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PostEurop Position Paper on the “VAT e-commerce package”

Brussels, 4 December 2019

PostEurop represents 52 Universal Postal Service Providers across Europe and is a restricted (i.e. regional) Union of the Universal Postal Union (UPU). The postal sector is a major contributor to, and facilitator of trade within the European Union and globally. The postal network is an open access channel and a vital facilitator of trade linking public administrations, businesses and consumers as well as enabling small business enterprises and social customers to access efficient communications and e-commerce services on a global scale.

The postal sector is one of the largest employers with over 2.1 million employees across wider Europe, reaching over 800 million people daily.

Efficient and effective postal services are essential to the social fabric and economic life of the European Union, and as a Service of General Economic Interest (SGEI), plays an important social function: postal operators are there to provide a quality, accessible and affordable universal postal service to all, as defined not only in the European Postal Services Directive, but also as signatories to the Universal Postal Union Treaty to which all countries, including EU Member States, are members.

1. INTRODUCTION

2021 is the “*big bang*” for the e-commerce sector, when several customs and taxation legislations, namely the new provisions of the Union Customs Code as well as the Council Directive (EU) 2017/2455 (“the VAT e-commerce Directive”) and their subsequent delegated acts and implementing regulations, will enter into force and will imply deep changes for European Union consumers, business and tax administration in general and for postal operators in particular.

The members of PostEurop supported from the beginning the initiative of the Commission to establish new rules in the e-commerce sector, submitting a specific position paper¹ in response to the EC public consultation on modernizing VAT for cross-border e-commerce and taking part in several workshops and technical meetings organised by the Commission during last years.

At the same time, the postal sector is actively involved in the various fora established by the European Commission to define the strategic and operational roadmap allowing the proper implementation of the new requirements, as well as in many expert working groups on customs and taxation projects: Import Control Systems 2 (ICS2), Customs 2020 Project Group, Fiscalis 2020, VAT

¹ PostEurop position paper on “*EC Public Consultation on Modernising VAT for cross-border e-commerce*”, dated 2 December 2015 – Register ID: 092682012915-24, in which, supporting the idea of the Commission to establish new rules in the e-commerce market, it was pointed out how, in absence of clear rules, negative financial and social impact on all stakeholders should derive.

Expert Group meetings, including the combined VAT & Customs meetings on Low Value Consignment and Import One Stop Shop.

2. GUIDING PRINCIPLES FOR A SMOOTH APPLICATION OF THE NEW RULES

As highlighted in the previous position paper, PostEurop members welcome the drive to make the application of VAT simpler for all the actors playing in the e-commerce arena and, at the same time, to reduce the administrative burden on businesses and suppliers.

After the adoption at the end of 2017 of the VAT e-commerce Directive, in December 2018 there was the publication of two proposals – the first one amends the Council Directive 2006/112/EC while the second one amends the Implementing Regulation (EU) No 282/2011 with reference, among others, to the new rules regarding distance sales of goods as well as supplies of goods or services facilitated by Electronic Interfaces (EI) – on which the Council of the European Union reached an agreement during the ECOFIN meeting on 12 March 2019, while the final adoption and publication is planned by the end of this year.

At the same time, the European Commission is working on the Explanatory Notes to the VAT e-commerce Directive, whose publication is expected by the end of 2019 or the beginning of 2020 at latest.

The members of PostEurop believe that some positive rules have been implemented, but there are others that should be changed or better clarified in order to grant a smooth application of the new Directive.

PostEurop members are strongly convinced that, in order to apply the new VAT rules efficiently and manage the huge volume of items to be checked at the international mail centers by postal operators and customs agencies deriving from exponential growth of the e-commerce flows and from the removal of VAT threshold for importation of low consignments, the following conditions need to be met:

- Electronic data (ITMATT messages) needs to be sent electronically and in advance for all items containing goods (irrespective of the value of the goods);
- The new Import One Stop Shop (IOSS) system for distance sales of goods up to Euro 150 imported from third territories or third countries should be adopted by EI to the greatest possible extent.

Electronic Advance Data (ITMATT messages) implementation by non-EU Designated Postal Operators

With reference to the electronic exchange of ITMATT messages – which is due to be implemented by all UPU Designated Postal Operators from 2021 – PostEurop members welcome this initiative, but they have serious concerns that this will not be achieved considering that the new rules require significant investment and global implementation at operational, IT and commercial level by developing countries. Postal operators do not believe all operators will be sending electronic data – with the necessary quality level – for customs purposes in 2021 and there will be a slower transition to compliance. This will impact EU customs agencies and postal operators risking negative service, financial and commercial impacts.

Adoption of IOSS by EI

With reference to the IOSS application, since this new system is optional (and not mandatory) for economic operators and EIs as well as the benefits for “opting in” depends on the correct and efficient functioning of the system itself, the EIs expressed their lack of interest to adopt the IOSS system if unclear rules still remain.

"Green channel" as a key for IOSS and customer experience

In order to make the new IOSS VAT regime a success and workable in practice, a "green lane" status for direct imports covered by a valid IOSS number is crucial. Only in this way, the customer experience and satisfaction can be guaranteed, providing an incentive for EIs to opt into the IOSS regime. Without a technological "green channel" solution for IOSS, PostEurop members believe that the customer's expectations will not be met and compliance cannot be achieved.

For this reason, PostEurop members are convinced that the abolishment of the Low Value Consignment Relief without a fully adoption of the IOSS and a "green channel" to facilitate this change will present a huge challenge to postal operators and shift all burden, risks (operational and financial) and liabilities to the European Designated Postal Operators, whilst having significant impact on users and stakeholders. The impact of the disruptions in the postal supply chain will jeopardise the universal postal service and the delivery of the items by Designated Postal Operators as a universal right of the consumers and will certainly lead to an increase of the final price for the consumer.

