



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
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Opinion

Title

DG TAXUD – Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax with regard to VAT rates for electronically supplied books, newspapers and periodicals

(version of 14 September 2016)*

(A) Context

A single 'standard' VAT rate applies to most goods and services. However, a majority of Member States have selectively used reduced VAT rates to promote social objectives. Legacy exceptions to the standard rate have led to different rates across the single market.

The Court of Justice of the European Union (CJEU) has recently confirmed that printed publications may benefit from lower rates while electronic publications may not.

The initiative on e-publications and a parallel initiative on modernising and simplifying the VAT for cross-border e-commerce are part of the Commission's Digital Single Market strategy (DSM) and the Action Plan on VAT. The latter addresses the preparation for a definitive VAT regime and, in the context of a regime based on the destination principle, proposes granting Member States more freedom in setting VAT rates.

(B) Overall opinion: NEGATIVE

The Board gives a negative opinion because the report contains shortcomings that need to be addressed, particularly with respect to the following issues:

(1) Clarify the context and timing of the initiative in relation to the Digital Single Market, VAT Action Plan, and the general revision of the EU VAT system envisaged for end-2017 with its destination principle in particular. Explain further that this initiative is actually an early application of the envisaged definitive VAT regime for the publishing market, without any risk of distortions in the internal market.

(2) Restrict the problem definition to those issues where there is economic evidence to support arguments for this initiative. This means analysing in a balanced way the unequal treatment between printed and electronic publications, across Member States and more generally the weight of VAT as a bottleneck to the emergence of innovative electronic services and their take-up, and - if substantiated - their reduced ability to support reading.

(3) Include the VAT reform in the baseline and adapt the objectives to reflect the refocused problem definition.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

(4) Develop further the analysis of options and the justification for the preferred option in view of the redefined objectives. Make clear the subsidiarity element and highlight the relevant policy trade-offs. Elaborate on any risks that may be introduced by the paradigm shift in the fundamental principles of the current EU VAT system resulting from the option to extend the scope of super reduced rates and zero rates.

The lead DG shall ensure that the report is revised accordingly and resubmitted to the Board for its final opinion.

(C) Main recommendations for improvements

(1) The report needs to **explain better the context** of the initiative and justify the need to act now, given the revision of the EU VAT system envisaged for end-2017. The report should explain further that the present initiative is actually an early test case of the envisaged definitive VAT regime, without any risk of distortions of competition in the internal market, because e-publications are already subject to a destination-based VAT regime and are excluded from the Commission proposal addressing geo-blocking. The **baseline scenario** needs to recognise the intention to adapt the future definitive VAT regime, incorporating the destination principle and other elements that are already known. The report should also describe the main options for returning to Member States the competences to set VAT rates.

(2) The report should make a more evidence-based case of the existence of a problem. The report should explain why action is needed to promote electronic publications, considering that the evidence provided points to an ongoing expansion of the e-publications market that appears unrelated to VAT rates. The report should present evidence of the concrete problems caused by the unequal possibilities of Member States to set different VAT rates for printed publications. The case that Member States lack instruments to promote reading and the potential role of VAT rates in this should also be supported by evidence. In the same vein, the assumption that change of VAT regime will positively impact the price of e-publications for end consumers should be clearly substantiated with robust evidence. The report should clearly present stakeholder views and note relevant initiatives, including a letter reportedly signed by representatives of 10 Member States expressing a desire for a VAT system that would permit the same reduced rates for printed and electronic publications.

(3) The clearly identified political mandate and refocused problem statement might place the **objectives** of this measure and hence, the options into a new light. The objective to promote reading irrespective of the format is arguably redundant. An objective to prepare for the future VAT regime while maintaining its integrity is arguably missing.

4) The report should **justify the choice of the preferred option** more thoroughly against the clarified context, problems and objectives. The final choice in the report does not respect the criterion of proportionality: starting from a limited economic issue on VAT differentials on the publishing market, the report proposes a final choice, which is potentially the most expensive, the most distorting to the current VAT system and the most risky in terms of further erosion of VAT revenues. The trade-off between the objective of equal treatment of printed and electronic publications on the one hand and safeguarding the integrity of the VAT system on the other needs to be explicit.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated into the final version of the impact assessment report.

(D) Procedure and presentation

The report should improve the presentation of stakeholder consultation results and add further disclaimers as to their representativeness. The report should document more clearly the views of the Member States.

(E) RSB scrutiny process

Reference number	2016/TAXUD/022
External expertise used	No
Date of RSB meeting	12 October 2016