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## **PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	12 December 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 812 final
Subject:	Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers

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Delegations will find attached document COM(2018) 812 final.

Encl.: COM(2018) 812 final



Brussels, 12.12.2018  
COM(2018) 812 final

2018/0412 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**amending Directive 2006/112/EC as regards introducing certain requirements for  
payment service providers**

{COM(2018) 813 final} - {SEC(2018) 495 final} - {SWD(2018) 487 final} -  
{SWD(2018) 488 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

In October 2017<sup>1</sup>, the Commission had already committed to address the administrative capacity of tax authorities to fight electronic commerce (hereinafter ‘e-commerce’) VAT fraud by improving cooperation with third parties. In the statement included in the minutes for the adoption of Council Directive (EU) 2017/2455 (the VAT E-commerce Directive)<sup>2</sup> in December 2017, the Council stressed the need to improve anti-fraud tools<sup>3</sup>. The current initiative to fight e-commerce VAT fraud complements and paves the ground for a smooth application of the new measures introduced with the VAT E-commerce Directive in the context of the Commission’s Digital Single Market Strategy<sup>4</sup>.

In particular, the VAT E-commerce Directive introduced new VAT obligations for online marketplaces<sup>5</sup> and new simplifications to help businesses comply with VAT obligations for supplies of services, distance sales of goods and imports, including electronic VAT registration and VAT payment through the One Stop Shop (registration in one single Member States instead of in all the Member States of consumption). These measures will strengthen VAT compliance by simplifying the VAT system, but tax authorities still need to be able to detect and control fraudulent businesses. At present, this is a challenge for tax authorities. The European Court of Auditors<sup>6</sup> has remarked that the VAT legislation on e-commerce essentially relies on the willingness of businesses to voluntarily register and pay the due VAT. There are nevertheless limits to how Member States can use the current legal framework for administrative cooperation. If the above-mentioned compliance simplifications are not accompanied by anti-fraud measures, fraudsters will have little incentive to change their attitude and start complying with VAT obligations. Thus, the success of compliance measures in e-commerce also depends on the effectiveness of anti-fraud measures, which must be developed in parallel.

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee On the follow-up to the Action Plan on VAT – Towards a single EU VAT area – Time to act (COM(2017) 566 final), point 2.1.1, page 3. See also point 6 of 20 measures to tackle the VAT gap, annex to the VAT action plan, available at:

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/docs/body/2016-03\\_20\\_measures\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/2016-03_20_measures_en.pdf)

<sup>2</sup> Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29.12.2017, p. 7).

<sup>3</sup> Council of the European Union 14769/1/17 REV 1, 30 November 2017,

<http://data.consilium.europa.eu/doc/document/ST-14769-2017-REV-1/en/pdf>

<sup>4</sup> Implementation of the Digital Single Market digital single market strategy (COM(2017) 228 final, 10.5.2017) see:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1496330315823&uri=CELEX:52017DC0228>

<sup>5</sup> Article 14a of Council Directive 2006/112/EC will make online market places, platforms and portals ‘deemed suppliers’ for the sales of goods facilitated through their electronic interfaces. They will be deemed to have received and supplied those goods themselves for (a) distance sales of goods imported from third territories or third countries not exceeding a value of EUR 150, and (b) the B2C supplies of goods which are already in the EU (i.e. in fulfilment centres) by non-EU-established taxable persons facilitated through these platforms.

<sup>6</sup> European Court of Auditors, Background Paper, Collection of VAT and customs duties on cross-border e-commerce, July 2018.

E-commerce has been growing rapidly in recent years, helping consumers to buy goods and services online. Consumers can choose between different suppliers, products and brands. They can also pay online in a trustful environment without moving from their computer or smartphone. Suppliers have changed their business models to benefit from e-commerce and sell their products to consumers globally without the need for a physical retail presence. However, this opportunity is also exploited by fraudulent businesses to gain an unfair market advantage by not fulfilling their VAT obligations.

The impact assessment attached to the present proposal identified three main cases of cross-border e-commerce VAT fraud: (i) intra-EU supplies of goods and services, (ii) imports of goods from businesses established in a third country or third territory (i.e. a country or territory outside the EU) to consumers in the Member States, and (iii) supplies of services from businesses established in a third country<sup>7</sup> to consumers in the Member States.

The total VAT loss within the Member States on cross-border supplies of goods is estimated at EUR 5 billion a year<sup>8</sup>. VAT fraud was also reported in cross-border supplies of services, namely in online television and digital games<sup>9</sup>. This fraud was documented by Europol and the European Union Intellectual Property Office in Europol's latest report about illegal distribution of (and sales of access to) television broadcasts<sup>10</sup>. This fraud has also been documented by the television industry organisation Nordic Content Protection (NCP)<sup>11</sup>. Online television distributors in Denmark, Finland and Sweden alone (these countries together have less than 10% of the EU's total online television market in terms of revenues)<sup>12</sup> estimate their annual loss of sales from illegal distribution at EUR 436 million. This amounts to approximately EUR 103 million in potential VAT losses<sup>13</sup>. These numbers (which will grow in parallel with the growth of e-commerce) show the urgent need to act to combat e-commerce VAT fraud. However, most tax authorities lack the tools and the sources of information to quantify the level of e-commerce VAT fraud<sup>14</sup>. In e-commerce VAT fraud, the internet allows fraudulent businesses to hide their own identity behind a domain name. Even when a tax authority is aware of the existence of a given online shop, the identity of the business behind it, its real location, or its turnover in that Member State often remain unknown. This represents a problem for tax authorities who might seek to start an investigation or initiate administrative cooperation at EU or international level. The Member States of consumption, where the VAT must be paid, most likely do not have any record or information to initiate an inspection. This is because the final consumers have no record-

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<sup>7</sup> This includes third territories under article 6.

<sup>8</sup> See Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (COM(2016) 757 final), p.2.

<sup>9</sup> The amount of illegal TV broadcasting in Latvia in 2015, Stockholm school of economics, Nelegālās maksas TV apraides apjoms Latvijā 2015, available at: [https://www.researchgate.net/profile/Arniss\\_Sauka/publication/303382487\\_Nelegalas\\_maksas\\_TV\\_apraides\\_apjoms\\_Latvija\\_2015/links/573f5c7408ae298602e8f2f2.pdf](https://www.researchgate.net/profile/Arniss_Sauka/publication/303382487_Nelegalas_maksas_TV_apraides_apjoms_Latvija_2015/links/573f5c7408ae298602e8f2f2.pdf)

<sup>10</sup> Europol and European Union Intellectual Property Office: 2017 Situation Report on Counterfeiting and Piracy in the European Union, available at [www.europol.europa.eu/publications-documents/2017-situation-report-counterfeiting-and-piracy-in-european-union](http://www.europol.europa.eu/publications-documents/2017-situation-report-counterfeiting-and-piracy-in-european-union)

<sup>11</sup> Nordic Content Protection: Trend Report 2017, available at: [www.ncprotection.com/wp-content/uploads/2017/03/Trend-Report-2017.pdf](http://www.ncprotection.com/wp-content/uploads/2017/03/Trend-Report-2017.pdf)

<sup>12</sup> See: [www.ofcom.org.uk/data/assets/pdf\\_file/0027/95661/ICMR-2016-4.pdf](http://www.ofcom.org.uk/data/assets/pdf_file/0027/95661/ICMR-2016-4.pdf)

<sup>13</sup> Calculated using standard rates without taking into account reduced rates

<sup>14</sup> In the targeted consultation to prepare this proposal, only three tax authorities provided rough VAT loss estimates on B2C intra-EU supplies of goods, B2C intra-EU supplies of services, and imports of goods in 2015, 2016 and 2017.

keeping obligations for their online purchases. Even if the latter was the case, it would be disproportionate to systematically have recourse to these final consumers to investigate VAT fraud by the seller.

