

April 2018

Rates of value added tax

Impact assessment (SWD(2018)7, SWD(2018)8 (summary)) of a Commission proposal for a Council directive amending Directive 2006/112/EC as regards rates of value added tax COM(2018)20

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above [proposal](#), submitted on 18 January 2018 and referred to Parliament's Committee on Economic and Monetary Affairs. The proposal amends [Directive 2006/112/EC](#) (hereafter the VAT Directive), which sets out the rules governing the current temporary VAT system (dating from 1993), which are currently based on the principle of origin.¹ When the Council adopted the common system of value added tax in 1967, the commitment was made to create a definitive VAT system operating within the European Community. However, when the fiscal frontiers between the Member States were abolished by the end of 1992, transitional VAT arrangements were adopted because there was no political and technical readiness for such a system. The VAT Directive establishes two principles (general rules) regarding the setting of the VAT rate: Member States must apply a standard rate that is not lower than 15 %² to all taxable supplies of goods and services; and they can opt to apply a maximum of two reduced VAT rates (not lower than 5 %) to specific goods and services that are listed in Annex III (the 'positive list') of the VAT Directive. However, the Council has agreed on derogations to allow application of rates lower than 5 % to products listed in Annex III, and to apply a reduced rate, including zero rates, to certain products that are not listed there (IA, p. 7). According to the Commission's 2016 [inception impact assessment](#), the current, temporary, VAT system is complex and fragmented, causing high costs and administrative burden for companies, cross-border fraud and obstacles for the functioning of the internal market.³ The VAT Directive provides that the transitional rules have to be replaced by definitive arrangements.⁴ (IA, p. 7). The new proposal, which was included in the [2017 Commission work programme](#), aims to provide more flexibility to the Member States in setting VAT rates, ensure equal treatment of Member States, prevent the expiry of derogations and contribute to the implementation of the definitive VAT regime. The proposal builds on the Commission's [Action Plan on VAT 2016](#)⁵ which aims to establish a single European VAT area based on the principle of taxation in the Member State of destination⁶ and to modernise the VAT system in order to make it simpler, more fraud-proof and business-friendly. The Council has welcomed the Commission's intention to present a proposal for increased flexibility for the Member States with respect to VAT rates. However, the

¹ Origin principle: 'under which the VAT rules applicable to a transaction (including the tax rate to be applied) are determined by the Member State where the seller is located' (IA, p. 11).

² The minimum standard rate, which exists since 1993, has been prolonged several times. The last prolongation was from 2015 to the end of 2017 (IA, p. 7).

³ See M. Remáč, [Setting VAT rates](#), implementation appraisal, EPRS, September 2017; M. Remáč, [Definitive VAT system and fighting VAT fraud](#), implementation appraisal EPRS, October 2017.

⁴ Commission [proposal](#) for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the VAT system and introducing the definitive system for the taxation of trade between Member States, COM(2017)569.

⁵ See also Commission [Communication on the follow-up to the Action Plan on VAT](#), COM(2017)566.

⁶ Destination principle: the VAT rules applicable are determined by the Member State of consumption (IA, p. 12).

Council has stressed that a sufficient level of harmonisation in the EU is required and that the solution should be balanced to avoid distortion of competition, increases in business costs and negative impacts on the functioning of the single market⁷ (IA, p. 9). The European Parliament has expressed support in the past for the intention of the Commission to propose a definitive VAT system that is 'simple, fair, robust, efficient and less susceptible to fraud'. It has also called 'for a clear vision regarding simplicity and fewer exceptions combined with a pragmatic approach respecting the interests of the rapidly developing digital economy'.⁸

