and citizens support the role of the EU to assist and to ensure administrative cooperation amongst Member States. Some of them consider that the current instruments are not adapted to new business models and to the fight against cross-border or organised crime fraud. New automated exchanges of information and a greater collaboration between the tax and law enforcement authorities should be envisaged. They support a greater role for Eurofisc. They expressed an overall positive opinion on joint audits.

- **Collection and use of expertise**

Besides consulting all stakeholders and in particular the Member States tax authorities, no outside experts were needed to draw up the current proposal.

- **Impact assessment**

In drawing up the current proposal, the impact assessment looked at five main options with sub-options:

- jointly processing and analysing data in Eurofisc;
- improving the operational framework for coordinated checks between Member States;
- developing the exchange of information and intelligence between Member States' tax administrations in Eurofisc and law enforcement authorities at EU level;
- tackling fraud involving the dual VAT regime applicable to cars by improving access to vehicle registration data;
- sharing information on customs procedures 42 and 63 between customs and tax authorities.

Careful analysis concluded that several options should be retained to address all relevant issues properly.

Due to the lack of relevant data, it was not possible to precisely assess and quantify the benefits of the main preferred options. However, the impact on the various stakeholders was summarised as follows:

- Member States: the main options covered by this initiative could help make fighting cross-border VAT fraud quicker and more efficient, and should therefore increase VAT revenues. Joint processing of data within Eurofisc would not trigger any

additional costs, as they are already borne by the Fiscalis programme²². A new exchange of information between tax and customs authorities and automated access to car registration data could trigger implementation and running costs, but these could be limited, as existing systems could be used.

- Business, including SMEs and micro-enterprises: better targeting of fraudsters could reduce the compliance costs and administrative burden for businesses involved in intra-Union trade, as the envisaged options would better use and analyse available information and therefore reduce the need for administrative enquiries and reporting obligations from compliant traders. Business should also benefit from a more level playing field and better functioning single market.

The impact assessment accompanying this proposal was considered by the Regulatory Scrutiny Board on 13 September 2017. The Board gave a positive opinion with some recommendations, in particular, on the need to better describe the interaction of this initiative with other elements of the VAT Action Plan and the need for clearer motivations for the design of the options. Such recommendations were taken on board. The opinion of the Board and the recommendations are mentioned in the Staff Working Document for the impact assessment.

- **Regulatory fitness and simplification**

This initiative does not fall within the remit of the Regulatory Fitness Programme.

- **Fundamental rights**

It is expected that this proposal would trigger new exchange and joint processing of existing VAT information, which could include personal data. However, data collection would be strictly targeted and circumscribed to operators supposedly involved in fraudulent transactions. The data would be kept only for the time necessary for analysis and investigations by national tax authorities empowered to enforce VAT obligations. They would be used solely to identify potential fraudsters at an early stage and to put an end to fraudulent networks whose purpose is to abuse the VAT system by perpetrating VAT fraud. They would be accessed and used by authorised personnel alone.

Nevertheless, these measures would ultimately be subject to Article 8 of the Charter of Fundamental Rights and, once introduced into Regulation (EU) No 904/2010, to Article 55(5) of that Regulation, which refers to the General Data Protection Regulation²³.

4. BUDGETARY IMPLICATIONS

The proposal will have no negative implications for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Pursuant to Article 59 of Regulation (EU) No 904/2010, the Regulation's application is reviewed every five years. In addition, under Article 49, to evaluate how well administrative

²² Regulation (EU) 1286/2013 of 11 December 2013 establishing an action programme to improve the operation of taxation systems States in the European Union for the period 2014-2020 (Fiscalis 2020).

²³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC

cooperation is combating tax evasion and avoidance, Member States must communicate to the Commission any available information relevant to the application of the Regulation and, *inter alia*, annual statistics about the use of the cooperation instruments. The impact assessment accompanying this proposal lists the indicators for monitoring and evaluation (see Chapter 8.1).

- **Detailed explanation of the specific provisions of the proposal**

The main objectives of the proposal are:

- jointly processing and analysing all relevant data within Eurofisc;
- improving the operational framework for coordinated checks between Member States;
- developing the exchange of data between Member States' tax administrations and law enforcement authorities at EU level;
- tackling fraud involving the dual VAT regime applicable to cars by improving access to vehicle registration data;
- fighting fraud involving customs procedures 42 and 63.

On 4 October 2017 the Commission proposed amending Regulation (EU) No 904/2010, and in particular Articles 17 and 31 thereof²⁴, to apply from 1 January 2019 to certified taxable persons. This legislative proposal therefore constitutes an amended proposal including these provisions.

Measures applicable as from the day of entry into force of this Regulation

Exchanges of information without prior request

Modifying Article 13 would enable the competent authorities to exchange information through other means than standard forms when they consider it necessary.

Joint audits

Carrying out an administrative enquiry is often necessary to combat VAT fraud in particular when the taxable person is not established in the Member States where the tax is due. Chapter VII provides for the presence of officials in administrative offices and in the premises of taxable persons during administrative enquiries in other Member States. To boost the capacity of tax administrations to check cross-border supplies, a new cooperation instrument would be included in the Regulation. Joint audits would allow officials from two or more tax administrations to form a single audit team if they so wished and to participate actively in an administrative enquiry. That team would examine the cross-border transactions of one or more related taxable persons (both legal entities and individuals) carrying out cross-border activities, including cross-border transactions involving related affiliated companies established in the participating countries.

