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**SUMMARY REPORT OF
THE OUTCOME OF THE PUBLIC CONSULTATION ON THE
REVIEW OF EXISTING LEGISLATION ON VAT REDUCED
RATES**

(8 OCTOBER 2012 – 4 JANUARY 2013)

1. BACKGROUND

On 8 October 2012 the Directorate General Taxation and Customs Union launched a public consultation¹ on its website in the framework of the review of the existing legislation on reduced VAT rates.

The review of the current VAT rates structure was one of the priority actions put forward in the Communication on the future of VAT² presented by the Commission on 6 December 2011. The Commission also specified that this review should be based on the following guiding principles:

- Abolition of those reduced rates which constitute an obstacle to the proper functioning of the internal market. Reduced rates that were justified in the past can have distortive effects today because the economic, business and legal environments have changed in the meantime;
- Abolition of reduced rates on goods and services whose consumption is discouraged by other EU policies. This could notably be the case for goods and services harmful to the environment, health and welfare;
- Similar goods and services should be subject to the same VAT rate and progress in technology should be taken into account in this respect, so that the challenge of convergence between the on-line and the physical environment is addressed.

The Commission services made a first evaluation of the current VAT rates structure in the light of the abovementioned guiding principles. This formed the basis of the consultation document inviting stakeholders to reply to 9 specific questions.

The consultation was closed on 4 January 2013 and, although the deadline for sending contributions had not been extended, replies arriving with a certain delay have also been accepted.

2. THE OUTCOME IN FIGURES

A total of **333** contributions were received, out of which *148 or 44%* are from organisations registered in the Transparency Register³ of Interest Representatives and *185 or 56%* from non-registered entities.

National associations accounted for the biggest share (138 or 41%) of all submissions, followed by replies from businesses (56 or 17%) and European associations (48 or 14%).

The public consultation was very targeted: eight of the nine questions only concerned specific sectors of activity. It explains why more than half of the submissions originate

¹ [Consultation on Review of existing legislation on VAT reduced rates](#)

² [Communication on the future of VAT](#)

³ http://europa.eu/transparency-register/index_en.htm

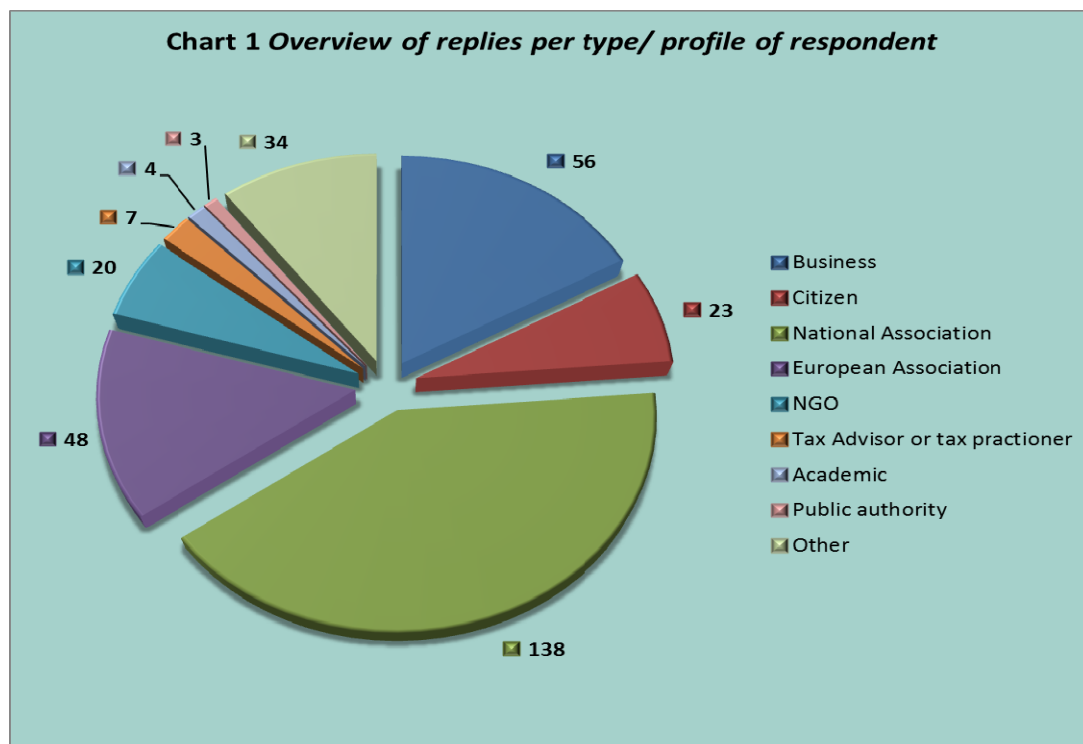
from national or European associations, the large majority of them representing sectors currently benefiting from a reduced VAT rate and opposed to its abolition or advocating for an extension of it.

