



Plenary sitting

A9-0048/2019

6.12.2019

REPORT

on the proposal for a Council directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers (COM(2018)0812 – C8-0015/2019 – 2018/0412(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Lídia Pereira

Symbols for procedures

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

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

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	13
PROCEDURE – COMMITTEE RESPONSIBLE	14
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE	15

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers (COM(2018)0812 – C8-0015/2019 – 2018/0412(CNS))

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2018)0812),
 - having regard to Article 113 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0015/2019),
 - having regard to Rule 82 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0048/2019),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) According to the 2019 Final Report in the context of the ‘Study and Reports on the VAT Gap in the EU-28 Member States’^{44a} prepared for the Commission, the VAT gap, that is to say, the difference between the expected VAT revenue and the amount actually collected, in the Union amounted to EUR

137,5 billion in 2017, representing EUR 267 of lost revenue per person in the Union. There are, however, big differences between Member States, with VAT gaps ranging from under 0,7 % of the total expected revenue in some Member States to 35,5 % in others. That highlights the need for more transnational cooperation in order to better combat VAT e-commerce fraud in particular, as well as VAT fraud more generally (including carousel fraud).

^{44a} Available on https://ec.europa.eu/taxation_customs/sites/taxation/files/vat-gap-full-report-2019_en.pdf.

Amendment 2

Proposal for a directive Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) The strategy for combatting VAT fraud should evolve in parallel with the increasing modernisation and digitalisation of our economy while rendering the VAT system as simple as possible for businesses and citizens. It is therefore particularly important that Member States continue to invest in technology-led tax collection, notably by automatically linking corporate cash registers and sales systems to VAT returns. In addition, tax authorities should continue their efforts towards closer cooperation and exchange of best practices, including through the Tax Administration EU Summit (TADEUS), a network of Member States' heads of tax administrations that seeks better coordination at strategic level between tax administrations. In that regard, tax authorities should work towards an effective communication and

interoperability between all databases regarding fiscal matters at Union level. Blockchain technology could also be used in order to better protect personal data and improve the online exchange of information between tax authorities.

Amendment 3

Proposal for a directive Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) At present, given that payments are executed only in a limited number of cases through virtual currencies exchange platforms, such platforms are not considered to be payment services providers as defined in Directive (EU) 2015/2366 of the European Parliament and of the Council ^{1a}. The risk of VAT fraud, although currently limited, does however exist. The Commission should therefore evaluate within three years whether virtual currencies exchange platforms should be included in the scope of this Directive.

^{1a} 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).

Amendment 4

Proposal for a directive Recital 7

Text proposed by the Commission

Amendment

(7) In accordance with Regulation

(7) In accordance with Regulation

(EU) 2016/679 of the European Parliament and of the Council⁴⁶, 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.

⁴⁶ 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).

(EU) 2016/679 of the European Parliament and of the Council⁴⁶, 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 *either* on the number of payments received by a payee over the course of a calendar quarter *or on a minimum amount per payment* 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.

⁴⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 04.05.2016, p.1).

Amendment 5

Proposal for a directive Recital 8

Text proposed by the Commission

(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.

Amendment

(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 **three**-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.

Amendment 6

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) The record keeping and reporting obligation should also arise in cases where a payment service provider receives funds or acquires payment transactions on behalf of the payee and not only where a payment service provider transfers funds or issues payments instruments for the payer.

Amendment 7

Proposal for a directive
Recital 8 b (new)

Text proposed by the Commission

Amendment

(8b) It is necessary to adopt an ambitious mandate for the European Public Prosecutor's Office (EPPO) in collaboration with national judicial authorities in order to ensure the efficient prosecution of fraudsters before the

national courts. Organised cross-border VAT fraud should be duly prosecuted and the fraudsters should be penalised.

Amendment 8

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point b

Directive 2006/112/EC

Article 243b – paragraph 2 – point b

Text proposed by the Commission

(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.

Amendment

(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 ***or executes a transfer of funds having a monetary value of at least EUR 2500 in a single payment transaction.***

Amendment 9

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point b

Directive 2006/112/EC

Article 243b – paragraph 3 – point a

Text proposed by the Commission

(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;

Amendment

(a) be kept by the payment service provider in electronic format for a period of ***three*** years from the end of the year during which the payment transaction was executed;

Amendment 10

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point b

Directive 2006/112/EC

Article 243c – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the IBAN of the payer's payment account;

(a) the IBAN of the payer's payment account ***or any other identifier which unambiguously identifies the payer and the payer's location;***

Justification

Reflects Council text

Amendment 11

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point b

Directive 2006/112/EC

Article 243d – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) any executed payment refunds for payment transactions referred to in point (g);

(h) any executed payment refunds for payment transactions referred to in point (g), ***if available;***

Justification

It is important for compliance purposes that PSPs are able to document all information requested.

Amendment 12

Proposal for a directive

Article 1 – paragraph 1 – point 1 a (new)

Directive 2006/112/EC

Title XV – Chapter 2a – Article 410 c (new)

Text proposed by the Commission

Amendment

(1a) In Chapter 2a of Title XV, the following Article is inserted:

‘Article 410c

By 31 December 2022, the Commission shall, on the basis of information obtained from the Member States, present to the European Parliament and to the Council a report on the operation of Section 2a of Chapter 4 of Title XI, in particular as

regards the need to include virtual currencies exchange platforms in the scope of that Section. That report shall be accompanied, where appropriate, by a legislative proposal.'

