

## Answers of the European Financial Congress<sup>1</sup> to the questions asked in the European Commission's Consultation Paper on combating VAT fraud in the e-commerce<sup>2</sup>

### Methodology for preparing the answers

The answers were prepared in the following stages:

#### *Stage 1*

A group of experts from the Polish financial sector were invited to participate in the survey. They received selected extracts of the EC's consultation paper. The experts were guaranteed anonymity.

#### *Stage 2*

The survey project coordinators from the European Financial Congress prepared a draft synthesis of opinions submitted by the experts. The draft synthesis was sent to the experts participating in the survey with the request to mark the passages that should be modified in the final position and to propose modifications and additions as well as marking the passages they did not agree with.

#### *Stage 3*

On the basis of the responses received, the final version of the European Financial Congress' answers was prepared.

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<sup>1</sup> European Financial Congress (EFC – [www.efcongress.com](http://www.efcongress.com)). The purpose of the regular debates held within the EFC is to ensure the financial security of the European Union and Poland.

<sup>2</sup> <https://ec.europa.eu/eusurvey/runner/069aa0e4-495c-4c95-b587-d36e344fb449?draftid=5e3d1e97-378d-4d49-a4ca-137c7703b0ee&surveylanguage=EN>

## Answers to the consultation questions

### I. Your view on the VAT fraud on online sales

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1. What is your opinion on the following statements:

	I strongly agree	I agree	I do not agree nor disagree	I disagree	I strongly disagree
a. VAT fraud on online sales is diminishing VAT revenues by a significant share.		X			
b. VAT fraud on online sales is harming consumers interests on the long term, by reducing market competition.		X			
c. VAT fraud on online sales is damaging the compliant businesses selling on-line.	X				
d. It is easy to sell online in the EU from another country even without registering for VAT.		X			
e. It is easy to declare and pay less VAT than required by law when selling online from another country than the country where the consumer is located.		X			
f. When selling online, it is easy to get advantage by declaring and paying VAT in a EU Member State with a lower VAT rate, while the goods and services are sold in another Member State, with a higher VAT rate.		X			
g. All EU Member States are concerned by the VAT fraud on online sales.			X		

2. How and to what extent you think that VAT fraud on online sales affects tax administrations in EU countries, consumers, businesses and small enterprises?

**We believe that the impact is significant: this type of fraud affects small companies to the largest extent, impairing their ability to compete and develop. This in turn leads to unfair competition. For this reason, this situation harms honest entrepreneurs whose products are more expensive, and therefore much less attractive. This also provokes bad habits among consumers, who expect honest traders to continue to reduce their prices, an option which is available to those who do not pay taxes. Small enterprises may become convinced that without resorting to fraudulent actions they will not stand a chance to compete in the market.**

Tax authorities are losing significant budget revenues. In practice, tax administration bodies have no effective instruments to combat this fraud (it is much worse than in the case of B2B transactions); the existing tools are used slowly and without much thought and depend on administrative effectiveness in other countries. It should be noted here that many administration bodies are uncooperative and some are indeed at a desperately low level.

In the trade of goods, threats are particularly noted with regard to the goods directly imported from China, where the inspection of imported goods is in fact illusory. The problem seems to concern both domestic and foreign companies trading in those goods. In consequence, they do not pay any VAT in the EU. This is due to a number of reasons. As low-value consignments from outside the EU are tax-exempt in most Member States, huge amounts of goods arrive in the territory of the EU, especially from China, whose importation is untaxed due to the declared low value of the consignment, and customs/ tax authorities have no possibility to verify the consignments. There are no clear rules regarding taxation of online sales, the place of taxation, the role of platforms and exchanges as taxpayers, peer-2-peer transactions, etc., and above all there is a lack of harmonised and dynamic approach to the issue of taxing online transactions that would reflect the changing reality – these are the main reasons for this situation.

## II. Your view on the current EU legal framework to fight against VAT fraud involving online sales

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Part of the VAT loss is due to traders that do not understand their tax obligations or find them too burdensome. For this reason, the VAT Digital Single Market Package makes it simpler to fulfil VAT obligations for businesses selling abroad to final consumers (both inside and outside the EU). But there are also traders that do not comply with VAT obligations to gain illicit market advantages and the tax administrations must be able to detect and control them. In order to detect fraudsters and control them, tax authorities use the control tools provided by their own national legislation and the EU administrative cooperation tools.

In particular, Council Regulation (EU) 904/2010 on administrative cooperation and combating fraud in the field of VAT provides the European tax authorities with the legal framework to exchange data and work together, so that the VAT due is actually paid and this in the right Member State. In particular, under Regulation 904/2010 the competent tax authorities exchange information on specific cases of VAT fraud, using standard electronic forms. Where more than two Member States are affected by the same fraud, the competent authorities can even carry out simultaneous controls on the taxable persons involved and established in their countries. Furthermore, tax authorities can also have access to certain data on intra-EU transactions between businesses through an electronic system called VIES – VAT Information Exchange System. Finally, the Regulation 904/2010 sets up a network of anti-fraud experts called Eurofisc, where Member States share the result of their own national risk analysis on VAT fraud involving also other EU Member States.