Moreover, when the fraudsters and their location are unknown, it can become a real issue to know to which Member State a request for administrative cooperation should be addressed.

This could result in bulk identification requests. They would have to be sent either to a third party (i.e. the online market place or payment service providers) which could potentially hold the information, or they could be made to a tax authority of a country where the third party is established. Nevertheless, this would be considered disproportionate under Article 54(1) of Regulation (EU) No 904/2010. Furthermore, under Article 54(2) of the same Regulation, Member States cannot be required to provide information if their national legislation does not authorise them to collect it. This limits the possibilities for Member States to request third-party data from other Member States.

The present proposal seeks to solve the problem of e-commerce VAT fraud by strengthening the cooperation between tax authorities and payment service providers. In recent years, more than 90 % of online purchases by European customers were made through credit transfers, direct debits and card payments, i.e. through an intermediary involved in the transaction<sup>15</sup>(a payment service provider), and this is a trend that will continue in the future<sup>16</sup>. Third parties that hold payment information can therefore give a complete picture of online purchases to tax authorities to help them properly carry out their task of monitoring compliance with VAT obligations on e-commerce supplies of goods and services. The experience of the Member States that already cooperate with payment service providers at national level has shown that cooperation with payment service providers produces tangible results in fighting e-commerce VAT fraud<sup>17</sup>. Some third countries also use payment information as a tool for detecting non-compliant traders in combination with simplified collection regimes for cross-border B2C supplies of goods similar to the EU system<sup>18</sup>.

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

This proposal complements the current VAT regulatory framework as recently modified by the VAT E-commerce Directive in the context of the Commission's Digital Single Market Strategy. Furthermore, this initiative strengthens the administrative cooperation framework to better tackle e-commerce VAT fraud and restore fair competition. Fighting tax fraud and tax evasion to prevent distortion of competition and help secure national and EU revenues is a Commission priority. The political guidelines<sup>19</sup> of the present Commission called for greater efforts to be made to combat tax evasion and tax fraud, and in the State of the Union 2018<sup>20</sup> it

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<sup>15</sup> E-shopper barometer 2017(DPD group), available at: [https://www.dpd.com/be\\_en/business\\_customers/dpd\\_insights/e\\_shopper\\_barometer\\_2017](https://www.dpd.com/be_en/business_customers/dpd_insights/e_shopper_barometer_2017) and International Post Corporation, e-Commerce logistics and delivery, eCom21 2016.

<sup>16</sup> See: <https://www.atkearney.com/documents/10192/1448080/Winning+the+Growth+Challenge+in+Payment+s.pdf/b9da93a5-9687-419e-b166-0b25daf585ff>, p. 5.

<sup>17</sup> In particular, the Finnish tax authority was able to collect EUR 16 million in 2016 based on cooperation with payment service providers.

<sup>18</sup> See Annex 11 of the Impact assessment, 'Third countries using payment data as VAT control tool'.

<sup>19</sup> See: [https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en.pdf)

<sup>20</sup> See: [https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-brochure\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-brochure_en.pdf)

is reiterated that the Commission is pursuing a far-reaching strategy to ensure that all companies, big and small, pay their fair share of tax.

Regulation (EU) No 2018/1541<sup>21</sup> amending Regulation (EU) No 904/2010 on administrative cooperation and fighting fraud in the field of value added tax<sup>22</sup> creates new tools for administrative cooperation between Member State tax authorities. These tools will mainly be used to fight (i) so-called carousel fraud (carried out on B2B transactions); (ii) fraud involving the margin scheme applicable to second-hand cars; (iii) fraud exploiting specific customs regimes applicable to imports carried out by taxable persons (also on B2B transactions); and (iv) will allow joint actions between tax authorities (i.e. joint administrative enquires). Experts from tax authorities and businesses in the EU VAT Forum<sup>23</sup> stress that the traditional form of cooperation to combat VAT fraud is based on records held by the businesses directly involved in the transaction chain. For cross-border B2C supplies, this information may not be directly available and thus ‘traditional’ cooperation between tax authorities is insufficient<sup>24</sup>. Therefore, this initiative also complements the amendments most recently introduced to the EU administrative cooperation framework in the field of VAT, by giving tax authorities a new tool to detect VAT fraud on cross-border B2C supplies.

Finally, this initiative should also be seen in an international context. When fraud is committed by suppliers established in a third country or third territory, international cooperation is crucial for the enforcement of the missing VAT due. The Union has recently concluded an agreement for VAT cooperation with Norway<sup>25</sup> and is active in the OECD to strengthen the use of administrative cooperation tools at international level. This initiative will give Member States the evidence to detect fraudsters in third countries. This evidence will be used as a first step to activate international cooperation or to contribute to the international dialogue on improving administrative cooperation with other jurisdictions.

## **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). This Article provides for the Council, acting unanimously in accordance with a special legislative procedure, to adopt provisions for the harmonisation of Member States’ rules in the area of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and functioning of the single market and avoid distortion of competition.

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<sup>21</sup> Council Regulation (EU) 2018/1541 of 2 October 2018 amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax (OJ L 259, 16.10.2018, p. 1).

<sup>22</sup> 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).

<sup>23</sup> The EU VAT Forum is a Commission experts group that offers a discussion platform where business and VAT authorities meet to discuss how the implementation of the VAT legislation can be improved in practice. See Commission Decision of 3 July 2012 setting up the EU VAT forum (OJ C 198, 6.7.2012, p. 4).

