

Procedure file

Basic information	
CNS - Consultation procedure Directive	2009/0139(CNS)
Procedure completed	
Value added tax (VAT): application of the reverse charge mechanism to supplies of certain services susceptible to fraud	
Amending Directive 2006/112/EC 2004/0079(CNS)	
Subject	
2.70.02 Indirect taxation, VAT, excise duties	
7.30.30.06 Action to combat economic fraud and corruption	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		20/10/2009
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3003	16/03/2010
	Economic and Financial Affairs ECOFIN	2981	02/12/2009
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	ŠEMETA Algirdas	

Key events			
29/09/2009	Legislative proposal published	COM(2009)0511	Summary
07/10/2009	Committee referral announced in Parliament		
02/12/2009	Debate in Council	2981	Summary
27/01/2010	Vote in committee		Summary
02/02/2010	Committee report tabled for plenary, 1st reading/single reading	A7-0008/2010	
08/02/2010	Debate in Parliament		
10/02/2010	Results of vote in Parliament		
10/02/2010	Decision by Parliament	T7-0011/2010	Summary
16/03/2010	Act adopted by Council after consultation of Parliament		
16/03/2010	End of procedure in Parliament		
20/03/2010	Final act published in Official Journal		

Technical information	
Procedure reference	2009/0139(CNS)

Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2006/112/EC 2004/0079(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 113
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/01137

Documentation gateway

Legislative proposal	COM(2009)0511	29/09/2009	EC	Summary
Committee draft report	PE430.612	13/11/2009	EP	
Amendments tabled in committee	PE430.935	10/12/2009	EP	
Economic and Social Committee: opinion, report	CES0101/2010	20/01/2010	ESC	
Committee report tabled for plenary, 1st reading/single reading	A7-0008/2010	02/02/2010	EP	
Text adopted by Parliament, 1st reading/single reading	T7-0011/2010	10/02/2010	EP	Summary
Commission response to text adopted in plenary	SP(2010)1339	17/03/2010	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Directive 2010/23](#)
[OJ L 072 20.03.2010, p. 0001](#) Summary

Value added tax (VAT): application of the reverse charge mechanism to supplies of certain services susceptible to fraud

PURPOSE: to allow the temporary application of the reverse charge mechanism to combat VAT fraud in relation to trade with emission certificates and to transactions involving certain fraud-sensitive goods, and amending Council Directive 2006/112/EC.

PROPOSED ACT: Council Directive.

BACKGROUND: fraud is a major concern for the correct functioning of the Internal Market and poses a threat to Member States' tax revenues. Certain Member States have requested, by means of a derogation granted on the basis of Article 395 of Council Directive 2006/112/EC (?the VAT Directive?) a targeted reverse charge system in relation to a particular fraud sensitive sector or to certain goods in order to combat fraud.

The most common form of evasion consists in invoicing supplies by a VAT registered supplier who disappears without accounting for this VAT but leaving the customer (also a taxable person) with a valid invoice for deduction. This means that the treasury does not receive VAT on the supply, but must give the next trader in the chain credit for input VAT.

This has, in certain cases, developed into Missing Trader Intra-Community Fraud (MTIC) which is an organised attack on the VAT system. The supplier receives credit for the input VAT through a refund of VAT when his onward supply to a taxable person in another Member State is exempt. In addition, such frauds are often organised in a series of supplies in which the same goods may circulate several times between Member States (?carousel fraud?) and the treasury may lose several times the amount of tax on single goods. It is to be noted that this type of fraud is extending to services as well. The reverse charge mechanism results in no VAT being charged by the supplier to taxable customers

who, in turn, become liable for the payment of the VAT. In practice, customers (insofar as they are normal taxable persons with a full right of deduction) would declare and deduct at the same time without effective payment to the treasury. In this sense, the theoretical possibility of committing fraud is removed.

CONTENT: the purpose of this proposal is to allow the temporary application of the reverse charge mechanism to combat existing fraud in relation to trade with emission certificates and to transactions involving certain fraud-sensitive goods. The application of a targeted reverse charge mechanism should, however, not alter the fundamental principles of the VAT system, such as the fractionated payment, and should therefore be restricted to a pre-defined list of goods and services.

Member States will have the option of applying this targeted reverse charge mechanism to a prescribed list of goods and services which have been identified by Member States themselves as sensitive to fraud.

