



Republika e Kosovës
Republika Kosova - Republic of Kosovo

Qeveria - Vlada - Government

Zyra e Kryeministrit
Kancelarija Premijera - Office of the Prime Minister

Zyra Ligjore - Pravna Kancelarija - Legal Office

REFERENCE:	___ 1261-2023
DATE:	22.08.2023
PËR/ZA/TO:	Klit Shala, Dpt. Head of the Legal Department/MFLT
CC:	Arben Krasniqi, Deputy Secretary General/OPM; Novitet Nezaj, Director of the Department of EU Law/OPM; Mentor Borovci, Director of Legal Office/OPM; Enis Spahiu, Dpt. Secretary General/ MFLT; Drinas Zeqiraj, Dpt. Head of the Division for Drafting and Harmonization of Legislation/MFLT; Vesa Janova, Senior Legal Officer/MFPT.
PËRMES/PREKO/THROUGH:	Arben Krasniqi, Dpt. Secretary General / Office of the Prime Minister; Mentor Borovci, Director of Legal Office / Office of the Prime Minister.
NGA/OD/FROM:	Labinote Kashtanjeva, Dpt. Head of the EU Legal Affairs Division/Legal Office/Office of the Prime Minister.
TEMA/SUBJEKAT/SUBJECT:	Cover Letter for the <i>Draft Law on the Administration of Tax Procedures.</i>

Dear Mr. Shala,

Based on the Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts, Regulation No. 13/2013 on Government Legal Service and Article 8 par 2.16 as well as Article 12 par 1.1 of Regulation (OPM) No. 01/2020 on Internal Organization and Systematization of Jobs in the Office of the Prime Minister, we convey to you the Legal Opinion on Compliance with EU *Acquis* for the *Draft Law on the Administration of Tax Procedures.*

Sincerely!



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LEGAL OPINION ON THE ALIGNMENT WITH EU LAW

22.08.2023

Legal Department of the Ministry of Finance, Labour and Transfers, dated 19 July 2023, based on Article 7 sub-paragraph 1.2 of Regulation No. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo and Article 13 paragraph 5 of Regulation No. 13/2013 on Government Legal Service, as well as based on Article 3 sub-paragraph 1.2 and sub-paragraph 1.3 of Regulation No. 14/2023 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries, has submitted for review to the EU Law Division in the Legal Office of the Office of the Prime Minister the *“Draft Law on the Administration of Tax Procedures”*.

1. SUBJECT

Legal opinion on Compliance of the *“Draft Law on the Administration of Tax Procedures”* with the EU *Acquis*.

2. ENCLOSED DOCUMENTS

Along with the the request from the Legal Department of the Ministry of Finance, Labour and Transfers with the EU *Acquis*, the following documents have been enclosed:

- The final draft of the *Draft law*, in 3 languages (Albanian, English and Serbian version);
- Declaration on Compliance;
- Explanatory Memorandum.

3. PREAMBLE

In accordance with Article 7 paragraph 3 of Regulation No. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo, Article 3 sub-paragraph 1.3, Article 13 paragraph 6, Article 21 paragraph 4 of Regulation No. 13/2013 on Government Legal Service and Article 30 paragraph 4 of Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts, the Division of EU Law, in the Office of the Prime Minister, based on the scope of its powers, on 22 August 2023 issues this:

4. LEGAL OPINION ON COMPLIANCE WITH EU LEGISLATION

The request for a Legal Opinion on compliance with the EU *Acquis* was sent as hard copy files on 19 July 2023, with reference number 1261. Full version of the *Draft Law* was sent in electronic copy on 31 July 2023. On 4 August 2023, preliminary comments were given regarding the scope of the *Draft Law* and its interrelationship with the EU *Acquis*. The Legal Department of the Ministry of Finance has submitted the updated Declaration of Compliance dated 18 August 2023.

