



Federation of European Accountants  
Fédération des Experts comptables Européens

Mrs Sharon Bowles  
Chair of Committee on Economic and  
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European Parliament  
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29 November 2012

Dear Mrs Bowles,

**Re: FEE's comments regarding the "Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC on the common system of value added tax as regards a quick reaction mechanism against VAT fraud"**

FEE (the Federation of European Accountants)<sup>1</sup> is pleased to provide you below with its comments on the European Commission's above-mentioned proposal. FEE's ID number on the European Commission's Register of Interest Representatives is 4713568401-18.

FEE is, of course, supportive of any and all measures to combat VAT fraud, both to ensure VAT revenues for the Member States and to create a level playing field for legitimate businesses. Therefore, FEE considers the general concept of accelerating the process to grant derogations from the VAT Directive (Council Directive 2006/112/EC) as one means of stopping fraud before the budgetary cost becomes excessive, helpful for that purpose.

We believe, however, that the current proposal to set up a Quick Reaction Mechanism will not promote a level playing field and will not significantly enhance the protection of VAT revenues for Member States.

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<sup>1</sup> FEE is the Fédération des Experts comptables Européens (Federation of European Accountants). It represents 45 professional institutes of accountants and auditors from 33 European countries, including all of the 27 EU Member States. In representing the European accountancy profession, FEE recognises the public interest. It has a combined membership of more than 700.000 professional accountants, working in different capacities in public practice, small and big firms, government and education, who all contribute to a more efficient, transparent and sustainable European economy.

## I. Overall comments

Although the aim of the proposal is limited to situations of massive and sudden fraud, there is a high risk that such drastic measures may affect not only those involved in fraudulent activities but also legitimate business. Therefore, careful consideration should be given to the justification provided by Member States regarding the exceptional fraud circumstances for which the application of the Quick Reaction Mechanism procedure is requested.

Furthermore, as many fraudulent activities rely on intra-Community supplies, the Commission should ensure that the proposed mechanism will not result in shifting the problem to other Member States. A coordinated Member States' response will be more efficient in the combat against "sudden and massive fraud".

## II. Decisions available only in one language.

We fully appreciate that the request for derogation and its acceptance by the Commission will only involve one Member State however, for FEE there remains a comparatively minor, but still important factor in the need for transparency in the legislative process. This is the fact that the Commission will adopt its decision on the basis of one single language version<sup>2</sup>. It is unclear whether both the preparatory work by the Commission and (if needed) in the relevant Committee will take place in one single language.

In any case, we assume that the implementing act would need to be translated for publication, because the Court of Justice of the European Union (CJEU) has ruled that a legal act of a European Institution cannot be held against citizens in the Member States unless the act has been published in the Official Journal in the Member States' official language.<sup>3</sup>

## III. Retroactive withdrawal of derogation

A major concern, however, arises from the fact that the Commission intends to make its decisions – at least the "urgent ones" - in the form of implementing acts. In accordance with Article 8, paragraphs 2 – 4 of the related Regulation<sup>4</sup>:

*2. The Commission shall adopt an implementing act which shall apply immediately, without its prior submission to a committee, and shall remain in force for a period not exceeding 6 months unless the basic act provides otherwise.*

*3. At the latest 14 days after its adoption, the chair<sup>5</sup> shall submit the act referred to in paragraph 2 to the relevant committee in order to obtain its opinion.*

*4. Where the examination procedure applies, in the event of the committee delivering a negative opinion, the Commission shall immediately repeal the implementing act adopted in accordance with paragraph 2.*

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<sup>2</sup> As mentioned in the Explanatory Memorandum of the proposal Section 1, par 18, "since only one Member State would be concerned, the adoption of the Decision could take place on the basis of one single language version".

<sup>3</sup> CJEU, judgment of 11.12.2007 Case C-161/06, Skoma-Lux sro.

<sup>4</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:055:0013:0018:EN:PDF>.

<sup>5</sup> The European Commission chairs these committees according to the relevant Regulation.

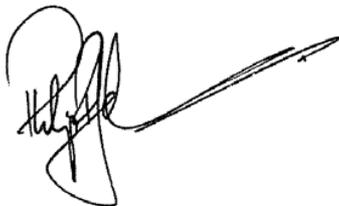
This procedure imposes the risk that a legal act within the Quick Reaction Mechanism will introduce changes to one Member State' VAT law based upon a Derogation which eventually has to be withdrawn. This does not meet the requirements established by the CJEU<sup>6</sup>: *"It follows that it is necessary, as Teleos and Others and the Commission correctly observe, that taxable persons be aware, before concluding a transaction, of their tax obligations"*. As a result, the proposed procedure is inappropriate for the area of VAT and should not be considered as a solution.

Instead, FEE recommends applying the existing procedure for adopting derogating measures as established in Art. 395 of the VAT Directive and accelerate the actual treatment of the requests. This Article does not provide for a minimum amount of time which must elapse before the Commission submits its proposal to the Council, but only a maximum time-frame.

As mentioned in the FEE response to the European Commission's Green Paper on the future of VAT<sup>7</sup>, business has to be aware of derogations and take them into account in any IT system set up. Therefore, introducing system changes and then removing them retroactively in case of a withdrawal of a decision would render system set-ups difficult to manage and create significant risks to taxpayers.

For further information on this letter, please contact Ms Petra Weymüller, FEE Senior Manager, at +32 2 285 40 75 or via email at [petra.weymuller@fee.be](mailto:petra.weymuller@fee.be) or Ms Anastasia Chalkidou, FEE Project Manager at +32 2 285 40 82 or via email at [anastasia.chalkidou@fee.be](mailto:anastasia.chalkidou@fee.be).

Yours sincerely,



Philip Johnson  
FEE President

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<sup>6</sup> CJEU, judgment of 27.2.2007 Case C-409/04, Teleos and others, par. 48.

<sup>7</sup> Dated 10 June 2011, see [http://www.fee.be/publications/default.asp?content\\_ref=1401&library\\_ref=4](http://www.fee.be/publications/default.asp?content_ref=1401&library_ref=4)