In addition, to avoid that the choice by taxable persons of their place of establishment in the Union hampers the proper enforcement of VAT and to avoid duplication of work and administrative burden for tax authorities and business, when at least two Member States consider that an administrative enquiry into the amounts declared by a taxable person non-established on their territory but taxable therein, is necessary, the Member State where the taxable person is established should undertake the enquiry and the requiring Member States

²⁴ COM(2017) 567, 4.10.2017.

should assist the Member State of establishment by taking part actively in the audit. This measure would be particularly relevant to combat fraud in e-commerce activity.

Eurofisc

Chapter X has established Eurofisc for the swift exchange of targeted information between Member States, in order to tackle large-scale or new VAT fraud patterns. To speed up the joint processing and analysis of data within Eurofisc, the Commission is currently developing TNA software for voluntary use by the Member States as of 2018.

In order to maximise TNA's potential to identify fraudulent networks across the whole EU, Regulation (EU) No 904/2010 would make clearer provision for the joint processing and analysis of data within Eurofisc. Involvement in such processing and analysis will remain voluntary. However, all Member States should grant Eurofisc officials access to their VIES data on intra-Union transactions through TNA; in that way the software can identify all potential fraud networks, including those involving traders established in non-participating Member States.

The amendments also provide clearer rules on how Eurofisc would run and be run. They would enable Eurofisc to coordinate joint administrative enquiries launched on the basis of its risk analyses. Eurofisc officials are often the first to be warned about new fraudulent networks, and they have strong expertise in serious VAT fraud. Therefore, they would be the best placed to coordinate the corresponding administrative enquiries.

This would make for a swifter and more effective reaction to the TNA results and the information from such enquiries could be immediately processed by TNA. In practice, such coordination would be carried out in the Eurofisc working field with the relevant expertise by one or several Eurofisc officials from the Member States involved in the enquiries. More coordinated checks between Member States should improve their capacity to react quickly to ever-changing fraudulent activities.

The proposal also opens up the possibility for Eurofisc officials to forward information on VAT fraud trends, risks and serious cases to Europol and the European Anti-Fraud Office (OLAF) and to disclose such cases to the EPPO. This would cover, in particular, the most damaging VAT fraud, such as MTIC schemes and abuses of customs procedure 42 frequently involving criminal organisations. These organisations take advantage of their international networks to create advanced MTIC schemes with the aim of extorting money from the national budgets. They hide behind straw men, which gives administrative measures less clout.

Cooperation with law enforcement authorities at EU level would allow for the cross-checking of Eurofisc information with criminal records, databases and other information held by OLAF and Europol and would help identify the real perpetrators of fraud and their networks. OLAF obtains in particular relevant information in the context of its investigations on customs fraud, which is intrinsically linked to VAT fraud such as customs procedure 42 fraud. OLAF may also facilitate and coordinate VAT fraud investigations, making use of its inter-disciplinary approach.

Most Member States have already put in place such cooperation at national level and involve Europol in their fight against MTIC fraud. However, often these cooperation actions are complex and create the risk that the value of the information will be lost before it reaches the right authorities. A direct link between Eurofisc, Europol and OLAF as well as with the EPPO, for the most serious VAT fraud cases, would shorten this latency of data and maximise their value in the fight against criminal organisations.

This proposal would lift some restrictions on the right of Eurofisc officials to consult VIES data on intra-Union supplies when the supplier or the customer is registered in another Member State (Article 21(2)). Currently, access is restricted to Eurofisc liaison officials, who should hold personal user identification for the electronic systems to gain access to this information. In addition, access must occur in connection with an investigation into suspected fraud and only during general working hours. This proposal would remove the latter condition, as limiting the timespan for fighting serious VAT fraud is difficult to justify. It is also proposed that the practical details around the identification of authorised officials be defined in an implementing act to address the concerns of certain Member States.

Procedures to refund VAT to taxable persons not established in the Member State of refund

Chapter XII covers the forwarding of requests for VAT refunds in other Member States and the exchange of information on such requests. It would be amended to improve coherence with the collection of VAT debts in the Member State of establishment and to avoid the use of – and the administrative burden and costs linked to – a recovery assistance request from the Member State of establishment to seize the VAT refund amount in the refund Member State.

Under the existing rules on recovery assistance, the authorities of the Member State of establishment may send a request for recovery or precautionary measures to the Member State of refund, for the VAT refund amounts to be seized. This requires the applicant authority to draw up a specific request for recovery assistance; the VAT refund and tax recovery authorities in the requested Member State must engage in special coordination to carry out this request; and the taxable person concerned who wants to contest the recovery or precautionary measures taken by the requested authorities, has to undertake this action in the requested Member State, in accordance with Articles 14(2) and 17 of Directive 2010/24/EU.

The taxable person concerned may consent to have a direct transfer of the VAT refund to the Member State of establishment, in order to discharge his outstanding VAT liabilities in that Member State, or in order to have this refund amount retained as a precautionary measure in case of disputed VAT debts in that Member State. In the latter case, a contestation of that retention could be brought before the competent judicial authorities in his own Member State of establishment, in all stages of the proceedings concerning the disputed VAT debt.

The current proposal would avoid the need for recovery assistance requests, insofar as the tax debtor would agree to the direct transfer. In this way, it would also reduce the administrative burden for the applicant Member State and avoid all administrative burden and costs for the requested Member State.

When applying the transfer and retention arrangements in view of securing the payment of disputed VAT liabilities in the Member State of establishment, that Member State must clearly respect the tax debtor's rights. In this regard, the proposal envisages judicial oversight of the retention of the VAT refund amount in the Member State of establishment. This is designed to help tax debtors wishing to contest the measure, as they will no longer have to contest precautionary measures in the other Member State.

