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COMMISSION STAFF WORKING DOCUMENT

**State of play on implementation of the VAT e-commerce package (Council Directive
(EU) 2017/2455)**

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Glossary

B2C	Business-to-Customer
CCN (CCN2)	Common Communication Network
ECCG	Electronic Customs Coordination Group
EU	European Union
IOSS	Import One-Stop Shop
SRDS	Super-reduced data set
TBE services	Telecommunications, Broadcasting and Electronic services
UCC	Union Customs Code
UCC-DA	Union Customs Code — Delegated Act
UCC-IA	Union Customs Code — Implementing Act
VAT	Value Added Tax

1. INTRODUCTION

On 5 December 2017, the Council adopted the VAT e-commerce package, which extends the scope of the current VAT mini one-stop shop applicable to B2C suppliers of telecommunications, broadcasting and electronic services ('TBE services') as follows:

- It extends the non-Union scheme (for supplies of TBE services from outside the EU) to cover all types of services;
- It extends the Union scheme (for supplies of intra-EU TBE services) to cover all types of services, intra-EU distance sales of goods and certain domestic supplies of goods;
- It creates an import scheme for distance sales of goods imported from third countries or territories to customers in the EU, in consignments of an intrinsic value up to €150. It also abolishes the import VAT exemption for goods in low-value consignments of a value up to €22.

To implement the package, which is due to apply as of 1 January 2021, it is necessary to lay down additional detailed implementing provisions and to adapt and develop the IT systems used to apply the VAT and customs rules. Due to the removal of the VAT exemption each import will be subject to VAT and will require a customs declaration.

The following statements were added to the adoption of this VAT e-commerce package:

The Council and Commission will do their utmost to ensure that:

- *the implementing provisions necessary for the correct application of Article 2 of the amending Directive are adopted by the end of 2019, and*
- *the UCC National Import Systems Upgrade referred to in row 14 of the Table in point II of the Annex to the Commission Implementing Decision (EU) 2016/578 of 11 April 2016 establishing the Work Programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code, including the necessary amendments to the data model for the messages, are timely in place.*
- *If it becomes apparent that the necessary VAT or customs IT systems will not 'be timely in place', the Commission will assess by the end of 2019 whether the Directive can still be correctly applied from 1 January 2021 and the Council may invite the Commission to submit to it, as a matter of urgency, a proposal for full or partial postponement of the application of the One Stop shop and elimination of the exemption.*

When deciding on the timing to implement the new and upgraded customs IT systems (debate on Article 278 UCC¹), Council also formally noted:

- *Member States which are not able to implement the UCC National Import Systems Upgrade by the end of 2020 need to adapt their existing systems so as to support the implementation of the above mentioned VAT e-commerce package by 1 January 2021.*

¹ Regulation (EU) 2019/632 of the European Parliament and of the Council of 17 April 2019 amending Regulation (EU) No 952/2013 to prolong the transitional use of means other than the electronic data-processing techniques provided for in the Union Customs Code.

In his letter of 9 December 2018 to the Ministers of Finance of all the Member States, Commissioner Moscovici pointed out that any postponement of the date by which the national import systems are to be upgraded (end 2022) should not delay implementation of the VAT e-commerce package and that Member States wishing to delay their upgrades should make the necessary adjustments to their current national import system to cover the period from 1 January 2021 to the date of implementation of the new UCC system.

This staff working document presents the state of preparedness of the Commission and Member States regarding the VAT and customs implementing legislation, and gives an overview of the readiness of the IT systems needed to apply the new e-commerce rules.

2. IMPLEMENTING THE VAT LEGISLATION

The VAT legislative package contains the following legal instruments:

1. Council Directive (EU) 2017/2455² amending Directive 2006/112/EC (the VAT Directive) and 2009/132/EC (VAT import exemptions)
2. Council Regulation (EU) 2017/2454³ amending Regulation (EU) 904/2010 (on administrative cooperation and combating fraud)
3. Council Implementing Regulation (EU) 2017/2459⁴ amending Regulation (EU) 282/2011 (the VAT Implementing Regulation)
4. Council Directive (EU) 2019/1995⁵ amending Directive 2006/112/EC (the VAT Directive)
5. Council Implementing Regulation (EU) 2019/2026⁶ amending Regulation (EU) 282/2011 (the VAT Implementing Regulation)
6. Commission Implementing Regulation (EU) 2020/21⁷ amending Implementing Regulation (EU) 79/2012
7. Draft Commission Implementing Regulation laying down detailed rules for the application of Council Regulation (EU) No 904/2010 as regards the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods (replacing Commission Implementing Regulation (EU) 815/2012).