Problem definition

The IA identifies two problems which this initiative seeks to address (IA, pp. 13-29). The **first problem** concerns the current rules which, according to the IA, impose excessive constraints on the tax policies of the Member States. The current legal framework, which limits the autonomy of the Member States in setting VAT rates, has been consistent with the objective of establishing a VAT system based on the principle of origin (IA, p. 14). However, the objective of an origin-based definitive VAT system has been abandoned due to the lack of progress on rate convergence⁹ required for such a system, and the destination principle has been adopted instead.¹⁰ The Commission considers that taxation at destination would allow more flexibility to Member States in setting VAT rates. In addition, all existing reduced rates, including derogations, legally applied in Member States, could be maintained and could be made available to all Member States, ensuring equal treatment. The IA report explains that in a destination-based VAT system suppliers would not derive significant benefit from being established in a lower-rate Member State (IA, pp. 14-15). Therefore, diversity in VAT rates would no longer disrupt the functioning of the single market, provided it was accompanied by safeguards to avoid potential risks, such as distortion of competition, revenue erosion, complexity and legal uncertainty. According to the IA, the destination principle has already been implemented for the majority of supplies of services and goods in the Member States and recent legislative proposals are aimed at implementing a destination-based system (IA, p. 12).¹¹ The areas where the origin principle continues to apply are cross-border shopping, distance sales, special schemes for farmers, travel agents and taxable dealers (IA, pp. 12, 15). The IA also points out that the current constraints on Member States' flexibility in setting VAT rates are no longer consistent with Article 113 of the Treaty on the Functioning of the European Union (TFEU), on which the VAT Directive is based. This article states that the harmonisation of legislation concerning turnover taxes is allowed only if it is necessary to ensure the establishment and functioning of the internal market and to avoid distortion of competition. The IA notes, however, that flexibility should be balanced against the need to ensure the continued proper functioning of the internal market (IA, pp. 11-12). The IA report illustrates the consequences of the problem by describing the requests by Member States for changes to the VAT Directive (seven cases in the last two years) and recurrent violations of the VAT Directive by Member States (40 infringement procedures on rates concerning 20 Member States to date) (IA, pp. 17-18).

The **second problem** is linked to the expiry of derogations, following the creation of the definitive VAT system, which would further restrict the flexibility of Member States in setting rates (IA, pp. 13, 26).¹² In a definitive VAT system all Member States would be bound by the same rules and would have equal freedom in setting VAT rules. The Member States decided in 1993 on the exceptions to the general rules (derogations) aimed at allowing them to keep all reduced and zero rates that had been applied before 1991. In the Council negotiations, the Member

⁷ [Council Conclusions of 25 May 2016](#).

⁸ [European Parliament resolution of 24 November 2016](#), 'towards a definitive VAT system and fighting VAT fraud'; see also [resolution of 26 May 2016](#) on the Single Market Strategy; [resolution of 13 October 2011](#) on the future of VAT.

⁹ See Commission Communication: [Towards a simpler, more robust and efficient VAT system tailored to the single market](#), COM(2011)851.

¹⁰ See [Council Conclusions of 15 May 2012](#). See also [Council Directive 2008/8/EC](#) amending Directive 2006/112/EC (place of supply of services) and Commission [Communication on an action plan on VAT](#), COM(2016)148.

¹¹ See also: A. Delivorias, [Amending VAT rules on distance sales](#), EPRS, February 2018; A. Delivorias, [Value added tax: Administrative cooperation and combating fraud](#), EPRS, February 2018.

¹² In the current system, all Member States may apply rates below 5 % to at least one category in Annex III (ES and LU can apply it to the whole of Annex III). Several Member States (AT, BE, FR, IE, IT, LU, PT, ES, UK) can apply reduced rates to various supplies that are not in Annex III. Some Member States (BE, DK, IE, MT, FI, SE, UK) can apply zero-rates to specific goods and all Member States may apply zero-rates in international passenger transport (IA, p. 27).

States accepted that the derogations would be temporary and would expire at the latest with the introduction of the definitive VAT system, and that for most derogations the scope could not be extended (IA, p. 7). Until 2004, new Member States could also negotiate derogations that would expire with the definitive VAT system. As of 2004, for the newest Member States, most of the derogations included an expiry date of 2007 (this was prolonged to 2010). The IA report notes that there is a large disparity between wide derogations for older Member States and more limited derogations for newer Member States (in particular between pre-1992 and post-1992 Member States), and that, consequently, there is a problem of equal treatment between Member States (IA, pp. 24, 27). The IA report also mentions that only a few Member States (such as IE, PL, IT, LU, ES) make significant use of the flexibility granted to them by the VAT Directive (IA, p. 9). According to the report, the difference in degree to which reduced rates are used is consistent with the widely differing national political preferences on using indirect taxation to pursue social policy objectives (IA, p. 9).

