ANNEX 2

taxud.c.1(2018)4850920 – Group on the Future of VAT
GFV N° 073 REV 2

COMMENTS OF MEMBER STATES ON THE DRAFT AMENDMENTS TO COMMISSION IMPLEMENTING REGULATION (EU) NO 815/2012

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
1.	LU	Article 2	As “intermediary” is defined in Article 1(4) which refers back to Article 369l VAT Directive, is adding “acting on his behalf” not be misleading, like any taxable person could have an intermediary acting on his behalf?	Not implemented	This addition is necessary as, else, it looks like an intermediary himself can register for the Import scheme. And as the intermediary is clearly defined in Article 1, there is no doubt that the addition of intermediary only covers the use of the Import scheme.
2.	LU	Article 3(4)	LU concludes that it is intended that the central registry does not only contain initial registration data and exclusion data, but any change of data in between a registration and exclusion has to be communicated. How can this functioning be justified given wording of Art. 47h of amended CR 904/2010? To LU’s understanding there is no added value and certainly no need for the database to be informed e.g. of a change of the name of the contact person (Annex I, Column C, box 6). Such information is irrelevant for Customs’ purposes of verifying the validity of an IOSS number.	Implemented	It is sufficient that the database includes the valid IOSS VAT identification numbers, which is what custom need to check the validity of such numbers in import declarations. The provision is amended accordingly.
3.	LU	Article 3(4)	What means "in a timely manner"	Implemented	This paragraph has been removed.

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
4.	PL	Annex I	Do you agree on the principle of putting in place a centrally updated database of IOSS VAT identification numbers? Please be informed that we agree that such a centrally updated database of IOSS VAT identification numbers should be created.	Implemented	See new version of Article 3(4)
5.	LU	Article 3(4)	COM's proposal: According to Art. 47h of amended CR 904/2010 Customs shall carry out an electronic verification of the validity of the individual IOSS VAT identification number. The central repository shall hence only contain the list of IOSS numbers whereby each number is either valid or invalid at the time of checking by Customs. Why does paragraph 4 foresee that MSs send complete sets of registration data to the central repository? LU's proposal: To LU's understanding sending of the activation/deactivation of an IOSS number to the central register is sufficient for Customs purposes. Upon registration of an IOSS trader, a message is sent by the MSI to the central repository whereby the message solely contains two pieces of information (IOSS number and a boolean variable set to TRUE indicating that the IOSS number is active). In between initial registration and a potential exclusion of the IOSS trader the updates of registration data are not sent to the central repository as this information is not needed by Customs for the checks to be performed according to Art. 47h of amended CR 904/2010. Upon exclusion of the IOSS trader by the MSI, the MSI informs the central repository of that matter by a message containing once again two pieces of information (IOSS number and the boolean variable set to FALSE thereby indicating that the IOSS number is not active anymore).	Implemented	See new version of Article 3(4)

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
			PROS of LU's solution: The database only holds information within the scope of the legal provision. Compared to the solution suggested by COM there is limited traffic on CCN (which seems to have been identified as an issue in SCIT documents N° 179 to 183). The uncontestable advantage of the advocated solution is that the MSI has the responsibility of interpreting its own raw data whereas COM's solution seems to shift that responsibility to the different Member States. Questions/disadvantages of the COM's proposal: The current wording entails that the sending of registration information specified in Annex I will happen immediately after allocation of an IOSS number to a trader, at least to the central repository accessible to Customs. Is it intended to align the sending of registration data to other Member States, that is will the sending process given in Art. 47c(2) of amended CR 904/2010 ("MSID shall transmit info …. to the other MSs within 10 days of the end of the month during which the info was received") have to be reviewed? If so, why mix the exchange process for VAT purposes with an exchange process for Customs purposes albeit the processes are not entangled? Who will have access to the information contained in the database? Will access be granted to all info contained in the database to be created? Is it up to the central repository to interpret the data received from Member Sates to conclude on the validity of IOSS number at a given point in time? Referring to SEED, data are normally re-dispatched according to a smart replication process from the central repository to the different Member		

