

Council Regulation (EU) 2018/1541 of 2 October 2018 amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax

COUNCIL REGULATION (EU) 2018/1541

of 2 October 2018

amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The current system for the taxation of trade between Member States is based on transitional arrangements introduced in 1993 which have become outdated and prone to fraud in the context of a highly complex value added tax (VAT) system. In October 2017, the Commission put forward a legislative proposal setting out the principles for a definitive VAT system for cross-border business-to-business trade between Member States that would be based on the taxation of cross-border supplies in the Member State of destination. Given the fact that it could take several years for the definitive VAT system for intra-Union trade to be fully implemented, short-term measures are needed to combat cross-border VAT fraud more effectively and in a more timely manner. Improving and simplifying the administrative cooperation instruments, in particular Eurofisc, is also of significant importance in the fight against VAT fraud in general and to strengthen trust between tax authorities before the definitive VAT regime is introduced.
- (2) Carrying out an administrative enquiry is often necessary to combat VAT fraud in particular when the taxable person is not established in the Member States where the tax is due. To ensure the proper enforcement of VAT and to avoid duplication of work and administrative burden of tax authorities and business, where at least two Member States consider that an administrative enquiry into the amounts declared by a taxable person not established on their territory but taxable therein is necessary, the Member State where the taxable person is established should undertake the enquiry unless it is able to provide the information requested. The requiring Member States should stand ready

to assist the Member State of establishment by taking part actively in the enquiry. As the officials of the requesting Member States might have better knowledge of the facts and circumstances of the case and where the requested Member State has not required officials from the requesting Member States the officials of the latter should be able to be present during the administrative enquiry in so far as conditions under national law of the requested Member State for such a presence are met. In this occasion the officials of the requesting Member States should have access to the same premises and documents as the officials of the requested Member State through their intermediation. Where the legislation of the requested Member State contains such conditions for providing the presence it should be assumed that the requested Member State shall undertake the necessary actions to satisfy these conditions. In any case, officials from the requesting Member States should, where they deem it necessary, have the possibility to be present for consultation on the enquiry in the requested Member State with its officials after informing them. The purpose of such consultation could be to exchange views and information about the development of the enquiry and to propose and discuss possible actions.

- (3) Forwarding information without a prior request to the competent authorities of other Member States in accordance with Council Regulation (EU) No 904/2010<sup>(3)</sup> should be as simple and effective as possible. It is therefore necessary to allow competent authorities to forward information by means other than the standard forms when they deem other secure means more appropriate and agree to use them or when the information has been received from a third country.
- (4) The VAT exemption for the imports of goods provided for in Article 143(2) of Council Directive 2006/112/EC<sup>(4)</sup> ('customs procedures 42 and 63') is often abused and goods are diverted to the black market without VAT having been paid. It is therefore essential that customs officials, when checking whether the requirements for applying the exemption are met, have access to the registry of VAT identification numbers and the recapitulative statements. Furthermore, the information collated by the customs authorities, as part of this procedure, should also be made available to the competent authorities of the Member State where the subsequent intra-Community acquisition should take place.
- (5) In order to tackle fraud arising from the dual VAT regime applicable to cars, Eurofisc liaison officials should be able to access vehicle registration data in an automated way. It would allow them to identify swiftly who has committed the fraudulent transactions and where. Such access should be made available via the European Vehicle and Driving Licence Information System (EUCARIS) software application, whose use is mandatory for Member States under Council Decisions 2008/615/JHA<sup>(5)</sup> and 2008/616/JHA<sup>(6)</sup>, as regards vehicle registration data.
- (6) In order to ensure uniform conditions for the implementation of the provisions on automated access to information collated by the customs authorities and to vehicle registration data, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>(7)</sup>.

