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**A7-0014/2013**

24.1.2013

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## **REPORT**

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 against VAT fraud  
(COM(2012)0428 – C7-0260/2012 – 2012/0205(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: David Casa

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT 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 against VAT fraud (COM(2012)0428 – C7-0260/2012 – 2012/0205(CNS))

(Special legislative procedure – consultation)

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2012)0428),
  - having regard to Article 113 of the Treaty on the Functioning of the European Union , pursuant to which the Council consulted Parliament (C7-0260/2012),
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0014/2013),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### Amendment 1

**Proposal for a directive**

**Recital -1 (new)**

*Text proposed by the Commission*

*Amendment*

***(-1) The enhanced fight against tax fraud and evasion is key to restoring and maintaining the stability and strength of public finances across the Union.***

## Amendment 2

### Proposal for a directive Recital 1

#### *Text proposed by the Commission*

(1) Tax fraud in the field of value added tax (VAT) **leads to** considerable **budget** losses and affects the conditions of competition and thus the operation of the internal market. 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.

#### *Amendment*

(1) Tax fraud in the field of value added tax (VAT) **results in** considerable losses **to public finances** and **negatively** affects the conditions of competition and thus the **fair and efficient** operation of the internal market. **Such losses should be curbed, even more so during times of fiscal austerity.** 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 **that often extends beyond the borders of a particular Member State.**

## Amendment 3

### Proposal for a directive Recital 2

#### *Text proposed by the Commission*

(2) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax allows Member States to apply for a 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.

#### *Amendment*

(2) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax allows Member States to apply for a 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 **quick or** flexible enough to ensure a prompt and suitable reaction to requests by Member States.

## Amendment 4

### Proposal for a directive Recital 7

#### *Text proposed by the Commission*

(7) The designation of the recipient as person liable for the payment of the VAT (***reverse charge***) is an effective measure to stop at once the most well-known types of tax evasion in certain sectors. However, ***as*** the situation may evolve over time, it may also be necessary to allow for other measures. To that end, the ***Council*** should, where appropriate, ***upon proposal of the Commission, determine*** any other measure as falling within the scope of the *Quick Reaction Mechanism*. The type of measures that could be authorised should be established in order to minimise the time necessary for the authorisation of the derogations by the Commission.

#### *Amendment*

(7) The designation of the recipient as person liable for the payment of the VAT ("***reverse-charge mechanism***") is an effective measure to stop at once the most well-known types of tax evasion in certain sectors ("***carousel fraud***"). However, ***given the existing weaknesses of the VAT system, and depending on how*** the situation may evolve over time, it may also be necessary to allow for other measures. To that end, 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.

## Amendment 5

### Proposal for a directive Recital 9 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(9a) In order to develop and improve the quick reaction mechanism on an ongoing basis, the Commission should report regularly to the European Parliament and to the Council on its application, examining, inter alia, other 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.***

## Amendment 6

### Proposal for a directive Recital 9 b (new)

*Text proposed by the Commission*

*Amendment*

***(9b) In order for the quick reaction mechanism to function in a satisfactory way, the Commission should, at all times, be capable of acting swiftly and accurately on these matters. The human and other resources of the quick reaction mechanism should therefore be adequate and an accelerated internal decision-making procedure should be established and maintained.***

## Amendment 7

### Proposal for a directive Recital 9 c (new)

*Text proposed by the Commission*

*Amendment*

***(9c) Since the application of a special measure in one Member State could have repercussions on the VAT systems of the other Member States, the Commission should, in order to maintain transparency, inform all Member States about all requests made and all decisions taken pursuant thereto.***

## Amendment 8

### Proposal for a directive Recital 9 d (new)

*Text proposed by the Commission*

*Amendment*

***(9d) In its work on enhancing and fine-tuning the quick reaction mechanism, the Commission should consult extensively***

*with undertakings in fraud-prone sectors and with other relevant stakeholders.*

## **Amendment 9**

### **Proposal for a directive Recital 10**

#### *Text proposed by the Commission*

(10) Since the objective of the action to be taken, to address sudden and massive fraud phenomena in the field of VAT which very often have an international dimension, cannot be sufficiently achieved by the Member States, as they are not in a position to individually counter the fraud circuits related to new forms of trade which involve several countries at the same time, and can therefore, by reason of ensuring a quicker and, as a result, a more adequate and effective response to these phenomena, 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 European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

#### *Amendment*

(10) Since the objective of the action to be taken, to address sudden and massive fraud phenomena in the field of VAT which very often have an international dimension, cannot be sufficiently achieved by the Member States, as they are not in a position to individually counter the fraud circuits related to new forms of trade which involve several countries at the same time, and can therefore, by reason of ensuring a quicker and, as a result, a more adequate and effective response to these phenomena, be better achieved at Union level, the Union *should* adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

## **Amendment 10**

### **Proposal for a directive Article 1**

Directive 2006/112/EC

Section 1a – Article 395a – paragraph 1 – point a

#### *Text proposed by the Commission*

(a) the designation of the recipient as person liable to pay VAT on specific supplies of goods and services by derogation from Article 193, following a request referred to in paragraph 2 of this

#### *Amendment*

(a) the designation of the recipient as person liable to pay VAT on specific supplies of goods and services by derogation from Article 193 ("*reverse-charge mechanism*"), following a request



Article for such measure;

referred to in paragraph 2 of this Article for such measure;

## Amendment 11

### Proposal for a directive

#### Article 1

Directive 2006/112/EC

Section 1a – Article 395a – paragraph 1 – point b

*Text proposed by the Commission*

*Amendment*

(b) any other measure **determined by the Council acting unanimously on a proposal from** the Commission.

