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Editorial

Why an EU VAT Agency Should Be Seriously Considered

Joachim Englisch*

1 The VAT expert group proposal: A new decentralized agency

In December 2024, the VAT Expert Group ('VEG') set up by the EU Commission presented its report on 'VAT after ViDA'.[1] Among its many recommendations for a future VAT system, the VEG proposed the creation of an EU VAT Agency from 2032 onwards.[2] According to the report, this agency's primary task would be 'to support uniform application and interpretation of VAT rules' by acting 'as a central coordinating body, potentially assisting Member States with VAT collection, resolving cross-border disputes, and promoting harmonization'.[3] Acknowledging the political sensitivity of Member States with respect to the autonomy of their tax administrations, and eventual reservations that they might therefore have regarding the creation of a Union agency with administrative competences, the VEG has proposed a staged approach.[4] The EU VAT Agency could initially serve as a mere point of contact for national tax administrations, taxable persons and other stakeholders to access VAT-relevant information. In a second step, the agency would then facilitate the sharing of tax-relevant information among Member States.[5] Ultimately, the VAT Agency 'could help ensure the harmonization of VAT policies, to facilitate an efficient VAT collection, to help to solve cross-border disputes and to reduce VAT evasion and fraud'.[6]

In the institutional framework of the EU, the new body proposed by the VEG is commonly referred to as EU decentralized agency.[7] The official terminology is somewhat misleading, because the element of 'decentralization' merely refers to the fact that the agency will often not have its seat in Brussels. In terms of operational activities, EU agencies typically add an element of centralization to the implementation of EU policies in their respective field, due to their coordinating role and, possibly, their power to adopt 'soft law' guidance or even legally binding acts. Currently, thirty-five such agencies already exist.[8] While they have diverse management structures, functions, and powers,[9] they all have in common that they have their own legal personalities, they are set up through Union legislation for an indefinite period, and they are distinct from the EU institutions.[10] EU agencies support cooperation between the EU and national administrations by pooling technical and specialist expertise from both the EU institutions and national authorities.[11] This is also reflected in their governance structure,[12] which normally gives Member States decisive influence over strategies and priorities through a management board.[13]

2 Data processing and analysis as key justification

As the CJEU has clarified in its *European Network and Information Security Agency* ('ENISA') ruling, the Union

* Dr, Prof. for Public Law and Tax Law at Münster University, Germany. Email: joachim.englisch@uni-muenster.de.

1 *See* VAT Expert Group, *'VAT after ViDA' – Reflections on the Future of VAT*, Report dated 2 Dec. 2024 (accessible at https://circabc.europa.eu/ui/group/cb1eaff7-eedd-413d-ab88-94f761f9773b/library/9e4b55dd-b03b-4274-bb36-20ef402a521d?p=1&n=10&sort=modified_DESC (accessed 26 May 2025)).

2 *See ibid.*, at 8.

3 *See ibid.*, at 4.

4 *See ibid.*, at 22.

5 Regarding a proposal for a staged approach that would immediately task an EU Tax Agency with the facilitation of EoI (regarding both, direct and indirect taxes) already in a first step, *see* Edoardo Traversa & Giuseppe Marino, *A-t-on besoin d'une agence fiscale européenne? Genèse et contours d'une idée en devenir*, Revue européenne et internationale de droit fiscal, 443 (447–448) (2024).

6 *See* VAT Expert Group, *supra* n. 1, at 22.

7 *See* European Parliament/Council of the EU/European Commission, *Joint Statement and Common Approach on Decentralized Agencies* (2012) (accessible at https://european-union.europa.eu/document/download/d4199ff4-1e3d-45e6-af7e-90cf1a7b10bc_en?filename=joint_statement_on_decentralised_agencies_en.pdf (accessed 26 May 2025)).

8 For an overview, *see* https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies_en?f%5B0%5D=oe_organisation_eu_type%3Ahttp%3A//publications.europa.eu/resource/authority/corporate-body-classification/AGENCY_DEC (accessed 26 May 2025).

9 For an overview, *see* European Court of Auditors, *Special Report: Future of EU Agencies* 9 et seq. (2020).

10 *See* Merijn Chamon, *EU Agencies: Legal and Political Limits to the Transformation of the EU Administration* 9 (2016).