Disclosure of serious VAT fraud cases involving at least two Member States to OLAF and the EPPO

Chapter XIII, which covers relations with the Commission, would be amended to better protect the European Union's financial interests. The Member States participating in the EPPO should communicate to it, information on the most serious VAT offences as referred to in Article 2(2) of Directive (EU) 2017/1371. These would be cases involving activity in two or more Member States and total damage of at least EUR 10 million.

The EPPO will be an independent and decentralised EU body. It will be responsible for investigating and prosecuting crimes against the EU budget such as cross-border VAT fraud above EUR 10 million. It will operate as a single office across participating Member States and will combine European and national law enforcement efforts in a unified, seamless and efficient approach.

OLAF will remain responsible for administrative investigations into non-fraudulent and fraudulent irregularities affecting the EU's financial interests. Its mandate and competence with regard to VAT fraud therefore go beyond those cases identified as most serious in Article 2(2) of Directive (EU) 2017/1371. In addition, as not all Member States will be part of the EPPO, OLAF will continue with its administrative investigations in relation to non-participating Member States in the same way as it does today. In the participating Member States, in areas under the EPPO's remit, the EPPO and OLAF will establish and maintain close cooperation aimed at ensuring the complementarity of their mandates, and avoiding duplication. In this context, OLAF may bring support to the EPPO investigations on VAT fraud cases.

OLAF may also facilitate and coordinate VAT fraud investigations making use of its interdisciplinary approach, as well as provide analysis and intelligence. To this end, the Member States should communicate to OLAF information about VAT offences where they deem it appropriate for the exercise of its mandate.

Update of the conditions governing the exchange of information and the Commission's exercise of implementing powers

Chapter XV, which lays down the conditions for the exchange of information, would be amended to reflect the new legal basis for personal data protection: Regulation (EU) 2016/679.

Chapter XVI, with the general and final provisions, must be updated with the new legal basis for Member State checks on how the Commission exercises its implementing powers: Regulation (EU) 182/2011.

Measures applicable from 1 January 2020

Sharing customs procedures 42/63 and vehicle registration data with tax authorities

Chapter V deals with the storage and exchange of information on taxable persons and transactions. Amending this chapter would allow for exchanges of data on customs imports with VAT exemptions and on vehicle registrations.

The first new set of data would be exchanged to tackle the abuse of the VAT scheme for importing goods free of VAT (customs procedures 42 and 63) where they were supposed to be delivered to another Member State but were diverted to the black market. One weakness of these procedures is that the entire process can take a long time to check, despite the risk of fraud occurring quickly. Before they can carry out such checks the tax authorities in the Member States of import and of destination have to wait for the importer's recapitulative statement, which often fails to materialise.

With this proposal, the relevant information in relation to customs procedures 42 and 63 submitted electronically with the customs declaration (e.g. VAT numbers, value of the imported goods, type of commodities etc.) would be shared by the Member State of import with the tax authorities in the Member State of destination. The tax authorities in both countries would therefore be able to cross-check this information with the information reported by the importer in his recapitulative statement and VAT return, and by the recipient in his VAT return. In addition, if the Member State of destination detected that the VAT

number of the customer, albeit valid, had been hijacked by the importer, it could immediately inform the Member State of import, so that it could check the importer. In addition, by cross-checking the customs information with the VAT recapitulative statements, the tax authorities would be able to detect cases of undervaluation at the moment of import, designed to avoid customs duties. Extended access to the data could be granted to Eurofisc officials, as for intra-Union supplies.

Amending Article 21 would also clarify that customs authorities responsible for checking the conditions for the VAT exemption in customs procedures 42 and 63 should be granted automated access to the VAT Information Exchange System (VIES) so that they could check the validity of VAT identification numbers. This is one of the conditions for granting the VAT exemption at the moment of import and an automatic check at the border would be a considerable deterrent against this type of fraud.

The second new set of data to be exchanged would be used by Eurofisc officials to tackle cross-border fraud involving the sale of second-hand cars. In particular it would allow them to identify swiftly who has committed the fraudulent transactions and where. In practice, this access would be granted through the EUCARIS platform²⁵, where automated information exchanges on vehicle registrations already take place.

Measures applicable as from 1 July 2021

When taxable persons established in one Member State supply goods or services to customers established on the territory of another Member State, they are increasingly subject to obligations in that other Member State. This is often driven by technological developments. In order to facilitate the correct application of VAT on such cross-border transactions, the mechanism provided for in Article 32 by which information is made readily available for taxable persons should be extended to encompass other information, notably on rates and measures targeting small enterprises.

²⁵ EUCARIS started in 1994 to enable national registration authorities to cooperate in the fight against international vehicle crime and driving licence tourism by exchanging vehicle registration and driving licence information. All EU Member States now make use of the system developed and operated by the EUCARIS co-operation.

Amended proposal for a

COUNCIL REGULATION

amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) ~~In its VAT Action Plan³, the Commission announced its intention to put forward a proposal setting out the principles for a definitive value added tax (VAT) system in relation to cross-border business-to-business trade between Member States. The Council, in its conclusions of 8 November 2016⁴, invited the Commission to make certain improvements in the meantime to the Union VAT rules in relation to cross-border transactions.~~
- (2) ~~The certified taxable person is one of the essential components of that new definitive VAT system for intra-Union trade and will, in addition, be used for certain simplification measures within the current VAT system. The concept of the certified taxable person should allow for proving that a specific taxable person can be considered as a reliable taxpayer within the Union.~~
- (3) ~~Certain rules laid down by Directive 2006/112/EC⁵ for transactions that are considered fraud-sensitive shall apply only where certified taxable persons are involved. It is therefore essential that the certified taxable person status of a taxable person can be verified by electronic means in order to guarantee that those rules may apply.~~