- (7) For the purpose of ensuring the effective and efficient monitoring of VAT on cross-border transactions, Regulation (EU) No 904/2010 provides for the presence of officials in administrative offices and during administrative enquiries in other Member States. In order to strengthen the capacity of tax authorities to check cross-border supplies, there should be administrative enquiries carried out jointly enabling officials from two or more Member States to form a single team and actively take part in an administrative enquiry carried out jointly.
- (8) In order to combat the most serious cross-border frauds, it is necessary to clarify and strengthen the governance, tasks and functioning of Eurofisc. Eurofisc liaison officials should be able to access, exchange, process and analyse all necessary information swiftly and coordinate any follow-up actions. However, such coordination does not imply a right for requiring any specific enquiry actions from the participating Member State. It is also necessary to strengthen the fight against VAT fraud at Union level, in particular by enabling Eurofisc working field coordinators to request targeted information from the European Union Agency for Law Enforcement Cooperation ('Europol') and the European Anti-Fraud Office ('OLAF'). Therefore, in order to receive relevant information in return held by Europol and OLAF, Eurofisc working field coordinators should be able to send as much information as necessary to Europol and OLAF.
- (9) In order to ensure uniform conditions for the implementation of the provisions on Eurofisc, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (10) Organising the forwarding of requests for VAT refunds pursuant to Article 5 of Council Directive 2008/9/EC<sup>(8)</sup> offers an opportunity to reduce the administrative burden for the competent authorities to recover unpaid tax liabilities in the Member State of establishment.
- (11) Member States may also communicate to OLAF relevant information where they consider it appropriate. This would enable OLAF to fulfil its mandate to carry out administrative investigations into fraud, corruption and other illegal activities affecting the financial interests of the Union, and to provide assistance to the Member States in order to coordinate their action to protect the financial interests of the Union against fraud.
- (12) The Commission may have access to the information communicated or collected pursuant to Regulation (EU) No 904/2010 only in so far as it is necessary for care, maintenance and development of the electronic systems hosted by the Commission and used by the Member States for the purpose of this Regulation.
- (13) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>(9)</sup> applies to the processing of personal data for the purpose of Regulation (EU) No 904/2010. Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>(10)</sup> applies to the processing of personal data by the Union institutions and bodies for the purpose of that Regulation. The fight against VAT fraud is recognised as an important objective of general public interest of both the Union and its Member States. For the purposes

of achieving the objectives of Regulation (EU) No 904/2010, namely the objective to cooperate and to exchange information that helps to effect a correct assessment of VAT, to monitor correct application of VAT, particularly on intra-Community transactions, and to combat VAT fraud, it is appropriate to provide for specific and limited restrictions on certain rights and obligations laid down by Regulation (EU) 2016/679.

- (14) More specifically, full application of the rights and obligations foreseen in Regulation (EU) 2016/679 would seriously undermine the effectiveness of the fight against VAT fraud as it would in particular allow the data subjects to obstruct ongoing investigations and risk profiling. This would jeopardise official or legal enquiries, analyses, investigations or procedures that are carried out in accordance with Regulation (EU) No 904/2010. It would also disable the administrative cooperation between the competent authorities which is a key instrument for the purpose of combating VAT fraud. Consequently, restrictions should be provided as regards the right for transparent information, the right to receive information where personal data are collected from the data subject, the right to receive information where personal data have not been obtained from the data subject, the right of access by the data subject, the right to erasure, the right to object to processing of personal data and the right concerning automated individual decision-making, including profiling. Exercise of these rights should be restricted only as long as it is necessary in order not to undermine the purposes pursued under Article 1 of Regulation (EU) No 904/2010. This restriction should only apply as regards certain categories of data referred to in Articles 1, 14 and 17 of that Regulation to the extent it is strictly necessary in order to ensure compliance with VAT legislation, and the relevant provisions of this Regulation.
- (15) As the objective of preventing, investigating and detecting VAT evasion and VAT fraud cannot be achieved by other less restrictive means of equal effectiveness, these restrictions are strictly necessary for the purpose of achieving the specific purpose in question. They are also proportionate in view of the loss of revenue for the Union and the Member States and the crucial importance of making information available in order to combat fraud effectively. The processing and the storage of information collected and exchanged under this Regulation is limited to the objectives of fight against VAT fraud. Information collected and exchanged under this Regulation does not concern sensitive data. It may not be further processed in a way that is incompatible with such purposes, including prohibition to process it for commercial purposes. As regards the safeguards to prevent abuse or unlawful access or transfer, Regulation (EU) No 904/2010 already provides detailed conditions concerning the access of the competent national authorities to the data and their subsequent use in order to achieve the general aim of that Regulation. The data retention period should be limited to what is necessary for the purpose of achieving the objectives pursued.
- (16) As Council Regulation (EU) 2017/2454<sup>(11)</sup> has also amended Article 17 of Regulation (EU) No 904/2010, with application from 1 January 2021, it is necessary to amend Regulation (EU) 2017/2454 in order to update the relevant cross-references to that Article. As Regulation (EU) 2017/2454 has also amended Annex I to Regulation (EU) No 904/2010, with application from 1 January 2021, it is necessary to amend

