30 October 2019

Joint Industry Position on the proposal for a Council Directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers in order to combat VAT Fraud

The European Banking Federation, European Savings and Retail Banking Group, European Association of Co-operative Banks, European Payment Institutions Federation (and their respective members) strongly support the fight against VAT and other tax fraud but are deeply concerned that in current form the proposals:

- Are disproportionate in terms of scope, volume of data required and cost
- Create significant risk
- Produce uncertainty in terms of reporting obligations
- Will not practically achieve stated objectives

With the current proposal seeking to be approved at November's ECOFIN, we would welcome your support in terms of prompting a full review of the proposals with the active involvement of the Payments Industry. The objective would be to ensure that the proposal is not approved until it has been amended into a form that

1) Is practical and workable for the industry to deliver and
2) Meets the needs of Member States in terms of effectively combatting VAT fraud.

In current form, our firm view is that the proposal achieves neither.

It is absolutely clear that Member States must have effective and efficient tools to combat VAT and tax fraud and the Payments Industry is fully prepared to work closely to ensure that this can be delivered.

We are however troubled that whilst concerns have been raised with the Commission, including recommendations on how to improve the proposals to achieve its stated objectives and to align it with the highly complex, multi-party and rapidly evolving nature of the payments industry, we believe these have been misunderstood and in some areas simply ignored.

Major Issues

In brief, the proposal introduces requirements for all payment service providers (PSPs) to provide information on cross-border payments within the EU and outside of it when certain criteria are met on a transaction by transaction basis. The volume of raw data involved is therefore vast, compounded by the potential for multiple reporting of the same transaction by different parties. We question whether the proposal is in line with the TFEU since it puts different handling and control processes between payment transactions taking place within a Member State and cross-border payments between Member States. The proposal therefore puts additional burdens on PSPs involved in payment transactions that are defined as “intra-EU cross-border” – a concept that does not exist according to the TFEU.

The net result is a proposed Directive which is:

- **Disproportionate:** The current proposals will create a huge, costly and heavy operational burden on PSPs and is likely to capture many transactions that have no possible linkage to VAT fraud whatsoever. Furthermore, the highly complex, interactive, fragmented and rapidly evolving nature of the payments industry means no one participant may possess or be able to access all of the data envisaged by these proposals.

- **Risk prone**: We are concerned that the current proposal will not guarantee the protection and security of the data that Member States would be obliged to report. The creation of a new central database for all EU related payments data on a transaction by transaction basis creates the potential for a single point of failure, potential for massive data leakage with profound consequences for citizens, the EU and the industry.

- **Uncertain**: The proposals remain unclear and confused on how (and which) PSPs will need to report the data, it is deeply concerning that at this stage of the proposal there is still significant uncertainty about the obligations of the different parties (and the rationale for each of those obligations). Furthermore, significant risks of erroneous reporting exists, in particular in cases where it is not always possible to determine whether a payment is a cross-border one

- Inefficient: The proposal is inefficient, since companies - which commit VAT-fraud - can avoid the recording of their transactions by establishing payment accounts in the Member States of their customers. Consequently, those transactions would lose their cross-border character with the effect that they are not recorded any more. Equally, PSPs located outside the EU would not be in the scope of the proposal and would not be obliged to share data with EU VAT authorities.

Proposed solution

We have made submissions to and met with the Commission and the Council on a number of occasions since the proposal was announced, set out our concerns and made a number of recommendations to make the proposals more practical and workable, foremost amongst these being

1. Legal certainty on which party in the payments chain reports and that reporting parties will only be required to report data that is already available to them as an integral part of payment transactions;
2. Implementation of the threshold should be done by the national tax authority, not by the PSPs, or alternatively amendments should be introduced to make the implementation of the threshold feasible at PSP level;
3. Clarity that the proposal only covers non-face to face transactions;
4. Moving from transaction-by-transaction reporting to batch reporting or where this makes sense depending on the payment instrument.

At every stage we have worked co-operatively to establish workable and proportionate proposals that achieve the Commission and Member States’ key objective to reduce VAT fraud. To date many of our concerns and recommendations have been largely dismissed and the latest iteration of the proposal introduces features the industry as a whole simply does not understand in context of the proposal.

The suggestion that these fundamental flaws can somehow be corrected during an Implementation phase is untenable. In our view any Directive likely to have significant and material impact must be firmly grounded in the operational realities of the industry concerned and actually capable of delivering what it promises.

We would therefore welcome your support ahead of November’s ECOFIN to delay the proposed Directive and strongly encourage the Commission to work proactively with the payments industry to make changes to the proposals that will ensure the Commission and Member States’ objectives are capable of being delivered.

This paper reflects the views of the following organisations:

- The European Payment Institutions Federation (EPIF)
- The European Banking Federation (EBF)
- The European Association of co-operative Banks (EACB)
- The European Savings and Retail Banking Group (ESBG)