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2025/0348 (CNS)**

NOTE

From: General Secretariat of the Council
To: Council

Subject: Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the access of the European Public Prosecutor's Office (EPPO) and the European Anti-Fraud Office (OLAF) to value added tax information at Union level

- General approach
- = Statements

STATEMENTS BY THE COMMISSION

Commission statement on Eurofisc consultation

The Commission takes note of the wording in Article 36(2e) providing that, in the preparation of the draft implementing act determining the criteria, the information to be included and the standard forms for Eurofisc analysis reports, the Commission shall consult Eurofisc.

The Commission recalls that, under Article 291 TFEU and Regulation (EU) No 182/2011, implementing acts are, in principle, adopted by the Commission in accordance with the applicable comitology framework. In that context, the 2016 Interinstitutional Agreement on Better Law-Making provides, in point 30, that the institutions should refrain from adding in Union legislation procedural requirements which would alter the mechanisms for control laid down in Regulation (EU) No 182/2011.

The Commission considers that making consultation of Eurofisc a binding procedural requirement raises legal and institutional concerns, as it introduces an additional step ahead of the formal comitology procedure, affects the institutional balance, and may create unnecessary procedural uncertainty.

While the Commission recognises the operational relevance of Eurofisc's expertise, such input should be taken into account in a manner consistent with the normal framework governing implementing acts and without creating additional procedural obligations for the Commission.

The Commission therefore considers that this wording should not be regarded as a precedent for other legislative acts.

The Commission remains of the view that, where operational or technical input is useful in the preparation of implementing acts, the appropriate approach is to allow the Commission to seek such advice, rather than to make such consultations a mandatory procedural obligation.

The Commission further underlines that the consultation of Eurofisc in the preparation phase of the draft implementing acts under Article 36(2e) remains strictly separate from the comitology procedure. Such consultation is of a purely advisory and non-binding nature and does not affect the Commission's discretion in exercising its implementing powers under Article 291 TFEU. In particular, it does not confer any decision-making role on Eurofisc, does not require the Commission to follow or take into account its views.

Commission statement on IT coordination point

The Commission acknowledges the concerns regarding the need for OLAF to coordinate with national authorities on the use of VAT data accessed under Regulation (EU) No 904/2010, also to ensure the coordinated and efficient use of their investigation resources. The Commission therefore confirms its openness to consider relevant improvements in the context of its upcoming revision of the EU anti-fraud architecture, including the legal frameworks applicable to the main anti-fraud actors, i.e. EPPO, OLAF, EUROJUST, EUROPOL, as well as of the PIF Directive.