The IA notes that in the stakeholder consultation, several Member States considered that the expiry of derogations, which allow super-reduced and zero rates, would be unacceptable. According to some Member States, economic operators have adapted their business models on the basis of the current system, which makes it difficult to abandon an existing derogation (IA, p. 26). On the other hand, some Member States have considered it important that the reform of the VAT rates also address the aspect of equal treatment (IA, p. 27). The IA report notes that the lack of a clear solution concerning the derogations is likely to prevent the introduction of the definitive system (IA, p. 27). It explains the derogations and the impact of their expiry (IA, pp. 24-28, boxes 6 and 7 respectively).

The IA report provides a convincing description of the problems, their drivers and their consequences and presents a useful problem tree (IA, p. 14). The problem definition is largely supported by studies, in particular the commissioned study concerning the reform of VAT rates (the VAT rates study),¹³ stakeholder consultation results and literature sources (IA, pp. 15, 78-79).

Objectives of the legislative proposal

The main **general objective** of the Commission proposal is to 'balance the objective of the VAT Action Plan (to allow Member States to maintain all currently existing reduced rates legally applied by them and to increase Member States' leeway on reduced VAT rates) with the mandate of the Council (to avoid distortion of competition, rise in business costs and negative impact on the functioning of the single market)' (IA, p. 30). The IA defines **another general objective** which is 'to prepare the ground for the introduction of the definitive system by providing an accepted solution to the derogations issue' (IA, p. 30). It points out that the proposal would contribute to the equal treatment of Member States as regards VAT rates (IA, p. 30). It identifies the following **specific objectives**: (1) 'Provide Member States with sufficient leeway in determining the scope and level of reduced VAT rates'; (2) 'Treat Member States equally'; (3) 'Limit tax distortions'; (4) 'Minimise complexity and business costs'; (5) 'Prevent litigation on VAT rates'; (6) 'Protect VAT revenue from erosion'.

The objectives have a clear link to the problem definition. According to the Better Regulation Guidelines, objectives should be specific, measurable, achievable, realistic and time-bound (S.M.A.R.T.) ([Better Regulation Toolbox, Tool #16](#)). It can be noted that the objectives are not formulated in a measurable or time-bound manner. Furthermore, they could have been more specific. According to the Better Regulation Toolbox (Tool #16), 'when objectives are multiple and interrelated, it is important to highlight the links between them, particularly any possible trade-offs'. The IA points out trade-off aspects between the specific objectives 1 and 4 and the specific objectives 2 and 4 (IA, p. 30). However, it does not present **operational objectives** as required by the [Better Regulation Guidelines](#).

¹³ [Reform of rules on EU VAT rates](#), PwC PricewaterhouseCoopers LLP (Project Leader), May 2017; see also: [A retrospective evaluation of elements of the EU VAT system](#), Institute for Fiscal Studies (lead), 2011.

Range of options considered

The IA presents two main options and three sub-options in addition to the baseline. Under the **baseline** scenario the IA assumes that the scope of Annex III remains unchanged. The baseline is also based on the assumption that other legislative proposals concerning VAT, such as the proposals on the [definitive VAT system](#) and the [SME VAT package](#), will be approved. The initiative concerning the [extension of One Stop Shop](#) was adopted by the Council at the end of 2017 (IA, p. 34). Under the baseline, unequal treatment between Member States and infringement cases are expected to continue (IA, p. 51). The expiry, at the end of 2017, of the obligation for Member States to set the standard rate at a minimum level of 15 % would not trigger immediate consequences because all Member States levy standard rates above 15 % (IA, p. 26). Furthermore, the Commission has proposed to maintain this rate as a permanent minimum standard rate.¹⁴ Under the current system, 35 % of household consumption expenditure must be taxed at the standard rate (IA, p. 36). The IA also points out that the destination principle is already applied to the 'vast' majority of goods and services (IA, p. 13). The IA report does not provide any quantification in this respect. However, it notes that without further EU measures the issue of derogations remains unaddressed, having in mind that the derogations are due to expire when the definitive VAT regime is in place (IA, p. 13).