11 *See* https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/types-institutions-and-bodies_en (accessed 26 May 2025).

12 *See* Joint Statement and Common Approach, *supra* n. 7, at 5–6.

13 *See* Chamon, *supra* n. 10, at 50.

legislator can rely on the internal market competence of Article 114 TFEU to establish an EU agency when the latter is tasked with 'contributing to the implementation of a process of harmonization […] by facilitating] the uniform implementation and application of acts based on that provision'.[14] In addition, the CJEU requires a sufficiently close link of the agency to the subject-matter of the respective field of harmonized law; this can be assumed, in particular, 'where the Community body thus established provides services to national authorities or operators which affect the homogenous implementation of harmonizing instruments'.[15] By analogy, the establishment of an EU VAT Agency could thus be based on Article 113 TFEU under the same conditions, because this competence clause pursues the same objective of establishing the internal market, namely in the specific context of harmonization concerning indirect taxes. As a caveat, the principles of subsidiarity and proportionality that are enshrined in Article 5 TEU would have to be observed.

Against this background, the staged approach envisaged by the VEG for establishing an EU VAT Agency might not be fully feasible. The idea to initially designate the agency only as a point of contact for the dissemination of VAT-relevant information might not meet the above requirements. It seems disproportionate to create a separate legal entity with its own budget and management structure for a task that is not very resource intensive and that is already carried out to a considerable extent[16] by the Commission services themselves.[17] Admittedly, several EU agencies exist whose main responsibility consists in information gathering and dissemination. However, they typically perform this task in order to provide empirically and scientifically reliable data and advice in support of policy decisions to be made either by EU institutions or by Member States in a particular field of harmonization.[18] By contrast, it is hard to argue in light of the already ongoing activities of Commission services that it is necessary to create a distinct Union body as a service unit for stakeholders, if this entity merely were to collect and disseminate information that requires no further analysis and processing.

At first sight, similar objections could even be raised with respect to the second stage of the evolution of an EU VAT Agency competences as envisaged by the VEG, i.e., the facilitation of an exchange of tax-relevant information among Member States. The Commission services already engage in this exercise, too, so that one might wonder what is to be gained by transferring this task to an independent agency. For example, the Commission supports the Eurofisc network that has been set up for the swift exchange, processing and analysis of VAT-relevant information between Member States (i.a., through Transaction Network Analysis tools) with the necessary technical and logistical support.[19] It furthermore hosts the central electronic system of payment information ('CESOP')[20] that enables, through the Eurofisc network, the exchange of information on cross-border payments that is collected from payment service providers since 2024 (based on Article 243b VAT Directive). The Commission also operates the VAT Information Exchange System ('VIES') interface that facilitates the exchange of information relating to recapitulative statements and VAT registration that is stored in national databases.

However, in light of recent and future developments, it is precisely the process of collection, processing, and analysis of VAT-relevant data, and the need for automated risk management that relies on such information, that provides the strongest argument for the creation of an EU VAT Agency by the beginning of the next decade. As of July 2030, near-real time digital reporting requirements for cross-border B2B transactions will be implemented to better detect and fight VAT fraud, based on the new Chapter 6 of Title XI of the reformed VAT Directive.[21] In particular, electronic invoice data referring to intra-Community supplies and (unless the respective Member States has opted out) also the corresponding data on intra-Community acquisitions of goods must be submitted electronically by taxable persons on a transactional basis. To manage the exchange of this vast amount of data and its use for national VAT controls, a new 'Central VIES' database will be set up and maintained by the Commission.[22] It is furthermore foreseen to process CESOP information with the data in this new system, and to give authorized Member States officials access to the aggregate data pool through the Eurofisc network, including for the purpose of its Transaction Network Analysis.[23] The cross-border payment data of CESOP, in turn, will likely in itself gain importance as a

[14] CJEU, 2 May 2006, C-217/04, *ENISA*, ECLI:EU:C:2006:279, para. 44. *See also* the Opinion of AG Jääskinen, 12 Sep. 2013, C-270/12, UK *v.* Parliament and Council, ECLI:EU:C:2013:562, paras 32–34. Several EU agencies have indeed been established on this legal basis, *see* Chamon, *supra* n. 10, at 142.

