

RESPONSE TO THE CALL FOR FEEDBACK ON THE VAT IN THE DIGITAL AGE INITIATIVE



FEDIL – The Voice of Luxembourg’s Industry

I. INTRODUCTION

Founded in 1918, FEDIL – The Voice of Luxembourg’s Industry (hereinafter “FEDIL”), is a multi-sector business federation, giving a voice to nearly 700 industrial members, service providers and construction companies and fostering economic activity in Luxembourg. Today, FEDIL represents 95% of Luxembourg’s industrial production, 75% of Luxembourg’s private research activity, 25% of national employment and 35% of national GDP.

FEDIL is a founding member of the European employers' association BusinessEurope and has a representative office in Brussels to ensure that its member companies’ voice is heard in European policymaking. To this end, FEDIL is registered in the EU Transparency Register (number 286194516022-33).

Through this document, FEDIL provides on behalf of its members a feedback to the European Commission’s VAT in the Digital Age proposal.

II. FEDIL’S FEEDBACK

We welcome the opportunity to provide our feedback on the VAT in the Digital Age proposal of the European Commission. We fully support the European Commission’s ambition to improve the VAT system through the use of digital tools, reducing VAT-related barriers for cross-border trade in the EU and making the VAT system better for businesses, while also more resilient to fraud.

We believe the VAT in the Digital Age proposal is well placed to embrace digitalization, and effectively addresses the challenges faced by businesses (and in particular by SMEs) who trade, or have ambitions to trade, across EU borders. This is well reflected in the proposal through :

- **The expansion of the Union One Stop Shop (‘UOSS’) and the introduction of a transfer module allowing businesses to use one single VAT registration to report transfers of own inventory to locations across the EU, as well as the onward sales in those locations.** We strongly encourage Member States to reach consensus on this pillar, as it would be a pivotal tool to reduce the need for costly, time-consuming, and often prohibitive need for businesses wanting to sell products across the EU to maintain multiple VAT registrations. Amendments to the text of the proposal should be in line with the ‘north star goal’ of reducing the VAT administrative burden for businesses. To achieve this, it is key that there is no (or extremely limited) negative VAT cash flow impact when businesses opt to report through the UOSS and the transfer module. Any newly introduced obligations for businesses and for electronic interfaces facilitating the transfer and/or the sale of goods should be proportional and ensure a level playing field.

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- **A shift to real-time digital reporting based on e-invoicing for businesses that operate cross-border in the EU and a more harmonized framework for domestic transactions.** We welcome the ambition to harmonize EU digital reporting requirements, as current fragmentation of digital reporting and e-invoicing standards around the EU is causing immense burden on businesses and is a threat to the Single Market. However, as the proposal focuses solely on creating a harmonised invoice format, it misses a key opportunity to harness the full business and economic benefits that could come from harmonization of transmission protocols and technical specifications for digital reporting.

However, due to the ambition of the proposal, we opine that a more realistic timeframe must be considered. Some of the proposed rules are designed to take effect eight months after the finalisation of this public consultation (from 1 January 2024). Given the unanimous approval required from all Member States, we recommend a minimum of twenty-four months from the date ViDA is approved before the first measures start being implemented. Additional lead time will be needed for the introduction of the more complex proposals, such as the introduction of mandatory electronic invoicing (see below). It could also be worth examining the possibility of granting incentives to businesses, ensure their practical needs are considered and provide sufficient guidance and support.

1. EU single VAT ID

We are strongly supportive of the **EU single VAT registration**, and we strongly encourage Member States to prioritize discussions on this pillar in order to reach consensus. We strongly encourage Member States to ensure that any amendments to the proposal are in line with the 'north star goal' to reduce the administrative burden on businesses. The One-Stop Shop (OSS) in place since 1 July 2021 has already been a great step forward in simplifying VAT compliance for cross-border scenarios for B2C businesses. However, neither movements of retail inventory across EU countries for storage, nor the onward sale of that inventory are eligible for the OSS system. As such, businesses still face the burden of VAT registration requirements in every EU country of storage. As indicated in the Commission's Impact Assessment, the extension of the OSS as detailed in the proposal is hence a great improvement, as it will reduce burdens on hundreds of thousands of businesses operating across many industries throughout the EU, allowing them to store inventory¹ closer to their customers, enabling faster and more sustainable delivery, without the requirement to VAT register outside their home country. This simplification will allow businesses and especially SMEs to take full advantage of the Single Market. National governments will also benefit from a more competitive EU market, leading to a boost for tax revenues at a time where Member States are dealing with the social and economic effects of recent energy price spikes and geo-political tensions. Simpler VAT obligations also leads to higher levels of VAT compliance and level the playing field across all sizes of businesses. We would also expect that the simplification of EU VAT obligations will encourage businesses to onshore inventory within the EU prior to sale, instead of

¹ We understand and appreciate that capital goods are excluded due to the necessity for Member States to monitor the VAT deduction. However, we note that there is no harmonized and precise definition of capital goods for VAT. This could lead to some difficulties of application. One solution could be to introduce such a definition, but it could be difficult and will certainly lead to lengthy discussions. Another solution could be to refer to international accounting standards, but they are also subject to some interpretation difficulties. A pragmatic solution could be to consider the qualification of the Member State of origin of the capital good and ensure that other Member States are obliged to accept this definition.