Regulation (EU) 2017/2454 as Annex I is no longer necessary and therefore should be deleted.

- (17) As the implementation of the provisions on the automated access to the information collated by the customs authorities and to vehicle registration data will require new technological developments, it is necessary to defer their application to allow the Member States and the Commission to carry out those developments.
- (18) Since the objectives of this Regulation, namely improving the cooperation instruments between Member States and combating cross-border fraud in the field of VAT, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (19) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered its formal comments on 21 March 2018.
- (20) Regulation (EU) No 904/2010 and Regulation (EU) 2017/2454 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### **Amendments to Regulation (EU) No 904/2010**

Regulation (EU) No 904/2010 is amended as follows:

- (1) Article 7 is amended as follows:
    - (a) paragraph 3 is deleted;
    - (b) paragraph 4 is replaced by the following:
      4. The request referred to in paragraph 1 may contain a reasoned request for a specific administrative enquiry. The requested authority shall undertake the administrative enquiry in consultation of the requesting authority where necessary. If the requested authority takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof.
- Notwithstanding the first subparagraph, an enquiry into the amounts declared or those that should have been declared by a taxable person established in the Member State of the requested authority, in connection with supplies of goods or services which are made by this taxable person and which are taxable in the Member State of the requesting authority, may be refused solely on any of the following grounds:
- a on the grounds provided for in Article 54(1), assessed by the requested authority in conformity with a statement of best practices concerning the interaction of this paragraph and Article 54(1),

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to be adopted in accordance with the procedure provided for in Article 58(2);

- b on the grounds provided for in Article 54(2), (3) and (4);
- c on the grounds that the requested authority had already supplied the requesting authority with information on the same taxable person as a result of an administrative enquiry held less than two years previously.

Where the requested authority refuses an administrative enquiry referred to in the second subparagraph on the grounds set out in point (a) or (b), it shall nevertheless provide to the requesting authority the dates and values of any relevant supplies made by the taxable person in the Member State of the requesting authority over the previous two years.;

- (c) the following paragraph is inserted:

4a. Where the competent authorities of at least two Member States consider that an administrative enquiry into the amounts referred to in the second subparagraph of paragraph 4 of this Article is required and submit a common reasoned request containing indications or evidence of risks of VAT evasion or fraud, the requested authority shall not refuse to undertake that enquiry except on the grounds provided for in point (b) of Article 54(1), Article 54(2), (3) or (4). Where the requested Member State already possesses the information requested, it shall provide this information to the requesting Member States. Where the requesting Member States are not satisfied with the information received, they shall inform the requested Member State to proceed further with the administrative enquiry.

If the requested Member State so requires, officials authorised by the requesting authorities shall take part in the administrative enquiry. Such administrative enquiry shall be carried out jointly and shall be conducted under the direction and according to the legislation of the requested Member State. The officials of the requesting authorities shall have access to the same premises and documents as the officials of the requested authority and, in so far as it is permitted under the legislation of the requested Member State for its officials, be able to interview taxable persons. The inspection powers of the officials of the requesting authorities shall be exercised for the sole purpose of carrying out the administrative enquiry.