<sup>24</sup> Consolidated report on cooperation between Member States and businesses in the field of e-commerce/modern commerce, p. 5. See: [https://ec.europa.eu/taxation\\_customs/business/vat/vat-reports-published\\_en](https://ec.europa.eu/taxation_customs/business/vat/vat-reports-published_en)

<sup>25</sup> See: <http://www.consilium.europa.eu/en/press/press-releases/2018/02/06/eu-norway-agreement-signed-strengthening-the-prevention-of-vat-fraud/>

- **Subsidiarity**

This initiative is consistent with the principle of subsidiarity, as the main problem at stake, e-commerce VAT fraud, is common to all Member States and is exacerbated by the insufficient tools at the disposal of tax authorities. Member States alone are not able to obtain from third parties such as payment service providers, the information necessary to control VAT cross-border supplies of goods and services, ensure that the e-commerce VAT rules (as recently amended by the VAT E-commerce Directive) are correctly applied, and tackle e-commerce VAT fraud. Therefore, cooperation between the Member States is crucial. The legal framework for administrative cooperation between Member States in the field of VAT is laid down in Regulation (EU) No 904/2010. Therefore, any initiative to introduce new tools for cooperation targeted at this specific problem requires a proposal by the Commission to amend the existing EU legal framework. To allow tax authorities to collect VAT-relevant payment data, new record-keeping obligations for payment service providers must be introduced. This requires a proposal to amend the VAT Directive.

- **Proportionality**

This proposal does not go beyond what is necessary to meet the objective of fighting e-commerce VAT fraud. In particular, the new system is expected to provide tax authorities with the necessary information and resources to detect e-commerce VAT fraud and collect additional VAT. The administrative burden for businesses and tax authorities would be reduced overall compared to the present situation, and legitimate businesses would benefit from a more level playing field.

The requirement for payment service providers to keep a number of records to be sent to the tax authorities also complies with the principle of proportionality. Payment service providers will be required to keep records of data that are already at their disposal to execute the payment transactions. Furthermore, an EU-harmonised obligation for record keeping and transmission of data to tax authorities will limit the administrative burdens on payment service providers (compared to the burden of requiring these payment service providers to comply with diverging national approaches).

Fighting VAT fraud is an important objective of general public interest of the Union and of the Member States. Only the data necessary to achieve that objective (combating e-commerce VAT fraud) will be processed by the anti-fraud experts of tax authorities, in line with the General Data Protection Regulation<sup>26</sup>, Regulation (EU) 2018/1725<sup>27</sup> and the Charter of Fundamental Rights<sup>28</sup>. More precisely, the only data that will be processed are the data that allow the tax authorities to (i) identify the suppliers, (ii) verify the number of transactions and their monetary value, and (iii) verify the origin of the payments. Data on consumers are not included in the present initiative, apart from data on the Member States of origin of the payments (i.e. the Member State the consumers are located in). Proportionality is also ensured by a threshold below which the payment service providers do not have to send payment data

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<sup>26</sup> 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) (Text with EEA relevance) (OJ L 119, 4.5.2016, p. 1).

<sup>27</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>28</sup> Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391).

to the tax authorities. The threshold would exclude from the present initiative and from the process of personal data those payments that most likely do not refer to economic activities.

- **Choice of the instrument**

A Directive is proposed in view of amending the VAT Directive to introduce new record keeping obligations for payment service providers.

A Regulation is proposed in view of amending the Regulation (EU) No 904/2010 on administrative cooperation and fighting fraud in the field of value added tax, to introduce a new database of VAT related payment data to be accessible by Member States only to fight e-commerce VAT fraud.

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

- **Ex-post evaluations**

The current proposal is supported by an evaluation of Regulation (EU) No 904/2010, in particular its sections focusing on its use in the field of e-commerce VAT fraud.

In general, tax authorities considered the current Regulation (EU) No 904/2010 an effective tool to fight e-commerce VAT fraud. However, tax authorities mentioned that the tools for administrative cooperation currently at their disposal do not easily allow the identification and control of online businesses when these online businesses' domain and bookkeeping records are in another country (regardless of whether that other country is a Member State of the EU or not). Tax authorities also stressed the need to increase the commitment of Member States to invest more resources into administrative cooperation, as this is a key factor in increasing the effectiveness of Regulation (EU) No 904/2010 in the fight against e-commerce VAT fraud. Finally, some Member States also mentioned that the effectiveness of the Regulation could be increased with new tools, such as access to - and exchange of - relevant payment information.

While the tax authorities considered that the tools laid down in Regulation (EU) No 904/2010 are relevant for fighting VAT fraud, they also stressed that there is room for improvement. In the view of tax authorities, the recent development of e-commerce and the large volumes of e-commerce transactions require new, more effective, and more efficient tools for administrative cooperation. Moreover, tax authorities said they expected that existing tools for fighting VAT fraud would become less relevant in the future due to changes in business models and changes in the patterns of VAT fraud.

Even though tax authorities generally lack quantitative evidence on the benefits and costs of administrative cooperation, they consider that the benefits of administrative cooperation are proportional to - or even higher than - the costs that tax authorities incurred in the exchange of information.

Regulation (EU) No 904/2010 and the current proposal contribute to the proper functioning of the single market. They are also consistent with the VAT E-commerce Directive rules. Nonetheless, Member State tax authorities recognised that the growth of e-commerce means they must deal with new challenges, such as how to process data for the detection of - and fight against - e-commerce VAT fraud.

Finally, both tax authorities and other stakeholders recognised the added value of the administrative cooperation framework laid down in Regulation (EU) No 904/2010, as e-commerce VAT fraud affects all Member States.

In conclusion, the evaluation showed that national anti-fraud measures are not sufficient to fight e-commerce VAT fraud and that administrative cooperation between Member States is necessary. It also showed that changes in e-commerce patterns require new and appropriate tools for the exchange of information.

- **Stakeholder consultations**

In 2017, the Commission sought the opinion of several stakeholders through a targeted consultation addressed to the tax authorities and to businesses, including payment service providers in particular. In 2017, a public consultation was also launched<sup>29</sup>.

The results of the consultations confirmed that all stakeholders recognise e-commerce VAT fraud as a significant problem. Businesses stressed that e-commerce VAT fraud harms honest businesses by distorting competition. Both tax authorities and businesses in general confirmed that tax authorities need payment information to fight e-commerce VAT fraud. Data protection was not considered an impediment to the collection and exchange of payment information, provided that the personal data of the payers is processed under the conditions laid down by the General Data Protection Regulation.

Most respondents expressed a positive opinion on amending the EU regulatory framework to provide tax authorities with more effective anti-fraud tools. A centralised EU system to collect and exchange VAT-relevant payment information was considered the most cost-effective tool.

Both tax authorities and payment service providers confirmed the added value of a standardised and harmonised approach for the collection and exchange of payment information.

This proposal was drafted after consultation with Member State tax authorities and businesses representatives, including payment service providers, as part of the VAT Forum subgroup on e-commerce.

- **Collection and use of expertise**

Besides consulting all stakeholders, no outside experts were needed to draw up the current proposal.

- **Impact assessment**

In addition to the baseline scenario, the impact assessment considered two options:

- (1) a non-regulatory option, basically consisting in providing guidelines to help tax authorities develop their administrative capacity to fight e-commerce VAT fraud;
- (2) a regulatory option, implying the amendment of the EU legal framework (i) for the payment service providers to keep records of VAT-relevant payment information,

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<sup>29</sup> The Commission also published the combined roadmap/inception impact assessment (see: [http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-899238\\_en](http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-899238_en)) “Exchange of VAT-relevant payment data”, allowing for initial feedback on the initiative. During the feedback period, 15 February 2018 - 15 March 2018, the Commission received only three answers. Two were supporting the initiative while the third one was not related to the content of the initiative.

and (ii) for the Member State tax authorities to collect and exchange the payment information.