The proposal concentrates on the following areas:

- 1) the Commission has some information on alleged cases of fraud in the area of trading greenhouse emission allowances. The differences in individual Member States responses have prompted the Commission to prepare this proposal. Although further analysis is still required as regards the precise circumstances and the actual dimension of the fraud problem, the information already provided by several Member States is such that it is appropriate to take swift action and include it in this proposal. Accordingly, included in the scope of the proposal are allowances to emit greenhouse gases as defined in Article 3 of Directive 2003/87/EC, transferable in accordance with Article 12 of that Directive, and other allowance units that may be used by operators for compliance with the same Directive;
- 2) mobile telephones and integrated circuit devices have also been included in the scope of the proposal. Member States should produce an evaluation report on the application of the mechanism before the end of the application period so as to enable a timely assessment of its efficiency;
- 3) perfume, and precious metals where they are not covered by the special arrangements for second-hand goods, works of art, collector's items and antiques pursuant to Articles 311 to 343 or the special scheme for investment gold pursuant to Articles 344 to 356 are included in the scope of the draft Directive.

In procedural terms, Member States should first inform the Commission about their intention to introduce the mechanism. The experimental application of a targeted reverse charge must be subject to detailed conditions so as to guarantee the functioning of the scheme, avoid potential negative impacts as far as possible and allow for a proper evaluation of the results.

Before applying this reverse charge scheme, the taxable persons who will be affected by the application of this scheme, as a supplier or as a customer, must be identified for VAT purposes under an individual number. It is furthermore stipulated that the Member States concerned have to introduce reporting obligations in order to guarantee a sufficient follow-up of the measure in order to ensure that the measure is operating effectively.

Moreover, to ensure that the application of reverse charge remains targeted and exceptional to the normal VAT rules, the goods and services have been listed and each Member State may choose to apply a reverse charge mechanism to a maximum of three categories of which two can be goods.

The interested Member States should implement effective control measures to monitor and to avoid, as much as possible, all forms of fraud and in particular new forms of fraud which would consist in the spilling over of fraud patterns to other products, to the retail level or to other Member States. For the implementation of these measures, it would be recommendable that the findings on the reverse charge mechanism, as described in the Commission document on measures to change the VAT system to fight fraud (see [SEC\(2008\)0249](#)), would be taken into consideration.

The experiences stemming from this temporary application of the scheme to fraud sensitive goods or services should allow, on the basis of an information and evaluation procedure as set out in the proposal, a better overall assessment of the usefulness and the proportionality of the targeted application of reverse charge.

Lastly, the Directive will apply until 31 December 2014.

BUDGETARY IMPLICATION: this proposal has no negative impact on the Community budget.

Value added tax (VAT): application of the reverse charge mechanism to supplies of certain services susceptible to fraud

The Council agreed on a general approach, pending the opinion of the European Parliament, on a draft directive that would allow Member States to implement, on an optional and temporary basis, a reversal of liability for the payment of VAT (value-added tax) on greenhouse gas emission allowances.

The aim is to close off certain forms of tax fraud, in particular so-called carousel schemes whereby supplies are traded several times by different suppliers without VAT being paid to the tax authorities. Applying a "reverse charge" principle, the draft directive would allow, until 30 June 2015, liability for the payment of VAT on emission allowances and services to be shifted from the supplier (as normally required by EU rules) to the customer.

The Council will continue to work on other elements of the proposal as regards the application of the reverse charge mechanism to mobile phones and electronic circuit devices with a view to reaching an agreement as soon as possible.

Pending agreement on the proposal, in the event of a justified request by a member state according to article 395 of the VAT directive (2006/112/EC) for the application of the reverse charge mechanism to mobile phones and electronic circuit devices, the Commission declared that it would present a proposal for a derogation before June 2010.

Member states that are at present authorised to apply the reverse charge mechanism to mobile phones and electronic circuit devices will be allowed to continue to apply that arrangement until agreement is reached on a new decision or directive.

Value added tax (VAT): application of the reverse charge mechanism to supplies of certain services susceptible to fraud

The Committee on Economic and Monetary Affairs adopted the report drawn up by David CASA (EPP, MT) amending, under the consultation procedure, the proposal for a Council directive amending Directive 2006/112/EC as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud.

The main amendments were as follows:

- It should be made clearer that the application of the optional reverse-charge mechanism shall only target business to business relationship involving taxable persons. The person to pay the tax shall never be the final consumer but rather the last business trader within the chain of commerce.

When choosing which goods and services shall be subject to that mechanism, Member States shall select trading greenhouse emission trading allowances and a maximum of two of the categories of goods listed in Part A of Annex VI A.