[15] CJEU, C-217/04, *supra* n. 14, para. 45.

[16] *See* the landing page, https://taxation-customs.ec.europa.eu/taxation/vat_en (accessed 26 May 2025) and the more topical links listed there. In particular, the Commission hosts several databases with information about non-harmonized elements of national VAT laws and procedure, such as the Taxes in Europe Database and the Tax Information Communication Database.

[17] *See also* European Court of Auditors, *supra* n. 9, at 12: 'Entrusting tasks to an agency should be the best option, compared to having them done […] by the Commission itself'.

[18] *See* Elena Madalina Busuioc, *The Accountability of European Agencies: Legal Provisions and Ongoing Practices*, 26–27 (2010).

[19] *See* Art. 35 of Regulation (EU) 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud.

[20] *See* Art. 24a of Regulation (EU) 904/2010.

[21] *See* Art. 5 of Council Directive (EU) 2025/516, of 11 Mar. 2025, amending Directive 2006/112/EC as regards VAT rules for the digital age ('ViDA').

[22] *See* Council Regulation (EU) 2025/517, of 11 Mar. 2025, amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age.

[23] *See* recital (14) of the preamble to Council Regulation (EU) 2025/517; *see also* the corresponding Commission proposal COM(2022) 703 final, of 8 Dec. 2022, at 3.

crucial element of VAT control vis-à-vis taxable persons who are not established in the EU, especially in the ever-growing e-commerce and digital services segments of the economy.

While the Commission will thus assume responsibility for the set-up and management of a central data hub, the main IT infrastructure would still be operated at national level, which also implies that technical specifications for the collection of the relevant information would to a certain degree still be determined by Member States' tax authorities. Moreover, it would be their responsibility to carry out the necessary big data analytics and identify transactions or trade patterns that indicate non-compliance or fraud, notwithstanding the centralized Eurofisc control mechanisms. This future scenario could result in a fragmentation of reporting and validation standards and in divergent control practices,[24] as well as inefficient investments and potentially also insufficient capacities at national level.

An EU VAT Agency could remedy such deficiencies through better coordination at Union level.[25] Beyond managing a centralized data warehouse system and coordinating data sharing between Member States, it could establish common standards and tools for data validation and reporting. The operation of the risk management analysis could equally be centralized, and agency experts and seconded Member State officials could collaborate in detecting signals of fraud or non-compliance that could then immediately be addressed by the affected Member States. This would also suggest to modify the operational modalities of the Eurofisc network and integrate it into the EU VAT Agency. Moreover, the procurement of central IT infrastructure at the level of an EU VAT Agency would be more cost-efficient due to economies of scale, and the risk of insufficient capacities at national level would be greatly reduced.

With such a mandate, the EU VAT Agency would pool technical resources and specialist expertise, and provide a platform for close interaction between EU and Member State officials that would go significantly beyond the mere coordinating role of the Commission as it is currently envisaged. Its establishment would thereby greatly facilitate the implementation of the common system of VAT and could thus be based on Article 113 TFEU without any doubts as to its proportionality. Moreover, the same effect could obviously not be achieved through similar but fragmented measures at national level, but instead it requires the creation of a body of Union law, so that the subsidiarity principle would be respected.

These conclusions are corroborated by the recent Commission proposal to create a Central EU Customs Data Hub to supervise trade flows and detect non-compliant trade.[26] In the view of the Commission, an EU Customs Authority that has been included in the same legislative proposal[27] would be 'the most efficient option' to manage this data hub.[28] The reasons given by the Commission for this assessment resonate with the arguments presented above for the creation of an EU VAT Agency.[29]

To round off its competences, and in line with the proposal for a Customs Authority, the EU VAT Agency could also be tasked with governing and organizing the exchange of information of relevant data with third countries, based on cooperation agreements concluded between the latter and the EU.