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
			States. Will it then be up to each and every Member State to interpret the sets of re-dispatched registration data and exclusion data to provide national Customs authorities with the information needed to perform the checks requested (validity/in-validity of an IOSS number) by Art. 47h of amended CR 904/2010? To LU's understanding the burden to interpret the data of the MSI's cannot be put on a Member State. If each and every Member State has to interpret the data of the 27 other Member Sates, how will a coherent interrelation throughout the EU of a given IOSS number be guaranteed? Is the suggested database that holds more information than the one needed compliant to GDPR?		
6.	LU	Annex I, Box D.1a	OK, in line with Art.369p(1) [TP registers] and 369p(3)(d) [intermediary registers] □ VAT identification number or national tax number	Not implemented	Here, we refer to the identification number of the intermediary, which is not a VAT identification number (Article 369q(2).
7.	LU	Annex I, Box D.2	Ok, in line with Art.369p(1)(d) [TP registers] and 369p(3)(d) [intermediary registers] □ VAT identification number or national tax number What does ", if any" mean in that context? Shouldn't the wording be of the kind The national tax number, if not established in the Community? That wording would cover business cases in Art.369l, 2nd subparagraph, (3)(a)-(b) and perfectly matches the comment.	Partially implemented	The fact that a company is established in the EU does not necessarily mean that it has to be VAT identified. But it is true that it should be mandatory to mention a national tax number if no VAT identification number exists. The words 'if any are therefore removed in Box D.2 and a footnote is added.

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
8.	LU	Annex I, Box D.2a	What does ", if any" mean in that context? Shouldn't the wording be of the kind The VAT identification number, if established in the Community ? Suggested wording covers business cases in Art.369l, 2nd subparagraph, (3)(b)-(c) and perfectly matches the comment. The wording allows to specify a fixed establishment in EU whereby the place of business is given in box 6 of Column D.	Not implemented	See reply to comment 6.
9.	PL	Annex I, row 5	As regards information to be included in Box number 5 („the full postal address"), please be noted that in practice of applying the non-Union MOSS scheme our tax administration has encountered problems that certain taxable persons not established in EU have included in this box addresses of their representatives, arguing that IR 815/2012 does not specify that it has to be the full postal address of their business seat. Therefore, we are of the view that the regulation could clarify that the information to be included in Box number 5 refers to the full postal address of the taxable person's seat.	Implemented	'of the company' has been added in all columns.
10.	LU	Annex I, Box D.6	To LU's understanding the comment as regards to Column D is not appropriate. Refer e.g. to Art.369l, 2nd subparagraph, (3), sub (b): "where the taxable person has established his business outside the Community but has one or more fixed establishments therein, the Member State with a fixed establishment where the taxable person indicates he will make use of this special scheme;" as well as to 369l, 2nd subparagraph, (3), sub (a): "where the taxable person is not established in the Community, the Member State in which he chooses to register;" Hence: Column D does not always correspond to MSI. The MIS can for	Implemented	The comment has bee redrafted. To be noted however that these comments are for clarification of the work in the GFV only and will not be included in the legal text.

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
			instance be defined by the full postal address of a fixed establishment, the country of place of business being outside of the EU. From a business point of view Column D is a mixture of the wordings of column A (non-Union) and B (Union).		
11.	AT	Annex I, Box E.8	We do not see a reason why the website(s) of the intermediary should not be put here, where available.	Implemented	
12.	LU	Annex I, Box C.13.1 and C.14.1	Wording of Column C and the related footnote (4) "Where there is more than one Member State from which services are supplied or intra-Community distance sales of goods are carried out, use box 13.1, 13.2, etc." is significantly different from the "MOSS version" of Council IR 815/2012. Under MOSS a taxable person had to specify all his fixed establishments whether or not services were supplied from these fixed establishments. The associated footnote read "Where there is more than one fixed establishment, use box 13.1,13.2, etc.". A fixed establishment from which no service is supplied will not be part anymore of the taxable person's registration data. Is this change intended? If so, why? Any objective reason behind? Note that under current MOSS all fixed establishment had to be specified in the registration data in order to verify that the identifier was not already used as a MOSS registration number within the EU. Refer to MOSS functional specification, version 1.17, section 6.2.1.1.2.2.2., page	Implemented	See new drafting.

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
			45: ”The MSID must use the List of Fixed Establishment Registrations to check if a Fixed Establishment is currently registered to use the special scheme: the MSID is not allowed to register the NETP if one of his Fixed Establishments is registered in another MS.”. To LU’s understanding abandoning that check is not justified, especially when considering the wording of Art. 369a(2.), 2nd subparagraph of VAT DIR (“Where a taxable person has not established his business in the Community, but has more than one fixed establishment therein, the Member State of identification shall be the Member State with a fixed establishment where that taxable person indicates that he will make use of this special scheme. The taxable person shall be bound by this decision for the calendar year concerned and the two calendar years following.”). How will unicity of the MSI otherwise be checked/guaranteed? Given that a taxable person established within the EU can register to the Import scheme LU wonders why the corresponding box in Column D is empty. Shouldn’t the same checks as for the Union scheme be performed in the business scenario of Art. 369l, 2nd paragraph, point (3), sub (b) of VAT DIR “where the taxable person has established his business outside the Community but has one or more fixed establishments therein, the Member State with a fixed establishment where the taxable person indicates he will make use of this special scheme;”. The constraint of unicity of MSI requires in that business scenario to have all fixed establishment identifiers within the EU to verify that none of the latter identifiers have been used to get an IOSS number, that is are listed on an IOSS registration form under box 2a. The same hold for the business scenario in Art. 369l, 2nd paragraph, point (3), sub (c) of VAT DIR “where the taxable person has established his business in a Member State, that Member State;”.		