The targeted nature of the public consultation is probably also the reason for the low number of submissions from academics, tax advisors and tax practitioners who would look at VAT rates in a broader context.

The summary below only reflects the arguments as they have been put forward by the respondents. The Commission services have refrained in this summary from commenting upon or adding any counter-arguments.

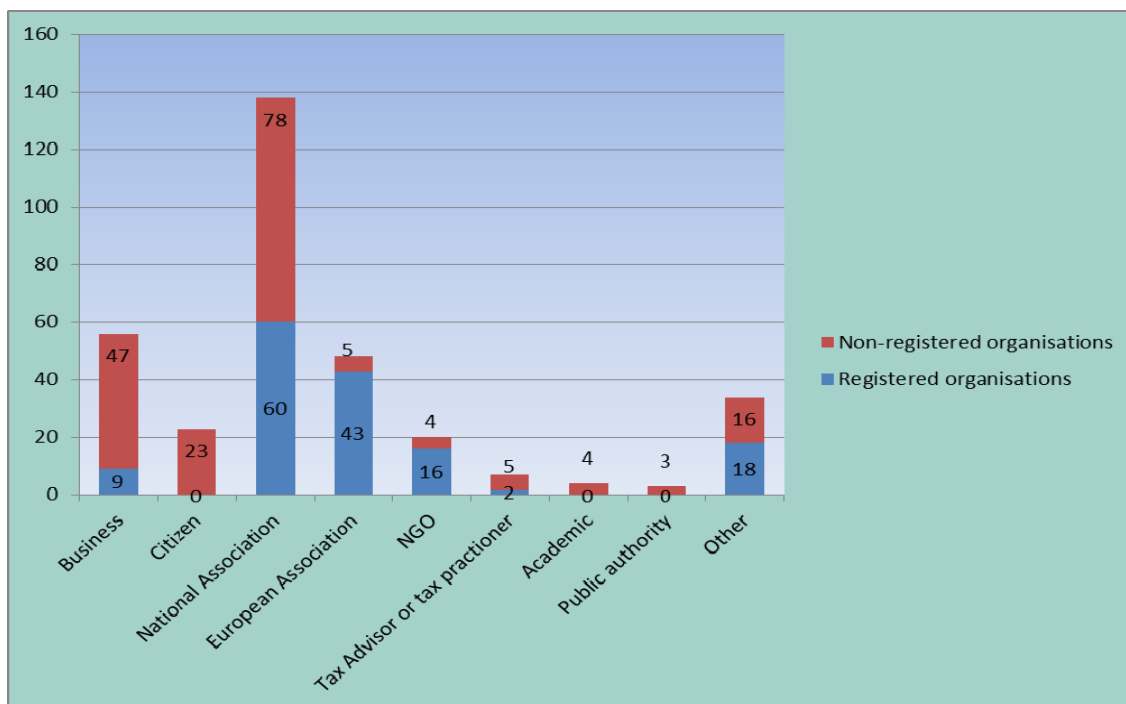
The profile of the majority of respondents is therefore a factor to be taken into account when reading the summary of the submissions here below.