Option 1 proposes a two-step approach. At first, the minimum standard rate of 15 % would be prolonged and Annex III (positive list)¹⁵ would be reviewed on a regular basis. The second step, following the establishment of the destination-based definitive VAT system (planned for 2022), would be to address the issue of derogations. The current derogations would be granted to all the Member States without going beyond what is already applied under the current rules by at least one Member State (IA, p. 35). For this purpose, the revised Annex III would be extended and the 5 % minimum rate would be abolished. Furthermore, a new annex would be created to cover the items that are not in Annex III. The Member States could apply a maximum of four reduced rates (IA, p. 35). Around 25 % of household consumption expenditure would be taxed at the standard rate (IA, pp. 34-36).

Option 2 also comprises two steps. The first is the same as the first step in option 1. The second step is to replace the existing Annex III with a negative list¹⁶ to which the minimum 15 % standard rate must be applied.¹⁷ The list would be structured according to the common statistical classification of products (CPA). The IA report explains that the negative list, which will be subject to a regular review, would aim at a 'clear and simple' solution to the problem of derogations and would make the rules on VAT rates more transparent. The Member States can apply no more than four reduced rates on account of the objective of simplicity (IA, p. 39). The reduced rates can only be applied if they are for the benefit of the final consumer¹⁸ and pursue an objective of general interest (IA, pp. 38-39). Around 15 % of household consumption expenditure would be covered by the negative list, i.e. would be taxed at standard rate. Option 2 provides a budgetary safeguard which means that the Member States cannot extend the scope of reduced rates if the weighted average VAT rate falls below the level of 12 % (IA, p. 40). In order to limit the complexity and costs for companies, the web portal 'Taxes in Europe' would be used and information would be restructured by product according to the CPA (IA, pp. 40-42).

There are three sub-options, which are similar to option 2 but which limit the flexibility of the Member States in certain areas. **Sub-option 2a** grants Member States only one additional reduced rate compared to the current status quo (IA, pp. 42, 38). This would mean that 23 Member States could keep their current VAT rates and five Member States (ES, FR, IE, IT, LU) would have to abolish one reduced rate (zero-rate or super-reduced rate) (IA, p.

¹⁴ See Commission's [proposal](#) for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, with regards to the obligation to respect a minimum standard rate, COM(2017)783.

¹⁵ Positive list: Reduced rates are permitted if they are specifically allowed, ie. goods and services included in Annex III (IA, p. 36).

¹⁶ Negative list: Reduced rates can be applied on any goods and services unless this is specifically excluded (IA, p. 36).

¹⁷ In line with the findings of the VAT rates study (2017), the IA report mentions the goods and products that would be included in the negative list, for example the ones subject to excise duties (e.g. alcohol), place-of-supply rules (e.g. hire of vehicles), special origin-based schemes (e.g. flat-rate farmers), easily transportable high value items (e.g. jewellery), exempted services for which the Member States have an option to tax (e.g. financial services) (IA, pp. 36-37).

¹⁸ This is in line with the principle that VAT is a consumption tax 'designed to be borne only by the final consumer'. According to EU case-law the final consumer is the person who 'acquires goods or services for personal use' (IA, p. 39).

42). **Sub-option 2b** proposes an additional weighted average rate of 5 % for the reduced rates. This safeguard does not require Member States to change VAT rates in the definitive VAT regime (IA, p. 42). **Sub-option 2c (preferred option)** would extend the negative list by including certain additional goods and would restrict Member States in applying reduced rates 'to most goods for final consumption' (IA, pp. 42, 59). The list would cover around 23 % of household consumption expenditure taxed at the standard rate. The IA report does not mention the corresponding value for options 2a and 2b (IA, p. 42). Sub-option 2c would not allow reduced rates for environmental products (such as solar panels) (IA, p. 43).

The IA report discusses two discarded options. The first one deals with a scenario where derogations would be maintained in a definitive VAT system. This option was discarded because derogations are a temporary, not permanent, instrument, and the definitive system requires the equal treatment of Member States. Another discarded option would let derogations expire. However, the IA stresses that this option would contradict Article 113 TFEU, the Council mandate and the VAT action plan (IA, p. 33). The consultation of Member States shows that there would be no political support for giving up the derogations. It is pointed out in the IA report that many Member States use reduced rates for social policy purposes (distributive tool) (IA, pp. 9, 34).