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
			As regards to the intermediary, Column E: How can unicity of MSI be checked if the fixed establishment identifiers are not provided upon registration? To LU's understanding the unicity of an MSI requested by Art. 369l, which is at the heart of the OSS registration and collection mechanism, guarantee that legal provision of Art. 369l, 2nd paragraph, point (3), sub (e) of VAT DIR ("where the intermediary has established his business outside the Community but has one or more fixed establishments therein, the Member State with a fixed establishment where the intermediary indicates he will make use of this special scheme.") is fulfilled?		
13.	AT	Annex I, Box B.13.1	The taxable person should include all fixed establishments in the EU irrespective of whether services are supplied from that fixed establishment at the moment of registration to the MOSS. Again, all VAT IDs are necessary to check a potential quarantine. B.13.1 should therefore say: "Individual VAT identification number(s) or if not available, tax reference number(s) allocated by the Member State(s) in which the taxable person has a fixed establishment(s) other than in the Member State of identification from which services are supplied or by the Member State(s) from which the taxable person carries out the dispatch or transport of intra-Community distance sales of goods by the taxable person begins." The footnote needs to be adapted accordingly.	Implemented	See new drafting.

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
14.	AT	Annex I, Box E.13.1	The information necessary in B.13.1 should also be necessary here. The VAT IDs are necessary to do a quarantine check. Otherwise, a Third country company with different establishments in the EU could, for instance, once excluded in one MSI (because of persistent failure to comply) register in another MSI. Furthermore, there should be a distinction between establishment-MSs and departure-MSs.	Implemented	See text added.
15.	AT	Annex I, Box E.14.1	The information necessary in B.14.1 should also be necessary here.	Implemented	See text added in this box.
16.	LU	Annex I, Box C.15.1	These VAT IDs were provided for control purposes. According to functional specifications of MOSS, version 1.17, section 6.2.1.1.2.2.2. Check Not Already Registered : "The MSID must use the List of Other MS NETP Registrations to check if the NETP is currently registered to use the special scheme under one of these identifiers" and related footnote "Note that it would not be legal for the NETP to have registered for the Union Scheme with such an identifier as the Union Scheme requires the NETP to have a fixed establishment in the MSID. We include the validation as it can uncover an inconsistency in the registration.". Why should that reasoning not be valid anymore? Given a taxable person established in EU can register to IOSS should the identifiers not be provided for control purposes in IOSS as well? The reason would be the same as the one listed above for MOSS.	To be discussed	

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
17.	AT	Annex I, Box C.15.1	This information should remain (necessary to do a quarantine check).	Not implemented	Depends on the decision on whether or not the quarantine period is kept. Most MS agreed to remove it.
18.	LU	Annex I, Box D.17	Instead of footnote (8) being "This cannot be prior to the date of registration onto the scheme." Shouldn't the wording be "The date of commencement of using the scheme is identical to the date in column D, box 19". Suggested wording is perfectly in line with Art. 57d(2.) stating "[…] that the special scheme shall apply as from the day the taxable person or intermediary has been allocated the individual VAT identification number […]".	Implemented	The wording suggested by LU is more precise.
19.	LU	Annex I, Box E.17	The information is naturally redundant with box 19 as for IOSS there is no retroactive registration as under Union and non-Unions scheme [Art. 57d(1.), 2nd sub-paragraph]! Refer to previous comment. Box 17 should nevertheless be foreseen to provide a certain symmetry of registration information amongst Union, non-Union and IOSS. Simplifies IT implementation. Moreover the information makes perfectly sense from a business point of view. The date of commencement cannot be after either (Art. 57d(2.) of amended IR 282/2011). Comment does not make any sense.	Implemented	The text of the comment has been amended.
20.	LU	Annex I, Box D.20	Given that a taxable person established in the Community can register to IOSS, why is the indicator of whether such a taxable person is a VAT group not foreseen in IOSS?	To be discussed	This could only be relevant if the taxable person is established in the EU.

