Council of the European Union

Brussels, 23 March 2018
(OR. en)

7420/18
ADD 3

Interinstitutional File:
2018/0073 (CNS)

FISC 151
ECOFIN 277
DIGIT 48
IA 78

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	22 March 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2018) 162 final
Subject:	REGULATORY SCRUTINY BOARD OPINION Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services

Delegations will find attached document SEC(2018) 162 final.

Encl.: SEC(2018) 162 final

EUROPEAN COMMISSION

Brussels, 21.3.2018
SEC(2018) 162

REGULATORY SCRUTINY BOARD OPINION

Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence

Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services

{COM(2018) 147}
{COM(2018) 148}
{SWD(2018) 81}
{SWD(2018) 82}

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2018)

Opinion

Title: Impact Assessment / Fair taxation of digital economy

(version of 24 January 2018)*

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Context

Taxation of the digital economy is part of the EU's fair taxation agenda. Corporate taxation aims to tax profits where the value is created, but the current international tax framework was designed for the traditional economy. Given the rapid progress of digitalisation and the new modes of value creation in the digital economy, this initiative aims at creating a comprehensive framework for taxation of the digital economy in the long term. It includes a targeted action to address the urgent threat of market fragmentation in the short term.

This initiative follows the European Council's commitment to adapt tax systems to the digital economy and takes into account the relevant developments in the OECD.

(B) Main considerations

The Board acknowledges the good and clear presentation of the report.

However, the report contains significant shortcomings that need to be addressed. As a result, the Board expresses reservations and gives a positive opinion only on the understanding that the report shall be adjusted in order to integrate the Board's recommendations on the following key aspects:

(1) The report does not clearly explain the context of the initiative and the rationale for a two-pronged approach. It does not show the urgency for the EU to act, before global progress is achieved at the OECD/G20 level.

(2) The projection of the implications of the baseline scenario is incomplete; the content of the options is not sufficiently detailed. And the transition between the short-term and long-term solutions lacks clarity.

(3) The analysis of impacts is insufficiently developed, especially as regards the thresholds, compliance costs and thus does not demonstrate the proportionality of the preferred option.

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

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(C) Further considerations and adjustment requirements

(1) The report should improve the description of the policy context, by assessing , global progress made on the issue of digital taxation, the relevant OECD work and the EU role in the process. . It should justify the urgency for the EU to act and further elaborate on the reasons for the proposed two-pronged approach, in particular given the unanimity rule. The report should also underline the risks of unilateral actions by Member States, tax competition, market fragmentation and tax avoidance. It should stress that the aim of the initiative is clarity on the taxing right allocation and not ensuring a fair tax burden on digital versus non-digital companies.

(2) The report should better analyse the magnitude of the problem, including at the Member State level. It should streamline the baseline scenario and project the implications of all the ongoing initiatives, at Member State, EU and international level.

(3) The report should better explain the modalities of the transition from the short-term to the long-term solution and provide more details on the content of the options (what would be taxed, how, by whom, and also on the digital activity thresholds, links with CC(C)TB, and interference of the new "permanent establishment" concept with double taxation conventions). The report should also elaborate how new, innovative, mixed-business models would be covered by the options. Concrete examples would help to clarify how the options would work in practice.

(4) The report should beef up the impacts section, preferably quantifying costs and benefits. It should explain how the limited expected proceeds of the tax (in particular the targeted short term solution) compare with the regulatory burdens on businesses and public administrations of introducing a nex tax or definition of the tax base. The report should include quantified compliance costs. The report should more assess more precisely the risks of double taxation associated with the short term measures and the transition from the short term to the long term solution. Finally, the report should better reflect on the proportionality of the preferred option.

(5) The Board takes note of the quantification of the various costs and benefits associated to the preferred options of this initiative, as assessed in the report considered by the Board and summarised in the attached quantification tables.

Some more technical comments have been transmitted directly to the author DG.

(D) RSB scrutiny process

The lead DG shall ensure that the report is adjusted in accordance with the recommendations of the Board prior to launching the interservice consultation.

The attached quantification tables may need to be adjusted to reflect any changes in the choice or the design of the preferred options in the final version of the report.

Full title	Impact Assessment accompanying the document Fair taxation of the digital economy
Reference number	PLAN/2017/1873
Date of RSB meeting	07 February 2018

ANNEX: Quantification tables extracted from the draft impact assessment report submitted to the Board on 24 January 2018

(N.B. The following tables present information on the costs and benefits of the initiative in question. These tables have been extracted from the draft impact assessment report submitted to the Regulatory Scrutiny Board on which the Board has given the opinion presented above. It is possible, therefore, that the content of the tables presented below are different from those in the final version of the impact assessment report published by the Commission as the draft report may have been revised in line with the Board's recommendations.)

The tables below summarise the costs and benefits (in million euros) for all preferred options together.

The initiatives directly affect companies falling under the scope of the comprehensive solution or of the targeted solution in absence of the former.

I. Overview of Benefits (total for all provisions) – Preferred Comprehensive Option		
Description	***Amount***	***Comments***
	Direct benefits	
Level the playing field	++	Businesses would benefit from a more level playing field as the revision of the rules would remove distortions of competition and fight aggressive tax planning.
Fair distribution between national administrations	+	Correcting the existing misalignment of taxation and value creation would contribute to a fairer distribution of tax revenues between national tax administrations.
Sustainable public finances	+	National tax administrations would benefit from a positive impact on public finances as the solution will contribute to the long-run sustainability of the corporate tax system.
	Indirect benefits	
Improve the perception of fairness	+	The solution would improve the perception of fairness for citizens by ensuring that large companies with significant digital activities do not escape their taxes in the EU.

II. Overview of Benefits (total for all provisions) – Preferred Targeted Option		
Description	***Amount***	***Comments***
	Direct benefits	
Preserve the integrity of the	+	By avoiding the fragmentation of the single market, it will provide a stable

single market		tax framework for businesses active in the EU.
Improve public finances	+	It will be an additional source of revenues to national tax administrations, although overall revenues are expected to be moderate.
	Indirect benefits	
Improve the perception of fairness	+	This would improve the perception of fairness for citizens and consumers by ensuring a minimum level of taxation in the EU for companies that rely the most on user contributions and data.

III. Overview of costs – Preferred options							
		Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Comprehensive solution	Direct costs	n/a	n/a	Increase in the regulatory and compliance burden for businesses falling under the scope of the solution to set up reporting for new permanent establishments	Increase in the regulatory and compliance burden for businesses falling under the scope of the solution.	Costs for implementing the new system, notably on IT. Costs for negotiating double tax treaties.	Costs for IT maintenance and staff training.
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
Targeted solution	Direct costs	n/a	n/a	Large companies above the thresholds would face one-off cost to adapt to the reporting requirements	Reporting requirements to compute the tax base in the Member States in which large companies	Costs for implementing the new system, notably on IT.	Costs for IT maintenance and staff training.

				in the Member States in which they are active. No costs for SMEs	are active. No costs for SMEs		
	Indirect costs	Possible increase in prices if companies pass on the cost of the tax, although this should be limited.	n/a	n/a	n/a	n/a	National tax administrations may wish to invest in additional resources to prevent under-reporting. In principle, the self-declaration system would limit these additional costs.