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'A' ITEM NOTE

From:	General Secretariat of the Council
To:	Council
No. Cion doc.:	14823/16 FISC 210 ECOFIN 1114 IA 129
Subject:	Proposal for a Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals – Political agreement

1. On 1 December 2016, the Commission submitted a proposal for a Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals¹.
2. Directive 2006/112/EC on the Common System of value added tax currently provides that electronically supplied services, including electronically supplied publications, are taxed at the standard rate. On the other hand, books on all means of physical support, as well as newspapers and periodicals, may be taxed at a reduced VAT rate, and some Member States were also granted the possibility to continue to apply super-reduced rates, including exemptions with the deductibility of the VAT paid at the preceding stage (zero rate).

¹ Doc. 14823/16.

3. This legislative dossier covers a specific sector of economy, which is important in the context of the EU Digital Single Market policy. The rules to be introduced by this amending Directive would not be mandatory. These rules would be applied temporarily, until the Council of the EU delivers on its political commitment to legislate on the definitive VAT system including the rules on setting of VAT rates².
4. The European Parliament issued its opinion on 1 June 2017³. The opinion of the European Economic and Social Committee was issued on 5 July 2017⁴.
5. Following the preparatory technical work, the ECOFIN Council discussed this dossier at its meetings on 16 June 2017⁵, 25 May 2018 and 13 July 2018⁶, however, no required unanimous support by Member States could yet be obtained. At the ECOFIN meeting of 13 July 2018 one delegation continued to maintain its reserve, while other delegations which took the floor underlined the urgent need to successfully complete these negotiations. The Presidency indicated that this dossier should therefore be on the agenda of 2 October 2018 meeting of the ECOFIN Council.
6. Following the meeting of Fiscal Attachés on 17 September, all delegations indicated that they are ready to support the Presidency compromise text that is set out in the Annex to this note.
7. The Committee of Permanent Representatives (Part 2) on 26 September 2018 decided to recommend that this dossier is submitted to the Council as an "A" ("no discussion") item.⁷
8. The Council is therefore invited, at its forthcoming meeting:
 - to reach a political agreement on the draft Directive, as set out in the Annex to this note, with a view to adopting the Directive, subject to legal-linguistic revision.

² On 18 January 2018, the Commission issued a proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax. The objective of that legislative proposal is to introduce the rules on setting of VAT rates across the EU, with effect from the entry into force of definitive arrangements for the taxation of trade between Member States.

³ *OJ C 307, 30.8.2018, p. 205.*

⁴ *OJ C 345, 13.10.2017, p. 79.*

⁵ Doc. 8076/17 and doc. 10040/17 + COR 1.

⁶ Doc. 8771/18 FISC 208 ECOFIN 403 CULT 57 DIGIT 88 + COR1.

⁷ Doc. 12259/18 FISC 373 ECOFIN 833 CULT 97 DIGIT 175.

Proposal for a

COUNCIL DIRECTIVE

**amending Directive 2006/112/EC, as regards rates of value added tax applied to books,
newspapers and periodicals**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament⁸,

Having regard to the opinion of the European Economic and Social Committee⁹,

Acting in accordance with a special legislative procedure,

⁸ OJ C , , p. .

⁹ OJ C , , p. .

Whereas:

- (1) Council Directive 2006/112/EC¹⁰ provides that Member States may apply reduced rates of value added tax (VAT) to publications on any means of physical support. However, a reduced VAT rate cannot be applied to electronically supplied publications, which have to be taxed at the standard VAT rate.
- (2) In line with the Commission's Digital Single Market Strategy¹¹ and in order to keep abreast of technological progress in a digital economy, Member States should be enabled to align the VAT rates for electronically supplied publications with lower VAT rates for publications on any means of physical support.
- (3) In the Action Plan on VAT¹², the Commission outlined that electronically supplied publications should be able to benefit from the same preferential VAT rate treatment as publications on any means of physical support. In its recent judgment in C-390/15, the Court of Justice of the European Union has considered that the supply of digital publications, on the one hand, on all physical means of support and, on the other hand, electronically, amount to comparable situations. Therefore, it is appropriate to introduce the possibility for all Member States to apply a reduced VAT rate to the supply of books, newspapers and periodicals irrespective of whether they are supplied on physical means of support or electronically. For the same reasons, it is appropriate to allow those Member States that currently apply, in accordance with Union law, VAT rates lower than the minimum laid down in Article 99 or grant exemptions with deductibility of the VAT paid at the preceding stage, to certain books, newspapers or periodicals supplied on physical means of support, to apply the same VAT treatment to such books, newspapers or periodicals when supplied electronically.

¹⁰ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

¹¹ COM(2015) 192 final.

¹² COM(2016) 148 final.

- (4) Since 1 January 2015, VAT on all electronically supplied services has been levied in the Member State where the customer is based. Given the implementation of the destination-based principle, it is no longer necessary to apply the standard rate to electronically supplied publications in order to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.
- (5) In order to prevent an extensive use of reduced VAT rates to audio-visual content, Member States should be enabled to apply a reduced rate to books, newspapers and periodicals, only if these publications, both on any means of physical support or electronically supplied, do not wholly or predominantly consist of music or video content.
- (6) Member States should maintain discretion to set VAT rates for publications and restrict the scope of reduced VAT rates, including, subject to objective justification, where digital publications offer the same reading content.
- (7) Directive 2006/112/EC should therefore be amended accordingly.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

- (1) In Article 98(2), the second subparagraph is replaced by the following:

'The reduced rates shall not apply to electronically supplied services with the exception of those falling under point (6) of Annex III.'

(2) In Article 99, the following paragraph 3 is added:

'3. By way of derogation from paragraphs 1 and 2 of this article, and in addition to the rates referred to in paragraph 1 of article 98, Member States which, at 1 January 2017, applied, in accordance with Union law, reduced rates lower than the minimum laid down in this Article or granted exemptions with deductibility of the VAT paid at the preceding stage to the supply of certain goods referred to in point (6) of Annex III, may also apply the same VAT treatment where that supply is supplied electronically, as referred to in point (6) of Annex III.'

(3) In Annex III, point (6) is replaced by the following:

'(6) supply, including on loan by libraries, of books, newspapers and periodicals either on physical means of support or supplied electronically or both (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript form, maps and hydrographic or similar charts), other than publications wholly or predominantly devoted to advertising and other than publications wholly or predominantly consisting of audible music or video content;'

Article 2

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President