A complete overview of all replies per profile of the respondent is shown in Chart 1 below.



An overview of the replies from registered and non-registered organisations per type of respondent is given in Chart 2.

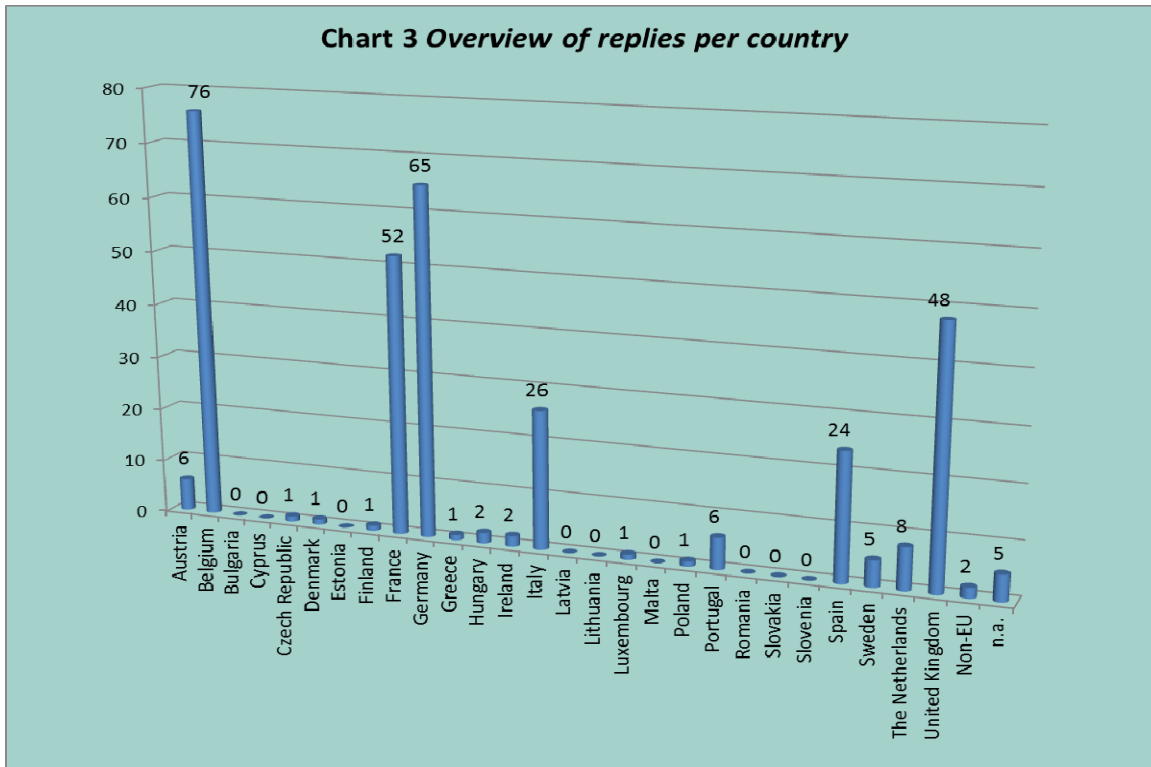
Chart 2 Overview of replies from Registered and non-registered organisations per type of respondent



326 out of the total number of 333 replies originated from 18 of the EU Member States, 1 from Canada and 1 from Switzerland. 5 respondents identified as international did not specify their country of origin. A number of these replies were very similar or identical.

The greatest number of submissions originated from Belgium (76), followed by those from Germany (65), France (52) and the United Kingdom (48). It should be noted that the number for Belgium includes the submissions from those European federations and associations which are based in Brussels.

An overview of the replies per country is given in Chart 3 below.



Further details are given in the Annex to the document.

The Commission has published on its website all submissions, with the exception of those who specifically requested not to be disclosed.