Where the requested Member State has not required officials from the requesting Member States, the officials from any of the requesting Member States shall be able to be present during the administrative enquiry exercising the powers provided for in Article 28(2), in so far as conditions under the national law of the requested Member State are met. In any case, the officials from those requesting Member States shall be able to be present for consultation.

Where officials from the requesting Member States have to participate or have to be present, the administrative enquiry shall be carried out only when such participation or presence for the purposes of the administrative enquiry is ensured.;

- (2) in Article 13, paragraph 3 is replaced by the following:

3. The information shall be forwarded by means of standard forms except in the cases referred to in Article 50 or in specific cases when the respective competent authorities deem other secure means more appropriate and agree to use them.

The Commission shall adopt by means of implementing acts the standard forms. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).;

- (3) Article 17 is amended as follows:

- (a) in paragraph 1, the following point is added:

- (f) information which it collects pursuant to points (a) and (b) of Article 143(2) of Directive 2006/112/EC, as well as the country of origin, the country of destination, the commodity code, the currency, the total amount, the exchange rate, the item price and the net weight.;

- (b) paragraph 2 is replaced by the following:

2. The Commission shall adopt by means of implementing acts the technical details concerning the automated enquiry of the information referred to in points (a) to (f) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).;

- (c) the following paragraph is added:

3. The Commission shall determine by means of implementing acts the data elements of the information referred to in point (f) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).;

- (4) Article 21 is amended as follows:

- (a) the following paragraph is inserted:

1a. Every Member State shall grant its officials who check the requirements provided for in Article 143(2) of Directive 2006/112/EC access to the information referred to in points (a) to (c) of Article 17(1) of this Regulation for which automated access is granted by the other Member States.;

- (b) in paragraph 2, point (e) is amended as follows:

- (i) points (i) and (ii) are replaced by the following:

- (i) access is in connection with an investigation into suspected fraud or is to detect fraud;
- (ii) access is through a Eurofisc liaison official, as referred to in Article 36(1), who holds a personal user identification for the electronic systems allowing access to this information.;

- (ii) point (iii) is deleted;

- (c) the following paragraph is inserted:

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2a. With respect to the information referred to in point (f) of Article 17(1), the following details shall be accessible:

- a the VAT identification numbers issued by the Member State receiving the information;
- b the VAT identification numbers of the importer or of his tax representative who supplies the goods to persons holding a VAT identification number referred to in point (a) of this paragraph;
- c the country of origin, the country of destination, the commodity code, the total amount and the net weight of the imported goods followed by an intra-Community supply of goods from each person referred to in point (b) of this paragraph to each person holding a VAT identification number referred to in point (a) of this paragraph;
- d the country of origin, the country of destination, the commodity code, the currency, the total amount, exchange rate, the item price and the net weight of the imported goods followed by an intra-Community supply of goods from each person referred to in point (b) of this paragraph to each person holding a VAT identification number issued by another Member State under the following conditions:
  - (i) access is in connection with an investigation into suspected fraud or is to detect fraud;
  - (ii) access is through a Eurofisc liaison official, as referred to in Article 36(1), who holds a personal user identification for the electronic systems allowing access to this information.

The values referred to in points (c) and (d) of the first subparagraph shall be expressed in the currency of the Member State providing the information and shall relate to each goods item of the customs declaration submitted.;

(d) the following paragraph is added:

3. The Commission shall determine by means of implementing acts the practical arrangements as regards the conditions provided for in point (e) of paragraph 2 of this Article in order to enable the Member State providing the information to identify the Eurofisc liaison official accessing the information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).;

(e) paragraph 3 is replaced by the following:

3. The Commission shall determine by means of implementing acts the practical arrangements as regards the conditions provided for in point (e) of paragraph 2, and in point (d) of paragraph 2a, of this Article in order to enable the Member State providing the information to identify the Eurofisc liaison official accessing the information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).;

(5) the following Article is inserted:



### Article 21a

1 Every Member State shall grant the competent authority of any other Member State automated access to the following information in relation to national vehicle registrations:

- a identification data relating to vehicles;
- b identification data relating to the owners and the holders of the vehicle in whose name the vehicle is registered, as defined in the law of the Member State of registration.