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shipping directly from non-EU locations – as well as reducing pressure on customs authorities, this should enhance tax authorities' ability to audit and enforce.

The fact that the local VAT could not be deducted via the OSS is a major drawback and we understand and accept that there are several reasons making currently this impossible or at least extremely difficult. Indeed, because of its design with a single point of contact authority, the OSS is less fit for including transactions which would allow recovery of VAT (other than self-assessed VAT, e.g., on intra-EU acquisitions of goods for resale), given the need for controlling tax refunds from tax authorities' perspective. Nevertheless, we would suggest:

- a) To foresee that studies will be conducted, and solutions will be proposed by the Commission to solve this in the future.
- b) In the meantime, and in parallel, it could be worth to investigate possibilities to create a link between the OSS and the VAT refund portal to allow a more automated processing of VAT credits (e.g. upload of OSS data in the refund portal, simultaneous filing periods, etc.) for taxpayers registered in the OSS. This could be done at EU level or in a first step between voluntary Member States via bilateral agreements which will improve the conditions their businesses operate. If this alternative succeeds and if solutions investigated under a) appear to be complex and/or costly, they could be abandoned if this alternative appears to be satisfactory.

Finally, we are supportive of the measure to make the existing Import One Stop Shop mandatory for marketplaces acting as deemed supplier, as this will improve the collection and simplify the audit and enforcement of VAT, while ensuring a level playing field.

2. Digital Reporting Requirements

We support the introduction of Digital Reporting Requirements. We agree these will play a key role in the simplification of the EU VAT system and the fight against VAT fraud. We praise the ambition of the proposal and the effort to mitigate the risk of businesses facing a patchwork of requirements across EU countries, which currently act as an administrative barrier to cross-border trade

- **Consistency and interoperability across EU Member States**

Notwithstanding the above, we believe that the proposals do not go far enough to drive EU harmonization and should be more ambitious in this area. While the proposals seek to harmonize invoice format across the EU, this is only a single facet of a digital reporting system. We believe the proposal must go much further to achieve sufficient levels of harmonization to make a significant difference to EU businesses, in particular by seeking to harmonize not only the invoice structure, but also the transmission protocols and technical specifications for the actual transmission of the invoices to Member State e-invoicing platforms, including any invoice validations and authenticity requirements. Existing international standards and methods should be considered for this purpose, including those associated with the PEPPOL network. In this respect, we note that PEPPOL is the system that has been chosen by Luxembourg for the mandatory B2G e-invoices. As Fedil, we thus support this system because many Luxembourg businesses have invested in (IT, training, etc.) and are thus already acquainted with and because it is a system that is in use in many countries in the world. Of course, this should not block potential evolutions if the advantages of these evolution exceed the associated costs.

Doing so would vastly simplify implementation for businesses and Member States, reduce costs and ensure compliance is achieved, while not doing so will be prohibitive for some businesses, thus exacerbating administrative borders within the Single Market.

- **Lead time in relation to Member State domestic regimes**

While we appreciate that Member States wish to be free to implement domestic e-invoicing at their own discretion, without needing to seek a derogation from the Commission, we foresee a risk that some Member States could seek to rush e-invoicing mandates into place without appropriate lead-time or consultation with stakeholders. This is a grave risk to business continuity given the fundamental role that invoices play in every day commercial operations. It is vital that all parties (businesses, e-invoice service providers and Member States) have enough time to prepare for new e-invoicing rules. We therefore call on the Commission to add guardrails to the proposed legislation that mandate a period of lead time prior to imposition of new domestic e-invoicing mandates, ideally specifying a minimum period of at least 12 months from the date of release of legislation and technical guidance. Subject to the respect of these conditions, it would be worth that Member States introduce domestic mandatory B2B invoices before 2028 to enable businesses gaining experience before having to use it on a cross-border basis.

- **Introducing mandatory e-invoices as of 1 January 2024 is not realistic**

ViDA proposes that as of 1 January 2024, invoices may be sent by the supplier to the customer in an electronic format without the prior approval of the customer. This timing does not factor the need to have all Member States unanimously agreeing to this proposal and subsequently the issuance of supporting guidance on a domestic level. It places challenges for suppliers who will need to update their systems and controls to send invoices electronically as well as for customers who must have the ability to manage different invoices from different suppliers without their prior approval.

As such, we recommend more lead time is provided from the approval of the ViDA package and issuance of supporting guidelines before the mandatory measures take effect.

- **Removal of European listings**

We appreciate the removal of the European listing of goods and services avoiding useless and burdensome duplications of reporting.

We note that the e-invoicing will enable VAT authorities to receive much more precise information in a shorter time framed than the listings while good-faith businesses will support important costs to implement and run the e-invoicing systems.