Under the regulatory option, two alternative technical solutions were envisaged to make tax authorities exchange the payment information: a distributed application similar to the VAT Information Exchange System, or a central repository at EU level (to be developed by the Commission).

The impact assessment showed that a central repository was the option that best addressed the objective of fighting e-commerce VAT fraud.

A central repository would ensure the best tackling of VAT fraud. It would give more guarantees in terms of uniformity of data and data analysis, and would provide for a clearer EU-wide perspective of the turnover of detected fraudsters than decentralised repositories.

The exchange of information through a central repository would also better reduce market distortion. As cooperation leads to better results for tax authorities, legitimate businesses would enjoy a more level playing field. The stakeholder consultation did not allow for a precise quantification of the compliance costs for payment service providers. However, the impact assessment showed that the harmonisation of reporting obligations in one single format for the transmission of information (and one single interface) will reduce compliance costs for payment service providers.

Tax authorities would also have lower development and running costs under the centralised solution than they would with a decentralised system at national level.

The impact assessment for the proposal was considered by the Regulatory Scrutiny Board on 27 June 2018. The Board gave a positive opinion to the proposal with some recommendations that have been taken into account. The opinion of the Board and its recommendations are included in Annex 1 to the Staff Working Document for the impact assessment accompanying the proposal<sup>30</sup>.

- **Regulatory fitness and simplification**

This initiative does not fall within the remit of the Regulatory Fitness Programme. The likely costs for tax authorities and the Commission are listed in Section 4.

The information received during the targeted consultation did not make possible any reliable quantification of costs for the payment service providers in the impact assessment. However, payment service providers currently receive information requests from different Member States in a variety of different formats and following different procedures. Under this initiative, the payment service providers would have to use an EU-harmonised standard for the transmission of payment information to the tax authorities of Member States. This would reduce the overall administrative burden on payment service providers.

The initiative does not provide for any new VAT obligations on the suppliers of goods and services to final consumers.

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<sup>30</sup> The executive summary sheet is available at the following page:  
[http://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=list&coteId=10102&version=ALL&p=1  
&](http://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=list&coteId=10102&version=ALL&p=1&)

Finally, this initiative is expected to considerably reduce Member States' VAT losses due to e-commerce VAT fraud.

- **Fundamental rights**

The proposal under consideration will trigger new exchanges and processing of VAT-related personal information.

The General Data Protection Regulation gives a wide definition of personal data, which includes any information on an identified or identifiable natural person who can be identified directly or indirectly. For this reason, payment information falls under its scope and the principles applicable for the protection of personal data as laid down in the Charter of Fundamental Rights.

The General Data Protection Regulation and Regulation (EU) 2018/1725 lay down very precise principles for how subjects' rights must be complied with while processing personal data. However, the Union may use legislative measures to restrict these principles and the rights of the data subject<sup>31</sup> — as long as the restrictions respect the principles of necessity and proportionality — to safeguard important objectives of general public interest of the Union, such as economic and financial interests, including taxation<sup>32</sup>.

The impact assessment supporting this initiative showed that tax authorities have no other effective alternative way of collecting the necessary information to fight e-commerce VAT fraud. Therefore, the exchange of payment information is a necessary measure.

Furthermore, only payment information that is necessary to fight e-commerce VAT fraud would be processed under this initiative. The information that would be processed only refers to the recipients of funds (payees) and on the payment transaction itself (amount, currency, date), while information on the consumers paying for goods or services (payers) is not part of the exchange of information. Therefore, that information would not be used for other purposes, such as controlling purchase habits of the consumers. Furthermore, the proposal includes a ceiling linked to the number of payments received by a given payee, excluding the payments likely executed for private reasons. Domestic payments would also be excluded from the scope of the initiative. Finally, the payment information would only be available to the Eurofisc liaison officials of the Member States<sup>33</sup> and only for the time necessary to fight e-commerce VAT fraud.

#### **4. BUDGETARY IMPLICATIONS**

It is expected that the investment costs of the Commission and of the tax authorities will be outweighed by the increase in VAT revenues collected. In fact, B2C online sales accounted

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<sup>31</sup> Restrictions could be set on the right to be informed in a transparent way about: the processing of data (Articles 12, 13 and 14); access to data (Article 15); rectification of data (Article 16); erasure of data (Article 17); restriction of processing data (Article 18); being notified about any rectification or erasure of data (Article 19); receiving data in a structured and common format - data portability (Article 20); the right to object (Article 21); and the right not to be subject to automated processing and profiling (Article 22).

<sup>32</sup> Article 23 GDPR and Article 25 of Regulation (EU) 2018/1725.

<sup>33</sup> The Eurofisc liaison officials are anti-fraud experts of the tax authorities and are appointed by the Member States as the competent officials for the exchange of early warning signals to fight VAT fraud. Regulation (EU) No 904/2010, Chapter X.

for around EUR 600 billion in 2017<sup>34</sup>. Therefore, assuming that tax authorities would be able to assess a VAT loss corresponding to 1% of that turnover, this would generate up to EUR 1.2 billion in VAT at EU-28 level. Even accounting for incomplete recovery of assessed VAT, these amounts would far exceed the overall operational costs for the initiative. Furthermore, fraud levels account for several percentage points of e-commerce sales. As a result of the increased collection of VAT, it is expected that the VAT gap will be reduced in the e-commerce sector.

The costs of this initiative will be spread among several years starting in 2019. The first part of these costs (until 2020) will be covered by existing allocations in the current Fiscalis 2020 programme. The majority of the costs will nevertheless take place after the year 2020, as described in the Legislative Financial Statements.

Taking into account the highest possible costs incurred by the Commission, the budgetary implications have been estimated to a one-off cost of EUR 11.8 million for setting-up the system, and an annual running cost of EUR 4,5 million once the system is fully operational. It was estimated that these running costs would only start in 2022 once the system is operational. Their impact on the budget was calculated over a five year period for a total (including the one-off cost) of EUR 34,3 million to set-up and run the system until 2027.

These costs are consistent with the MFF proposal and the Fiscalis programme for the next period.

## **5. OTHER ELEMENTS**

### **• Implementation plans and arrangements for monitoring, evaluation and reporting**

The Eurofisc reports and the annual statistics of the Member States are presented and discussed in the Standing Committee on Administrative Cooperation<sup>35</sup> in accordance with Article 49 of Regulation (EU) No 904/2010. The Standing Committee is chaired by the European Commission. In addition, the Commission will seek to obtain from Member States any relevant information on the functioning of the new system and on fraud. Where relevant, coordination will be ensured within the Fiscalis Committee (this committee has still not yet been set up under the new Fiscalis programme<sup>36</sup>).