2 Access to the information referred to in paragraph 1 shall be granted under the following conditions:

- a access is in connection with an investigation into suspected VAT fraud or is to detect VAT fraud;
- b access is through a Eurofisc liaison official, as referred to in Article 36(1), who holds a personal user identification for the electronic systems allowing access to this information.

3 The Commission shall determine by means of implementing acts the data elements and the technical details concerning the automated enquiry of the information referred to in paragraph 1 of this Article and the practical arrangements as regards the conditions provided for in paragraph 2 of this Article in order to enable the Member State providing the information to identify the Eurofisc liaison official accessing the information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).;

(6) Article 24 is replaced by the following:

#### *Article 24*

Where, for the purposes of Articles 17 to 21a, the competent authorities of the Member States exchange information by electronic means, they shall take all measures necessary to ensure compliance with Article 55.

Member States shall be responsible for all necessary developments to their systems to permit the exchange of that information using the CCN/CSI network or any other similar secure network used to exchange the information referred to in Article 21a by electronic means.;

(7) the title of Chapter VII is replaced by the following:

PRESENCE IN ADMINISTRATIVE OFFICES AND DURING ADMINISTRATIVE ENQUIRIES AND ADMINISTRATIVE ENQUIRIES CARRIED OUT JOINTLY;

(8) Article 28 is amended as follows:

(a) the following paragraph is inserted:

2a. By agreement between the requesting authorities and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authorities may, with a view to collecting and exchanging the information referred to in Article 1, take part in the administrative enquiries carried out in the territory of the requested Member State. Such administrative enquiries shall be carried out jointly by the officials of the requesting and requested authorities and shall be conducted under the direction and according to the legislation of the

requested Member State. The officials of the requesting authorities shall have access to the same premises and documents as the officials of the requested authority and, in so far as it is permitted under the legislation of the requested Member State for its officials, be able to interview taxable persons.

Where it is permitted under the legislation of the requested Member State the officials of the requesting Member States shall exercise the same inspection powers as those conferred on officials of the requested Member State.

The inspection powers of the officials of the requesting authorities shall be exercised for the sole purpose of carrying out the administrative enquiry.

By agreement between the requesting authorities and the requested authority, and in accordance with the arrangements laid down by the requested authority, the participating authorities may draft a common enquiry report.;

(b) paragraph 3 is replaced by the following:

3. The officials of the requesting authority present in another Member State in accordance with paragraphs 1, 2 and 2a must at all times be able to produce written authority stating their identity and their official capacity.;

(9) Article 33 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. In order to promote and facilitate multilateral cooperation in the fight against VAT fraud, this Chapter establishes a network for the swift exchange, processing and analysis of targeted information on cross-border fraud between Member States and for the coordination of any follow-up actions (“Eurofisc”).;

(b) paragraph 2 is amended as follows:

(i) points (b) and (c) are replaced by the following:

(b) carry out and coordinate the swift multilateral exchange and the joint processing and analysis of targeted information on cross-border fraud in the subject areas in which Eurofisc operates (“Eurofisc working fields”);

(c) coordinate the work of the Eurofisc liaison officials as referred to in Article 36(1) of the participating Member States in acting on warnings and information received.;

(ii) the following point is added:

(d) coordinate participating Member States' administrative enquiries of fraud identified by the Eurofisc liaison officials as referred to in Article 36(1) without the power to require Member States to carry out administrative enquiries.;

(10) in Article 34, paragraph 2 is replaced by the following:

2. Member States having chosen to take part in a Eurofisc working field shall actively participate in the multilateral exchange and the joint processing and analysis of targeted information on cross-border fraud between all participating Member States and in the coordination of any follow-up actions.;

(11) Article 35 is replaced by the following:

*Article 35*

The Commission shall provide Eurofisc with technical and logistical support. The Commission shall not have access to the information referred to in Article 1, which may be exchanged over Eurofisc, except in the circumstances provided for in Article 55(2).;

(12) Article 36 is amended as follows:

(a) the following paragraph is inserted:

1a. The liaison officials of the Member States shall designate a Eurofisc chairperson among the Eurofisc liaison officials, for a limited period of time.

