



# Response to the Consultation

of the European Confederation of Independent Trade Unions (CESI)

## **Review of existing VAT legislation on public bodies and tax exemptions in the public interest**

TAXUD/C1

Author: Trade Council “Central Administration and Finances”, Presidium of  
CESI  
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**Confédération Européenne des Syndicats Indépendants**

European Confederation of Independent Trade Unions ★ Confederazione Europeadei Sindacati Indipendenti  
Europäische Union unabhängiger Gewerkschaften ★ Confederación Europea de Sindicatos Independientes

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## CESI

The European Confederation of Independent Trade Unions (CESI) is a European organisation whose members include trade unions from the member states of the European Union as well as from acceding countries. CESI, an organisation which is not politically affiliated, represents over 5 million members. It aims to promote better living and working conditions and contribute towards the improvement of Europe's social dimension.

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• Name of your organisation/ entity/ company

**European Confederation of Independent Trade Unions**

• Country of domicile

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Yes

No

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Yes

No

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## THE EUROPEAN CONFEDERATION OF INDEPENDENT TRADE UNIONS

Having regard to the following items:

(a) Green Paper on the future of VAT – Towards a simpler, more robust and efficient VAT system

(b) The Communication of the European Commission on the future of VAT – Towards a simpler, more robust and efficient VAT system tailored to the single market

(c) The study on VAT in the public sector and exemptions in the public interest (final report for TAXUD, 10/01/2013)

(d) The judgments of the Court C-284/04, C-288/07 and C-102/08, that can be consulted at <http://curia.europa.eu>

(e) The CESI Resolution “Towards More Efficiency and Fairness in Taxation in Europe”, adopted on 10/05/2011

(g) The joint UFE – CESI statement on the European Commission’s Action Plan to strengthen the fight against tax fraud and tax evasion [COM(2012) 722] of 26 February 2013

- CESI supports all the initiatives of the European Commission that aim to simplify tax regulation in Europe in order to fight tax fraud and tax evasion more effectively, to improve the relations with users, and make tax cooperation amongst European administrations easier. However, this administrative and regulatory simplification cannot be performed at the expense of the most vulnerable taxpayers, namely salaried workers;
- CESI welcomes any initiative that will lead to improved tax collection on a European level and a more effective fight against tax fraud and evasion;

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- CESI specifies that the present consultation of the European Commission’s DG TAXUD’s *Review of existing VAT legislation on public bodies and tax exemptions in the public interest* is not of an “essentially technical nature”, as indicated in the consultation document. The questions asked are directly linked to political choices, with changes on the level of the structure of public employment that will have a direct impact on households’ disposable income.

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- CESI is also sorry that the Commission and DG TAXUD only concentrate on the alleged obstacles that are the result of the exemptions of public bodies (Art. 13 of the VAT Directive) and not on the positive aspects of these exemptions, i.e. the fact they enable public bodies to respond to the needs of all, namely the most vulnerable members of the population. This exemption is also in keeping with Protocol 26 on services of general interest, including the guarantee of high levels of quality, safety and affordability.
  - CESI reiterates that national, regional and local authorities are in the best position to determine which public services they should provide on their territories. It is not up to the European Commission to make such decisions.
  - CESI calls upon both European and national players to consider the improved legal security of Services of General Economic Interest in the European Union, without, however, calling into question the subsidiarity principle.
  - CESI questions the appropriateness of the current paradigm that is based on the belief that the production of services is more efficient when carried out by the private sector (as indicated in Annex 2 of the consultation document). Thus, CESI reiterates its request for the **establishment of a stakeholders' group to analyse and promote best practices for the application of the values of Protocol 26 by public authorities (Public Service Delegation, Management, Public-Private Partnerships, joint enterprises ...)**<sup>1</sup>.
  - CESI points out that although the collection of VAT may be efficient, it is also considered unfair from a social point of view. VAT does not take into account the end consumer's ability to pay, and it does not affect companies in their quality as intermediary consumers.

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<sup>1</sup> "Providing high-quality public services based on the values of Protocol 26 TEU/TFEU", Motion of the CESI Congress, December 2012



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## Response to the consultation

### **Q1 General Evaluation of the current rules (see point 3):**

CESI believes that the VAT regime to which the public sector is subjected, and namely the special rules for public bodies (Art. 13, 132 to 134), is appropriate, taking into account the specific missions of the said public bodies.

The activities performed by public services of general interest in a permanent and regular fashion to carry out the public service missions (such as the application of justice, the collection of taxes, etc.) are not subject to VAT. The regulation in force in the EU member countries lists certain activities for which public bodies are not subject to VAT, thus aligning itself with the directive on the common VAT system (referred to as the VAT Directive hereafter) that defines tax exemptions for some activities of general interest (articles 132 et seq.).

Often, if the activities in question are in direct competition with commercial ones, due to their nature, scope or means of application, bodies under public law are considered as subject to VAT.

Consequently, the regulatory provisions in force often explicitly list the activities that are exempt of VAT or excluded from its field of application.

**CESI is opposed to the revision of the tax exemption for public bodies listed in the VAT Directive. The exemption in question enables public bodies to carry out services of general interest for citizens more efficiently.**

Furthermore, the current economic climate calls for great care as to a possible reform that may have an impact on the provision of public services that are currently needed more than ever, especially by the poorest citizens. The negative consequences on consumption and economic growth must also be considered.

