

To DG TAXUD and DG FISMA

Consultation Reply by EPSM

on

- Regulation on measures to strengthen administrative cooperation in order to combat VAT fraud; COM(2018) 813, and
- Directive on introducing certain requirements for payment service providers; COM(2018) 812

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The EPSM appreciates to be given the opportunity to provide comments on the draft Directive and the draft Regulation and recognises the overall objective of combatting VAT fraud.

Having said this, EPSM has some major concerns which are pointed out in the following:

Consultation process

EPSM believes that the consultation process up to now has not been satisfactory. The addressees of the draft Directive and Regulation have not been consulted in an appropriate manner. The drafts should have been discussed in Payment Systems Market Expert Group (PSMEG). Considering the scope of the PSMEG, EPSM asks the Commission to consult the Directive and Regulation within this group.

Mission of the PSMEG (source: [EC website](#)):

The expert group's objective is to advise the Commission in the area of payments and to assist the Commission in the preparation of legislative acts or policy initiatives regarding payments, including fraud prevention issues related to payment industry and users.

Contradicting Principles

EPSM understands that the draft Directive and Regulation require payment service providers to compare IBANs and BICs of payees and payers and report those transactions where these numbers suggest that payer and payee reside in different Member States. This contradicts with a number of other principles of the European Union, such as the free access to bank accounts - which allows residents of the EU to open a bank account anywhere in the EU - and the Consumer Financial Services Action Plan – which motivates consumers to compare financial services within all Member States.

Free Access to bank accounts (Source: [EC website](#)):

The directive on payment accounts gives people in the EU the right to a basic payment account regardless of a person's place of residence or financial situation.

Consumer Financial Services Action Plan (Source: [EC website](#)):

European consumers and firms should be able to take full advantage of a true Single Market for financial services. Consumers should have access to the best products available across the EU, not just within their own country.

Addressees unclear

The texts of the Directive and the Regulation do not make clear which PSPs are addressed. As very significant investments will be required to comply with the Directive and Regulation, it needs to be clear, who is required to provide this data. While the respective Impact Assessment suggests that only the PSPs of the payers are obliged, an urgently needed clarification in the text is requested.

Impact Assessment, page 26 (Source: [EC website](#)):

Therefore, the payment service providers acting on behalf of the European payers will provide tax authorities with the necessary information to detect the recipient of the funds even when established outside the EU, and this without disclosing the information on the customer. The regulatory options do not foresee any additional obligation to the taxable persons supplying goods and services (both online and in the "traditional" market).

Additional Concerns

EPSM has a number of additional concerns, which are summarised as follows:

- It is unclear if the data fields, required in order to comply with the Directive, are available at present.
- The efforts and costs required from the PSPs to comply with the Directive are underestimated. Consequently, the Directive obliging PSPs fighting VAT fraud from third parties seems disproportionate.

Conclusion:

The EPSM supports appropriate measures to combat VAT fraud. Nevertheless, based on the substantial concerns illustrated above, the EPSM strongly recommends not pursuing the text of the present drafts. Instead, an intense consultation within the entire EU payment community, including the service providers for card and e-money payments, should be organised. At least, the European Commission's Payment Systems Market Expert Group (PSMEG) should be consulted before working on a modified, technically and regulatory more suitable proposal that is fit for purpose.

In general, VAT-IDs and other tax-IDs seem to be a better tool for monitoring tax compliance than IBANs.

About the EPSM

The "European Association of Payment Service Providers for Merchants (EPSM)" is an interest representation and information platform of 68 European payment network operators, acquirers and other payment service providers for merchants. Among the non-voting members are terminal manufacturers, processing and acquiring providers as well as payment schemes. EPSM is based in Munich, Germany.

The 67 EPSM members have their headquarters in 16 European countries (AU, BE, CH, CZ, CY, DE, DK, FR, GR, IR, LU, LV, NL, SE, SK and UK).

For more information about EPSM and its members, please visit the [EPSM website](#).