The Commission will adopt the draft implementing regulation referred to in point 7 through the comitology procedure in February 2020. However, stable legal texts were made available to the Member States in mid-2019, enabling them to start updating the IT systems as necessary. As a result, the Commission considers that Member States received the legal framework in due time and were given sufficient leeway to make the required changes in their national VAT legislation and to update their IT systems to enable the rules to enter into force on 1 January 2021.

² OJ L 348, 29.12.2017, p. 7.

³ OJ L 348, 29.12.2017, p. 1.

⁴ OJ L 348, 29.12.2017, p. 32.

⁵ OJ L 310, 2.12.2019, p. 1.

⁶ OJ L 313, 4.12.2019, p. 14.

⁷ OJ L 11, 15.01.2020, p. 1.

The follow up to transpose EU legislation into national legislation will follow the normal procedure, including the process of Member States notifying the Commission of changes made.

In the meantime, the Commission is working closely with Member States and businesses on explanatory notes for VAT and guidance for customs, due to be ready in early 2020.

3. CUSTOMS LEGISLATION

The legislative work is ongoing to amend the customs UCC delegated and implementing acts. The amendments should be adopted by mid-2020 to enable the VAT e-commerce package to enter into force on 1 January 2021.

The legal changes in the UCC legal acts to implement the obligations stemming from the VAT e-commerce package are as follows:

1. An amendment to the UCC delegated act, introducing a ‘super-reduced data set’ (SRDS) to declare low-value consignments and maintaining the current simplified system until 1 January 2021. This is already in force (Commission Delegated Regulation (EU) 2019/1143⁸ of 14 March 2019 amending Delegated Regulation (EU) 2015/2446 as regards the declaration of certain low-value consignments).
2. An amendment to the UCC implementing act to provide the legal basis to capture and exchange VAT information in the Commission’s electronic system ‘Surveillance’. This is also already in force (Commission Implementing Regulation (EU) 2019/1394⁹ of 10 September 2019 amending and correcting Implementing Regulation (EU) 2015/2447 as regards certain rules on surveillance for release for free circulation and exit from the EU’s customs territory).
3. Further amendments to the UCC delegated act and to the UCC implementing act to facilitate implementation and to enhance the effectiveness of customs aspects of the VAT e-commerce package. These are in progress and consist of:
 - a legally binding definition of ‘intrinsic value’,
 - transitional measures for implementation of the VAT e-commerce package where the upgrade of national import systems is not ready by 1 January 2021, and
 - transitional measures for postal operators for a limited time (until October 2021) and for limited situations where pre-sent electronic data (advance data) are not available.
4. In the context of ongoing work to harmonise data for trans-European systems, the data-related Annexes B to the UCC delegated and implementing acts are undergoing a review. Given that the data in this Annex has broader applications, the review will have an impact on the data sets used for import and on the super-reduced data set for low-value consignments. The Commission has proposed

⁸ OJ L 181, 5.7.2019, p. 2.

⁹ OJ L 234, 11.9.2019, p. 1.

solutions to allow Member States to meet the implementation deadline provided for in the VAT Directive.

As the legal texts are now available to the Member States, the Commission considers that the focus must now be on updating Member States' IT systems.

4. IT ACTIVITIES

The related IT activities were split into six business cases:

1. Business case (1) updates the Union and non-Union schemes, covering the extension of their scope and introducing new rules on correcting the VAT returns (exchange of VAT-related information). All Member States but two¹⁰ will be ready to implement this business case.
2. Business case (2) develops the import scheme (import one-stop shop or IOSS), covering distance sales of goods imported from third countries and territories (exchange of VAT-related information). All Member States but the same two will be ready to implement this business case.
3. Business case (3) develops a central registry of the IOSS VAT identification numbers sent by each Member State. Member State tax authorities must make this registry accessible to customs, to allow for the electronic and automated validation of the IOSS VAT identification number at the point of import.
 - i. The Commission is confident that it will be ready with the development of the central registry by 1 January 2021.
 - ii. All Member States but two will be able to transmit the issued IOSS VAT identification numbers to the central registry. Some Member States have expressed concern regarding the CCN2 connection. As a fall-back solution, the Commission can keep the CCN connection.
 - iii. However, it appears that three¹¹ Member State will not be able to develop the validation module of the IOSS VAT identification number by 2021. Indeed, it requires changes to the national customs import system. Although, it is technically possible for customs to manually validate the IOSS VAT identification numbers, in practice, however, it is impossible to perform these manual validations for huge volumes of imported consignments.
4. Business case (4) develops monthly reports containing the monthly total amount of imports under each individual IOSS VAT identification number (per supplier).