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ ~~Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT – Towards a single EU VAT area – Time to decide (COM(2016)148 final of 7.4.2016).~~

⁴ ~~Council conclusions of 8 November 2016 on Improvements to the current EU VAT rules for cross-border transactions (No. 14257/16 FISC 190 ECOFIN 1023 of 9 November 2016).~~

⁵ ~~Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).~~

- (4) ~~In the first step towards a definitive VAT system as proposed by the VAT Action Plan, in the case of intra-Union supplies of goods the reverse charge procedure should apply where the person acquiring the goods is a certified taxable person. It is therefore essential, for a taxable person making an intra-Union supply of goods, to know whether or not his customer has been granted the certified taxable person status. Given the practical similarity with the current exemption for intra-Community supplies of goods and in order to avoid unnecessary costs or burden, use should be made of the current VAT Information Exchange System (VIES) in which information on the certified taxable person status should be integrated.~~
- (5) ~~In order to provide information on the certified taxable person status of taxable persons in Member States, Member States should record and store in an electronic system the up to date certified taxable person status of taxable persons. Tax authorities of a Member State should thereafter grant tax authorities of other Member States automatic access to this information and should be able, upon demand from persons referred to in Article 31(1) of Council Regulation (EU) No 904/2010⁶, to confirm by electronic means the certified taxable person status of any taxable person where that status is relevant for the purpose of the transactions referred to in that Article.~~
- (6) ~~Taking into account that the provisions included in this Regulation result from the amendments introduced by Council Directive [...] 15 /EU⁷, this Regulation should apply from the date of the application of those amendments.~~
- (1) The current system for the taxation of trade between Member States is based on transitional arrangements introduced in 1993 which have become outdated and prone to fraud in the context of a highly complex value added tax (VAT) system. The Commission put forward a proposal³ setting out the principles for a definitive VAT system for cross-border business-to-business trade between Member States that would be based on the taxation of cross-border supplies in the Member State of destination. Given the fact that it could take several years for the definitive VAT system for intra-Union trade to be fully implemented, short term measures are needed to combat cross-border VAT fraud more effectively and in a more timely manner. Improving and simplifying the administrative cooperation instruments, in particular Eurofisc, is also of significant importance in the fight against VAT fraud in general and to strengthen trust between tax authorities before the definitive VAT regime is introduced.**
- (2) Carrying out an administrative enquiry is often necessary to combat VAT fraud in particular when the taxable person is not established in the Member States where the tax is due. To ensure the proper enforcement of VAT and to avoid duplication of work and administrative burden of tax authorities and business, where at least two Member States consider that an administrative enquiry into the amounts declared by a taxable person non-established on their territory but taxable therein, is necessary, the Member State where the taxable person is established should undertake the enquiry and the requiring Member States**

⁶ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p.1).

⁷ Council Directive [...] /EU of [...] amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States (OJ L [...])

³ COM(2017) 569 final of 4 October 2017.

should assist the Member State of establishment by taking part actively in the enquiry.

- (3) Forwarding information without a prior request to the competent authorities of other Member States in accordance with Council Regulation (EU) No 904/2010⁴ should be as simple and effective as possible. It is therefore necessary to allow competent authorities to forward information by means other than the standard forms when they deem it necessary.
- (4) The concept of certified taxable person is one of the essential components of the proposal on the definitive VAT system and will also be used for certain simplification measures within the current VAT system. The concept of the certified taxable person should make it possible to prove that a specific taxable person can be considered as a reliable taxpayer within the Union.
- (5) Certain rules laid down by Directive 2006/112/EC⁵ for transactions that are considered fraud-sensitive are to apply only where certified taxable persons are involved. It is therefore essential that status of a certified taxable person can be verified by electronic means in order to guarantee that those rules may apply.
- (6) As a first step towards a definitive VAT system as proposed in in Communication from the Commission on an action plan on VAT - Towards a single EU VAT area - Time to decide⁶, the reverse charge procedure is to apply to intra-Union supplies of goods where the person acquiring the goods is a certified taxable person. It is therefore essential for taxable persons supplying goods within the Union to know whether or not their customers have been granted certified taxable person status. Given the practical similarity with the current exemption for intra-Community supplies of goods, and to avoid unnecessary costs or burden, information on the certified taxable person status should be provided by the VAT Information Exchange System (VIES).
- (7) In order to provide information on the certified taxable person status of taxable persons in Member States, Member States should record and store the up to date status of taxable persons who have been granted certified taxable person status by a competent authority in that Member State, in an electronic system. The tax authorities in a Member State should then grant the tax authorities in other Member States automated access to this information. In addition, they should also be able, at the request of certain persons provided for in Regulation (EU) No 904/2010, to confirm by electronic means the certified taxable person status of any taxable person where that status is relevant for those transactions.
- (8) The VAT exemption for the imports of goods provided for in Article 143(2) of Directive 2006/112/EC ('customs procedure 42') is often abused and goods are diverted to the black market without VAT having been paid. It is therefore essential that customs officials when checking whether the requirements for granting the exemption are met, have access to the registry of VAT identification numbers. Furthermore, the information collated by the customs authorities, as part of this procedure, should also be made available to the competent authorities

⁴ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).

⁵ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁶ COM(2016)148 final of 7 April 2016.

of the Member State where the subsequent intra-Community acquisition must take place.