3. What is your opinion on the following statements:

	I strongly agree	I agree	I do not agree nor disagree	I disagree	I strongly disagree
a. Member States have adequate tools to fight against VAT fraud on online sales				X	
b. The current instruments for cooperation between Member States are sufficient to detect VAT fraud on online sales				X	
c. The existing administrative cooperation tools allow Member States to fight against VAT fraud involving online sales at a higher level than what could be achieved by the EU Member States acting independently		X			

4. In your view, the results of the fight against VAT fraud on online sales, compared to the level of resources invested by each Member State, are:

- Insufficient X
- Proportional to the resources invested
- Optimal

5. Please shortly explain why you think that tax authorities in EU Member States have/do not have the tools to fight the VAT fraud on online sales?

The main problem is the insufficient level of cooperation between authorities from individual countries, namely the lack of cooperation between Member States, the lack of immediate exchange of information between Member States and the lack of real coordination at the EU level. Without effective involvement of the EU, Member States will not build proper cooperation due to cultural differences, political aspects, level of knowledge, protection of local interests, etc. The existing administrative tools created for B2B trading are not only imperfect, but also completely unadapted to B2C transactions. In addition, there is a lack of effective cross-border collection capability, namely a lack of common databases or other shared IT and analytical tools.

In the case of the MOSS system, countries may not be fully interested in verifying the revenues of other countries, because it means their costs vs. other countries' VAT revenues.

In order to effectively combat VAT fraud on online sales, you need good quality data collected in real time, or relatively fast after the transaction. Also, tools are needed for analysing those data. In addition, the above features should be linked with information about payments made. It is only then that we will be able to find discrepancies resulting, for example, from the fact that a particular trade was not declared for VAT purposes or was declared locally at a lower VAT rate.

Moreover, it would be important to ensure that the quality of data, the frequency of obtaining them and their format are the same in all EU countries (also in the case of transfers going from EU consumers

to non-EU traders). This would create an opportunity for a quick verification of transactions without waiting (as it is today) for a formal and time-demanding response from tax authorities from another country.

### III. Your opinion on possible options and their impacts

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The following questions aim at collecting the stakeholders' opinion on three alternative policy options:

- the baseline situation where the tax authorities of the EU Member States follow different approaches to fight against VAT fraud in the e-commerce and only some of them collect data from online intermediaries;
- a non-regulatory option where the European Commission helps tax authorities in investing more in administrative capacity to fight VAT fraud in the e-commerce and publishing guidelines in order to enhance the cooperation between tax authorities and payment intermediaries;
- a regulatory option amending the EU legal framework and allowing tax authorities to:
  1. collect data from payment intermediaries,
  2. use these data to detect remote sellers not complying with VAT obligations,
  3. exchange or share these data amongst Member States' tax authorities.

Under the regulatory option 3, alternative technical solutions could be envisaged to make tax authorities exchange or share the relevant payment data:

- Automatic exchange of data between tax authorities (with standard forms): under this solution the Member States tax authorities will collect payment data at national level and will periodically transmit each other (e.g. every month) the relevant information using standard forms;
- Tax administrations' access (through an electronic interface) to each other's electronic databases: the Member States tax authorities will collect payment data at national level and store it in a national electronic database. Every tax authority will make available the relevant payment data to the other Member States' tax authorities through an electronic interface;
- Storage of payment data in an EU central database: under this option every Member State's tax authority will upload the relevant payment data in a EU central database. The data in this EU central database will be accessible only to anti-fraud experts of the EU Member States' tax administrations.

Only cross-border payment data relevant for fighting VAT fraud on online sales will be collected under this third option. In particular the data will refer to:

- Identification of the payee: e. g. the name, address, VAT number or other tax number;
- Unique identifier for the payment;
- Total amount of the payment;

- Date of the payment;
- Country of origin of the payment;
- Description of the supply underlining the payment (goods or services).

The implementation of the envisaged measures under this option would trigger the automatic processing of personal data at EU level. It will have to meet the requirements at EU and national level on the protection of personal data.

6. At which level do you think VAT fraud on online sales can be effectively addressed?

- at Member States level
- at EU level
- **at both levels X**

7. What is your opinion on the following statements?

	I strongly agree	I agree	I do not agree nor disagree	I disagree	I strongly disagree
a. The Member States should develop their own administrative capacity to better fight against VAT fraud on online sales			X		
b. EU wide guidelines for cooperating with payment intermediaries will help to better fight against VAT fraud on online sales	X				
c. Payment data can help tax authorities to fight against VAT fraud on online sales	X				
d. Exchange of payment data must <b>not</b> reveal the identity of the customer (buyer)			X		
e. The best way for Member States' tax authorities to exchange payment data is through automatic exchange			X		
f. The best way for Member States' tax authorities to exchange payment data is through access to each other database			X		
g. The best way for Member States' tax authorities to exchange payment data is through setting up a central EU database	X				

Fraudsters take advantage of the fact that they have no physical presence in the Member States where they should register, declare and pay VAT. This also implies that tax administrations have very little sources of information to detect these fraudsters. On the other hand, payment

intermediaries involved in the online sales hold the information necessary to tax authorities to potentially detect the fraudsters. The option 3 described above aimed at empowering the Member States tax authorities to collect data from payment intermediaries and exchange these data amongst them.

