



Council of the European Union
General Secretariat

**Interinstitutional files:
2022/0407 (CNS)**

Brussels, 04 July 2023

WK 9116/2023 INIT

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NOTE

From:	Presidency
To:	Delegations
Subject:	Presidency note on second hand goods - works of art and antiques

Delegations will find attached a Presidency note on the SVR provisions of the VIDA package related to second hand goods, works of art and antiques.

Presidency note

Second-hand goods – works of art and antiques

1. Background

During the negotiations on Council Directive (EU) 2022/542 of 5 April 2022 (the 'VAT Rates Directive'), it was decided to keep the possibility for Member States to apply reduced rates on works of art and antiques, with a few changes to avoid distortions of competition, namely:

- A prohibition to combine the margin scheme and a reduced rate,
- A prohibition to apply the margin scheme on goods which have been acquired under a reduced rate.

A number of Member States also requested more future-proof mechanisms to address the risk of distortions of competition.

This resulted in a 'review' article in the VAT rates Directive (Art. 4) that states that *"on the basis of an assessment of whether future-proof solutions adapted to the digital age and aligned with the objective of a destination-based VAT system are possible, the Commission shall, where appropriate, submit a legislative proposal to amend the relevant provisions of this Directive as far as the margin scheme laid down in Title XII, Chapter 4, of Directive 2006/112/EC is concerned"*.

On this basis the Commission included a number of provisions in the ViDA proposal, more specifically under the SVR umbrella.

2. Proposed legislative changes in ViDA

The proposal provides for the following changes:

- All cross-border supplies (including to taxable persons) of all margin scheme goods would be included in the definition of **intra-Community distance sales** of goods (Article 14(4), point (1)) and could be declared in the OSS (Article 369b(a)), including supplies to normal taxable persons;
- With the removal of Article 35, the place of supply of all cross-border margin scheme supplies of goods (B2B and B2C) would be aligned with the place of supply rule for intra-Community distance sales of goods as set out in Article 33;
- A new place of supply rule (Article 39a) would be introduced for 'local' supplies to all consumers (taxable and non-taxable persons) of some categories of margin scheme goods, namely **antiques and works of art**;
- All supplies of margin scheme goods (which are not intra-Community distance sales) by non-established taxable dealers could be declared in the OSS (Article 369b(e));

3. Questions for consideration

The Presidency would like to hear the delegations' views on a number of questions in relation to these changes:

Q.1: In follow-up of the Rates Directive, do Member States agree with the deletion of Article 35, which results in taxation at destination of intra-Community distance sales of margin scheme goods?

Q.2: Do Member States agree with the inclusion in the OSS of the supplies of margin scheme goods (which are not intra-Community distance sales) by non-established taxable dealers?

Q.3: Do Member States agree that the place of supply of antiques and works of art under the margin scheme should always be situated in the Member State of the customer, even where there is no dispatch or transport?

Q.4: Do Member States consider that exceptions to this rule should be foreseen (second residence, non-EU residents...)?

Q.5: Do Member States share the view that the same rule should be applicable to **public auctions** as to avoid a discrepancy in the place of supply rules in case the same work of art or antique would be sold under the margin scheme via a shop or via a public auction?

Q.6: Are the Member States of the view that, in case this taxation at destination for works of art and antiques would be adopted, there would be a need to review the limitations introduced by the Rates Directive and, if so which one(s)?