(b) any other measure **proposed by** the Commission, **and approved unanimously by the Council after consulting the European Parliament.**

## Amendment 12

### Proposal for a directive

#### Article 1

Directive 2006/112/EC

Section 1a – Article 395a – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

For the purposes of **point (a), the** special measure 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.

For the purposes of **points (a) and (b), 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.

#### *Justification*

*The legislative text needs to be open to further special measures being added to the scope of the mechanism.*

## Amendment 13

### Proposal for a directive

#### Article 1 – paragraph 1 (new)

2006/112/EC

Section 1a – Article 395a – paragraph 1 – subparagraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***The procedure laid down in this paragraph shall be completed within three months.***

#### **Amendment 14**

##### **Proposal for a directive**

##### **Article 1**

Directive 2006/112/EC

Section 1a – Article 395a – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

2. A Member State wishing to introduce a measure as provided for in paragraph 1 shall send an application to the Commission. The Member State shall provide ***it*** with the information indicating the sector concerned, the type and the features of the fraud, its sudden and massive character and its consequences in terms of considerable and irreparable financial losses. If the Commission considers it does not have all the necessary information, it shall contact the Member State concerned within ***one month*** of receipt of the application and specify what additional information is required.

2. A Member State wishing to introduce a measure as provided for in paragraph 1 shall send an application to the Commission. The Member State shall provide ***the Commission, the competent committees of the European Parliament and the Court of Auditors*** with the information indicating the sector concerned, the type and the features of the fraud, its sudden and massive character and its consequences in terms of considerable and irreparable financial losses. 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 and specify what additional information is required. ***The Commission shall also consult the relevant business sector, where appropriate and where possible.***

#### **Amendment 15**

##### **Proposal for a directive**

##### **Article 1**

Directive 2006/112/EC

Section 1a – Article 395a – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

Once the Commission has all the information it considers necessary for appraisal of the request it shall, within one month, either authorise the special measure or, *in case* the Commission objects to the requested measure, inform the Member State concerned ***thereof***.

*Amendment*

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.***

*Justification*

*Enhanced transparency throughout this procedure would make it easier for Member States to get a full picture of fraud patterns, to coordinate across borders and to take swift and accurate decisions in the SCAC.*

**Amendment 16**

**Proposal for a directive**

**Article 1**

Directive 2006/112/EC

Section 1a – Article 395c (new)

*Text proposed by the Commission*

*Amendment*

***Article 395c***

***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 quick reaction mechanism established under this Section. 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.*

## **Amendment 17**

### **Proposal for a directive Article 1 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 1a*

*By 1 January 2014, the Commission shall present a report on how the regular derogation procedure set out in Article 395 of Directive 2006/112/EC could be accelerated. The aim of the report shall 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.*

#### *Justification*

*The experience so far is that the Commission is quite often rather slow in going through the regular derogation procedure. There seems to be some room for improvement here. In addition to introducing the Quick Reaction Mechanism, an effort should therefore be made to make this regular procedure more efficient.*

## **Amendment 18**

### **Proposal for a directive Article 2 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

2. Member States shall communicate **to the European Parliament and** to the Commission the text of the main provisions of national law which they

adopt in the field covered by this Directive.

## **Amendment 19**

### **Proposal for a directive Article 3 – paragraph 1**

#### *Text proposed by the Commission*

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

#### *Amendment*

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. ***It shall be consolidated with the Directive which it amends within three months of its entry into force.***

## **EXPLANATORY STATEMENT**

### **The Commission proposal**

On 31 July 2012 the Commission put forward a proposal for a Quick Reaction Mechanism (QRM), that would enable Member States to respond more swiftly and efficiently to VAT fraud. Under the QRM, a Member State faced with a serious case of sudden and massive VAT fraud would be able to implement certain emergency measures, in a way which they are currently not allowed to under VAT legislation. In this context, the proposal provides that Member States would be able to apply, within the space of a month, a "reverse charge mechanism" which makes the recipient rather than the supplier of the goods or services liable for VAT. This would significantly improve their chances of effectively tackling complex fraud schemes, such as carousel fraud, and of reducing otherwise irreparable financial losses. In order to deal with possible new forms of fraud in the future, it is also foreseen that other anti-fraud measures could be authorised and established under the QRM.