Regulation (EU) No 904/2010 and Directive 2006/112/EC already lay down rules for periodic Commission evaluations and reporting. Therefore, in line with these existing obligations, every 5 years, the Commission will report to the European Parliament and the Council on the functioning of the new administrative cooperation tool, pursuant to Article 59 of Regulation (EU) No 904/2010.

Furthermore, every 4 years the Commission will report to the European Parliament and the Council on the operation of the new VAT obligations imposed on payment service providers

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<sup>34</sup> E-commerce Europe estimated 2017 e-commerce turnover at EUR 602 billion for the North, East and South regions of Europe.

<sup>35</sup> The Standing Committee on Administrative Cooperation (SCAC) is composed of Member States representatives and chaired by the Commission. The SCAC is responsible for the implementation of Regulation (EU) No 904/2010.

<sup>36</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the 'Fiscalis' programme for cooperation in the field of taxation (COM(2018) 443 final), Article 18.

pursuant to Article 404 of Directive 2006/112/EC. The Commission will ensure that the two reports are coordinated and built on the same findings.

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

In Article 243a the definitions refer to the relevant provisions of Directive (EU) 2015/2366<sup>37</sup> (PSD2) on payment services in the internal market.

Article 243b of the VAT Directive introduces a new record-keeping obligation for payment service providers. These payment services are set out in Annex 1 of PSD2. Not all payment services are relevant for the control of cross-border supplies of goods and services. The only payment services that are relevant are those that result in a cross-border transfer of funds to the payees<sup>38</sup> (or to the payment service providers acting on behalf of the payees) and only when the payer<sup>39</sup> is located in one of the Member States. This is because the Member State of origin of the payment gives an indication to the tax authorities about the place of consumption. Under this initiative, the ‘cross-border’ concept refers to transactions where the consumer is in a Member State and the supplier is in another Member State or in a third country, or in a third territory. Domestic payments are not included in the scope of this proposal.

Article 243b does not refer to the place of establishment or to the permanent address or usual residence of the payee and payer. In fact, payment service providers are third parties compared to the contractual relation between the taxable persons supplying goods and services and their consumers. For this reason, the information available to payment service providers when they execute payment services does not necessarily match with the information taxable persons have on their consumers or with the information necessary to establish the place of taxable transaction. The location only triggers the record-keeping obligation of payment service providers pursuant to Article 243b.

The rules to determine the location of the payees and of the payers are laid down in the proposed article 243c (see *infra*).

In order to capture only the payments that are potentially linked to an economic activity (thus excluding cross-border fund transfers executed for private reasons) a ceiling linked to the number of cross-border payments received by a payee is provided for. Only when the total amount of payments received by a given payee exceeds the ceiling of 25 payments in a calendar quarter (that is also the reporting period for payment service providers) will the payment service provider have to keep records on that payee available to tax authorities. The ceiling was decided by taking into account an average value of online shopping orders of EUR 95<sup>40</sup>. 100 payment transactions per year of that value every year will result in almost EUR 10 000 in sales, which can already give rise to VAT obligations in the Member States.

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<sup>37</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance) (OJ L 337, 23.12.2015, p. 35).

<sup>38</sup> ‘Payee’ means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction (Article 4(9) PSD2).

<sup>39</sup> ‘Payer’ means a natural or legal person who holds a payment account and allows a payment order from that payment account or, where there is no payment account, a natural or legal person who gives a payment order (Article 9(8) PSD2).

<sup>40</sup> <https://www.statista.com/statistics/239247/global-online-shopping-order-values-by-device>

This amount also matches the EUR 10 000 threshold on intra-EU supplies introduced by the VAT E-commerce Directive.

The record-keeping period for the payment service providers would be 2 years. This record-keeping period is proportionate, considering the massive volume of information at stake, its high sensitivity in terms of data protection and the time necessary for tax authorities to detect VAT fraud.

Article 243c, refers to the rules that payment service providers must apply to determine the location of the payers and payees as mentioned before. Article 243c does not lay down rules to establish the place of taxation, but instead lays down rules to establish the location of the payee and payers so as to apply the record-keeping obligation pursuant to Article 243b of the VAT Directive.

Furthermore, Article 243c does not imply the transmission of the information used to determine the location of the payer to the tax authorities. This information will remain with the payment service provider.

Pursuant to paragraph 1, the location of the payer will be considered as being in the Member State indicated by the identifier of the account of the payer. The Single Euro Payments Area Regulation<sup>41</sup> establishes the IBAN (International Bank Account Number) as the identifier of an individual payment account in a Member State. If a payment is executed through a payment service not falling under the Single Euro Payments Area Regulation (which only applies to credit transfers and direct debits in euro), the location of the payer may be given by any other identifier of the payment account of the payer.

There are also payment transactions (i.e. money remittance) where the funds are transferred to the payee without any payment account being created in the name of the payer. In this case, the location of the payer will be considered as being in the Member State indicated by the identifier of the payment service provider acting on behalf of the payer.

Pursuant to paragraph 2, the location of the payee (the beneficiary of the funds) will be considered as being in the Member State or third country indicated by the identifier of the payment account where the funds are credited. Should the funds not be credited to any payment account, then the location of the payee will be considered as being in the Member State, third country or third territory indicated by the identifier of the payment service provider acting on behalf of the payee.

Article 243d provides the details of the information to be kept by the payment service providers referred to in Article 243b. The records contain information to identify the payment service provider keeping the records, information to identify the payee, and information on the payments received by the payee. The identification information of the payers is not included in the record-keeping obligation of the payment service providers as it is not necessary to detect fraud. Furthermore, payment service providers are not always aware of whether the payers are taxable persons or merely private consumers. Therefore, when the threshold of 25 payments in a quarter is exceeded, the payment service providers will have to keep information referring to all payments received by a given payee, without distinguishing

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<sup>41</sup> SEPA Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro (OJ L 94, 30.3.2012, p. 22).

between payments received by consumers or taxable persons. This distinction will be a task of the Member State tax authorities when they analyse the information.

The payment service providers must keep records of any VAT or tax identification number of the payee if applicable. VAT identification numbers (national or Mini One Stop Shop identification numbers) are necessary for the tax authorities of the Member States to identify VAT taxable persons and cross-check their payment information with the respective VAT or MOSS declarations and payments. The VAT identification of the payee may not be available to the payment service providers (either because the payee does not have a VAT identification number or because the payee has a VAT identification number but does not communicate it to the payment service provider). In case a VAT identification number is not available to the payment service providers, the tax authorities will have to activate the necessary procedures (domestic or using administrative cooperation) to find out whether behind the given payee there is a taxable person and to assess whether there are VAT liabilities.

Finally, the payment service providers must keep information on the payment transaction itself, such as the amount, currency, date, origin of the payment and indication of any payment refund.