The options are clearly linked to the problem definition and objectives. More information on the sub-options would have been useful as their description is quite limited. Stakeholders' views are described for options 1 and 2 but not for the sub-options.¹⁹ It can also be noted that the description of the baseline is quite fragmented as its elements are explained in various different sections.

Scope of the impact assessment

The IA compares the options from the point of view of effectiveness in achieving the objectives, efficiency and coherence. The IA notes that none of the options would have automatic impacts because the use of reduced rates is optional, but the options would provide more flexibility in setting VAT rates (IA, pp. 43, 77). It is assumed that Member States might make targeted adjustments but will maintain the main characteristics of their VAT system (IA, p. 43). Furthermore, it is assumed that the direct economic and social impacts of the options are negligible in the short term, with the exception of sectoral impacts in case of targeted VAT changes (IA, p. 44). The environmental impacts would also depend on the choices of the Member States (IA, pp. 44-45). The IA points out that in the long term, economic, social and environmental aspects may influence political choices (IA, p. 45). For each option, the IA report discusses potential long-term risks relating to increased tax rate flexibility identified in the VAT rates study, such as risks of fiscal distortions, complexity and costs for operators and tax administrations, legal uncertainty, fostering litigation and eroding VAT revenues (IA, pp. 45-57). Mitigating measures are proposed in relation to compliance costs and complexity (web portal and the principle that reduced VAT rates must be for the benefit of the final consumer)²⁰ and VAT revenues (budgetary safeguard) (IA, pp. 49-51). The IA does not, however, provide estimates of the expected decrease in compliance costs (IA, p. 50).

In relation to the two 'main' options 1 and 2, the IA finds option 2 better than option 1, because it addresses the derogation problem, introduces the CPA classification for the negative list and defines the principle that reduced rates must be for the benefit of the final consumer. As regards all the options, option 2 and sub-options a, b and c seem to achieve the objectives better than option 1 in terms of providing Member States sufficient leeway in setting reduced rates, equal treatment of Member States, and minimising complexity and business costs. In terms of limiting tax distortions, option 1 is assessed to be slightly better than option 2 and its sub-options. None of the options would seem to achieve the objective relating to prevention of litigation, though option 2 and its sub-options are considered to be less effective than the baseline and option 1. Overall, according to the IA, 'the most effective option in achieving all objectives seems to be sub-option 2c' (IA, p. 59). However, in the IA report this

¹⁹ One explanation for this could be the fact that the sub-options were added after the second opinion of the RSB (October 2017) (IA, pp. 61-62). It does not appear from the analysis whether the stakeholders and Member States have been consulted on the sub-options (see also Stakeholder Consultation section below).

²⁰ Preserves simplicity for business-to-business supplies as the standard rate would be applied in these cases (IA, p. 50).

result is not immediately apparent as option 2c only appears to achieve the relevant objectives better than the options 2, 2a and b with regard to the objective of preventing revenue erosion, due to its extended negative list. On the other hand, option 1 is considered to achieve this objective equally well (IA, pp. 47-60, 115-117 and Table 7 on comparison of options, p. 58). The analysis would have benefited from a more developed justification for the preferred option. Given the trade-off elements in setting the objectives (increased flexibility and equal treatment versus complexity and business costs), it would have been useful if aspects of complexity and costs had been addressed further, especially since several stakeholders have voiced their concerns in this regard.

Subsidiarity / proportionality

The legal basis of the initiative is Article 113 (TFEU) according to which harmonisation of turnover taxes, such as VAT, is only allowed if it is necessary for ensuring the functioning of the internal market and to avoid distortion of competition (IA, pp. 7, 29). The IA report stresses that as the current system imposes too many constraints on the Member States, it is necessary to revise the EU legislation to allow Member States more flexibility in setting VAT rates (IA, p. 29). Given the concerns of stakeholders that the initiative increases complexity, it would perhaps have been useful to have provided more discussion on its possible impact on the functioning of the internal market.