8. The problem of VAT fraud on online sales across all the EU Member States:

- **Justifies the collection and exchange VAT-relevant payment data** **X**
- Does not justify collection and exchange VAT-relevant payment data

9. Which one of the three options you would consider as:

	Baseline situation	Non-regulatory option	Regulatory option
a. The easiest to implement			<b>X</b>
b. The most effective to fight VAT fraud on online sales			<b>X</b>
c. The most consistent with the other EU initiatives, notably the VAT Digital Single Market Package			<b>X</b>

10. The collection and exchange of the following payment data will help tax administrations in fighting VAT fraud on online sales:

In relation to the option implying the collection and exchange of VAT-relevant payment data, we ask for your opinion about the need of tax administrations to collect and use certain categories of data for fraud detection purposes. If you disagree with the use of such categories of data, you will be asked for the reasons of your choice.

	I agree	I disagree
Identification of the payee (business receiving the money)	<b>X</b>	
Total amount of the payment	<b>X</b>	
Date of the payment	<b>X</b>	
Country of origin for the payment	<b>X</b>	
Description of the supply underlining the payment	<b>X</b>	

11. Can you motivate your choice? (multiple choice)

- **This data is not sufficient to fight VAT fraud on online sales** **X**
- This data is not available
- **This data is burdensome to collect and report to tax administrations** **X**
- **Other reason** **X**

12. In your opinion, why is this data not sufficient to fight VAT fraud on online sales?

There are a few important bits and pieces missing, e.g. from where and to where goods are shipped; if several intermediaries/ traders are engaged, what are their specific roles and who is responsible for a transaction involving transfer of goods. There may be many intermediaries in the payment process who will be transferring funds to each other and making relevant deductions. It is important to ensure that the data available allow a link to be established between the seller and the transaction, even though intermediaries are involved in the payment process.

13. If other reason, please, explain:

Once all the indicated pieces of information are in place, online fraud should be significantly reduced. It will be a challenge to gather the information describing the delivery followed by a payment, but this is not a problem which cannot be addressed.

14. In your opinion, which are the most important difficulties related to the collection of payment data from payment intermediaries?

- The payment intermediaries will have to bear high costs for transmitting this data to tax authorities The costs of the payment intermediaries will be transferred to the consumers
- **The payment data are not accurate enough to fight against VAT fraud on online sales X**
- **Other X**

15. If other, please, explain:

The payment intermediaries do not need to have any knowledge about the details of the transaction itself, or may have insufficient information. Using their data may be in addition to the existing knowledge about the transaction, but the data as such are certainly insufficient from the point of view of the intended purpose.

The greatest difficulty is to overcome the political and administrative resistance to the transfer of such data between Member States (i.e. data which allow consumer preferences to be identified to a different extent) and the concern that such heavily profiled data might leak out.

The costs of data transfer by intermediaries should not be significant. The data transfer itself is not sufficient to combat fraud, though. There will also be a need for dedicated instruments (scripts, alerts, etc.) and a close cooperation between administration bodies.

16. If possible, please, explain how these difficulties could be reduced.

Problems with transferring and gathering payment data may be limited by organisational measures at the EU level, standardised transaction descriptions, ensuring high confidentiality of those data and strong safeguards implemented in central systems.

17. What is your opinion with reference to the risks related to privacy and data protection in case of the collection of payment data from payment intermediaries?

	I strongly agree	I agree	I do not agree nor disagree	I disagree	I strongly disagree
a. The collection and exchange of payment data by tax authorities is disproportionate with respect to the purpose of fighting VAT fraud				X	
b. The collection and exchange of payment data by tax authorities is not necessary with respect to the purpose of fighting VAT fraud				X	
c. The data may be used for other purposes than VAT fraud detection		X			
d. The data may be used for identifying the customer		X			

18. How would a new legal obligation for collecting and exchanging VAT-relevant payment data impact business?

**At the implementation phase, additional workload and costs (including IT costs) will be needed on the side of the institutions that are payment intermediaries.**

**It is important to ensure that these regulations cover online transactions with non-EU traders. Otherwise, obligations will be imposed on EU companies, and dishonest traders will move their business outside the EU, still engaging in harmful competition against the entities established in Member States.**

19. Would you like to propose any alternative solution to better fight VAT fraud on online sales?

**All in all, this is a good proposal, but more data are needed in order for the control to be more effective. The very transfer of data is not sufficient to combat fraud. The imposition of such an obligation and creation of a central EU-level database available to each Member State must be accompanied by other activities: central management, closer cooperation, tools to improve operations of any weaker administration bodies as well as tools to discipline uncooperative administration bodies.**