UNICE
THE VOICE OF BUSINESS IN EUROPE

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UNICE COMMENTS

ON VAT ADMINISTRATIVE COOPERATION
[COM (2001) 294 FINAL-18.06.2001]

1. INTRODUCTION

Under COM (2001) 294, the EU Commission has proposed a single reinforced legal framework for closer cooperation which is necessary to fight VAT fraud effectively. In this respect, the Commission proposes a new Regulation replacing, strengthening and modernising the provisions of the 1992 Regulation and incorporating the 1977 Directive.

While endorsing the principle that Member States must improve co-operation against VAT fraud, UNICE would like to stress that the current complexity of the VAT system contributes to the level of VAT fraud. In this respect, UNICE notes with some concern the general lack of progress at Council level regarding both simplification of the current transitional VAT regime - for example implementation of the SLIM VAT project - and the passage to the definitive system. As a result, many deficiencies remain which encourage fraud and non-compliance with existing rules. We believe further steps must be taken, to meet the challenges posed by fraud.

As concerns the new Commission communication, UNICE supports the effort to strengthen co-operation between Member States to fight against VAT fraud.

A Community-reinforced framework for co-operation would benefit companies by reducing the high costs deriving from VAT fraud that are currently creating a competitive disadvantage for legitimate trade. VAT fraud adds costs for complying businesses, limits the ability to create effective tax policy solutions, and introduces distortions between businesses that hamper the realisation of an effective single market.

However, it is essential that the new procedures introduce no new obligations or additional administrative burdens on complying taxpayers. Also, the guarantees as to the nature and the use of the information Member States will be allowed to request under the new Regulation have to be strengthened. There should be no invasion of the rights of the taxpayer to confidentiality in his own private and business affairs. For these reasons, we hereby put forward some observations designed to make the proposal safer and more effective.

Finally, we would like this to be the opportunity for businesses to be allowed to consult the VIES system, in order to assist them in complying with their obligations – for instance, allowing an immediate check of the correctness of VAT identification numbers throughout the Community.

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2. Observations on the proposal

2.1 Exchange of relevant information

Under the proposal, the competent authorities communicate any information that may help Member States to effect a correct assessment of VAT, including "*any information relating to a specific case or cases*" (article 5).

This general provision appears too wide. We believe it should be restricted to the exchange of the relevant VAT information, both to guarantee the taxpayer's rights and to limit the costs of administrative enquiries, given the lack of control resources.

Moreover, the provision has to be read in conjunction with articles 36 and 37, designed to provide adequate protection of taxpayers' rights. We believe this protection should be reinforced. In particular:

Notification

- the proposal no longer provides for a notification of the exchange of information to the (taxable) person concerned. It stipulates that the requested authority must proceed as though acting on its own account or at the request of another authority in its own country (article 5). We do not consider it advisable to drop notification in other situations than in case of a suspicion of fraud in the other Member State, i.e. when there are justified reasons to believe VAT fraud is taking place. Furthermore, it has to be pointed out that there is currently no common definition of VAT fraud;
- exchange of documentation obtained with the authorisation or at the request of the judicial authority (article 4) is allowed when the judicial authority gives its consent. In this case, the taxpayer should always be notified;

Provision of information

- to avoid unnecessary additional burdens on taxpayers, it should be stated that the requested authority is not allowed to ask the taxpayer for information or documentation that are already in the possession of the same Member State's administration;
- in article 36, protections for taxpayers need to be strengthened. Paragraph 2 should state that the Regulation "forbids" (instead of "shall impose no obligations for") enquiries or exchange of information, if the laws or practices of the requested Member State do not authorise the competent authority to carry out those enquiries or collect/use the information for that Member State's own purposes. Paragraph 3 should state that the provision of information "should" be refused (not "may" be refused), where it would lead to the disclosure of a commercial, industrial or professional secret, or of a commercial process or operation. It should also be possible for the requested authority to refuse information when this would lead to harm or to impose a disproportionate burden on the legitimate business activity. In any case, the taxpayer should be able to complain against infringement of the disclosure rules. Finally, in paragraph 4, the minimum VAT threshold triggering a request for assistance should be better defined;

Use of information

- stronger guarantees as to the use of the information should be introduced. In particular, the use of information should be allowed for tax purposes and not for any "other purposes" as presently stated in article 37, paragraph 2. Also in article 37, paragraph 3 should be amended to provide that, when the requesting authority decides to transmit the information received from the requested authority to another Member State, this should be done only with consent of the requested authority.

  For the same reasons, article 32, dealing with relations with third countries, should provide that the requesting authority has the power to transmit the information received from 3rd countries to other Member States, but only with the consent of the 3rd country.

2.2 Decentralisation of administrative cooperation

UNICE welcomes the concept of a framework for decentralised cooperation, with competent officials per territorial service under the responsibility of the central liaison office (CLO), as it can make cooperation and controls more efficient and faster.

However, the new structure proposed is not clear. The competence of and the relation between the competent authorities, the C.L.O. and the official per territorial service are not well defined.

The provision for direct contacts between other officials than the competent officials (article 3, paragraph 4) may undermine co-ordination between offices and it may lack legal security too. It should therefore be removed, as it seems incongruous to allow a provision that would weaken the delegation of powers by the competent authority to specifically designated officials. If this is not possible, it should be clearly stated in the Regulation that the C.L.O. must be informed of the information flows.

Finally, as article 31 states that the Commission and the Member States shall examine and evaluate how the arrangements for administrative cooperation provided in the Regulation are working, UNICE believes that business should be involved in this process to give its contribution with the aim of improving the mechanism.

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