Supporting this amendment, Members stress that where Member States choose to apply the reverse-charge system, they must include trading greenhouse emission certificates because from 2013 onwards the majority of allowances will be auctioned. Due to the greater amount of allowances traded the potential loss in case of fraud is much bigger. A maximum of two is justified because of the uncertainty how the reverse charge system will effect other areas of trade or shift fraudulent activities to other Member States.

- To reduce the possibility of fraud being committed, the reporting has to take place within reasonable periods of time so that the authorities are enabled to supervise the movement of goods and services. Reporting obligation for suppliers on a global transaction basis should be permitted in order to minimise the burden for business.

- With a view to ensuring uniform application, the Commission should be empowered to adopt measures designed to specify, on the basis of input by the Member States and taking into account the advice of the VAT Committee, the evaluation criteria that will be used by Member States when assessing the effect of the application of the reverse-charge mechanism on fraudulent activities. Such criteria should be established by the Commission by 30 June 2010.

- By 1 July 2014, the Commission should submit a report to the European Parliament and the Council together with appropriate proposals, on the basis of the Member States' evaluation reports, assessing the overall effectiveness and efficiency of the measure applying the mechanism and the cost-benefit ratio of the measure in order to re-evaluate whether an extension or a widening of its scope would be appropriate.

Value added tax (VAT): application of the reverse charge mechanism to supplies of certain services susceptible to fraud

The European Parliament adopted by 506 votes to 26, with 9 abstentions a legislative resolution amending, under the consultation procedure, the proposal for a Council directive amending Directive 2006/112/EC as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud.

The main amendments were as follows:

Taxable persons: according to MEPs, it should be made clearer that the application of the optional reverse-charge mechanism shall only target business to business relationship involving taxable persons. The person to pay the tax shall never be the final consumer but rather the last business trader within the chain of commerce.

Greenhouse gas emission trading allowances: when choosing which goods and services shall be subject to that mechanism, Member States shall select trading greenhouse emission trading allowances and a maximum of two of the categories of goods listed in Part A of Annex VI A.

Communication of information and reporting obligations: to reduce the possibility of fraud being committed, the reporting has to take place on a periodical basis so that the authorities are enabled to supervise the movement of goods and services. Reporting obligation for suppliers on a global transaction basis should be permitted in order to minimise the burden for business.

Inspections: control measures to monitor and mitigate current forms of fraud should be accompanied by already existing unannounced inspections.

Effect of the application of the reverse-charge mechanism on fraudulent activities: with a view to ensuring uniform application, the Commission should be empowered to adopt measures designed to specify, on the basis of input by the Member States and taking into account the advice of the VAT Committee, the evaluation criteria that will be used by Member States when assessing the effect of the application of the reverse-charge mechanism on fraudulent activities. Such criteria should be established by the Commission by 30 June 2010.

Report: by 1 July 2014, the Commission should submit a report to the European Parliament and the Council together with appropriate proposals, on the basis of the Member States' evaluation reports, assessing the overall effectiveness and efficiency of the measure applying the mechanism and the cost-benefit ratio of the measure in order to re-evaluate whether an extension or a widening of its scope would be appropriate.

Value added tax (VAT): application of the reverse charge mechanism to supplies of certain services susceptible to fraud

PURPOSE: [to combat VAT fraud in relation to trade in greenhouse gas emission quotas.](#)

LEGISLATIVE ACT: Council Directive 2010/23/EU amending Directive 2006/112/EC on the common system of value added tax, as regards an

optional and temporary application of the reverse charge mechanism in relation to supplies of certain services susceptible to fraud

CONTENT: the Council adopted a Directive allowing member states to implement, on an optional and temporary basis, a reversal of liability for the payment of VAT (value-added tax) on greenhouse gas emission allowance trading.

The aim is to close off certain forms of tax fraud, in particular so-called carousel schemes whereby supplies are traded several times by different suppliers without VAT being paid to the tax authorities. Applying a "reverse charge" principle, the directive will allow, until 30 June 2015 and for a minimum period of two years, liability for the payment of VAT on emission allowances and services to be shifted from the supplier (as normally required by EU rules) to the customer.

Member States shall inform the Commission of the application of the mechanism. Member States choosing to apply the mechanism shall communicate the provisions of the measure applying the mechanism to the Commission when the mechanism commences.

ENTRY INTO FORCE : 09/04/2010.

APPLICATION : until 30/06/2015.