Tuesday 17 December 2019

P9_TA(2019)0090

Requirements for payment service providers *

European Parliament legislative resolution of 17 December 2019 on the proposal for a Council directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers (COM(2018)0812 — C8-0015/2019 — 2018/0412(CNS))

(Special legislative procedure — consultation)

(2021/C 255/21)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2018)0812),

— having regard to Article 113 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0015/2019),

— having regard to Rule 82 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs (A9-0048/2019),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;

5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 2 a (new)

Text proposed by the Commission	*Amendment*
	(2a) According to the 2019 Final Report in the context of the 'Study and Reports on the VAT Gap in the EU-28 Member States' [44a] ***prepared for the Commission, the VAT gap, that is to say, the difference between the expected VAT revenue and the amount actually collected, in the Union amounted to EUR 137,5 billion in 2017, representing EUR 267 of lost revenue per person in the Union. There are, however, big differences between Member States, with VAT gaps ranging from under 0,7 % of the total expected revenue in some Member States to 35,5 % in others. That highlights the need for more transnational cooperation in order to better combat VAT e-commerce fraud in particular, as well as VAT fraud more generally (including carousel fraud).***

[44a] ***vailable on https://ec.europa.eu/taxation_customs/sites/taxation/files/vat-gap-full-report-2019_en.pdf.***

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Amendment 2

Proposal for a directive

Recital 2 b (new)

Text proposed by the Commission	*Amendment*
	(2b) The strategy for combatting VAT fraud should evolve in parallel with the increasing modernisation and digitalisation of our economy while rendering the VAT system as simple as possible for businesses and citizens. It is therefore particularly important that Member States continue to invest in technology-led tax collection, notably by automatically linking corporate cash registers and sales systems to VAT returns. In addition, tax authorities should continue their efforts towards closer cooperation and exchange of best practices, including through the Tax Administration EU Summit (TADEUS), a network of Member States' heads of tax administrations that seeks better coordination at strategic level between tax administrations. In that regard, tax authorities should work towards an effective communication and interoperability between all databases regarding fiscal matters at Union level. Blockchain technology could also be used in order to better protect personal data and improve the online exchange of information between tax authorities.

Amendment 3

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission	*Amendment*
	(3a) At present, given that payments are executed only in a limited number of cases through virtual currencies exchange platforms, such platforms are not considered to be payment services providers as defined in Directive (EU) 2015/2366 of the European Parliament and of the Council [1a]***. The risk of VAT fraud, although currently limited, does however exist. The Commission should therefore evaluate within three years whether virtual currencies exchange platforms should be included in the scope of this Directive.***

[1a] ***Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).***

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Amendment 4

Proposal for a directive

Recital 7

Text proposed by the Commission	*Amendment*
(7) In accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council ([46]), it is important that the obligation on a payment service provider, to retain and provide information in relation to a cross-border payment transaction, should be proportionate and should only be what is necessary for Member States to fight e-commerce VAT fraud. Furthermore, the only information relating to the payer that should be retained is where the payer is located. With regard to information relating to the payee and the payment transaction itself, payment service providers should only be required to retain and transmit to tax authorities information which is necessary for tax authorities to detect possible fraudsters and to carry out VAT controls. Therefore, payment service providers should only be required to retain records on cross-border payment transactions which are likely to indicate economic activities. The introduction of a ceiling based on the number of payments received by a payee over the course of a calendar quarter would give a reliable indication that those payments were received as part of an economic activity, thereby excluding payments for non-commercial reasons. Where such a ceiling is reached, the accounting obligation of the payment service provider would be triggered.	(7) In accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council ([46]), it is important that the obligation on a payment service provider, to retain and provide information in relation to a cross-border payment transaction, should be proportionate and should only be what is necessary for Member States to fight e-commerce VAT fraud. Furthermore, the only information relating to the payer that should be retained is where the payer is located. With regard to information relating to the payee and the payment transaction itself, payment service providers should only be required to retain and transmit to tax authorities information which is necessary for tax authorities to detect possible fraudsters and to carry out VAT controls. Therefore, payment service providers should only be required to retain records on cross-border payment transactions which are likely to indicate economic activities. The introduction of a ceiling based ***either*** on the number of payments received by a payee over the course of a calendar quarter ***or on a minimum amount per payment*** would give a reliable indication that those payments were received as part of an economic activity, thereby excluding payments for non-commercial reasons. Where such a ceiling is reached, the accounting obligation of the payment service provider would be triggered.