Amendment 13

Proposal for a directive

Article 2 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Member States shall adopt and publish, by 31 December **2023** 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.

Amendment 14

Proposal for a directive

Article 2 – paragraph 1 – subparagraph 2

Text proposed by the Commission

They shall apply those provisions from 1 January **2022**.

Amendment

They shall apply those provisions from 1 January **2024**.

EXPLANATORY STATEMENT

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 European Commission identifies 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 to consumers in the Member States.

According to the Commission, the VAT gap (the difference between the expected VAT revenue and the amount actually collected) in the EU currently amounts €137 billion, representing a€267 of lost revenue per person in the EU. There are however big differences between EU Member States, with VAT gaps ranging from under 0,7% of the total expected revenue in some Member States to 35,5% in others. This proves the need for more transnational cooperation to better fight against VAT e-commerce fraud in particular but more generally VAT fraud (including carousel fraud).

The Commission's 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 (a payment service provider), and this is a trend that will continue in the future.

The Rapporteur fully supports the Commission's proposal and proposes a few amendments, notably to ensure that the fight against VAT fraud is more effective. The Rapporteur also draws the attention on the need to evaluate whether exchange platform of virtual currencies should be included in the scope of the proposal.

Moreover, the Rapporteur considers that the strategy to fight against VAT fraud must evolve in parallel with the increasing modernisation and digitalization of our economy while rendering the VAT system as simple as possible for businesses and citizens. The Rapporteur therefore calls Member States to continue to invest in technology-led tax collection. In that regard, she considers that the use of the block chain technology could also be used to better protect personal data and improve the online exchange of information between tax authorities.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Requirements for payment service providers	
References	COM(2018)0812 – C8-0015/2019 – 2018/0412(CNS)	
Date of consulting Parliament	20.12.2018	
Committee responsible Date announced in plenary	ECON 14.1.2019	
Rapporteurs Date appointed	Lídia Pereira 18.7.2019	
Discussed in committee	4.11.2019	3.12.2019
Date adopted	3.12.2019	
Result of final vote	+: 51 -: 4 0: 3	
Members present for the final vote	Gunnar Beck, Marek Belka, Stefan Berger, Gilles Boyer, Cristian-Silviu Buşoi, Derk Jan Eppink, Engin Eroglu, Markus Ferber, Jonás Fernández, Raffaele Fitto, Frances Fitzgerald, Luis Garicano, Valentino Grant, José Gusmão, Enikő Győri, Danuta Maria Hübner, Stasys Jakeliūnas, Othmar Karas, Billy Kelleher, Ondřej Kovářík, Philippe Lamberts, Aušra Maldeikienė, Jörg Meuthen, Csaba Molnár, Luděk Niedermayer, Dimitrios Papadimoulis, Piernicola Pedicini, Lídia Pereira, Jake Pugh, Evelyn Regner, Antonio Maria Rinaldi, Robert Rowland, Martin Schirdewan, Pedro Silva Pereira, Paul Tang, Irene Tinagli, Inese Vaidere, Johan Van Overtveldt, Stéphanie Yon-Courtin, Marco Zanni	
Substitutes present for the final vote	Carmen Avram, Gabriele Bischoff, Damien Carême, Fabio Massimo Castaldo, Richard Corbett, Agnès Evren, Eugen Jurzyca, Pedro Marques, Fulvio Martusciello, Ville Niinistö, Bogdan Rzońca, Stéphane Séjourné, Monica Semedo, Antonio Tajani, Julie Ward	
Substitutes under Rule 209(7) present for the final vote	Rosa D'Amato, Anna Deparnay-Grunenberg, Dino Giarrusso	
Date tabled	9.12.2019	

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

51	+
ECR	Derk Jan Eppink, Raffaele Fitto, Eugen Jurzyca, Bogdan Rzońca, Johan Van Oortveldt
GUE/NGL	José Gusmão, Dimitrios Papadimoulis, Martin Schirdewan
NI	Fabio Massimo Castaldo, Rosa D'Amato, Dino Giarrusso, Piericola Pedicini
PPE	Stefan Berger, Cristian-Silviu Buşoi, Agnès Evren, Markus Ferber, Frances Fitzgerald, Enikő Győri, Danuta Maria Hübner, Othmar Karas, Aušra Maldeikienė, Fulvio Martusciello, Luděk Niedermayer, Lídia Pereira, Antonio Tajani, Inese Vaidere
RENEW	Gilles Boyer, Engin Eroglu, Luis Garicano, Billy Kelleher, Ondřej Kovařík, Stéphane Séjourné, Monica Semedo, Stéphanie Yon-Courtin
S&D	Carmen Avram, Marek Belka, Gabriele Bischoff, Richard Corbett, Jonás Fernández, Pedro Marques, Csaba Molnár, Evelyn Regner, Pedro Silva Pereira, Paul Tang, Irene Tinagli, Julie Ward
VERTS/ALE	Damien Carême, Anna Deparnay-Grunenberg, Stasys Jakeliūnas, Philippe Lamberts, Ville Niinistö

4	-
ID	Gunnar Beck, Jörg Meuthen
NI	Jake Pugh, Robert Rowland

3	0
ID	Valentino Grant, Antonio Maria Rinaldi, Marco Zanni

Key to symbols:

+ : in favour

- : against

0 : abstention