5. INTRODUCTION

The purpose of this *Draft Law* is the regulation of procedures for the administration of tax obligations in the Republic of Kosovo that are within the scope of the Tax Administration of Kosovo, as well as the principles of organization and operation of TAK.¹ This *Draft Law* contains a total of 123 articles.

6. SUMMARY OF EU ACTS GOVERNING THE SCOPE OF THE DRAFT LEGISLATION

¹ Article 1 of the *Draft Law*.

Scope of the *Draft Law on the Administration of Tax Procedures* is defined by the EU *acquis*, mainly in the form of administrative cooperation, information exchange, as well as the resolution of cross-border disputes. At the primary level of EU legislation, **Treaty on the Functioning of the European Union (TFEU)**², defines the relevant provisions in the field of taxes.

Article 113 of the TFEU, defines the legislative procedure related to the approximation of legislation in the field of taxes:

The Council, by unanimity in accordance with a special legislative procedure and after consulting with the European Parliament and the Economic and Social Committee, adopts provisions for the harmonization of legislation on income taxes, excises, and other forms of direct taxation, as far as such harmonization is necessary to ensure the creation and functioning of the internal market and to avoid distortion of competition.

For more, **Article 115 of the TFEU**, stipulates:

Without prejudice to Article 114, the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issues directives for the approximation of the provisions of the legislative, regulatory and administrative acts of the Member States, which directly affect the establishment or functioning of the internal market.

Then, within the framework of the EU's secondary legislation regulating the form of administrative cooperation, information exchange, and resolution of cross-border disputes, deriving from the above-mentioned articles of TFEU, the legislative framework includes:

- I. *Council Directive 2011/16/EU of 15 February 2011 on Administrative Cooperation in the field of Taxation*,³

² Accessible at: [Versioni i Konsoliduar i Traktatit](#)

³ Accessible at: [Council Directive 2011/16/BE](#)

- The Directive on Administrative Cooperation (DAC) requires all EU Member States to share certain information with each other regarding tax matters. The exchanged information includes details about income from employment, director's compensations, life insurance products, pensions, ownership, and income from immovable properties. Through the exchange of information, the prevention of fiscal evasion and other financial crimes is the aim, making it more difficult for individuals and companies to hide their assets or income from tax authorities. The Directive has been in force since 2014 and is one of the key legislative instruments for promoting tax transparency and cooperation between EU Member States. The Directive has undergone 7 changes aimed at strengthening administrative cooperation between member states.

For more, under the Directive on Administrative Cooperation, there is also an Implementing Regulation that complements Directive 2011/16/EU:

- Commission Implementing Regulation (EU) 2015/2378 of 15 December 2015 which establishes detailed rules for the implementation of certain provisions of Directive 2011/16/EU on Administrative Cooperation in the field of Taxation;⁴

II. *Council Regulation (EU) No. 904/2010 of 7 October 2010 on Administrative Cooperation and Combating Fraud in the field of Value Added Tax;*⁵

– Council Regulation No. 904/2010 specifies the conditions under which the competent authorities in the Member States responsible for the implementation of VAT laws must cooperate with each other and with the Commission to ensure compliance with those laws. For this purpose, it defines the rules and procedures to enable the competent authorities of the Member States to cooperate and exchange with each other any information that may assist in the proper assessment of VAT, monitoring the correct implementation of VAT, particularly intra-Community transactions, and combating VAT fraud. In particular, the Regulation sets out the rules and procedures for Member States to collect and exchange such information electronically.

⁴Accessible at: [Commission Implementing Regulation \(EU\) 2015/2378 \(Consolidated version of all amendments to the Implementing Regulation\)](#)

⁵Accessible at: [Council Regulation \(EU\) No. 904/2010](#)

III. *Council Regulation (EU) No. 389/2012 of 2 May 2012 on Administrative Cooperation in the Field of Excise Duties;*⁶

This Regulation determines the conditions under which the competent authorities in the Member States cooperate with each other and with the Commission for the implementation and assurance of the compliance of the excise legislation. For this purpose, this Regulation specifies the rules and procedures to enable the competent authorities of Member States to cooperate and exchange, by electronic means or otherwise, the information necessary to ensure the correct implementation of the excise legislation.