3. ANALYSIS OF THE REPLIES

3.1. General observations

3.1.1. VAT rates in the broader context of the European Semester

A number of respondents used the opportunity of this public consultation for commenting on the review of the VAT rates in the broader context of the European Semester. These remarks were made either generally or more specifically when replying to the questions 2 to 5 concerning the reduced VAT rates for water, energy products, waste and housing.

The aim of increasing the growth-friendliness of the tax structure by shifting taxation away from labour towards consumption (VAT), environmental and property taxes was challenged in certain contributions as such tax shift might trigger a price increase for products offered by the respondents.

Several respondents pointed out to the regressive nature of VAT, which implies that poorer households spend a greater proportion of their income on buying goods and services than wealthier ones. Poorer households would consequently be more affected in relative terms by an increase in the VAT rate.

From an economic point of view, reduced VAT rates do have an income distribution effect but alternative instruments such as direct subsidies or incentives are considered to be more targeted and therefore more efficient. Alternatives to reduced rates to overcome

this perceived regressiveness (such as direct subsidies, higher family allowances) were not mentioned by the respondents.

Several respondents also indicate that the application of reduced VAT rates for income distribution purposes could have certain advantages in terms of simplicity compared to other measures which can be complex to administer for both national authorities and persons benefiting from them.

Moreover, whilst the scope of the reduced rates is laid down in EU legislation, these alternative instruments are a purely national competence. In the current economic climate, respondents fear that there might be no compensating mechanisms or that they will be insufficient. In other words, the social impact of a reduced VAT rate but also its cost in terms of revenue shortfalls are known, whereas in case of abolition, they become uncertain, influenced by and dependent on national considerations.

Certain respondents indicated therefore that the decision of whether or not to apply reduced rates should be left to the competence of the Member States. They consider that there is no reason for the EU to legislate when reduced VAT rates do not lead to distortions within the Single Market. In their view, Member States are the best placed to evaluate the effects of reduced rates on growth, employment and on their budget. Member States wishing to shift the VAT rate on a certain good or service from the reduced to the standard rate are the best placed to complement this change by other measures, when appropriate.

3.1.2. General contributions

Certain economic sectors which, although not specifically targeted in this public consultation, submitted contributions with a view to defending the existing reduced rate applicable to their sector of activity. This is notably the case for the reduced VAT rate for the supply of live plants and other floricultural products and more generally in the agricultural sector, accommodation and restaurant services, fishery and food products in general, supply of goods and services by organisations recognised as being devoted to social wellbeing by Member States, renovation and alteration of housing and passenger transport.

Several contributions advocated for the extension of the scope of reduced rates. This was notably the case for the following supplies of goods and/or services: audio-visual content (music and movies), car repair, protection equipment for motorcycles, housing, housing rents, horse-riding, medical equipment not covered by the existing reduced rate, services provided to places of worship, listed monuments, cultural heritage and historical monuments, gardening and landscaping services. Several contributions advocated for an equal treatment for all cultural supplies, be they provided traditionally ("off-line") or digitally ("on-line"), for equal treatment of all modes of passenger transport, for all food products (dairy and soyfood products in particular) and for equal treatment of spirit drinks in all Member States.

The Commission services take note of these contributions although they do not fit within any of the three guiding principles laid down by the Commission in its Communication on the future of VAT (see point 1 above).

Finally, a number of contributions are primarily related to the VAT treatment of activities of public authorities or of activities in the public interest and therefore exempt of VAT compared to the same activities supplied by private companies which are taxed.

This is however a separate topic on which the Commission services are currently also working and contributions will be taken on board in that on-going work.

3.2. Abolition of those reduced rates constituting an obstacle to the proper functioning of the Internal Market

Q1. Are there any concrete situations that you are aware of whereby the application of a reduced rate on certain goods and services by one or more Member States is effectively resulting in material distortion of competition within the Single Market? Please explain and, if possible, give an indication of the economic impact of the distortive effects.

The vast majority of respondents from various sectors indicated that they are not aware of situations where the current optional application of reduced VAT rates by one or more Member States effectively gives rise to appreciable distortions of competition or shifts in trade within the Single Market.