VAT fraud costs the EU and national budgets several billion euro every year. In some serious cases, vast sums are lost within a very short timeframe, due to the speed at which fraud schemes evolve nowadays. For example, between June 2008 and December 2009, an estimated €5 billion was lost as a result of VAT fraud in greenhouse gas emission allowances.

Currently, if a Member State wishes to counteract VAT fraud through measures not provided for under EU VAT legislation, it must formally request a derogation to do so. The Commission then draws up a proposal to this effect and submits it to Council for unanimous adoption before the measures can be implemented. This process can be slow and cumbersome, delaying the Member State in question from taking the necessary action to stop the fraud.

With the Quick Reaction Mechanism, Member States would no longer have to wait for this formal process to be completed before applying specific anti-fraud measures. Instead, a faster procedure would grant them a temporary derogation within a month. The derogation would be valid for up to one year. This would allow the Member State in question to begin counteracting the fraud nearly immediately, while more permanent measures are being established (and if necessary while the standard derogation procedure is being launched).

The Quick Reaction Mechanism was foreseen in the new VAT Strategy, as well as the Communication on fighting tax fraud and evasion, as a means of strengthening the fight against tax fraud in the EU and safeguarding public revenues.

### **The position of the Rapporteur**

Your rapporteur very much welcomes this proposal as a pragmatic and useful approach to tackle VAT fraud, in particular carousel fraud, in times of budgetary constraints and fiscal austerity.

The proposal provides a true European added-value, and responds to demands in your

rapporteur's previous report on the "Green Paper on the Future of VAT", as well as European Parliament's previous calls to increase efforts to combat tax evasion and tax fraud.

VAT fraud is claimed to cost the EU and national budgets several billion euro every year.

VAT fraud also harms legitimate and compliant businesses. In 2005/06 Missing Trader Carousel fraud alone amounted to approximately €14.8 billion across the EU.

The Commission proposal would indeed enable Member States to respond more 'swiftly and efficiently' to VAT fraud. Your rapporteur does however have some observations:

1. Before any anti-fraud measures are implemented, there needs to be a brief consultation period to ensure that the proposed measure is effective and accurately addresses the VAT at risk.
2. It should be recognized that historically anti-fraud measures typically place a greater compliance burden upon businesses that want to comply with VAT law, whilst the targeted fraudsters will either ignore the measure, or just move on to another scam. Tax agencies need to recognize this and not use any new legislation as a way of attacking businesses that are trying to comply with the law. Any quick reaction mechanism must only be applicable in serious fraudulent circumstances.
3. The Proposal should be coupled with a long-term strategy to tackle fraud which requires more structural changes to the VAT systems. The complexity of VAT legislation across the EU has created opportunities for fraudsters. The Commissions thinking around its White Paper, the Future of VAT, should address how the current complexity of the VAT system precipitates fraud.
4. The domestic reverse charge mechanism is an effective measure against fraud, however before it is introduced in any MS, consideration needs to be given to the processing demands it places upon compliant taxpayers. The additional IT costs that can be incurred upon a business when it has to make a decision every time it sells a certain type of product in terms of whether or not it the reverse charge should apply creates a significant additional cost. To the extent that it is possible, any anti-fraud QRM needs to be introduced without increasing the compliance burden upon taxpayers.

## PROCEDURE

<b>Title</b>	Amendment of Directive 2006/112/EC on the common system of value added tax as regards a quick reaction mechanism against VAT fraud	
<b>References</b>	COM(2012)0428 – C7-0260/2012 – 2012/0205(CNS)	
<b>Date of consulting Parliament</b>	5.9.2012	
<b>Committee responsible</b> Date announced in plenary	ECON 11.9.2012	
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	CONT 11.9.2012	JURI 11.9.2012
<b>Not delivering opinions</b> Date of decision	CONT 7.11.2012	JURI 18.9.2012
<b>Rapporteur(s)</b> Date appointed	David Casa 11.9.2012	
<b>Discussed in committee</b>	28.11.2012	22.1.2013
<b>Date adopted</b>	22.1.2013	
<b>Result of final vote</b>	+: –: 0:	41 0 0
<b>Members present for the final vote</b>	Burkhard Balz, Elena Băsescu, Udo Bullmann, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Markus Ferber, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Syed Kamall, Othmar Karas, Wolf Klinz, Philippe Lamberts, Werner Langen, Hans-Peter Martin, Arlene McCarthy, Sławomir Nitrás, Ivari Padar, Anni Podimata, Antolín Sánchez Presedo, Peter Simon, Peter Skinner, Theodor Dumitru Stolojan, Marianne Thyssen, Ramon Tremosa i Balcells, Corien Wortmann-Kool	
<b>Substitute(s) present for the final vote</b>	Philippe De Backer, Robert Goebbels, Thomas Mann, Marisa Matias, Mario Mauro, Nils Torvalds, Emilie Turunen	
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Dominique Riquet	
<b>Date tabled</b>	24.1.2013	