Proposal for a

**COUNCIL DIRECTIVE**

**amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers**

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 Parliament<sup>42</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>43</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2006/112/EC<sup>44</sup> lays down the general value added tax (VAT) accounting obligations for taxable persons.
- (2) The growth of electronic commerce ('e-commerce') facilitates the cross-border supply of goods and services to final consumers in Member States. In this context a cross-border supply refers to a situation where VAT is due in one Member State but the supplier is established in another Member State, or in a third country or third territory. However, fraudulent businesses exploit e-commerce opportunities in order to gain unfair market advantages by evading their VAT obligations. Where the principle of taxation at destination applies, because consumers have no accounting obligations, the Member States of consumption need appropriate tools to detect and control these fraudulent businesses.
- (3) In the vast majority of online purchases made by European consumers, payments are executed through payment service providers. In order to execute a payment transaction, a payment service provider holds specific information to identify the recipient, or payee, of that payment together with details on the amount and date of the payment transaction and the Member State of origin of the payment. This is particularly the case in the context of a cross-border payment transaction where the payer is located in one Member State and the payee is located in another Member State or in a third country or third territory. This information is necessary for tax authorities to carry out their basic tasks of detecting fraudulent businesses and controlling VAT liabilities. It is therefore necessary that this VAT-relevant information, which is held by payment service providers, is made available to the tax authorities of the Member States to help them identify and combat cross-border e-commerce VAT fraud.

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<sup>42</sup> OJ C , , p. .

<sup>43</sup> OJ C , , p. .

<sup>44</sup> 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) It is important that payment service providers should be obliged to keep sufficiently detailed records of certain cross-border payment transactions triggered by the location of the payer and of the payee as part of this new measure envisaged to fight cross-border e-commerce VAT fraud. As a result, it is necessary to define the specific concept of the location of the payer and of the payee and also the means for their identification. The location of the payer and of the payee should only trigger the record keeping obligation of the payment service providers which is established in the Union and it should be without prejudice to the rules laid down in this Directive and the Council Implementing Regulation (EU) No 282/2011<sup>45</sup> as regards the place of a taxable transaction.
- (5) From information already held by payment service providers, they are able to identify the location of the payee and the payer in relation to the payment services they execute, based on an identifier of an individual payment account in a Member State used by that payer or payee.
- (6) Alternatively, the location of the payer or the payee should be determined by means of a business identifier of the payment service provider where it has been acting on behalf of the payer or the payee. This means of identification should also be used where the funds are transferred to a payee without any payment account being created in the name of a payer, or where the funds are not credited to any payment account.
- (7) In accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>46</sup>, it is important that the obligation on a payment service provider, to retain and provide information in relation to a cross-border payment transaction, should be proportionate and should only be what is necessary for Member States to fight e-commerce VAT fraud. Furthermore, the only information relating to the payer that should be retained is where the payer is located. With regard to information relating to the payee and the payment transaction itself, payment service providers should only be required to retain and transmit to tax authorities information which is necessary for tax authorities to detect possible fraudsters and to carry out VAT controls. Therefore, payment service providers should only be required to retain records on cross-border payment transactions which are likely to indicate economic activities. The introduction of a ceiling based on the number of payments received by a payee over the course of a calendar quarter would give a reliable indication that those payments were received as part of an economic activity, thereby excluding payments for non-commercial reasons. Where such a ceiling is reached, the accounting obligation of the payment service provider would be triggered.
- (8) Due to the significant volume of information and its sensitivity in terms of the protection of personal data, it is necessary and proportionate that payment service providers retain records of the information in relation to cross-border payment transactions for a two-year period in order to assist Member States fight e-commerce VAT fraud and detect fraudsters. This period constitutes the minimum necessary for Member States to carry out controls effectively and to investigate suspected VAT fraud or to detect VAT fraud.
- (9) The information to be retained by the payment service providers should be collected by and exchanged between the Member States in accordance with Council Regulation (EU) No

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<sup>45</sup> Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

<sup>46</sup> 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 L119, 04.05.2016, p.1).

904/2010<sup>47</sup> which lays down the rules for administrative cooperation and exchange of information in order to combat VAT fraud.

- (10) E-commerce VAT fraud is a common problem for all Member States but individual Member States do not necessarily have the information to ensure that e-commerce VAT rules are correctly applied and to tackle e-commerce VAT fraud. Since the objective of this Directive, — the fight against e-commerce VAT fraud — cannot be sufficiently achieved by the Member States individually due to the cross-border nature of e-commerce and the need to obtain information from other Member States, but can 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 that objective.
- (11) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Directive fully respects the right of protection of personal data laid down in Article 8 of the Charter. The payment information retained and disclosed in accordance with this Directive should be processed only by the anti-fraud experts of tax authorities within the limits of what is proportionate and necessary to achieve the objective of fighting e-commerce VAT fraud.
- (12) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>48</sup> and delivered an opinion on [...]...<sup>49</sup>
- (13) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*  
*Amendments to Directive 2006/112/EC*

Directive 2006/112/EC is amended as follows:

- (1) Chapter 4 of Title XI is amended as follows:
  - (a) the following Section 2a is inserted:

*'Section 2a*

***General obligations for payment service providers***;

- (b) the following Articles from 243a to 243d are inserted:

*'Article 243a*

For the purposes of this Section, the following definitions shall apply:

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<sup>47</sup> 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).

<sup>48</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>49</sup> OJ C [...], [...], p. [...].

- (1) 'payment service provider' means a body listed in points (a) to (f) of paragraph 1 of Article 1 of Directive (EU) 2015/2366 (\*), or a natural or legal person benefiting from an exemption in accordance with Article 32 of that Directive;
- (2) 'payment service' means the business activities set out in points (3) to (6) of Annex 1 to Directive (EU) 2015/2366;
- (3) 'payment transaction' means an act defined in point 5 of Article 4 of Directive (EU) 2015/2366;
- (4) 'payer' means a natural or legal person as defined in point 8 of Article 4 of Directive (EU) 2015/2366;
- (5) 'payee' means a natural or legal person as defined in point 9 of Article 4 of Directive (EU) 2015/2366;
- (6) 'IBAN' means an international payment account number identifier as defined in point 15 of Article 2 of Regulation (EU) No 260/2012 of the European Parliament and of the Council (\*\*);
- (7) 'BIC' means a business identifier code as defined in point 16 of Article 2 of Regulation (EU) No 260/2012.

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(\*) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

(\*\*) Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).

#### *Article 243b*

1. Member States shall ensure that payment service providers keep sufficiently detailed records of the payees and of the payment transactions in relation to payment services they execute for each calendar quarter to enable the competent authorities of the Member States to carry out controls of the supplies of goods and services which in accordance with the provisions of Title V are deemed to take place in a Member State.
2. The requirement referred to in paragraph 1 shall apply in circumstances where both of the following conditions are met:
  - (a) where funds are transferred by a payment service provider from a payer located in one Member State to a payee located in another Member State, in a third territory or in a third country;
  - (b) in respect of the transfer of funds referred to in point (a), where a payment service provider executes more than 25 payment transactions to the same payee in the course of a calendar quarter.
3. The records referred to in paragraph 1 shall:
  - (a) be kept by the payment service provider in electronic format for a period of two years from the end of the year during which the payment transaction was executed;

- (b) be made available to the Member States of establishment of the payment service provider in accordance with Article 24b of Regulation (EU) No 904/2010 (\*).

