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Surveillance State: European Commission plans EU-wide information sharing of UK taxpayers' details

Margarida Vasconcelos
Jim McConalogue

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Authors: Margarida Vasconcelos
& Jim McConalogue

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The European Foundation
83 Victoria Street
London,
SW1H 0HW



Telephone:
0777 066 8932
0203 178 7038
E-mail: vasconcelos@e-f.org.uk
Web site:
www.europeanfoundation.org

Introduction

Margarida Vasconcelos and Jim McConalogue report on a European Commission plan to share UK taxpayer information across Europe, relating to identity, activity, VAT identification numbers and turnover data.

The authors report on:

- A new EU common approach on tax data;
- Increasing exchange of taxpayer data;
- Immediate access to identity, activity and turnover data;
- How the European Commission will enforce national checks;
- The setting up of Eurofisc and the future “Eurocracy”

Under the proposals, Her Majesty’s Revenue & Customs and all Member States tax authorities would be required to grant “direct access” to personal information contained on national taxpayer databases, without the knowledge or consent of the UK taxpayer.

Common approach on tax data

The European Union institutions, through the Council and the European Parliament, have been calling for a common approach to collecting tax data in order to combat tax fraud. The European Commission recently put forward a proposal to recast a previous Council regulation [1798/2003] on administrative cooperation and combating fraud on VAT. The draft proposal supplements the 2003 regulation, which lays down the conditions under which the Member States’ authorities responsible for VAT administration are to cooperate with each other and with the Commission.

According to the Commission, the proposal will have no impact on economic operators but on Member States’ tax authorities. The Commission has carried out no impact assessment as it believes the Member States are better positioned to assess the impact of the proposal. In fact, the proposal is likely to impose excessive administrative burdens on the Member States.

The draft regulation would introduce a requirement for Member States to cooperate to protect the VAT revenue of all Member States. The draft regulation sets out joint responsibility for the protection of VAT revenues. The Member States are required to monitor the correct application of tax owed on their own territory as well as tax relating to activity on their own territory but owed within another Member State.

The draft proposal introduces new rules which would regulate the exchange of information between Member States’ tax authorities in order to combat VAT fraud.

Under the Council regulation 1798/2003, a Member State which receives a request for assistance from another Member State is required to communicate information concerning VAT or carry out a specific administrative enquiry. The present proposal limits the ability for Member States to refuse to provide such information and provides

for these requests to be sent through a standard form.

Increasing exchange of taxpayer data

The regulation also governs exchanges of information without prior request. Member States are presently required to automatically exchange VAT information where taxation is considered to take place in the Member State of destination and the information given by the Member State of origin is necessary for the effectiveness of the control system of the Member State of destination as well as where a Member State believes that a breach of VAT legislation has been committed. Member States would be required to automatically exchange data so that each Member State of consumption may ascertain whether the taxable persons established on its territory declare and pay the correct amount of VAT, due on all kinds of telecommunications, broadcasting and electronically supplied services.

The exchange of information is spontaneous. The draft regulation has amended the provisions, specifying that such exchanges must take place in any case where the provided criteria are met. Member States would no longer be allowed to determine whether they will take part in the exchange of a particular category of information. In fact, they would be required to exchange certain information spontaneously which may be useful to the competent authorities of the other Member States. The European Commission will be given the power to decide, through the comitology procedure, on the practical arrangements for the exchange of information as well as on standard forms required to forward information.

Immediate access to identity, activity and turnover data

The European Commission has also proposed new rules on the kind of information that should be stored in national tax databases as well as the common procedures for registration of taxpayers in Member States. Under the existing regulation, Member States are required to keep an electronic database to store and process information collected through the recapitulative statement (EC Sales List). In order to enable Member States to rapidly exchange certain information relating to the taxpayers established on their territory, the Commission has proposed to enhance their VAT databases. Hence, the draft proposal would increase the amount of storage and exchange of information on taxable persons and their intra-Community transactions to be included in those databases. This information includes: data on the identity, activity or legal form of persons to whom a VAT identification number has been issued as well as data on their turnover. The list and details of such data would be adopted through the comitology procedure. Member States would be required to place all the information in the database system “without delay” or “no later than one month after the end of the period to which the information relates.”

Under the draft regulation, each Member States’ tax authorities would be required to grant “direct access” to information contained on their national taxpayer databases to other Member States. With regards to information collected through the recapitulative

statement, several details must be accessible such as VAT identification numbers issued by the Member State receiving the information as well as the VAT numbers of the persons who carried out intra-Community supplies of goods and services.

Commission to enforce national checks

In order to guarantee “the quality and reliability of the information” contained in this database system, the UK and all Member States would be required to perform checks on the information supplied when taxable persons and non-taxable legal persons are identified for VAT purposes. Such information and checks would be related to the activity and identity of the taxable person and would be decided through the comitology procedure. Moreover, Member States would be required to, no later than a year after the VAT identification of the taxable persons and non-taxable legal persons, perform a risk analysis on those persons, taking into account these checks.

The Commission also proposes that Member States must give notification in the database system, without delay, of situations such as persons identified in the database who have ceased economic activity and risks identified in the course of a risk analysis. The rules and procedures for the application of this provision would be adopted through the comitology procedure.

The 2003 Council regulation has also been amended to specify the cases in which Member States are required to carry out multilateral controls, checks on the tax situation of a taxable person, meaning “whenever such controls would appear to be more effective than controls carried out by only one Member State.” Member States are required, within two weeks of receipt of a proposal for a multilateral control, to confirm their agreement or communicate their reasoned refusal to their counterpart authority. Obviously, the Member States concerned must “spontaneously” exchange the information collected.

Member States would be required to inform the Commission of their invoicing provisions that are applicable to taxable persons not established on their territory so that this information can be published on the Commission's website. However, the details of the list of information that Member States would have to submit as well as its format would be decided through the comitology procedure.

Eurofisc and the future Eurocracy

The draft regulation would also create a legal basis to establish Eurofisc, a common structure for collecting personal data to supposedly combat cross border VAT fraud. The structure would be made up of competent officials designated by the Member States who would be allowed to directly exchange information. Such a structure would organise and promote fast exchange of information between all Member States based on risk and strategic analysis procedures. It would also evaluate threats posed by transactions in breach of VAT legislation in order to provide analyses on fraud patterns. Eurofisc would process the received information and forward the result of that

processing to all the Member States. The arrangements for the exchange of information within Eurofisc would be determined through the comitology procedure.

Unanimity is required at the Council for the proposal to be adopted. Several Member States are likely to raise subsidiarity concerns over the proposal. It remains to be seen if Member States will be willing to accept the sharing of their national VAT data with each other, as stated in the draft proposal. Importantly, the Commission has left a lot of room for the unaccountable comitology procedure which will diminish Member States control over the content of this measure.

Conclusion

Given the threat to the UK taxpayer of European-wide sharing of their personal data under the EU common approach, the increasing exchange of their information, the immediate access to their identities, activity and turnover data, UK taxpayers need to take action to demand that their data is not shared across Europe under this Brussels power-grab. The UK Government has failed to act in the interests of basic British liberties and the European Commission will be free to enforce national checks. There is at present no bar to the future setting up of the information-collecting body Eurofisc and the handing over of data to unaccountable and bureaucratic European institutions. Under this proposal, Her Majesty's Revenue & Customs and all Member States' tax authorities would be required to grant "direct access" to UK taxpayer information contained on national databases, without their knowledge or consent.