3 Additional administrative competences of an EU VAT agency

In addition, or as a gradual development of a follow-up competence, the EU VAT Agency could be tasked with facilitating, coordinating or even organizing certain forms of administrative cooperation between Member States that are currently under-utilized due to technical and capacity constraints or due to a lack of legal certainty as to the proper procedures.[30] In particular, the agency could provide logistic and technical support, possibly including translation services, as well as legal guidance for joint administrative enquiries ('joint audits') and simultaneous controls[31] that have their legal basis in Regulation (EU) 904/2010. Such an approach could find inspiration in corresponding responsibilities and activities of the 'Steering Committee' that is in the process of being set up in Brazil to administer the recently reformed subnational VAT.[32] If greater political ambition were to permit this, European inspectors directly affiliated with the EU VAT Agency could participate in joint audits, while national tax administrations would still select audit cases and decide how

[24] *See also* in the context of exchange of information for direct tax purposes, European Court of Auditors, *Special Report: Exchanging Tax Information in the EU: Solid Foundation, Cracks in the Implementation* (2021); and Traversa & Marino, *supra* n. 5, at 443 (446).

[25] The need for better coordination of anti-fraud measures is also emphasized in the report delivered to the Commission by Ecorys et al., *Study Supporting the Evaluation of Administrative Cooperation and Combating Fraud in the Field of Value-Added Tax* 11 (Final Report 18 May 2023).

[26] *See* Commission proposal for a Regulation establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013, of 17 May 2023, COM (2023) 258 final.

[27] For an extensive analysis of the proposed EU Customs Authority, *see also* Timothy Lyons, *The Proposed EU Customs Authority: A New Agency in a new System*, 19 Global Trade & Cust. J., 362 (2024), doi: 10.54648/GTCJ2024049.

[28] *See* Commission proposal, *supra* n. 26, at 11.

[29] *See ibid.*, at 10; *see also* the preceding recommendations in the Report of the Wise Persons Group on the Reform of the EU Customs Union, Mar. 2022.

[30] For an overview of current shortcomings and obstacles, *see* Ecorys et al., *supra* n. 25, at 43 et seq.

[31] *See* Traversa & Marino, *supra* n. 5, at 443 (448).

[32] *See* Melina Rocha, *Tax Reform in Brazil and the Unique Federal Arrangement to Implement Its Dual-VAT* (Kluwer International Tax Blog 26 Feb. 2024) (https://kluwertaxblog.com/2024/02/26/tax-reform-in-brazil-and-the-unique-federal-arrangement-to-implement-its-dual-vat/ (accessed 26 May 2025)).

to act upon the audit results. Such a model could draw on the experience of the US Multistate Tax Commission Joint Audit Program.[33] Alternatively, it could also be the EU VAT Agency itself that suggests or initiates joint audits. While this would apparently go beyond the powers that are usually assigned to EU agencies,[34] such a competence would be a logical extension of the EU VAT Agency's task to analyse compliance and fraud risks based on the invoice data that will be submitted under the digital reporting regime.

In a similar vein, the EU VAT Agency could support novel forms of administrative cooperation such as multilateral cooperative compliance programs,[35] through technical and logistical support as well as guidelines and standards. This kind of early tax certainty mechanism is currently offered by several Member States' tax administrations in the context of international direct taxation,[36] and a parallel regime for VAT could build on this experience. In addition or alternatively, the pilot project for cross-border VAT rulings[37] could be expanded and coordinated by the EU VAT Agency.

It could moreover make sense to shift the administration of the One-Stop-Shop ('OSS') for taxable persons who are not established in the Union[38] to the level of the EU VAT Agency, if the latter is granted access to CESOP (payment flow) data. This would allow the agency to carry out an effective tax risk management. The ensuing synergies should render efforts to police and encourage VAT compliance of non-established traders more effective and efficient, especially in the platform economy.