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(\*) 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).

*Article 243c*

1. For the purposes of paragraph 2 of Article 243b and without prejudice to the dispositions of Title V of this Directive, the location of the payer shall be considered to be in a Member State corresponding to either:
  - (a) the IBAN of the payer's payment account;
  - (b) the BIC or any other business identifier code that unambiguously identifies the payment service provider acting on behalf of the payer.
2. For the application of paragraph 2 of Article 243b, the location of the payee shall be considered to be in a Member State, third country or third territory corresponding to either:
  - (a) the IBAN of the payee's payment account or any other payment account number identifier which unambiguously identifies an individual payment account;
  - (b) the BIC or any other business identifier code that unambiguously identifies the payment service provider acting on behalf of the payee.

*Article 243d*

1. The records kept by the payment service providers, in accordance with Article 243b, shall contain the following information:
  - (a) the BIC or any other business identifier code that unambiguously identifies the payment service provider;
  - (b) the name of the payee or the business name, if appropriate;
  - (c) any VAT identification number of the payee, if available;
  - (d) the IBAN or any other payment account number identifier which unambiguously identifies the individual payment account of the payee;
  - (e) the BIC or any other business identifier code that unambiguously identifies the payment service provider acting on behalf of the payee where the payee receives funds without having any payment account;
  - (f) the address of the payee in the records of the payment services provider;
  - (g) any executed payment transactions referred to in paragraph 2 of Article 243b;
  - (h) any executed payment refunds for payment transactions referred to in point (g);
2. The information referred to in points (g) and (h) of paragraph 1, shall contain the following details:
  - (a) the date and time of the execution of the payment transaction or of the payment refund;

- (b) the amount and the currency of the payment transaction or of the payment refund;
- (c) the Member State of origin of the funds received by the payee or on his behalf, the Member State, third territory or third country of destination of the refund, as appropriate, and the information used to determine the origin or the destination of the payment transaction or of the payment refund in accordance with Article 243c.’

#### *Article 2*

1. Member States shall adopt and publish, by 31 December 2021 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2022.

When Member States adopt those provisions, the latter shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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.

#### *Article 3*

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

#### *Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*

## LEGISLATIVE FINANCIAL STATEMENT

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned (*programme cluster*)
- 1.3. Nature of the proposal/initiative
- 1.4. Grounds for the proposal/initiative
- 1.5. Duration and financial impact
- 1.6. Management mode(s) planned

### **2. MANAGEMENT MEASURES**

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
  - 3.2.1. *Summary of estimated impact on expenditure*
  - 3.2.2. *Estimated impact on appropriations of an administrative nature*
  - 3.2.3. *Third-party contributions*
- 3.3. Estimated impact on revenue

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Mandatory transmission and exchange of VAT-relevant payment data  
PLAN/2017/2023 — TAXUD

#### 1.2. Policy area(s) concerned (*Programme cluster*)

Single Market, Innovation and Digital

#### 1.3. The proposal/initiative relates to:

a new action

a new action following a pilot project/preparatory action<sup>50</sup>

the extension of an existing action

a merger or redirection of one or more actions towards another/a new action

#### 1.4. Grounds for the proposal/initiative

##### 1.4.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The following milestones are set for the project:

(1) End of 2022 — The central system for collecting data from payment providers and for the risk analysis is operational;

(2) End of 2024 — Feedback on the use of the payment data, the risk criteria and the supplementary VAT assessed is provided to the Commission by at least 2/3 of the active users (Member States).

##### 1.4.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise, created by Member States alone.

Reasons for action at European level (ex-ante) Member States alone cannot effectively fight e-commerce VAT fraud. Tax authorities do not have access to information on business to consumers' cross-border supplies.

From another perspective, exchanging information between Member States tax authorities on payment data is not always possible due to legal limitations, which makes the current administrative cooperation tools rather un-effective in respect to e-commerce VAT fraud.

Expected generated Union added value (ex-post)

A higher VAT compliance level among remote sellers would generate an improved level playing field for all companies active in the e-commerce sector. Equally, the improved compliance level would lead to higher VAT revenues and to a lower VAT gap.

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<sup>50</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

For payment providers, the adoption of a single centralised EU-wide system of collecting VAT-relevant payment data would reduce the risks and costs of reporting the same information in multiple formats, in every EU Member State.

#### 1.4.3. *Lessons learned from similar experiences in the past*

This is a new initiative. However, based on the Mini One Stop Shop project (MOSS) which developed a common European platform for declaring and paying VAT on electronic services across Europe, the following considerations can be drawn:

- (1) The implementation of the technical solution has to be planned well in advance, allowing a wide consultation of stakeholders and taking into account the necessary time and financial resources to develop the new system;
- (2) The requirements to store information on long term should be carefully weighted in terms of costs and benefits;
- (3) A good communication campaign should accompany the implementation of the initiative, in order to help businesses comply with the new reporting requirements.

Lessons learned from the development of IT systems and the administrative cooperation under the Fiscalis and Customs programmes will be used. Most notably, the experience that will be gathered in developing the future Information System for Customs 2 may be useful in building the risk analysis tools for payment data.

#### 1.4.4. *Compatibility and possible synergy with other appropriate instruments*

The funds for the implementation of this initiative will be provided by the Fiscalis programme.

Finally, the initiative will be implemented in conjunction with the new rules of the VAT Digital Single Market Package, notably the Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods. The payment data would allow the tax authorities to crosscheck information declared by marketplaces, platforms or other remote sellers as well as to verify the application of the EUR 10 000 threshold for intra-EU supplies.

### 1.5. **Duration and financial impact**

#### **limited duration**

- in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

#### **unlimited duration**

- Implementation with a start-up period from 2020 to 2023,
- followed by full-scale operation.

### 1.6. **Management mode(s) planned<sup>51</sup>**

- Direct management** by the Commission

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<sup>51</sup> Details of management modes and references to the Financial Regulation may be found on DG BUDG Website: <https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

- by its departments, including by its staff in the Union delegations;
- by the executive agencies
- Shared management** with the Member States
- Indirect management** by entrusting budget implementation tasks to:
  - third countries or the bodies they have designated;
  - international organisations and their agencies (to be specified);
  - the EIB and the European Investment Fund;
  - bodies referred to in Articles 70 and 71 of the Financial Regulation;
  - public law bodies;
  - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
  - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
  - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

#### Comments

The Commission shall be assisted by the Standing Committee on Administrative Cooperation, on the grounds of art. 58 of Regulation (EU) No 904/2010 and Regulation (EU) No 182/2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

TAXUD will submit yearly monitoring reports to the Standing Committee on Administrative Cooperation (SCAC).

### **2.2. Management and control system(s)**

#### *2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The initiative will be implemented in direct management mode. This management mode provides the most efficient allocation of financial resources and greatest impact possible. It offers flexibility and sufficient steering control to the Commission for yearly allocation of resources.