Even if not relevant for Luxembourg which does not impose reporting other than those of the Directive, and considering Luxembourg companies have subsidiaries abroad, Member States should also consider avoiding imposing duplicated reportings.

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- **Pre-clearance**

We welcome the absence of pre-clearance of the invoices which seems adding an additional step without well-defined benefits.

- **Summary invoicing**

Removing the option to issue summary invoices will cause disruption for many businesses, impacting on established commercial practices and driving up costs for businesses who will have to issue and ingest many more invoices per day. The drivers for this requirement from an anti-fraud perspective are unclear and should be revisited with appropriate business input.

It must be clarified that summary invoices are extremely important for many industrial sectors where goods are sold on a continuous basis to selected well known clients in the frame of long-term relationships. A good example could be tire manufacturers that would sell tires on a continuous basis to car manufactures. Sales will occur every day with variable and unforeseeable number of tires. In addition, it happens often that call off stocks are used. All these elements made extremely difficult to comply with the proposed delay of issuances of electronic invoices in the two days of the transactions. In addition, summary invoices are a facilitation granted only to good and reliable clients because it implies a delay in the payment of the invoices. Under these circumstances, the risk of fraud is extremely limited not to say theoretical.

We should also note that some important and very international economic sectors with multiple transactions are members of international settlement platforms that will issue a monthly or bimonthly report of the cross transactions performed between the members of these platform. Summary invoices are necessary in this environment. Prohibiting summary invoices would be a major threat for EU businesses of these economic sectors. This may even imply that they would be unable to participate to these platforms or with a substantial cost and major difficulties.

We thus consider as extremely important to keep the possibility to issue summary invoices. To ensure that the issuance of such summary invoices would not become an abusive practice, it could be envisaged to impose some conditions such as, for example, an agreement by the Member State of the businesses willing to issue such invoices and/or of the Member State of the businesses willing to receive such invoices, or, of an EU central body. Other solutions could probably be envisaged and discussed.

- **Practical issue linked with the two days delay for the issuance of the invoice**

A further issue regarding the issuance of returns in the second workday of the tax event may appear when the amount of the invoice depends on elements such as the amounts invoiced by different suppliers. This situation happens often for transaction between group companies where there is no risk of VAT fraud. Similar issues could exist for certain categories of services for which it could be difficult to precisely determine the date of the taxable event. This is for example the case of professional services².

² For example, is the tax event when an advice or tax a return is send or is when it is approved by the client?

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The two-day delay to issue and report invoices is extremely short, will lead to many practical difficulties and impose huge investments and will be detrimental to the quality of the reported information. In this respect, we note that other reporting aimed to fight against VAT fraud (e.g., DAC7 or CESOP) foresees much longer delay (e.g., CESOP requires a quarterly reporting).

- **Absence of invoice for exempt supplies**

We understand that the exemption to issue invoices for exempt supplies remains available. This is a welcome simplification for concerned businesses that are numerous and of first importance in Luxembourg. It will avoid to authorities to handle useless data relating to transactions where no risk of VAT fraud could be identified.

- **E-archiving requirements**

We strongly suggest including in the proposal a specific section/paragraph concerning data storage and archive requirements, due to e-invoicing rules impact. For European businesses/entities, it might be helpful to set up a defensible and compliant infrastructure strategy, and e-archiving might support it. It would be of great interest to propose a harmonization of the process within Europe. It is noteworthy that current local guidelines (where e-invoicing is in place e.g., Italy and Portugal) must be followed by taxpayers regarding store e-documents, and they did contain instructions for the creation, management, and preservation of such electronic documents (files). This creates additional burden and costs.

Otherwise, if after the introduction of the e-invoicing mandate, e-archive requirements would lose importance, a harmonization on this regard is required.

3. Ensuring the VAT in the Digital Age proposal works in practice

It is also key that the many important reforms included in the VAT in the Digital Age proposal work in practice for businesses and tax authorities. Therefore, we urge the Commission to supplement its plan to create a ‘central VIES’ system by also addressing critical upgrades required to the functionality made available to taxpayers to check the validity of VAT numbers. The requirement to check VAT number validity is now a core part of VAT compliance and the ability to perform such checks in an efficient and scalable way is essential tool businesses to manage risk. VAT number validity checks are also increasingly required under other legislations, such as DAC7. As such, demands on the VIES system have expanded way beyond its original remit, and it is no longer fit for purpose. This creates inefficiency and risk for businesses and missed opportunities for compliant businesses to help weed out non-compliance from the system. VIES must urgently be upgraded to handle bulk validations, enhance the quality of information held within it, enable real-time updates, and reduce downtime.

Finally, as regards the Implementing Act that the EU Commission will draft to make the IOSS system more fraud proof, we urge the Commission to consult with the industry very early on to ensure that solutions are adapted to ecommerce reality and practically feasible for all stakeholders.

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CONCLUSION

Acknowledging the wide-ranging benefits of the proposal and the need for added resilience to the VAT system, we call on the EU Member States to adopt the VAT in the Digital Age proposal. The most urgent action is needed to ensure the implementation of a single VAT registration as soon as possible, including expansion of the Union One Stop Shop.