4 Potential normative role of an EU VAT agency

Besides carrying out administrative tasks, the EU VAT Agency could also make a normative contribution to the implementation of the common system of harmonized VAT. In particular, it could adopt legally binding interpretations of the VAT Directive or of certain aspects thereof, as an alternative to the adoption of implementing acts by the Commission with comitology. The Commission proposed the latter approach based on Article 291 (2), (3) TFEU in 2020,[39] which would have transformed the VAT Committee into a comitology committee. However, its proposal was met with considerable reservations by Member States and it is currently no longer pursued. Apparently, Member States are – unfortunately – not ready to grant the Commission implementing powers that would only require the support of a qualified majority of Member States[40] for the legally binding concretization of EU VAT legislation. Endowing the EU VAT Agency with interpretative competences could alleviate eventual concerns of granting too much power to the Commission, due to a greater flexibility in terms of voting modalities. Initially, a higher, super-qualified majority for the adoption of an interpretative act by the agency's board – in which both, the Commission and Member States would be represented – could be required, which would still be a significant step forward compared to the status quo of a unanimous vote in Council.[41]

Primary Union law would not stand in the way of granting the EU VAT Agency such interpretative powers. The CJEU has clarified that agencies may, in principle, also adopt acts of general application.[42] While the so-called Meroni doctrine[43] prohibits the delegation of discretionary powers to agencies[44] in order to safeguard the institutional balance of powers established by the European Treaties, it does not relate to the individual or general nature of the acts which the agencies are authorized to adopt.[45] It merely requires that the agency's powers are precisely delineated[46] and do not involve policy choices or a margin of political judgment.[47] This

33 For an overview of the MTC audit program, *see* Michele Borens & Cat Baron, *Managing the Growing MTC Audit Program*, 112 Tax Notes State, 913 (2024); *see also* the program's website at https://www.mtc.gov/audit/ (accessed 26 May 2025).

34 *See* Chamon, *supra* n. 10, at 43. However, the European Labour Authority may at least 'suggest' concerted and joint inspections, on its own initiative, based on Art. 8 of Regulation (EU) 2019/1149.

35 For an extensive analysis of this dispute prevention mechanism, *see* Jeffrey Owens & Anastasiya Piakarskaya & Timoleon Angelos Christodoulopoulos & Olena Sushkova, *The Use of Cooperative Compliance for MinimizingCross-Border VAT/GST Disputes*, 16 World Tax J., 561 (2024).

36 *See* EU Commission, *Guidelines European Trust and Cooperation Approach (ETACA)* (2021) (accessible at https://taxation-customs.ec.europa.eu/eu-cooperative-compliance-programme/european-trust-and-cooperation-approach-etaca-pilot-project-mnes_en (accessed 26 May 2025)); *see also* Ronald Russo & Joost Engelmoer & Mario H. Martini, *Cooperative Compliance in the European Union: An Introduction to the European Trust and Cooperation Approach*, 76 Bull. Int'l Tax'n, 83 (2022); Timoleon Angelos Christodoulopoulos & Jeffrey Owens & Jonathan Leigh-Pemberton & Daniel Simon Dallhammer a& Richard Stern, *From National Cooperative Compliance to Project-Related Multilateral Cooperative Compliance*, 17 World Tax J. 2/2025, at 4.2.

37 *See* Commission information notice, *Test Case for VAT Ruling Requests Relating to Cross-Border Situations* (Update Jul. 2024) (accessible at https://taxation-customs.ec.europa.eu/document/download/924667d0-84c2-41b4-a23d-9dba600b2576_en?filename=cbr_info-notice-to-the-public_en.pdf (accessed 26 May 2025)); *see also* Mojca Bartol Lesar, *EU VAT Cross-Border Rulings*, 30 IVM (2019), at 247.

38 *See* Arts 358a et seq. VAT-D.

39 *See* Commission proposal for a Council Directive amending Directive 2006/112/EC as regards conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of that Directive, of 18 Dec. 2020, COM (2020) 749 final.

40 Compare, Art. 5 (1) to (4) of Regulation (EU) No 182/2011, of 16 Feb. 2011, laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

41 Compare, Art. 397 VAT-D.

42 Compare, CJEU, 22 Jan. 2014, C-270/12, *ESMA*, ECLI:EU:C:2014:18, paras 65 and 105.

43 The term '*Meroni* doctrine' refers to the precedent established by CJEU 13 Jun. 1958, 9/56, Meroni *v.* High Authority, ECLI:EU:C:1958:7.

44 *See* Chamon, *supra* n. 10, at 191–192, with further references.