A number of respondents acknowledged, however, that the current application by some Member States of reduced VAT rates to e-books results in significant distortions of competition between Member States to the detriment of suppliers in the Member States which comply with EU law and apply the standard rate. Whilst some respondents noted that it is not possible to quantify the economic impact of this distortion, the impact is however significant, leading to businesses relocating their activities to those low taxing Member States. By contrast, other respondents took the view that the market of e-books is only an emerging market and the effects on trade could thus only be marginal.

Some respondents indicated that the differences in rates, reduced or not, affect B2C (Business to Consumers) supplies where taxation at the place of consumption cannot be ensured. It was pointed out however that the distance sales provisions which require the supplier to register in the Member State where the consumers resides when an established threshold is exceeded, evens out such distortions to a certain extent.

A few respondents referred also to potential distortions that might occur in the case of B2C supplies of goods as a result of the differences in the VAT rates (standard and reduced) in bordering regions.

In addition, some respondents indicated that the existing rules in relation to the place of taxation of supplies of telecommunication, broadcasting and electronic services have the potential to distort competition. However, it was also stressed that the change in the rules for the place of taxation from 2015 from the place of establishment of the supplier to the place of the customer will eliminate such distortions.

Many respondents took the opportunity to refer to domestic distortions and to call for an extension of the scope of existing reduced VAT in order to ensure that similar categories of supplies of goods and services, some of which are in direct competition with each other, are not taxed differently. The different treatment is primarily the result of national choices on the scope of the reduced VAT rates rather than the legal framework laid down in the EU VAT Directive.

3.3. Abolition of reduced rates on goods and services for which the consumption is discouraged by other EU policies

Q2. Which arguments (social, economic, legal, etc.) do you wish to put forward in the context of the assessment of the reduced VAT rate for water?

Almost all respondents advocated for the reduced VAT rate water to be maintained for clear social reasons as access to clean water is a basic human right and a commodity of primary necessity which must therefore be available at affordable prices to all, particularly those on low income.

In this respect, a number of respondents put forward the argument that reduced VAT rates play an important role in reaching the goal enshrined in the EU Treaties that services of general interest must be made accessible to all citizens at affordable prices. Doing away with reduced VAT rates for water and for essential goods and services in general would sharply increase their price and act as a barrier to their accessibility by ordinary consumers.

A very large number of respondents considered that, whilst it is important to use scarce water resources efficiently, abolishing the reduced VAT rate would have limited effect on the level of water consumption and hence on the aims of the Water Framework Directive. Businesses which are some of the largest consumers of water would not be affected by an increase in VAT rates, because they can recover their input VAT. Only domestic users and entities which are unable to recover their input tax – individuals, exempt small enterprises, charities and other exempt entities like hospitals, schools, universities – would receive the price signal, even though they only represent a minority share of overall water consumption.

Respondents largely referred to the existence of other policy measures, taxes and charges applied at national level by local and regional authorities in the Member States to encourage more sustainable water consumption and to control and restrict usage other than for basic needs (progressive tariffs to discourage excess consumption, charges for industrial consumption, obligatory installation of water meters, swimming-pool and hose pipe bans, national regulatory models, awareness raising campaigns for water conservations, etc.).

Many respondents stressed that there is no legitimate justification to abolish the right of Member States to implement a reduced VAT rate for the supply of water given that there are no distortions of competition within the single market because water utilities are local or regional services and not transnational. For this reason, it was indicated that Member States should have the flexibility to decide their own policy with regard to taxation of water, including the application of reduced VAT rates.

Respondents underlined that for the achievement of EU objectives, particularly regarding environment and sustainability but also social and territorial cohesion, national and regional authorities can implement efficient and adapted tools to maximise their effects on their territories. National and regional authorities are able to take into account the diversity in national conditions, notably the impact of climate change, the scarcity or not of the resource, and issues such as contamination, erosion and the dehydration of soil as well as the problem of floods.