The deadline for the subsidiarity check by national parliaments was 20 March 2018. No reasoned opinions have been submitted. The German Bundesrat submitted comments according to which it 'objects to an extension of the scope of reduced tax rates, as differing tax rates make the implementation of law more complicated' and 'the initiative might even reduce the degree of harmonisation concerning VAT rates'. The Slovenian National Assembly expressed reservations in relation to the proposal as it 'would make the VAT system even more complex which would lead to additional costs for businesses and create legal uncertainty'.²¹

Budgetary or public finance implications

According to its explanatory memorandum, the legislative proposal would not have a negative impact on the EU budget.²² The preferred option includes a budgetary safeguard to ensure that the scope of reduced rates cannot be extended by Member States if the weighted average VAT rate falls under the level of 12 % (IA, pp. 39-40). The costs concerning the web portal are included in the FISCALIS 2020 budget (IA, p. 41).

SME test / Competitiveness

The IA report does not provide an SME test and it seems that the impacts on SMEs have not been specifically analysed. SMEs were consulted in the context of the stakeholder consultation, but specific SME opinions do not appear to have been explicitly identified, the global term 'businesses' being used in the description of the views concerning the business sector (Annex 9.2.). The IA notes that any increase in the system's complexity would tend to increase costs for business (IA, p. 49). In order to minimise the complexity and business costs of the preferred option, mitigating measures are proposed, such as a dedicated web portal providing operators with information on VAT rates (based on a statistical classification). The IA notes this to be especially important for operators in the e-commerce sector and the decrease of costs is expected to benefit SMEs in particular. However, the IA does not provide a quantified estimate of the decrease (IA, p. 50). Another safeguard to avoid complexity is the principle that reduced VAT rates must be for the benefit of the final consumer, which would preserve simplicity for typical business-to-business supplies (IA, p. 50). The IA considers that under a destination-based system, distortion of competition and harmful tax competition would be limited (IA, p. 47). On the other hand, the IA notes that increased flexibility may increase legal uncertainty and a litigation risk as regards the principle of fiscal neutrality,²³

²¹ See [Platform for EU Interparliamentary Exchange \(IPEX\)](#).

²² 'The VAT own resources are calculated as a percentage of a harmonised base that is derived by dividing VAT revenues by a weighted average VAT rate and this eliminates all VAT rates differentials' (Explanatory Memorandum, p. 6).

²³ Defined in EU case law: The principle of fiscal neutrality is 'inherent in the common system of VAT and precludes treating similar goods or services, which are in actual or potential competition with each other, differently for VAT purposes' (IA, p. 23).

state aid rules and prohibition of protectionist taxation (IA, p. 52). As regards SMEs, it can be noted that the Commission has made a [proposal](#) to reduce VAT costs for SMEs.

Simplification and other regulatory implications

The IA indicates that the proposal is in line with the objectives of the Regulatory Fitness and Performance programme (REFIT), the VAT Action Plan and the proposals contributing to the establishment of the definitive VAT system (IA, p. 6 and explanatory memorandum of the proposal, p. 4).

Quality of data, research and analysis

Overall, the IA provides a thorough and convincing analysis of the problems. Several outsourced studies and reviews have supported the preparation of the IA²⁴ and links are provided to the publications. A more developed justification of the preferred option would have benefited the analysis, especially given the fact that, in the stakeholder consultation, a majority of the stakeholders preferred option 1 as they saw various risks in option 2. As mentioned above, stakeholder views have not been indicated for the sub-options. It can also be mentioned that quantification is limited in parts of the analysis.