The initiative will be implemented via procurement by the Commission.

For procurement, the payment modalities are fully aligned with corporate standards (no pre-financing; all payments are linked to the acceptance of pre-defined deliverables).

The control system for procurement is based on a thorough ex-ante verification of all transactions, therefore excluding any error at payment time.

#### *2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them*

The general identified risks related to the implementation of this initiative refer to:

1. Shortage of financial and human resources for the IT solution on the central repository and on the changes that each Member State has to operate into its national information systems;
2. The security risks related to the storage and processing of sensitive payment data;

Risks will be addressed by TAXUD with support from the Member States by the means of (i) appropriate financing decisions, (ii) extensive consultation on the technical and functional requirements of the new IT systems as well as by the consultation of various stakeholders and rigorous analysis by the Commission and the Standing Committee on Administrative Cooperation of performance indicators and market trends.

#### *2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of 'control costs ÷ value of the related funds managed'), and assessment of the expected levels of risk of error (at payment & at closure)*

As the financing of the initiative will be done through the Fiscalis programme, the specific internal control system will apply.

TAXUD will also regularly check on the implementation of the initiative, from both the business and IT perspectives and will set in place regular management check in its units in charge of tax administration and fight against fraud as well as in charge of taxation IT systems

TAXUD has a good record and appropriate experience in implementing large-scale trans-European IT systems and complex business rules involving all the EU Member

States. Most notably, the experience with both the Fiscalis and Customs programmes will minimise the risks of error (under 2 %).

The applied control strategy has proven to be effective and efficient under the former similar initiatives for Customs and the cost of control has shown to be limited.

Considering that similar control systems will be used for this initiative, the anticipated cost of controls and expected level of risk of error at payment/closure can be considered cost-effective.

### **2.3. Measures to prevent fraud and irregularities**

DG TAXUD implements a comprehensive Anti-Fraud Strategy (AFS) leading to anti-fraud culture within the DG through awareness raising activities on potential fraud risks and ethical behaviour among DG TAXUD staff.

Considering that the programme will be implemented through procurement, the provision of the AFS apply (Objective 3 of AFS: ‘Raising awareness on possible conflict of interest in dealing with external stakeholders such as lobbyists, tenderers, contractors’). The preventing measures will focus on 1) maintaining records of contacts with lobbyists, 2) centralised management of procurement procedures and contacts with tenderers, 3) dedicated training on contacts with lobbyists and will be particularly applicable to the implementation of the initiative.

Mandatory consultation of the Early Detection and Exclusion System before awarding contracts (and any financial transaction) will also further discourage potential fraud and irregularity.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading of the multiannual financial framework and new expenditure budget line(s) proposed

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading ..... ...]	Diff./Non-diff <sup>52</sup> .	from EFTA countries <sup>53</sup>	from candidate countries <sup>54</sup>	from third countries	within the meaning of Article [21(2)(b)] of the Financial Regulation
1	03.01 Single Market — Administrative line 03.04 Single Market — Cooperation in the field of taxation (FISCALIS)	Diff.	NO	NO	NO	NO

<sup>52</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>53</sup> EFTA: European Free Trade Association.

<sup>54</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	<...>	‘Single Market, Innovation and Digital’
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			2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
Operational appropriations (split according to the budget lines listed under 3.1)	Commitments	(1)	5,400	5,550	5,235	4,585	4,585	4,585	4,585		34,525
	Payments	(2)									34,525
Appropriations of an administrative nature financed from the envelope of the programme <sup>55</sup>	Commitments = Payments	(3)									
<b>TOTAL appropriations for the envelope of the programme</b>	Commitments	=1+3	5,400	5,550	5,235	4,585	4,585	4,585	4,585		34,525
	Payments	=2+3									34,525

<b>Heading of multiannual financial framework</b>	7	‘Administrative expenditure’
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<sup>55</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former ‘BA’ lines), indirect research, direct research.

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	<i>Post 2027</i>	TOTAL
Human resources		2,244	0,902	0,225	0,225	0,225	0,225	0,225		<b>4,274</b>
Other administrative expenditure										
<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>	(Total commitments = Total payments)	2,444	0,952	0,276	0,276	0,276	0,276	0,276		<b>4,774</b>

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	<i>Post 2027</i>	TOTAL
<b>TOTAL appropriations across HEADINGS of the multiannual financial framework</b>	Commitments	7,644	6,452	5,460	4,810	4,810	4,810	8,910		<b>38,798</b>
	Payments									

### 3.2.2. Summary of estimated impact on appropriations of an administrative nature

- The proposal requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL
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<b>HEADING 7 of the multiannual financial framework</b>								
Human resources	2,244	0,902	0,225	0,225	0,225	0,225	0,225	<b>4,274</b>
Other administrative expenditure	NA							
<b>Subtotal HEADING 7 of the multiannual financial framework</b>								

<b>Outside HEADING 7<sup>56</sup> of the multiannual financial framework</b>								
Human resources								
Other expenditure of an administrative nature								
<b>Subtotal outside HEADING 7 of the multiannual financial framework</b>								

<b>TOTAL</b>	2,244	0,902	0,225	0,225	0,225	0,225	0,225	<b>4,274</b>
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>56</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

### 3.2.2.1. Estimated requirements of human resources

– The proposal requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

Years	2021	2022	2023	2024	2025	2026	2027
<b>• Establishment plan posts (officials and temporary staff)</b>							
Headquarters and Commission's Representation Offices	6	2	0,5	0,5	0,5	0,5	0,5
Delegations							
Research							
<b>• External staff (in Full Time Equivalent unit: FTE) — AC, AL, END, INT and JED <sup>57</sup></b>							
Heading 7							
Financed from HEADING 7 of the multiannual financial framework	- at Headquarters	9	4	1	1	1	1
	- in Delegations						
Financed from the envelope of the programme <sup>58</sup>	- at Headquarters						
	- in Delegations						
Research							
Other (specify)							
<b>TOTAL</b>	<b>15</b>	<b>6</b>	<b>1,5</b>	<b>1,5</b>	<b>1,5</b>	<b>1,5</b>	<b>1,5</b>

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Figures include both staff working on the direct management and implementation of the initiative and staff working on policy areas supported by the initiative.
External staff	Figures include both staff working on the direct management and implementation of the initiative and staff working on policy areas supported by the initiative.

<sup>57</sup> AC= Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

<sup>58</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

### 3.2.3. *Third-party contributions*

The proposal/initiative:

- does not provide for co-financing by third parties

### 3.3. **Estimated impact on revenue**

- The proposal/initiative has the following financial impact:

(1) on VAT revenue

EUR million (to three decimal places)

Budget revenue line:	Impact of the proposal/initiative <sup>59</sup>						
	2021	2022	2023	2024	2025	2026	2027
Article .....	NA	NA	NA	NA	NA	NA	NA

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<sup>59</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.