There were suggestions that a reduced VAT rate could apply to a certain minimum volume of water consumption beyond which taxation could be at the standard VAT rate.

Others believed that urban water for domestic use should have the same VAT rate as that applied to basic food. However the standard rate could be applied to water used for non-essential purposes, such as for ornamental lakes and swimming pools, and in the productive process, though it is recognised that this would be complex to put in place and administer.

In this respect, some respondents indicated that legal arguments are the most important in the context of the assessment so that, in the interest of legal certainty and simplicity, they considered it desirable to avoid VAT rate differentiation, even for basic necessities like water. However at the same time the standard VAT rate could be lowered and an upper limit could be set for it.

A few respondents suggested that VAT rate increases might be justified for encouraging efficient water management, only on condition that the consequent additional resources raised by the state were totally reinvested in the water sectors (for investments in infrastructures, etc.). However, given the current economic and budgetary situation across Europe and the difficulty of earmarking revenues especially in countries with federal structure, it was indicated that this condition appears highly unrealistic.

Finally, some respondents indicated as desirable that the same VAT rates apply in all EU countries to ensure a genuine level playing field with a common VAT regime.

Q3. Which arguments (social, economic, legal, etc.) do you wish to put forward in the context of the assessment of the reduced VAT rate for certain energy products?

A large majority of respondents were strongly opposed to the abolition of the existing reduced VAT rates for energy products (gas, electricity, fuel for heating, district heating and cooling). They took the view that reduced VAT rates for energy products are allowed and should be maintained above all for social reasons in order to ensure universal access and affordable prices for households and thereby reduce households' exposure to energy poverty in view of rising energy costs and current economic difficulties.

In addition, a large number of respondents reiterated that essential goods and services, including energy, merit special treatment and should therefore be subject to a reduced VAT not the least in order to tackle the regressive nature of the VAT, but also because the EU Treaties provide for making the services of general interest accessible to all citizens at affordable prices.

On the other hand, a number of respondents made the point that, from an economic perspective, VAT is too general to efficiently target poor and vulnerable households, as other non-vulnerable households will benefit much more from reduced VAT rates without any rationale. It was suggested that social concerns and the issue of affordability could be more efficiently addressed with specific proactive measures outside the VAT system, such as direct subsidies and incentives to improve the energy efficiency of the building stock, which explicitly target vulnerable households.

Some respondents referred to the possibility of allowing the reduced VAT rate to apply to a certain minimum volume of energy beyond which the standard rate would apply. Others were however not in favour of such differentiation, including when the objective is to give preferential treatment only to green energy.

From an environmental point of view, many respondents were of the opinion that whilst mitigating climate change and promoting the efficient use of resources are worthy objectives, they should not involve the use of taxes which impose a disproportionate financial burden on vulnerable consumers within society. Moreover, increasing the VAT rate on energy was not considered an appropriate instrument for reducing energy consumption in view of the fact that for businesses, which are the biggest consumers, it is mostly irrelevant which VAT rate applies as they can recover their input VAT from the tax authorities.

Promoting energy savings through measures to increase energy efficiency was generally considered a far better instrument for reducing energy consumption than increasing the cost of the energy supplied. In addition, a large number of respondents advocated that as long as energy consumption is taxed at a reduced VAT rate, a similar rate should be applied to all products and services aimed at improving the energy efficiency, including the production of renewable energy.

From an internal market point of view, most respondents stressed that there is no evidence of distortion of competition between energy suppliers in the single market resulting from the application of reduced rates to energy products that could justify an abolition of the reduced VAT rates applied to them as energy products are taxed in the country where they are effectively used and consumed.

Finally, some respondents suggested that the removal of reduced VAT rates for energy would be politically very controversial as it is highly sensitive and likely to provoke enormous public hostility, including towards the EU.

Q4. Which arguments (social, economic, legal, etc.) do you wish to put forward in the context of the assessment of the reduced VAT rate for street cleaning, refuse collection and waste treatment? In your view, how can the hierarchy set out by the Waste Framework Directive be reflected in the VAT rates structure?