The liaison officials of the Member States shall:

- a agree on the establishment and termination of Eurofisc working fields;
- b examine any issues relating to the operational functioning of Eurofisc;
- c assess, at least on a yearly basis, the effectiveness and efficiency of the operation of Eurofisc activities;
- d approve the annual report, referred to in Article 37.;

(b) paragraph 2 is replaced by the following:

2. The liaison officials of the Member States participating in a particular Eurofisc working field (“participating Eurofisc liaison officials”) shall designate a Eurofisc working field coordinator, among the participating Eurofisc liaison officials, for a limited period of time.

Eurofisc working field coordinators shall:

- a collate the information received from the participating Eurofisc liaison officials as agreed by the working field participants and shall make all information available to the other participating Eurofisc liaison officials; this information shall be exchanged by electronic means;
- b ensure that the information received from the participating Eurofisc liaison officials is processed and analysed together with the relevant targeted information on cross-border fraud communicated or collected pursuant to this Regulation, as agreed by the participants in the working field, and shall make the result available to all participating Eurofisc liaison officials;
- c provide feedback to all participating Eurofisc liaison officials;
- d submit an annual report on the activities of the working field to the liaison officials of the Member States.;

(c) the following paragraphs are added:

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3. Eurofisc working field coordinators may request relevant information from the European Union Agency for Law Enforcement Cooperation (“Europol”) and the European Anti-Fraud Office (“OLAF”). For this purpose and as agreed by the working field participants they may send them as much information as necessary in order to receive the requested information.

4 Eurofisc working field coordinators shall make the information received from Europol and OLAF available to the other participating Eurofisc liaison officials; this information shall be exchanged by electronic means.

5 Eurofisc working field coordinators shall also ensure that the information received from Europol and OLAF, is processed and analysed together with the relevant targeted information communicated or collected pursuant to this Regulation, as agreed by the working field participants, and shall make the results available to the participating Eurofisc liaison officials.;

(13) Article 37 is replaced by the following:

*Article 37*

The Eurofisc chairperson shall submit an annual report on the activities of all of the working fields to the Committee referred to in Article 58(1).

The Commission shall adopt by means of implementing acts the procedural arrangements in relation to Eurofisc. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).;

(14) in Article 48(1), the following subparagraphs are added:

Where the Member State of establishment becomes aware that a taxable person making a request for refund of VAT, in accordance with Article 5 of Directive 2008/9/EC, has tax liabilities in that Member State of establishment, it may request the consent of the taxable person for the transfer of the VAT refund directly to this Member State in order to discharge the outstanding tax liabilities. Where the taxable person consents to this transfer, the Member State of establishment shall inform the Member State of refund of the amount regarding which the consent is obtained and the Member State of refund on behalf of the taxable person shall transfer this amount to the Member State of establishment. The Member State of establishment shall inform the taxable person whether the amount transferred amounts to either a full or a partial discharge of the tax liability in accordance with its national law and administrative practices. However, the transfer of the VAT refund to the Member State of establishment shall not affect the right of the Member State of refund to recover the liabilities that the taxable person has in the latter Member State.