([46]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

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Amendment 5

Proposal for a directive

Recital 8

Text proposed by the Commission	*Amendment*
(8) Due to the significant volume of information and its sensitivity in terms of the protection of personal data, it is necessary and proportionate that payment service providers retain records of the information in relation to cross-border payment transactions for a ***two***-year period in order to assist Member States fight e-commerce VAT fraud and detect fraudsters. This period constitutes the minimum necessary for Member States to carry out controls effectively and to investigate suspected VAT fraud or to detect VAT fraud.	(8) Due to the significant volume of information and its sensitivity in terms of the protection of personal data, it is necessary and proportionate that payment service providers retain records of the information in relation to cross-border payment transactions for a ***three***-year period in order to assist Member States fight e-commerce VAT fraud and detect fraudsters. This period constitutes the minimum necessary for Member States to carry out controls effectively and to investigate suspected VAT fraud or to detect VAT fraud.

Amendment 6

Proposal for a directive

Recital 8 a (new)

Text proposed by the Commission	*Amendment*
	(8a) The record keeping and reporting obligation should also arise in cases where a payment service provider receives funds or acquires payment transactions on behalf of the payee and not only where a payment service provider transfers funds or issues payments instruments for the payer.

Amendment 7

Proposal for a directive

Recital 8 b (new)

Text proposed by the Commission	*Amendment*
	(8b) It is necessary to adopt an ambitious mandate for the European Public Prosecutor's Office (EPPO) in collaboration with national judicial authorities in order to ensure the efficient prosecution of fraudsters before the national courts. Organised cross-border VAT fraud should be duly prosecuted and the fraudsters should be penalised.

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Amendment 8

Proposal for a directive

Article 1 — paragraph 1 — point 1 — point b

Directive 2006/112/EC

Article 243b — paragraph 2 — point b

Text proposed by the Commission	*Amendment*
(b) in respect of the transfer of funds referred to in point (a), where a payment service provider executes more than 25 payment transactions to the same payee in the course of a calendar quarter.	(b) in respect of the transfer of funds referred to in point (a), where a payment service provider executes more than 25 payment transactions to the same payee in the course of a calendar quarter ***or executes a transfer of funds having a monetary value of at least EUR 2 500 in a single payment transaction***.

Amendment 9

Proposal for a directive

Article 1 — paragraph 1 — point 1 — point b

Directive 2006/112/EC

Article 243b — paragraph 3 — point a

Text proposed by the Commission	*Amendment*
(a) be kept by the payment service provider in electronic format for a period of ***two*** years from the end of the year during which the payment transaction was executed;	(a) be kept by the payment service provider in electronic format for a period of ***three*** years from the end of the year during which the payment transaction was executed;

Amendment 10

Proposal for a directive

Article 1 — paragraph 1 — point 1 — point b

Directive 2006/112/EC

Article 243c — paragraph 1 — point a

Text proposed by the Commission	*Amendment*
(a) the IBAN of the payer's payment account;	(a) the IBAN of the payer's payment account ***or any other identifier which unambiguously identifies the payer and the payer's location***;

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Amendment 11

Proposal for a directive

Article 1 — paragraph 1 — point 1 — point b

Directive 2006/112/EC

Article 243d — paragraph 1 — point h

Text proposed by the Commission	*Amendment*
(h) any executed payment refunds for payment transactions referred to in point (g);	(h) any executed payment refunds for payment transactions referred to in point (g)***, if available***;

Amendment 12

Proposal for a directive

Article 1 — paragraph 1 — point 1 a (new)

Directive 2006/112/EC

Title XV — Chapter 2a — Article 410 c (new)

Text proposed by the Commission	*Amendment*
	(1a) In Chapter 2a of Title XV, the following Article is inserted:
	'Article 410c
	By 31 December 2022, the Commission shall, on the basis of information obtained from the Member States, present to the European Parliament and to the Council a report on the operation of Section 2a of Chapter 4 of Title XI, in particular as regards the need to include virtual currencies exchange platforms in the scope of that Section. That report shall be accompanied, where appropriate, by a legislative proposal.'

Amendment 13

Proposal for a directive

Article 2 — paragraph 1 — subparagraph 1

Text proposed by the Commission	*Amendment*
Member States shall adopt and publish, by 31 December ***2021*** at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	Member States shall adopt and publish, by 31 December ***2023*** at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

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Amendment 14

Proposal for a directive

Article 2 — paragraph 1 — subparagraph 2

Text proposed by the Commission	*Amendment*
They shall apply those provisions from 1 January ***2022***.	They shall apply those provisions from 1 January ***2024***.