Stakeholder consultation

The IA report provides a description of the stakeholder consultation, as required by the Better Regulation Guidelines (Annex 9.2.). An open public consultation on the reform of VAT rates, which was carried out between 21 December 2016 and 21 March 2017, resulted in 327 contributions. Among respondents (associations, businesses, academics, tax practitioners, private persons), there was no consensus concerning the reform. As regards the options, there was a preference (60 %) for option 1, but 50 % of the respondents favoured keeping the minimum rate of 5 % (which would be abolished under option 1) (IA, pp. 65-69, 32). In addition, Member States were consulted through the group on the future of VAT (GFV). A majority of the Member States preferred option 1, although they expressed doubts about abolishing the minimum rate of 5 %, and supported a regular update of Annex III. Option 2 was discarded by most Member States because increased flexibility was considered to cause risks, such as complicated implementation by business and tax administrations, increased political pressure for reduced rates, reduction of budget revenues of Member States and technical and political difficulties to agree on a negative list of supplies (IA, pp. 69-71, 32). It would have been interesting to have more specific information on the views of various stakeholders', such as sectoral associations, companies of different sizes and academics, as the IA report refers only to '(majority/most) Member States' and 'respondents'. It can also be noted that the views of the stakeholders concern options 1 and 2, but not the sub-options 2a to c, which were added to the IA report after the RSB's second opinion (October 2017) (IA, pp. 61-62). It does not appear from the analysis whether the stakeholders and Member States, in particular, were consulted on these. In any case, stakeholder views on the preferred option 2c are not reported in the IA.

Monitoring and evaluation

According to the monitoring plan, until the entry into force of the definitive VAT regime, the Commission will monitor Member States' respect of the minimum rates, the scope of Annex III and the scope of derogations when reduced rates are applied. When the definitive VAT regime is in place, the Commission will monitor the application of the standard rate to items in the negative list, the reduced rates for the benefit of the final consumer and the budgetary safeguard. It will prepare an evaluation report concerning the negative list and budgetary safeguard every five years after the entry into force of the new rules (IA, pp. 59-60). The IA report does not present indicators for monitoring the achievement of the set objectives.

²⁴ [Study on reduced VAT applied to goods and services in the Member States of the EU](#), Copenhagen Economics, 2017; [A retrospective evaluation of elements of the EU VAT system](#), Institute for Fiscal Studies IFS et al., 2011; [Study on the economic effects of the current VAT rates structure](#), consortium led by Netherlands Bureau for Economic Policy Analysis CPB, 2013; [Reform of rules on EU VAT rates](#), PwC PricewaterhouseCoopers LLP (Project Leader), May 2017.

Commission Regulatory Scrutiny Board

The European Commission's Regulatory Scrutiny Board (RSB) issued a [negative opinion](#) on a draft version of the IA report on 12 July 2017 and a [positive opinion with reservations](#) on a revised draft version on 18 October 2017. The remarks of the RSB concern the flexibility and harmonisation of VAT rates, which it finds inconsistent with the views of most stakeholders and with the Council conclusions; the justification for ensuring equal treatment by extending derogations on a permanent basis; the need to pay more attention to the specific objectives relating to minimisation of complexity and costs and the protection of VAT revenues from erosion; the need to take greater account, in the comparison of options, of the risks concerning complexity, legal uncertainty and litigations, business costs and tax erosion; the request that sub-options be considered within the two 'polar' options (main options 1 and 2); and the need to clarify the baseline. As required by the Better Regulation Guidelines, the IA report explains (Annex 9.1.3.) how the recommendations of the RSB have been taken into account (IA, pp. 61-64). However, while many points raised by the RSB have been addressed, the IA could have provided further justifications, in particular for the choice of the preferred option 2c.

Coherence between the Commission's legislative proposal and IA

The legislative proposal of the Commission appears to follow the recommendations expressed in the IA.

Conclusions

The IA report provides a convincing description of the problems. The thorough analysis is supported by studies, stakeholder consultation results and literature sources. The objectives set are clearly linked to the defined problems although they could have been more specific. Given the trade-off elements in setting the objectives (increased flexibility and equal treatment versus complexity and business costs), it would have been useful if aspects relating to complexity and costs had been addressed further, in particular in the light of the concerns expressed by stakeholders in this regard. The options are linked to the problem definition and objectives, but more information on the sub-options would have been welcome as their description is quite limited. In particular, a more developed justification for the preferred option 2c would have benefited the analysis, given that it is not immediately apparent from the information provided in the IA that this option would best achieve the relevant objectives. Stakeholders' views are described for the main 'polar' options (1 and 2) but not for the sub-options. It can be pointed out that the sub-options have been added after the second opinion of the RSB and the report does not indicate whether the stakeholders and Member States have been consulted on these. According to the results of the stakeholder consultation, the majority of Member States did not favour option 2, which they found to cause several risks.

This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Economic and Monetary Affairs, analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

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