45 *See* CJEU, 18 Jun. 2024, C-551/22 P, Commission *v.* SRB, ECLI:EU:C:2024:520, paras 72–73.

46 *See ibid.*, paras 72–73.

47 *See* CJEU, 2 Sep. 2021, C-718/18, Commission *v.* Germany, ECLI:EU:C:2021:662, para. 131.

requirement would certainly be met if the EU VAT Agency were merely tasked with interpreting definitions and concepts of the VAT-Directive, because the latter provides a full and relatively detailed legal framework of the common system of VAT and its interpretation does therefore not leave room for significant policy choices.

The EU VAT Agency should also act as a guardian of taxpayer rights in the processing and use of the data that the agency would store and manage in the above mentioned data hub. As a caveat, the EU VAT Agency could not, in itself, adopt a legally binding framework for the protection of taxpayer rights, because this would involve value judgments and trade-offs with a degree of political discretion that could not lawfully be conferred upon an agency under the *Meroni* doctrine. However, the EU VAT Agency could be tasked with policing the adherence to legal standards once they have been established by Council, develop guidance for their concretization and make recommendations for eventual amendments.

Theoretically, and by reasoning a maiore ad minus, the EU VAT Agency could also be authorized to issue binding rulings upon request in individual cases[48] concerning transactions with a cross-border dimension, so as to avoid double (non-) taxation and provide early legal certainty. However, since such rulings would typically be context-specific and issued with respect to the particular facts and circumstances of the case in doubt, and would moreover immediately concern and be binding for only two or some, but not for all Member States' tax administrations, it would seem more in line with proportionality requirements to leave the responsibility for their issuance with the affected Member States. As mentioned above, the EU VAT Agency could nevertheless greatly facilitate this early certainty mechanism of bilateral or multilateral rulings through coordination, technical support, guidance and soft law standards.

5 A centre of expertise and networking

Apart from the exercise of the competences and powers conferred to it, the EU VAT Agency would also provide an institutional platform for the collaboration and networking among experts from national tax administrations, and between them and Commission services and specialized agency staff.[49] It could, in particular, develop and deliver programs of capacity building, e.g., through training, organizing an exchange of staff between Member States, establishing uniform performance measurement standards, and knowledge sharing and dissemination. These kind of activities are currently organized through the Fiscalis program,[50] and they could be partially transferred to the agency, at least to the extent that they are VAT-related. The EU VAT Agency could also provide a forum for Member States that are interested in streamlining their national reporting, proof of transport, data validation, and similar procedural standards on a voluntary basis.

6 Eventual evolution into an EU agency for tax cooperation

Finally, the EU VAT Agency could form the nucleus of an EU Agency for Tax Cooperation. This body would have more comprehensive competences; it would facilitate the exchange of information and provide a platform for administrative cooperation also in the fields of excise taxation and direct taxation. In early 2024, more than 100 tax academics have signed an open letter to the then Tax Commissioner *Gentiloni* in which they were calling for the creation of such an EU agency.[51] This was not least also a reaction to a special report by the European Court of Auditors,[52] which found that the implementation of the Directive on administrative cooperation in the field of taxation ('DAC')[53] by Member States suffered from similar shortcomings and inefficiencies as those described above for the area of VAT.

However, in this regard a staged approach might indeed be appropriate for technical, legal, and political reasons. In excise taxation, a system of real time reporting (on the movement of excise goods) that fulfils an anti-fraud purpose similar to the one of the future VAT digital reporting requirements is already in place,[54] and a system of exchange of excise data about authorized economic operators ('SEED') exists that parallels the above-mentioned VIES interface in VAT. Moreover, the harmonization of both, excise taxes and VAT, has a common legal basis in Article 113 TFEU. A joint EU agency for VAT and excise duties could therefore not only generate significant synergies from the start,[55] but combined EU legislation to this effect would not raise any issues under primary Union law.