IV. *Council Directive (EU) 2017/1852 of 10 October 2017 on Tax Dispute Settlement Mechanisms in the European Union;*⁷

– This Directive establishes the rules for a mechanism for resolving disputes between Member States when these disputes arise from the interpretation and implementation of agreements and conventions that provide for the elimination of double taxation of income and, as appropriate, also of capital. The directive also defines the rights and obligations of the affected individuals when such disputes arise.

V. *Council Directive 2010/24/EU of 16 March 2010 on mutual assistance for the recovery of claims relating to taxes, duties and other measures;*⁸

– This Directive establishes the rules under which Member States must provide assistance for the recovery of any claim mentioned, in accordance with Article 2 of this Directive, originating in another Member State.

⁶ Accessible at: [Council Regulation \(EU\) No. 389/2012](#)

⁷ Accessible at: [Council Directive \(EU\) 2017/1852](#)

⁸ Accessible at: [Council Directive 2010/24/EU](#)

VI. *EU Directive 2016/1164 of 12 July 2016 establishing rules against tax avoidance practices that directly affect the functioning of the internal market;*⁹

– The Directive applies to all taxpayers who are subject to corporate tax in one or more Member States, including permanent establishments in one or more Member States of entities resident for tax purposes in a third country.

7. DESCRIPTION AND EVALUATION OF THE DOCUMENTS SENT IN ACCORDANCE WITH THE PROPOSED LEGISLATION BY THE LINE INSTITUTION

In terms of content

The *Draft law* regulates the procedures for the administration of tax obligations in the Republic of Kosovo that are within the scope of the Tax Administration of Kosovo, as well as the principles of organization and operation of TAK. The scope of the *Draft law* is defined by the EU *Acquis*, mainly in the form of administrative cooperation, exchange of information, as well as the resolution of cross-border disputes. The *Draft Law* contains relevant provisions regarding the exchange of information for tax purposes that are determined by Article 10 of the *Draft Law* - Exchange of information for international purposes, as well as through Article 66 - Confidentiality of information, paragraph 2, subparagraph 8 of this Article. These provisions confirm the exchange of information for tax purposes, but only through international agreements. Considering that there exists a legislative framework requiring harmonization with local legislation in the field of administrative cooperation in the field of taxes, the provisions of the *Draft Law* regulating the exchange of information are restrictive, considering that access to tax information is limited only through international agreements, and as such do not transpose the respective *Acquis* for this field.

Furthermore, the Republic of Kosovo has international obligations arising from the Stabilization and Association Agreement regarding the field of taxation, as specified in Article 105 of the SAA. The field of taxation falls under Chapter 16 of the *Acquis* and includes, among other things, the field of administrative cooperation and mutual assistance between Member States with the aim of

⁹ Accessible at: [Council Directive 2016/1164](#)