- (9) In order to tackle fraud arising from the dual VAT regime applicable to cars, Eurofisc liaison officials should be able to access vehicle registration data in an automated way. It would allow them to identify swiftly who has committed the fraudulent transactions and where. Such access should be made available via the European Vehicle and Driving Licence Information System (EUCARIS) software application, whose use is mandatory for Member States under Council Decision 2008/615/JHA⁷ and Council Decision 2008/616/JHA⁸, as regards vehicle registration data.
- (10) In order to ensure uniform conditions for the implementation of the provisions on automated access to information collated by the customs authorities and to vehicle registration data, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁹.
- (11) For the purpose of ensuring the effective and efficient monitoring of VAT on cross-border transactions, Regulation (EU) No 904/2010 provides for the presence of officials in administrative offices and during administrative enquiries in other Member States. In order to strengthen the capacity of tax authorities to check cross-border supplies, there should be joint audits enabling officials from two or more Member States to form a single audit team and actively take part in a joint administrative enquiry.
- (12) When taxable persons established in one Member State supply goods or services to customers established in another Member State, they are increasingly subject to obligations in that other Member State. This is often driven by technological developments. To facilitate the correct application of VAT on such cross-border transactions, the mechanism by which information is made readily available for taxable persons should be extended to encompass other information, notably rates and measures for small businesses.
- (13) In order to combat the most serious cross-border fraud schemes, it is necessary to clarify and strengthen the governance, tasks and functioning of Eurofisc. Eurofisc liaison officials should be able to access, exchange, process and analyse all necessary information swiftly and coordinate any follow-up actions. It is also necessary to strengthen the cooperation with other authorities involved in the fight against VAT fraud at Union level, in particular through the exchange of targeted information with Europol and the European Anti-Fraud Office. Therefore, Eurofisc liaison officials should be able to share, spontaneously or on foot of a request, information and intelligence with Europol and the European Anti-Fraud Office. This would enable Eurofisc liaison officials to receive data and intelligence held by Europol and the European Anti-Fraud Office in order to identify the real perpetrators of the VAT fraud activities.

⁷ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

⁸ Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA (OJ L 210, 6.8.2008, p. 12).

⁹ Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

- (14) In order to ensure uniform conditions for the implementation of the provisions on Eurofisc, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (15) Organising the forwarding of requests for VAT refunds — pursuant to Article 5 of Council Directive 2008/9/EC¹⁰ offers an opportunity to reduce the administrative burden for the competent authorities to recover unpaid VAT debts in the Member State of establishment.
- (16) To protect the financial interests of the Union against serious cross-border VAT fraud, the Member States participating in the European Public Prosecutor's Office should communicate to that office, including via Eurofisc liaisons officials, information on the most serious VAT offences as referred to in Article 2(2) of Directive (EU) 2017/1371 of the European Parliament and of the Council¹¹.
- (17) Member States should also communicate to the European Anti-Fraud Office information about offences against the common VAT system where they consider it appropriate. This would enable the European Anti-Fraud Office to fulfil its mandate to carry out administrative investigations into fraud, corruption and other illegal activities affecting the financial interests of the Union, and to provide assistance to the Member States in order to coordinate their action to protect the financial interests of the Union against fraud.
- (18) The Commission may have access to the information communicated or collected pursuant to Regulation (EU) No 904/2010 only in so far as it is necessary for care, maintenance and development of the electronic systems hosted by the Commission and used by the Member States for the purpose of this Regulation.
- (19) For the purposes of this Regulation, it is appropriate to consider limitations on certain rights and obligations laid down by Regulation (EU) 2016/679 of the European Parliament and of the Council¹² in order to safeguard the interests referred to in Article 23(1)(e) of that Regulation. Such limitations are necessary and proportionate in view of the potential loss of revenue for Member States and the crucial importance of making information available in order to combating fraud effectively.
- (20) Directive 2006/112/EC will lay down rules for transactions that are to apply only where certified taxable persons are involved and new rules on rates and for small businesses. It is therefore necessary to defer the application of the measures of this Regulation relating to the status of certified taxable person and in respect of information to be made available to taxable persons about rates and special rules for small businesses until those rules are applied. As the implementation of the provisions on the automated access to the information collated by the customs authorities and to vehicle registration data will require new technological

¹⁰ Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ L 44, 20.2.2008, p. 23).

¹¹ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

¹² Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (OJ L 119, 4.5.2016, p. 1).

developments, it is necessary to defer their application to allow the Member States and the Commission to carry out those developments.

(21) Since the objectives of this Regulation – improving the cooperation instruments between Member States and combating cross-border fraud in the field of VAT – cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(22) (7)—Regulation (EU) No 904/2010 should therefore be amended accordingly,
HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 904/2010

Regulation (EU) No 904/2010 is amended as follows:

(1) Article 7 is amended as follows:

(a) paragraph 3 is deleted;

(b) paragraph 4 is replaced by the following:

‘4. The request referred to in paragraph 1 may contain a reasoned request for a specific administrative enquiry. The requested authority shall undertake the administrative enquiry in coordination with the requesting authority. The tools and procedures referred to in Articles 28 to 30 of this Regulation may be used. If the requested authority takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof.

Notwithstanding the first subparagraph, an enquiry into the amounts declared by a taxable person established in the Member State of the requested authority and which are taxable in the Member State of the requesting authority, may be refused solely on any of the following grounds:

(a) on the grounds provided for in Article 54(1), assessed by the requested authority in conformity with a statement of best practices concerning the interaction of this paragraph and Article 54(1), to be adopted in accordance with the procedure provided for in Article 58(2);

(b) on the grounds provided for in paragraphs 2, 3 and 4 of Article 54;

(c) on the grounds that the requested authority had already supplied the requesting authority with information on the same taxable person as a result of an administrative enquiry held less than two years previously.

Where the requested authority refuses an administrative enquiry referred to in the second subparagraph on the grounds set out in points (a) or (b), it shall nevertheless provide to the requesting authority the dates and values of any relevant supplies made by the taxable person in the Member State of the requesting authority over the previous two years.