¹⁰ The Netherlands informed the Commission that they need four additional years to implement the changes in the VAT IT systems. Germany informed the Commission that they will be able to implement the changes to the VAT IT systems concerning the non-Union scheme by 1 January 2022 only. As regards the import scheme no clear date of readiness was communicated.

¹¹ Slovakia informed the Commission that they will be able to validate the IOSS VAT identification number by 1 July 2021. The Netherlands informed the Commission that they need additional four years to implement the changes in the VAT IT systems, hence IOSS VAT identification number validation will not be possible either. Germany informed the Commission about a delay in the national implementation, but no clear date was communicated regarding this business case.

These reports will be compiled by the Surveillance system and will be made accessible to all tax administrations.

- i. This business case was approved by the Electronic Customs Coordination Group (ECCG) on 14 February 2019. The related business process models, including a proposal for the message structure, were approved by written procedure on 21 June 2019.
 - ii. The technical specifications were published on 15 January 2020. They translate the super-reduced data set, as defined legally, into a technical message, a subset of the Surveillance data records already in use for data collection.
 - iii. From the information available to the Commission, 21 Member States have confirmed that they will be able to send import data to Surveillance by January 2021, either in the form of standard/simplified declarations or in the super-reduced data set, including the IOSS VAT identification number. Three Member States¹² informed the Commission that they will encounter delays, thereby delaying the control capability of these Member States. Three Member States¹³ have not replied to the Commission's survey sent in November nor to the reminders at end 2019.
5. Business case (5) extends the VAT rates module in the Taxes in Europe Database (TEDB) to cover all services and goods. This will help businesses make a correct assessment of the VAT due on distance sales throughout the EU. The Commission is confident that it will be ready to implement this business case by 1 January 2021.
6. Business case (6) extends the e-forms supporting the exchange of information between Member States to requests for records of taxable persons and to audits of taxable persons using the non-Union, Union and/or import scheme. The Commission is confident that implementation of this business case will be ready by mid-2021. Since this is a tool facilitating audit work, the Commission considers that this short delay does not interfere with the proper functioning of the VAT e-commerce package.

The detailed planning of the IT work needed is included in the IT master plan. The first version of the plan was shared with the Member States on 4 May 2018. The purpose of the master plan is to ensure effective and coherent management of the IT projects required to implement the VAT e-commerce package, both regarding VAT and customs.

The Commission is following up the national implementation plans accordingly.

The Member States are regularly updated on the state of play of the VAT e-commerce project via the Standing Committee on Administrative Cooperation (SCAC) and the SCAC Expert Group. IT aspects are discussed in Fiscalis Project Groups and in the

¹² Slovakia will need additional 6 months. The Netherlands will be able to send the SRDS but without the validated IOSS VAT identification number. Germany informed the Commission about delay in the national implementation, but no clear date was communicated regarding this business case.

¹³ Denmark, Italy and Malta did not reply to the survey, nor to the reminders.

Standing Committee on IT, a sub-committee of SCAC. Where needed, businesses are informed and consulted via the VAT Expert Group (VEG). Customs aspects are discussed in the Customs Expert Group (Import and Export Formalities and General Legislation Sections) and, at a more technical level, in the Customs 2020 Project Group on the Import and Export Customs Formalities related to Low-Value Consignments that reports on its activities to the Customs Expert Group. Businesses are consulted on customs matters via the Trade Contract Group (TCG), which is generally invited to attend the meetings of the Customs Expert Group.

In September 2019, the Commission also commenced visits to the Member States to follow up on implementation of the IT systems at national level and to offer technical assistance where required.

5. STATE OF PLAY

5.1. COMMISSION

As shown above, the Commission is on track with the preparatory work needed to implement the VAT e-commerce package by 1 January 2021. An effective and coherent EU regulatory framework is being put in place to ensure VAT and customs duties are collected in the budgets of the Member States and the EU, in particular via the VAT Directive and the Union Customs Code.

The vast majority of the draft legal texts, especially those that serve as a basis for IT developments, were made available to Member States in early 2019 and have now been adopted or are in the process of final adoption.

The functional and technical specifications necessary for the changes to the national VAT IT systems were made available to Member States on 26 June 2019. The Commission started collecting the national project plans for adapting the VAT IT systems in July 2019, and regular updates are being collected on a bi-monthly basis starting in October 2019. The legislation providing for a super-reduced data set for simplified customs declarations was adopted on 14 March 2019 (see 3.1 above) allowing for the adaptations of the customs IT systems. The related business process models, including the message structure, were made available to the Member States on 6 June 2019. The Commission sent the Member States a survey to assess the readiness of the national customs IT systems on 6 November 2019.