ensuring the normal functioning of the internal market in relation to taxes and tools for preventing tax evasion and avoidance. Moreover, the European Commission's Report on Kosovo, from the conclusions of the Subcommittee of 2021 comes the request for Kosovo's tax harmonization with the minimum standards of the BEPS/OECD framework.¹⁰ Within the inclusive framework of the OECD related to the Base Erosion and Profit Shifting (BEPS), there are around 15 Action Plans designed to assist governments of various countries with rules and tools, both nationally and internationally, to address tax evasion. Some of these Action Plans have already been transposed into the legal system of the European Union. The OECD Report on Base Erosion and Profit Shifting (BEPS) – Action Plan 12 on Mandatory Disclosure Rules¹¹, has been incorporated into the EU legal system through the Directive on Administrative Cooperation (DAC 6)¹². Also, the standards from Action Plan 13 on Country-by-Country Reporting¹³ have been taken into account during the drafting of EU Directive 2016/881, which amends Directive 2011/16/EU.¹⁴ The BEPS standards were also taken into account during the drafting of the EU Directive 2016/1164 of July 12, 2016 on the establishment of rules against tax evasion practices that directly affect the functioning of the internal market. Measures to combat BEPS are defined in Article 4 of this Directive, where restrictions are imposed on excessive interest payments. In addition, the Council Conclusions on corporate taxation on the basis of erosion and profit shifting of 8 December 2015, concludes that EU Directives should be the preferred and appropriate instrument for implementing BEPS conclusions within the OECD in the EU, in order to ensure legal certainty and proportionality at the level of harmonization required by the Internal Market.¹⁵ In this regard, the potential transposition of the *Draft law* with the EU legislative framework related to administrative cooperation in the field of taxation, it would simultaneously enable the transposition of the minimum standards of the BEPS framework even though the Republic of Kosovo is not a member of the comprehensive OECD framework on Base Erosion and Profit Shifting.

In technical terms

¹⁰ These conclusions are also reflected in the National Program for the Implementation of the Stabilization and Association Agreement (PKZMSA) 2022-2026, available at: [NPISAA 2022- 2026](#)

¹¹ Accessible at: [Action 12](#)

¹² Action Plan 12 has been transposed through amendment number 5 of the Directive.

¹³ Accessible at: [Action 13](#)

¹⁴ Accessible at: [Direktiva \(BE\) 2016/881](#)

¹⁵ Accessible at: [Council Conclusions on Basis Erosion and Profit Shifting](#)

Accompanying documentation is partially in accordance with Administrative Instruction No. 03/2013 on Drafting of Regulatory Acts and with Practical Guidelines for Alignment of the Legislation of the Republic of Kosovo with the Legislation of the EU. The Responsible Institution is recommended to complete the Declaration of Compliance based on the findings in this **Opinion**.

8. COMPLIANCE OPINION

This **Compliance Opinion** is based on the content of the draft act. The responsibility of the Division for EU Law in LO/OPM is highlighted by its opinion, while the proposing institution is responsible for completing the Declaration of Compliance (DoC) and Conformity Tables (CT) when the draft act is linked to the transposition of the EU *Acquis*. Line institutions are responsible for the policies they make and for the level of harmonization with the EU *Acquis*. Therefore, the preliminary stages of partial transposition up to complete transposition are the responsibility of the proposing body of the draft instruction. Responsibility for meeting and assessing compliance with EU *Acquis* rests with line institutions. *Manuals for Completing Tables and Declarations of Compliance and Practical Guidelines for Aligning the Legislation of the Republic of Kosovo with the Legislation of the European Union*, contain practical instructions for this process.¹⁶

9. COMPLIANCE EVALUATION

To combat tax evasion, fiscal evasion, and fiscal fraud, various legislative acts of the Union regulate mutual assistance between the tax authorities of the Member States. We recommend that "*Draft Law on the Administration of Tax Procedures*" which uses as a basis the *Acquis* part relevant for administrative cooperation in the field of taxes.¹⁷

¹⁶ Please be informed through: <http://mei-ks.net/sq/dokumente-udhzuese-nbi-procesin-e-prafrimit-ligjor>

¹⁷ See *Acquis* relevant for administrative cooperation in the field of taxes in point 6 of the Opinion. Moreover, by not transposing the relevant legislative framework, the Draft Law fails to harmonize Kosovo's tax system with the minimum standards of the inclusive BEPS framework within the OECD, requirements that were reflected last year in the National Program for the Implementation of the Stabilization Association Agreement (NPISAA) 2022-2026. See also NPEI 2023-2027, section 3.1 Chapter 16: Taxes, p. 65.

Respectfully,

Labinote Kashtanjeva

Dept. Head of the EU Legal Affairs Division

EU Law Division

Legal Office/Office of the Prime Minister