Where the competent authorities of at least two Member States consider that an administrative enquiry is required, the requested authority shall not refuse to undertake that enquiry. Member States shall ensure that arrangements are put in place between those requesting authorities and the requested authority whereby officials authorised by the requesting authorities shall take part in the administrative enquiry carried out in the territory of the requested authority with a view to collecting the information referred to in the second subparagraph. Such administrative enquiry shall be carried out jointly by the officials of the requesting and requested authorities. The officials of the requesting authorities shall exercise the same powers of inspection as those conferred on officials of the requested authority. The officials of the requesting authorities shall have access to the same premises and documents as the officials of the requested authority for the sole purpose of carrying out the administrative enquiry.’;

(2) in Article 13, paragraph 3 is replaced by the following:

‘3. The information shall be forwarded by means of standard forms or by other means which the respective competent authorities deem appropriate. The Commission shall adopt by means of implementing acts the standard forms. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2)’;

(1) — ~~Article 17 is replaced by the following:~~

~~*‘Article 17*~~

~~1. — Each Member State shall store in an electronic system the following information:~~

~~(a) — information which it collects pursuant to Chapter 6 of Title XI of Directive 2006/112/EC;~~

~~(b) — data on the identity, activity, legal form and address of persons to whom it has issued a VAT identification number, collected pursuant to Article 213 of Directive 2006/112/EC, as well as the date on which that number was issued;~~

~~(c) — data on VAT identification numbers it has issued which have become invalid, and the dates on which those numbers became invalid;~~

~~(d) — information which it collects pursuant to Articles 360, 361, 364 and 365 of Directive 2006/112/EC as well as, as from 1 January 2015, information which it collects pursuant to Articles 369c, 369f and 369g of that Directive;~~

~~(e) — information as regards the status of a certified taxable person pursuant to Article 13a of Directive 2006/112/EC, as well as the date on which that status was granted, refused and withdrawn.~~

~~2. — The technical details concerning the automated enquiry of the information referred to in points (b), (c), (d) and (e) of paragraph 1 of this Article shall be adopted in accordance with the procedure provided for in Article 58(2).’~~

(3) Article 17 is amended as follows:

(a) in paragraph 1, the following point (e) is added:

- ‘(e) information as regards the status of a certified taxable person pursuant to Article 13a of Directive 2006/112/EC, as well as the date on which that status was granted, refused and withdrawn.’;
- (b) in paragraph 1, the following point (f) is added:
- ‘(f) information which it collects pursuant to points (a) and (b) of Article 143(2) of Directive 2006/112/EC, as well as the country of origin, the country of destination, the commodity code, the currency, the total amount, the exchange rate, the prices of the individual items and the net weight.’;
- (c) paragraph 2 is replaced by the following:
- ‘2. The Commission shall adopt by means of implementing acts the technical details concerning the automated enquiry of the information referred to in points (b) to (e) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;
- (d) paragraph 2 is replaced by the following:
- ‘2. The Commission shall adopt by means of implementing acts the technical details concerning the automated enquiry of the information referred to in points (b) to (f) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;
- (e) the following paragraph 3 is added:
- ‘3. The Commission shall determine by means of implementing acts the exact categories of information referred to in point (f) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;
- (4) Article 21 is amended as follows:
- (a) the following paragraph 1a is inserted:
- ‘1a. Every Member State shall grant its officials who check the requirements provided for in Article 143(2) of Directive 2006/112/EC access to the information referred to in points (b) and (c) of Article(17)(1) of this Regulation for which automated access is granted by the other Member States.’;
- (b) in paragraph 2, point (e) is amended as follows:
- (i) points (i) and (ii) are replaced by the following:
- ‘(i) access is in connection with an investigation into suspected fraud or is to detect or identify perpetrators of fraud;
- (ii) access is through a Eurofisc liaison official, as referred to in Article 36(1), who holds a personal user identification for the electronic systems allowing access to this information.’;
- (ii) point (iii) is deleted;
- (c) the following paragraph 2a is inserted:

‘2a. With respect to the information referred to in Article 17(1)(f), at least the following details shall be accessible:

(a) the VAT identification numbers issued by the Member State receiving the information;

(b) the VAT identification numbers of the importer or of his tax representative who supplies the goods to persons holding a VAT identification number referred to in point (a);

(c) the country of origin, the country of destination, the commodity code, the currency, the total amount, the exchange rate, the prices of the individual items and the net weight of the imported goods followed by an intra-Community supply of goods from each person referred to in point (b) to each person holding a VAT identification number referred to in point (a);

(d) the country of origin, the country of destination, the commodity code, the currency, the total amount, the exchange rate, the prices of the individual items and the net weight of the imported goods followed by an intra-Community supply of goods from each person referred to in point (b) to each person holding a VAT identification number issued by another Member State under the following conditions:

(i) access is in connection with an investigation into suspected fraud or is to detect or identify perpetrators of fraud;

(ii) access is through a Eurofisc liaison official, as referred to in Article 36(1), who holds a personal user identification for the electronic systems allowing access to this information.

The values referred to in points (c) and (d) shall be expressed in the currency of the Member State providing the information and shall relate to each single administrative document submitted.’;

(d) the following paragraph 3 is added:

‘3. The Commission shall determine by means of implementing acts the practical arrangements as regards the conditions provided for in point (e) of paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;

(e) paragraph 3 is replaced by the following:

‘3. The Commission shall determine by means of implementing acts the practical arrangements as regards the conditions provided for in point (e) of paragraph 2 and in point (d) of paragraph 2a of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;

(5) the following Article 21a is inserted:

‘Article 21a

1. Every Member State shall grant the competent authority of any other Member State automated access to the following information in relation to national vehicle registrations:

(a) data relating to vehicles;

(b) data relating to the owners and the holders of the vehicle in whose name the vehicle is registered, as defined in the law of the Member State of registration.