Where the tax liabilities in the Member State of establishment are disputed, the transfer of the refund amounts can be used by the Member State of establishment as a retention measure, with the consent of the taxable person, in so far as an effective judicial review is ensured in that Member State.;

(15) the title of Chapter XIII is replaced by the following:

**RELATIONS WITH THE COMMISSION AND OTHER INSTITUTIONS, BODIES, OFFICES AND AGENCIES OF THE UNION;**

- (16) in Article 49, the following paragraph is inserted:
- 2a. The Member States may communicate to OLAF relevant information to enable it to consider appropriate action in accordance with its mandate. Where that information was received from another Member State, the latter may require that the transmission of the information be subject to its prior agreement.;
- (17) Article 55 is amended as follows:
- (a) paragraph 2 is replaced by the following:
2. Persons duly accredited by the Security Accreditation Authority of the Commission may have access to this information only in so far as it is necessary for care, maintenance and development of the electronic systems hosted by the Commission and used by the Member States to implement this Regulation.;
- (b) paragraph 5 is replaced by the following:
5. All storage, processing or exchange of information referred to in this Regulation is subject to Regulations (EU) 2016/679<sup>(12)</sup> and (EC) No 45/2001<sup>(13)</sup> of the European Parliament and of the Council. However, Member States shall for the purpose of the correct application of this Regulation, restrict the scope of the obligations and rights provided for in Articles 12 to 15, 17, 21 and 22 of Regulation (EU) 2016/679. Such restrictions shall be limited to what is strictly necessary in order to safeguard the interests referred to in point (e) of Article 23(1) of that Regulation, in particular to:
- a enable the competent authorities of the Member States to fulfil their tasks properly for the purposes of this Regulation; or
- b avoid obstructing official or legal enquiries, analyses, investigations or procedures for the purposes of this Regulation and to ensure that the prevention, investigation and detection of tax evasion and tax fraud is not jeopardised.
- The processing and storage of information referred to in this Regulation shall be carried out only for the purposes referred to in Article 1(1) of this Regulation and the information shall not be further processed in a way that is incompatible with those purposes. The processing of personal data on the basis of this Regulation for any other purposes, such as commercial purposes, shall be prohibited. The storage periods of this information shall be limited to the extent necessary to achieve those purposes. The storage periods of the information referred to in Article 17 of this Regulation shall be determined as per the limitation periods provided for in the legislation of the Member State concerned but no longer than ten years.;
- (18) in Article 58, paragraph 2 is replaced by the following:
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>(14)</sup> shall apply.;
- (19) Annex I is deleted.

## *Article 2*

### **Amendments to Regulation (EU) 2017/2454**

Article 1 of Regulation (EU) 2017/2454 is amended as follows:

- (1) point 5 is replaced by the following:
  - (5) in Article 17, paragraph 2 is replaced by the following:
2. The Commission shall adopt by means of implementing acts the technical details concerning the automated enquiry of the information referred to in points (a) to (f) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).’;
- (2) point 8 is deleted.

## *Article 3*

### **Entry into force and application**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Points (3) (a), (b) and (c), points (4) (a), (c) and (e) and points (5), (6) and (14) of Article 1 shall apply from 1 January 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 2 October 2018.

*For the Council*

*The President*

H. LÖGER

- (1) Opinion of the European Parliament of 3 July 2018 (not yet published in the Official Journal).
- (2) Opinion of the European Economic and Social Committee of 23 May 2018 (not yet published in the Official Journal).
- (3) Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax ([OJ L 268, 12.10.2010, p. 1](#)).
- (4) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([OJ L 347, 11.12.2006, p. 1](#)).
- (5) Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ([OJ L 210, 6.8.2008, p. 1](#)).
- (6) Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ([OJ L 210, 6.8.2008, p. 12](#)).
- (7) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ([OJ L 55, 28.2.2011, p. 13](#)).
- (8) Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State ([OJ L 44, 20.2.2008, p. 23](#)).
- (9) 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](#)).
- (10) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ([OJ L 8, 12.1.2001, p. 1](#)).
- (11) Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax ([OJ L 348, 29.12.2017, p. 1](#)).
- (12) 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](#)).
- (13) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ([OJ L 8, 12.1.2001, p. 1](#));
- (14) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ([OJ L 55, 28.2.2011, p. 13](#));