The Commission has constantly indicated its willingness to assist Member States in adapting their national IT systems, and has offered to work with the Member States concerned to find acceptable solutions so that the VAT e-commerce rules can enter into force on time. The Commission drew up a list of national single points of contact to aid cooperation between national customs and tax administrations, follow up on the project and ensure prompt completion. 22 Member States¹⁴ have communicated the contact details of their single points of contact. Their role is to ensure smooth and swift communication between national customs and tax administrations and between the Member States and the Commission.

¹⁴ Bulgaria, Cyprus, Germany, Lithuania and the Netherlands have not yet appointed a single point of contact.

The Commission is working closely together with Member State administrations and economic operators to solve the remaining open issues and is preparing explanatory notes and guidance to support the implementation.

In short, the work to update the current systems or create new systems as needed to make the new VAT e-commerce rules operational started at EU level in March 2018. It is progressing as planned with a view to ensuring that the essential parts will be operational by 1 January 2021.

5.2. MEMBER STATES

In terms of preparations at Member State level, the Commission considers they have sufficient time to make the legislative changes needed in their national legislation regarding the changes to the tax system by 1 January 2021. The changes regarding customs legislation will apply without the need for Member States to pass national implementing measures. This is a national responsibility and these changes will need to be notified to the Commission.

Close cooperation within Member States between customs and tax administrations is crucial to success. To meet the legal obligation laid down in the VAT e-commerce legislation to check the validity of the IOSS VAT identification number, the IT systems of both administrations need to be interconnected. This automated access needs to be ensured at domestic level within each Member State.

From the information available to the Commission, 21 Member States have confirmed that they will be able to launch all required systems by January 2021. Three Member States have informed the Commission that they will not be able to implement all the changes to the IT systems on time. The Commission has not received information on the state of play on implementing the required IT developments in the remaining three Member States. As stated above, the Commission stands ready to assist each Member State in this project. It needs to have detailed information about where the problems lay in order to assist and propose, if necessary and possible, targeted (fall-back) solutions.

5.3. ECONOMIC OPERATORS

The business community is investing huge efforts in preparing for implementation of the VAT package. Stakeholders were consulted on the legal drafts and are involved in ongoing technical discussions on the explanatory notes and guidance documents, both regarding the VAT and the customs arrangements.

To ensure their business processes and IT systems are adapted in due time, they need a stable legal framework and to have certainty and predictability regarding the implementation date.

5.4. CONCLUSION

The current rules on e-commerce are outdated and put European businesses at a disadvantage vis-à-vis their third-country-established competitors. The rules are also vulnerable to abuse and fraud.

The European Union must step up the fight against tax fraud, tax evasion and tax avoidance. The European Parliament highly welcomed this VAT package, which will help close the current loopholes that hinder VAT collection and will produce benefits, in particular to smaller enterprises doing business across the EU. The European Union needs to equip itself with a fraud-proof VAT regime and assess how to improve cooperation between national authorities. Digital systems should be put in place without delay to ensure the Union Customs Code is implemented properly. This was also emphasised in the European Court of Auditors' Special Report No 12/2019 'E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved'.

The implementation of the VAT e-commerce package is a first step in the construction of a model seeking synergies with the customs clearance requirements of low-value consignments.

When adopting the VAT e-commerce package in December 2017, Council provided for a three-year lead period as necessary for making the required IT changes. Council also underscored the urgent need to bring in measures to protect VAT revenue and ensure fair competition for EU-established businesses.

The latter issue has become even more apparent due to an increasing number of Member States anticipating the new rules by introducing national legislation based on joint and several liability for marketplaces. This is creating a patchwork of different national rules, causing major compliance difficulties for businesses and jeopardising the EU common position agreed in December 2017. This situation may aggravate if implementation of the commonly agreed rules is delayed.

Hence, it is very important to stress that each further delay in introducing these new rules causes all Member States to continue losing significant VAT revenue from e-commerce, estimated at €5 billion in 2015 and estimated to rise to €7 billion in 2020 with an annual increase of at least 15%¹⁵.

Delays would put European businesses at a commercial disadvantage. Therefore, it is essential that all Member States are ready to apply the commonly agreed rules on VAT e-commerce as of 1 January 2021.

¹⁵ Commission Staff Working Document, Impact Assessment, Modernising VAT for cross-border B2C e-Commerce, page 20 of SWD(2016)379.