### **Q2 Distortion of competition clause:**

**In the view of CESI members, the current legal provisions in place are sufficient.**

In some states, such as Luxembourg, the activities for which public bodies are not subject to VAT are very clearly defined. This corresponds to the legislation in force which grants *the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users (Protocol 26 annexed to the TEU and TFEU).*

The provision regarding the distortion of competition in Article 13, paragraph 1, second subparagraph, of the VAT Directive permits the effective prevention of distortion of competition, namely since the European Court of Justice published clarifications on this

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issue by means of several judgments.<sup>2</sup> These distortions must be evaluated beyond a specific local market, taking into account the real possibility of an operator entering the market. Moreover, cases of distortion of competition, whether existing ones or potential ones, must *be of some significance* and cannot be negligible.

**CESI wishes to highlight the fact that alternative solutions to taking cases to court may be considered, so as not to create bottlenecks in the judiciary systems.**

In Belgium, for instance, the national legislation allows any individual entrepreneur who considers he/she has been wronged by disloyal competition to file a claim at the tax authorities, thus speeding up the process.

Ideally, for example, a **standardisation of the VAT return or the establishment of one-stop point of contact to reduce the administrative burden of the upstream companies** could be considered.

### **Q3 Reform measures (see point 5):**

CESI is in favour of an administrative and regulatory simplification of VAT on a European level. That said, it must not negatively affect the quality of public services, nor should it put an additional financial burden on the users.

The measures put forward in the Commission's consultation document do not seem to take those two elements into account. The consultation document concentrates on a general distortion of competition, but public bodies are subject to very different conditions and demands than the private sector.

Of course **Option 1: The full taxation Model is not possible**. It would have a negative impact on public employment (considering the alleged levels of pay in the private sector are most certainly debatable in the current economic climate), on households' disposable income and consequently on the chances of economic growth, as well as on the affordability of basic services for users.

**The other options, nos. 2, 3 and 4 directly call into question the ability of the public authorities to define their competences** and what they consider are services of general interest (SGI), going against Article 14 TFEU and of Protocol 26. In the event of a conflict, the European justice system can be referred to on the basis of a "manifest error" via an action for annulment. In addition, the regulations in the treaties must not go against the proper execution of missions of general interest (ART 106.2 TFEU and Protocol 26, Article 2)<sup>3</sup>. In

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<sup>2</sup>See judgments C-284/04, C-288/07 and C-102/08 at <http://curia.europa.eu>

<sup>3</sup> "Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the



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CESI's view, this means that the latter should prevail in the event of any dispute regarding the application of the rules of the treaties.

The transposition and implementation of **Option 2**, for example, which plans an upstream refund system, would generate extremely high financial costs, and the amount of administrative resources required would cancel out any potential economic gain.

Thus, CESI calls upon the Commission to concentrate on measures to simplify the administrative and regulatory systems in place, as well as on the fight against fraud and on training tax agents in Europe.

CESI believes that the proposed “reforms” actually aim to open up public services to increased competition, when over the past years, not only have they played a stabilising role on the economic and social levels, but they have also been the object of harsh budgetary cuts.

#### **Q4 Sectorial reform (see point 5.4.):**

**A sectorial reform** in the sectors mentioned by “Copenhagen Economics” **would have a direct impact on public employment levels, the quality of the services and on the price of services of general interest, leading to an additional indirect tax for households.**

Indeed, the study is based on a transfer of these activities via outsourcing to the private sector. However, this cannot be automatic:

- because this choice would also be the result of a political decision struck by democratically-elected representatives;
- and because the unquestioned belief in the greater efficiency of the private sector compared to the public sector, expressed by the firm in question and shared by the European Commission in its consultation document, remains to be proven.

The national, regional and local authorities are in the best position to determine which public services they should provide on their territories. The European Commission should not be in charge of defining them.

For instance, access to water at an affordable rate corresponds to the definition of the SGIs in Protocol 26. Subjecting this type of service to VAT would be a threat to public jobs on the one hand (because there is little chance that private jobs will compensate for them in this current economic crisis), and on the other, the users will have to pay more for a basic utility.

CESI cannot agree to this kind of approach.

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*performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.” ART 106.2 TFEU*

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### **Q5 Option to tax (see point 5.5.):**

CESI is in favour of an administrative and regulatory tax simplification if this is not carried out at the expense of the citizens, who would be unfairly and indirectly taxed by means of an increase in prices, including to access basic services such as the SGIs.

**Thus, CESI does not support the Option to tax 5.5, because it would make the current system even more complex.**

Moreover, CESI questions the European Commission's (and of the firms employed to perform its economic studies) persistent obsession with favouring the outsourcing of services of general interest to the private sector. However, it must be noted that the economic and financial crisis in Europe has proven that public services are able to play the role of an economic and financial stabiliser to the full. By doing so, these services represent a cornerstone of the European social model – a cornerstone that not only CESI believes in, but the European citizens too.

Instead of calling into question the VAT rules that are currently in force in the public sector, the Commission should concentrate on the unacceptable discrimination against the companies that pay their due taxes compared to the ones that commit systematic fraud. According to a recent study funded by the Commission within the framework of its endeavours to reform the VAT system in Europe, 193 billion Euros of VAT revenue (1.5 % of GDP) have been lost due to non-compliance with the rules or non-collection in 2011.

If flouting the rules unquestionably contributes towards this loss of income, then the loss of VAT earnings is not only the result of fraud. Non-collected VAT is also the result of bankruptcies and other insolvencies, statistical errors, late payments and optimisation, amongst others.

This is why CESI calls upon the European Commission to design its VAT reforms with a simplification of its collection, the fight against fraud and tax optimisation in mind.

*The trade union delegates of CESI, in representation of the personnel working for central and tax administrations, remain available to the decision-makers in charge of this dossier at the European institutions to exchange their practices and experiences with them.*

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