2. Access to the information referred to in paragraph 1, shall be granted under the following conditions:

(i) access is in connection with an investigation into suspected fraud or is to detect or identify perpetrators of fraud;

(ii) access is through a Eurofisc liaison official, as referred to in Article 36(1), who holds a personal user identification for the electronic systems allowing access to this information.

3. The Commission shall determine by means of implementing acts the exact categories of information and the technical details concerning the automated enquiry of the information referred to in paragraph 1 of this Article and the practical arrangements as regards the conditions provided for in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;

(6) in Article 24, the second paragraph is replaced by the following:

‘Member States shall be responsible for all necessary developments to their systems to permit the exchange of that information using the CCN/CSI network or any other similar network used for the same purpose.’;

(7) the title of CHAPTER VII is replaced by the following:

‘PRESENCE IN ADMINISTRATIVE OFFICES AND DURING
ADMINISTRATIVE ENQUIRIES AND JOINT AUDITS’;

(8) Article 28 is amended as follows:

(a) the following paragraph 2a is inserted:

‘2a. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may, with a view to collecting and exchanging the information referred to in Article 1, take part in the administrative enquiries carried out in the territory of the requested Member State. Such administrative enquiries shall be carried out jointly by the officials of the requesting and requested authorities. The officials of the requesting authority shall exercise the same powers of inspection as those conferred on officials of the requested authority. The officials of the requesting authorities shall have access to the same premises and documents as the officials of the requested authority for the sole purpose of carrying out the administrative enquiry. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the requested authority, both authorities may draft a common audit report.’;

(b) paragraph 3 is replaced by the following:

‘3. The officials of the requesting authority present in another Member State in accordance with paragraphs 1, 2 and 2a must at all times be able to produce written authority stating their identity and their official capacity.’;

- (9) ~~(2) Paragraph 1 of~~ in Article 31, paragraph 1 is replaced by the following:
- ‘1. The competent authorities of each Member State shall ensure that persons involved in the intra-Community supply of goods or of services and non-established taxable persons supplying telecommunication services, broadcasting services and electronically supplied services, in particular those referred to in Annex II to Directive 2006/112/EC, are allowed to obtain, for the purposes of such transactions, confirmation by electronic means of the validity of the VAT identification number of any specified person as well as the associated name and address. The competent authorities of each Member State shall also ensure that it can be verified by electronic means whether any specified person is a certified taxable person pursuant to Article 13a of Directive 2006/112/EC where such tax status is relevant for the purposes of that Article. This information shall correspond to the data referred to in Article 17 of this Regulation.’;
- (10) in Article 32, paragraph 1 is replaced by the following:
- ‘1. The Commission shall, on the basis of the information provided by the Member States, publish on its website the details of the provisions approved by each Member State which transpose Chapter 2 of Title VIII, Article 167a, Chapter 3 of Title XI and Chapter 1 of Title XII of Directive 2006/112/EC.’;
- (11) Article 33 is amended as follows:
- (a) paragraph 1 is replaced by the following:
- ‘1. In order to promote and facilitate multilateral cooperation in the fight against VAT fraud, this Chapter establishes a network for the swift exchange, processing and analysis of targeted information between Member States and for the coordination of any follow-up actions (‘Eurofisc’).’;
- (b) paragraph 2 is amended as follows:
- (i) point (b) and (c) are replaced by the following:
- ‘(b) carry out and coordinate the swift multilateral exchange and the joint processing and analysis of targeted information in the subject areas in which Eurofisc operates (‘Eurofisc working fields’);
- (c) coordinate the work of the Eurofisc liaison officials as referred to in Article 36(1) of the participating Member States in acting on warnings and intelligence received;’;
- (ii) the following point (d) is added:
- ‘(d) coordinate participating Member States’ administrative enquiries into the suspects and perpetrators of fraud identified by the Eurofisc liaison officials as referred to in Article 36(1).’;
- (12) in Article 34, paragraph 2 is replaced by the following:
- ‘2. Member States having chosen to take part in a Eurofisc working field shall actively participate in the multilateral exchange and the joint processing and analysis of targeted information between all participating Member States and in the coordination of any follow-up actions.’;
- (13) Article 35 is replaced by the following:

‘Article 35

The Commission shall provide Eurofisc with technical and logistical support. The Commission shall not have access to the information referred to in Article 1, which may be exchanged over Eurofisc, except in the circumstances provided for in Article 55(2).’;

(14) Article 36 is amended as follows:

(a) the following paragraph 1a is inserted:

‘1a. The liaison officials of the Member States shall designate a Eurofisc chairperson among the Eurofisc liaison officials, for a limited period of time.

The liaison officials of the Member States shall:

(a) agree on the establishment and termination of Eurofisc working fields;

(b) examine any issues relating to the operational functioning of Eurofisc;

(c) assess, at least on a yearly basis, the effectiveness and efficiency of the operation of Eurofisc activities;

(d) approve the annual report, referred to in Article 37.

The Eurofisc chairperson shall ensure that Eurofisc operates properly.’;

(b) paragraph 2 is replaced by the following:

‘2. The liaison officials of the Member States participating in a particular Eurofisc working field (‘participating Eurofisc liaison officials’) shall designate a Eurofisc working field coordinator, among the participating Eurofisc liaison officials, for a limited period of time.

