

3 June 2019

Commission Directive on Introducing Requirements for Payment Service Providers

KEY MESSAGES



- 1** We welcome the European Commission's efforts to fight VAT-fraud, as VAT-fraud creates strong competitive distortions at the expense of the vast majority of businesses who pay their taxes in full.
- 2** It is essential that the Commission's action targets fraudsters, is proportionate and does not put more administrative burden on Payment Service Providers (PSPs) than necessary. In this light, we oppose the Commission's proposal unless the requested data can be restricted to that which is readily available without extensive efforts and costs for EU-based PSPs. Otherwise, the current proposal can create a competitive disadvantage vis-à-vis third-country PSPs and could lead to higher transaction fees for all EU-customers without significantly reducing overall VAT-fraud.
- 3** As the Commission's proposal will imply new exchanges and processing of VAT-related personal information, it is important that the Commission ensures that the data are only used with the sole objective of fighting VAT fraud, whilst fully guaranteeing the provisions of the EU's privacy rules on personal data.

WHAT DOES BUSINESSEUROPE AIM FOR?



- We call on Member States to keep improving cooperation between the different national tax administrations to establish greater levels of trust and efficiency. We cannot improve the VAT-system and reduce VAT-fraud without trust between Member States and cooperation between tax administrations and businesses.
- As online cross-border e-commerce is growing globally, it is important that the European Commission intensifies its dialogue with the OECD to counter VAT-fraud on a worldwide basis.
- To limit the administrative burden on PSPs, the requested information should only include such information that is already (easily) available for PSPs and that can be used by Member States for assisting in the collection of VAT.



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Background

The proposal amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers (PSPs) would require PSPs to transmit cross border payment data in order to allow tax authorities to better control the correct application of VAT on cross border supplies, particularly with respect to B2C e-Commerce transactions.

PSPs, in particular credit institutions, electronic money institutions and payment institutions, will need to report cross-border payment data collected in an EU-wide register (Central Electronic System of Payment Information – CESOP). In CESOP, tax authorities of all Member States can identify EU and non-EU sellers failing to declare VAT on cross-border B2C selling.

Only when there are more than 25 payments to the same payee during a period of 3 months, will PSPs need to share the relevant data. The necessary data to report, next to the transactions made, include the name of the payee, VAT identification number of the payee, IBAN, BIC, address of the payee in the records of the PSP, etc.

VAT-fraud

The ongoing digitalisation of our economy is sure to increase the sale of goods and services online. In order to enhance the Single Market, online cross-border e-commerce should be made easier for businesses. In this respect, we have welcomed the 2017-agreement on the e-commerce directive, which will encourage online businesses to expand cross-border. We have supported in particular the broadening of the Mini-One-Stop-Shop (MOSS) to all B2C distance sales of goods and services, which can relieve administrative burden for businesses significantly.

However, as the Commission's impact assessment notes, growing online sales may give rise to increased instances and new methods of VAT-fraud. Currently, online cross-border sales in the EU are worth €96 billion a year and Member States already lose in total around 5 billion per year in VAT in cross-border e-commerce supplies of goods, which hurts both legitimate businesses and Member States.

It is essential in this light that the European Commission and Member States' tax authorities increase their dialogue to deliver a strong response against VAT-fraud. We recognise that payment information can be a valuable supplementary source of information in the efforts to reduce VAT fraud, especially with third-country counterparts as these companies do not otherwise have a presence in Europe. A European-wide effort would also be more beneficial compared to a patchwork of national initiatives, which



would only complicate the international VAT-system even more. The proposal's introduction of a harmonised European reporting system (CESOP) should be welcomed in this sense, provided the system meets the requirements of effectiveness and proportionality (see below). In addition, the proposed thresholds in the Commission's seem appropriate but will require continuous monitoring over the years to see if changes to the thresholds are required.

We also encourage the European Commission's activity at OECD-level to fight VAT-fraud on a global level.

Requirements for Payments Service Providers

However, it is essential that the proposed measures are suitable instruments for combatting VAT fraud and are proportionate in terms of the additional burden they place on PSPs. While businesses, including financial institutions, are willing to contribute to the fight against VAT-fraud and collaborate with national tax authorities in Member States, we cannot support the Commission's proposal where the additional burdens are not adequately assessed, nor the adequacy and effectiveness of the information requested from PSPs in the fight against VAT fraud.

In this light, we believe that the proposal requires careful consideration and constructive debate to ensure the feasibility and efficiency of the proposed system. We also refer to the joint letter by the European Credit Sector Associations and European Payment Institutions Federation, which explains further how 'the proposal wrongly assumes that the payer PSP has all the details'.¹

We believe it is essential that the requested information from the PSPs only includes such information that is already available for PSPs and that can be used by Member States for assisting in the collection of VAT. Given the fact that a significant proportion of VAT fraud in online commerce have a third-country component, we strongly believe that information requirements should only mandate internationally available information.

While the proposal recognises that the payee's VAT identifier is sometimes not available, some of the other required information in the Commission's proposal is sometimes not available either to PSPs. For instance:

- with card payments, the payer's bank does not know the payee's IBAN,
- non-EU countries do not use IBAN,
- the payer's account may show the payment service provider as the payee
- payment refunds usually take place after the original payment has already gone through to the online retailer. The refund is executed as a separate transaction that does not always contain a reference to the original payment transaction.

The proposal also wrongly assumes that the payer PSP has all the details on the ultimate beneficiary of the payment. There are no automated or easy methods to gather this information, if it is at all available. Thus, collecting this data can require excessive

¹<https://www.wsbi-esbg.org/press/positions/Pages/Proposal-for-a-Council-Directive-amending-Directive-2006112EC-requirements-for-PSPs%E2%80%99-cooperation-in-the-fight-against-cross.aspx>



effort, which can create a competitive disadvantage vis à vis PSPs in third countries who are involved in e-commerce payments in the EU.

It should be noted that in intra-EU trade there are usually at least three reporters involved. Often, the online retailer's PSP has the most complete dataset and it needs to be considered whether reporting from all PSP's in this instance is needed. In trade with non-EU countries, transactions are usually card payments and only the payer's card issuer – who in accordance with the international agreements may have incomplete data on the payee - is likely to be obligated by the regulation.

Privacy

It is important that basic principles of privacy are respected in implementing this file, in particular after the recent GDPR-rules. In this sense, the requested data should only be used with the objective of fighting VAT-fraud. In this light, we are concerned that the proposal is not clear to what extent, under what circumstances and on what grounds the authorities will access the personal data. These situations should be more clearly defined.