By contrast, the (in particular: automatic) exchange of information under the DAC is less concerned with identifying fraudulent trade flows and patterns in the transmitted data itself, but instead it predominantly seeks to match the exchanged information with the one submitted by the relevant taxpayers in their personal or corporate income tax declarations, in order to detect the concealment or under-reporting of income vis-à-vis national tax authorities. This implies a lesser need for

[48] *See also* in general terms, EU Commission, *Draft Interinstitutional Agreement on the Operating Framework for the European Regulatory Agencies*, of 25 Feb. 2005, COM(2005) 59 final, at 5.

[49] Compare European Court of Auditors, *supra* n. 9, at 12.

[50] *See* Regulation (EU) 2021/847, of 20 May 2021, establishing the 'Fiscalis' programme for cooperation in the field of taxation and repealing Regulation (EU) No 1286/2013.

[51] *See* Elodie Lamer, *Stakeholders Push for Tighter Implementation of EU Tax Rules,* 115 Tax Notes Int'l, 928 (2024).

[52] Compare, European Court of Auditors, *supra* n. 24. *See* furthermore, regarding 'DAC6' specifically, European Court of Auditors, *Combatting Harmful Tax Regimes and Corporate Tax Avoidance* 24 et seq. (2024).

[53] Council Directive 2011/16/EU, of 15 Feb. 2011, on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC; and its subsequent amendments ('DAC2' to 'DAC8').

[54] Excise Movement and Control System (EMCS), as prescribed in Arts 20 et seq. of Council Directive (EU) 2020/262 laying down the general arrangements for excise duty (recast).

[55] *See also* Traversa & Marino, *supra* n. 5, at 443 (448).

risk management operations at agency level, and a somewhat smaller potential for efficiency gains through centralization, even though significant benefits could still be attained through an improved framework for the coordination of administrative cooperation. More importantly, EU agencies are routinely established by way of a regulation. However, the harmonization of direct taxes, and the corresponding provisions of the DAC in particular, can normally only be based on Article 115 TFEU, which merely authorizes Council to issue directives. Pursuant to Article 288 TFEU, directives are exclusively addressed at Member States. It can be inferred from settled CJEU case law, though, that the creation of an EU agency constitutes a measure that does not address individual Member States[56]; hence a directive would not be a suitable legal instrument to this effect.[57] Article 115 TFEU could therefore arguably not be relied on to create an EU Tax Agency with competences in the field of direct taxation. Such competences would moreover also not be merely ancillary or incidental to the ones in the area of VAT (and, eventually, excise taxation) and could therefore not be based on Article 113 TFEU, either.[58] While a special Union competence for the support of administrative cooperation through capacity building exists with Article 2 (6), 6 (g), 197 (2) TFEU, it hardly allows for the creation of an EU agency, not least because Member States cannot be *obliged* to cooperate based on this provision. Finally, it is not entirely clear whether the implied powers clause of Article 352 TFEU could instead be invoked as a legal basis for an EU Tax Agency covering also operational measures concerning direct taxes. At least, this would very likely constitute an additional political roadblock in Council negotiations.

This could suggest to transform an EU VAT Agency into an EU Tax Agency with more comprehensive operational competences, i.e., also with respect to direct taxes, only in a second step, after Member States have come to appreciate the benefits of the agency approach in the field of VAT and, possibly, excise taxation.

7 Conclusion

The creation of an EU VAT Agency would require significant political efforts, considering the sensitivity of Member States with respect to the administration of their tax systems. However, the rewards would be significant, and Member States' tax sovereignty would hardly be at stake: The EU VAT Agency would implement rather than make the relevant tax policy choices. Moreover, it would still be the Member States that would be in the driving seat of the agency, due to its unique governance structure. A 'VAT after ViDA' should therefore indeed be a VAT with an EU VAT Agency!

56 *See* CJEU, C-217/04, *supra* n. 14, para. 44; CJEU, C-270/12, *supra* n. 42, para. 107.

57 For a different opinion regarding the possibility to create an EU agency through a directive, *see* Chamon, *supra* n. 10, at 155, who nevertheless acknowledges that this would entail a more cumbersome, complex, and limited implementation.

58 Compare the general CJEU case law on measures with several components, e.g., CJEU, 6 Sep. 2012, C-490/10, *Parliament / Council*, ECLI:EU:C:2012:525, paras 44 et seq., with further references.