Assuming that the entire system will work in the better way, which means that ITMATT messages will be sent electronically in advance for all shipments with an high quality level and quite all the EIs acting in the e-commerce arena will opt for the new IOSS system – at the moment there is no certainty this will happen – practical implementation of the new rules will not be easy in any way and require investment by all stakeholders (customs agencies, postal operators, EIs and express carriers). As clearly appeared from various meetings during last months and in particular during Fiscalis meeting in Madrid at the end of September 2019, a number of unclarities still remain.

3. CRITICAL ISSUES

PostEurop members believe that some rules contained in the VAT e-commerce Directive present challenges and – if not solved – could prevent a proper implementation of the new guidelines.

PostEurop members have identified a number of unclear issues related to the new IOSS and Special Arrangement, these are the following:

3.1 Risk of double taxation phenomena

VAT and Customs legislation, at the moment, is not aligned on some crucial points that could generate phenomena of double taxation in the new IOSS system. We believe it's necessary to define whether VAT or Customs rules should take prevalence or to establish new clear rules in order to avoid negative effects on the entire delivery industry². This could have a positive effect for all actors playing in the e-commerce sector, considering that EI should be encouraged to opt for the IOSS system and postal operators should be facilitated in managing the substantial increase flows deriving from the removal of VAT threshold for importation of low consignments.

3.2 Exchange rate

² In the Annex of the document the General Secretariat of the Council sent to Permanent Representatives Committee on 18th November 2019, in point 6 it was underlined "(...) the importance of an effective and coherent EU regulatory framework, in particular the VAT Directive and the Union Customs Code, in order to ensure collection of VAT and customs duties for budgets of the Member States and the EU (...)"

The exchange rate issue for IOSS shipments springs from the fact that – from a VAT perspective – the assessment of the threshold of Euro 150 is shifted from the moment of import to that of the online sale/payment. VAT is/will be collected via the IOSS declarations. In the current solution, where the IOSS shipment exceeds the Euro 150 threshold at importation (due to different exchange rate used) the burden to collect and pay VAT will be on the postal operators. This burden is disproportionate with the taxes (to be) collected and therefore unacceptable.

A practical approach to bypass this issue is required. PostEurop members believe the best way this could be achieved is by shifting the enforcement (both of VAT and possible customs debt collection) away from the border (ex-ante control). VAT and customs authorities should join forces in sharing the necessary information to come to effective enforcement measures to collect any missing VAT and/or duties.

3.3 Grouped/split consignment as well as grouped/split orders

Different scenarios are possible, whereby a workable solution from a VAT perspective creates practical issues from a customs perspective, taking into account that the declarant in many cases will not know whether a shipment was made out of different orders, or that one order has been split in different consignments to meet the criteria of the IOSS.

This creates a practical problem because customers could refuse the shipments in cases where they are asked to pay the VAT on the same goods twice – once at the moment of purchase and another at the moment of importation.

These controls should be moved away from the border and VAT and customs authorities should join forces in sharing the necessary information to come to effective enforcement measures to collect any missing VAT and/or duties.

3.4 Clarification on the functioning of the Special Arrangement

There are currently still a lot of outstanding questions on how the Special Arrangement will function.

The main questions refer to the role of the declarant where, from a VAT point of view, the person for whom the goods are destined is liable for the payment of the VAT.

At the same time, PostEurop members' recommend that the rules are fixed on how the periodic payment of the VAT to customs will be organised and, in particular, if the payment will occur via the deferment account of the declarant.

Lastly, direct representation should be allowed in all Member States for low value consignments to ensure a level playing field.

3.5 Return shipments

Further clarification is needed on how return shipments under IOSS and the Special Arrangement should be treated to allow a reclaim of the VAT paid under IOSS or under the Special Arrangement.

3.6 Transitional procedures

To prevent operational disruptions of the postal import process the declaration by any other act should be available for a transitional period.

4. CONCLUSIONS

The aforementioned issues would need to be rapidly solved considering that postal operators – and all other actors playing in the e-commerce arena in general – have less than 13 months to undertake the necessary IT, industrial and operational investments implied by the new regulatory customs and taxation requirements. The issues brought up are not new and were raised already in 2015 as a part of the first position paper from the members of PostEurop. Hence, there is an urgent need to take the necessary actions to solve the issues.

If the issues raised above are not solved in due time, there is a risk that there will be an increase in the complexity for the customers with negative impact on costs and speed of delivery.

PostEurop assumes that the European Commission will ensure that all of the issues will be solved in due time in order to allow all actors affected by the new rules to put in place the necessary implementations and needed investments before 1st January 2021.

PostEurop members expect the European Commission will find the correct way – through a legislative and explanatory intervention – to clarify the unclear rules, so that the new guidelines contained in the VAT e-commerce Directive can be applied in a smooth way as soon as possible.

Until the barriers to implementation are addressed, postal operators ask decision makers to postpone the enforcement of the new rules.

PostEurop and its members remain open to further discuss these crucial issues with the European Commission, giving their availability for desirable future meetings.

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PostEurop is the association which represents the interest of 52 European public postal operators. Committed to supporting and developing a sustainable and competitive European postal communication market accessible to all customers and ensuring a modern and affordable universal service, PostEurop promotes cooperation and innovation bringing added value to the European postal industry. Its members represent 2.1 million employees across Europe and serve to 800 million customers daily through over 175,000 counters. PostEurop is also an officially recognised Restricted Union of the Universal Postal Union (UPU).