Eurofisc working field coordinators shall:

(a) collate the information received from the participating Eurofisc liaison officials as agreed by the working field participants and shall make all information available to the other participating Eurofisc liaison officials; this information shall be exchanged by electronic means;

(b) ensure that the information received from the participating Eurofisc liaison officials is processed and analysed together with the relevant targeted information communicated or collected pursuant to this Regulation, as agreed by the participants in the working field, and shall make the result available to all participating Eurofisc liaison officials;

(c) provide feedback to all participating Eurofisc liaison officials;

(d) submit an annual report on the activities of the working field to the liaison officials of the Member States.

(c) the following paragraphs 3, 4 and 5 are added:

‘3. Eurofisc working field coordinators may forward, on their own initiative or on request, some of the collated and processed information to Europol and the European Anti-Fraud Office (‘OLAF’), as agreed by the working field participants.

4. Eurofisc working field coordinators shall make the information received from Europol and OLAF available to the other participating Eurofisc liaison officials; this information shall be exchanged by electronic means.

5. Eurofisc working field coordinators shall also ensure that the information received from Europol and OLAF is processed and analysed together with the relevant targeted information communicated or collected pursuant to this Regulation, as agreed by the working field participants, and shall make the results available to the participating Eurofisc liaison officials.’;

- (15) Article 37 is replaced by the following:

‘Article 37

The Eurofisc chairperson shall submit an annual report on the activities of all of the working fields to the Committee referred to in Article 58(1).

The Commission shall adopt by means of implementing acts the practical and procedural arrangements in relation to Eurofisc. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;

- (16) in paragraph 1 of Article 48, the following subparagraphs are added:

‘Where the Member State of establishment becomes aware that a taxable person making a request for refund of VAT, in accordance with Article 5 of Directive 2008/9/EC, has undisputed VAT liabilities in that Member State of establishment, it may inform the Member State of refund of those liabilities so that the Member State of refund shall request the consent of the taxable person for the transfer of the VAT refund directly to the Member State of establishment in order to discharge the outstanding VAT liabilities. Where the taxable person consents to this transfer, the Member State of refund on behalf of the taxable person shall transfer this amount to the Member State of establishment, to the extent that it is required to discharge the outstanding VAT liability. The Member State of establishment shall inform the taxable person whether the amount transferred amounts to either a full or a partial discharge of the VAT liability within 15 days of the receipt of the transfer from the Member State of refund.

Where the Member State of establishment becomes aware that a taxable person making a request for refund of VAT, in accordance with Article 5 of Directive 2008/9/EC, has disputed VAT liabilities in that Member State of establishment, it may inform the Member State of refund of those liabilities, so that the Member State of refund shall request the consent of the taxable person for the transfer of the VAT refund directly to the Member State of establishment in order that it be retained as a precautionary measure. Where the taxable person consents to this transfer and retention, the Member State of refund on behalf of the taxable person shall transfer this amount to the Member State of establishment to the extent that it is required to secure the payment of the disputed VAT liability. The Member State of establishment shall inform the taxable person of the transfer and of the retention of the amount transferred within 15 days of the receipt of the transfer from the Member State of refund. The transfer of the amount to the Member State of establishment shall only be permitted where the Member State of establishment has in place effective judicial control, which enables the courts to grant the release, at the request of the taxable person and in all stages of the proceedings, of the amount retained or of any part of it.’;

- (17) the title of CHAPTER XIII is replaced by the following:
‘RELATIONS WITH THE COMMISSION AND OTHER INSTITUTIONS,
BODIES, OFFICES AND AGENCIES OF THE UNION’;
- (18) in Article 49, the following paragraph 2a is added:
‘2a. The Member States participating in the European Public Prosecutor’s Office shall communicate to that office, in accordance with Article 24 of Council Regulation (EU) 2017/1939(*), any available information about serious offences against the common VAT system as referred to in Article 2(2) of Directive (EU) 2017/1371 of the European Parliament and of the Council(**).
The Member States may communicate to the European Anti-fraud Office any available information about offences against the common VAT system to enable it to consider appropriate action in accordance with its mandate.’;
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- (*) Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’) (OJ L 283, 31.10.2017, p. 1).
- (**) Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).
- (19) Article 55 is amended as follows:
- (a) paragraph 2 is replaced by the following:
‘2. Persons duly accredited by the Security Accreditation Authority of the Commission may have access to this information only in so far as it is necessary for care, maintenance and development of the electronic systems hosted by the Commission and used by the Member States to implement this Regulation.’;
- (b) paragraph 5 is replaced by the following:
‘5. All storage, processing or exchange of information referred to in this Regulation is subject to the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council(*). However, Member States shall, for the purpose of the correct application of this Regulation, restrict the scope of the obligations and rights provided for in Articles 12 to 22 and Articles 5 and 34 of Regulation (EU) 2016/679 to the extent required in order to safeguard the interests referred to in Article 23(1)(e) of that Regulation. The processing and storage of information referred to in this Regulation shall be carried out only for the purposes referred to in Article 1(1) of this Regulation and the storage periods of this information shall be limited to the extent necessary to achieve those purposes.’;
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- (*) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).
- (20) in Article 58, paragraph 2 is replaced by the following:

‘2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council(*) shall apply.’;

(*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(21) Annex I is deleted.

Article 2

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

~~It shall apply from 1 January 2019.~~

Points (a) and (c) of point (3) of Article 1, and point (9) of Article 1 shall apply from 1 January 2019.

Points (b), (d) and (e) of point (3) of Article 1, points (a), (c) and (e) of point (4) of Article 1, and point (5) of Article 1 shall apply from 1 January 2020.

Point (10) of Article 1 shall apply from 1 July 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*