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
21.	LU	Annex I, Box E.21	As an intermediary could besides his action as an intermediary on behalf of a taxable person and be registered at the same time as a taxable person in one of the three schemes should there not be a similar information to the ones in columns B, C and D in column E?	Implemented	Added in box E.21
22.	LU	Annex I	Format is acceptable and fulfils requirements: IM or IN clearly identifies the IOSS scheme and distinguishes taxpayer and intermediary, ISO 3 code allows to specify MSI. Sole uncertainty: difficult to evaluate if the 6 digits yyyyy are sufficient as the 6 digits determine the number of possible IDs. Experience will show. A solution might be to allow for yyyyy not only digits but also 26 letters. That significantly raises the number of possible combinations for an IOSS number.	To be discussed	See also suggestion of AT to add a role to the normal VAT identification number of an intermediary instead of creating a new type of number.
23.	PL	Annex I	Do you agree on the formats proposed? Please be advised that we agree on the proposed formats of IOSS VAT identification number and Intermediary registration number.	To be discussed	See comment above.
24.	AT	Annex II	In para. 3 “for the use of the Import scheme” should be replaced by “to act as such”.	Implemented	
25.	PL	Annex III	Do you agree with the suggested way forward? Please be noted that we support the idea of creation a separate part 2(c) in the VAT return to include the distance sales of goods dispatched or transported from Member States other than the MSI. Furthermore, we are of the view that it would be reasonable to make a distinction between supplies of goods and supplies of services in the VAT return under the Union scheme. Such a distinction would facilitate data analysis.	Implemented	This is taken into account in REV 2 of the document

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
26.	LU	Annex III, Box C.2a	Footnotes (4) and (5) are redundant. Why not refer to a single footnote? In case of footnote (8) redundancy is e.g. avoided.	Implemented	Footnote 5 is removed. Remaining footnotes still to be renumbered in the table.
27.	AT	Annex III, Part 2	Services coming from establishments outside the EU should fall under Part 2a. Furthermore, there should be a distinction between supplies of goods and supplies of services (not only where the establishment/place of departure is not in the MSI)	Implemented	See new wording in box 11.1
28.	AT	Annex III, C/D.9.1	There are multiple reduced rates possible per MS.	Not implemented	This is already the case for the current MOSS and is implemented as such by the MS concerned on the basis of the current wording of the Annex.
29.	LU	Annex III, Box C.21.1	Is the word “establishments” appropriate regards to supplies of goods dispatched or transported from Member State other than the Member State of identification? The word made perfectly sense within the context of MOSS but not necessarily within the context of OSS.	Implemented	'establishments' deleted.
30.	LU	Annex III, Box C.22.1	Footnotes (2) and (3) hold the same information/are redundant as the return period for Union and non-Union scheme is a calendar quarter. Why not refer to a single footnote? In case of footnote (8) redundancy is e.g. avoided.	Implemented	Footnote 3 is removed. Remaining footnotes still to be renumbered in the table.
31.	LU	Annex III, Row 27.1	Footnotes (9) and (10) hold the same information/are redundant. Why not refer to a single footnote? In case of footnote (8) redundancy is e.g. avoided	Not implemented	The text of these footnotes is not identical
32.	LU	Annex III, Footnotes 9 and 10	What does the wording imply? The wording could be read as follows: If a taxable person declares 200€ for AT he can only correct up to -200€ for AT. However the taxable person cannot be prevented to declare a correction of -400€ according to the VAT DIR. To LU’s understanding it	Not implemented	The text means that compensation in the VAT return is limited to the amount of VAT on new supplies per MSC. But it does not mean that

Nr	MS	Article / Annex	Comment	TAXUD position	TAXUD comment
			shall be possible that a taxable person declares no supplies of goods and services for a MSC, but nevertheless corrects a previously submitted VAT return by -400€. These -400€ trigger a reimbursement process as specified in Art. 63, 2nd paragraph, of amended Council IR 282/2011. The wording should hence be reviewed.		there is not refund process which is triggered if the negative corrections exceed the new payments in an MSC.
33.	AT	Annex III, Footnotes 9 and 10	The footnotes need to be rephrased. They seem to say that negative amounts from corrections in a MS can only be taken into account to the extent that there is a payment obligation in that MS. We assume this is not the intended result.	Not implemented	See comment above. The reference to box 26 have been replaced by box 27 in both footnotes.
34.	IT	Annex III	Returned goods: It would be very useful for risk analysis purposes to include a mere information box on the total value of returned goods per MS of destination in the Import-Scheme. Under the agreed rules, the total amount of imports is recorded in the customs procedure with a view to compare it with the amount declared via the OSS. The efficiency of such a cross-checking mechanism would significantly be reduced if the amount of imports would always be too high compared to the amounts declared via the IOSS if returned goods only reduce the latter. An alternative would be to include returned goods in the information gathered in the customs procedure relating to the import.	To be discussed	