Social arguments were mainly put forward to justify the application of a reduced VAT rate for street cleaning, refuse collection and waste treatment. Any increase in VAT would impose a disproportionate financial burden on vulnerable consumers within society. A balance needs to be found between social and environmental reasons. Using VAT to affect consumer choices might not be in line with increasing the functionality of VAT, but may be justifiable for social reasons.

The collection of residual waste from households is an environmental and public health necessity, and street cleaning is an environmental and aesthetic necessity. Therefore, some respondents failed to understand that these activities would be any less socially desirable than collection for recycling and recovery.

Conversely, an increase of VAT has no impact on the biggest consumers of these utilities, namely taxable persons which can fully deduct their input VAT, and is therefore unlikely to influence their behaviour.

Several respondents were more specific concerning recycling activities carried out by social enterprises. These activities have significant social value through employment and training of marginalised groups. They must therefore be better supported through a number of measures including reduced VAT rates, and even a zero VAT rate, to reward the resource efficiency and socio-economic benefits they provide to society.

In addition the sector provides good quality items and appliances at a fraction of the price of a new item, giving access to such products to people of all income levels.

Concerning the **economic arguments**, it was argued that in many cases consumers have no choice about the waste disposal method they use. Thus taxing a less desirable method at a higher rate would have little incentive effect.

Some respondents support the application of reduced VAT rates for the waste management sector in all European countries in order to reward the resource efficiency and socio-economic benefits the recycling sector offers to society. As an economic incentive to divert waste from landfill, Member States should retain the option of applying reduced rates to waste management services, on a case-by-case basis.

Some respondents assert that minimising waste and increasing resource efficiency not only benefits the environment but also makes business sense-. Reduced overhead costs, savings in time and money as well as the business benefits of being seen to be green are all motivating factors for small businesses to manage their waste strategically.

Whereas others explain that using VAT as a fiscal instrument to induce behaviour change in relation to waste would be harmful to the small business sector and more emphasis should be placed on securing the necessary infrastructure to help small business gain access to waste and recycling services.

It was also argued that due to its character as a general consumption tax, the EU VAT system seems to be an inappropriate tool for stimulating a more economical use of water, energy and waste management.

From a **legal point of view**, it was pointed **out** that the application of any differentiation of tax rates may cause problems of interpretation. This could result in significant compliance costs for businesses and with tax authorities being confronted with questions of interpretation in borderline cases.

On whether the hierarchy set out by the **Waste Framework Directive (WFD)** can be reflected in the VAT rates structure, no clear view emerged. Almost the same number of contributions was in favour of this alignment as those against it. A third group with the same number of contributors had comments but did not take a position.

Certain respondents favour such an approach and consider that preferential taxation of particular waste collection services (those in line with the hierarchy set out in the WFD) would encourage a specific behaviour of consumers and businesses.

The application of reduced VAT rates in this respect is considered to be an effective policy instrument. Differential VAT rates could be used as a powerful tool to promote both resource efficiency and the waste hierarchy. It could be one way to help stimulate

and develop the supply of secondary resources (recyclates) and help incentivise the development of EU markets for the use of these materials by enabling Member States to charge lower VAT rates for reused or refurbished goods or to products which contain higher levels of recycled material.

On the other hand, respondents consider that VAT is not the right instrument to reflect or influence the hierarchy set out by the WFD. The only way that the hierarchy could be reflected in VAT rates would be to have a different VAT rate for collection for recycling and recovery, from that applied to collection of residual waste for disposal. This would create administrative complexity and therefore conflict with the 'better regulation' policy.

Some respondents claim that a reduced VAT rate for all concerned services does not go against the hierarchy set out by the WFD. Reduced rates would help to keep street cleaning, refuse collection and waste treatment at affordable prices for citizens, while other taxes or burdens (for instance, on landfill) would be more effective in implementing the waste prevention hierarchy.

It is also claimed that differential VAT rates would not serve as a significant incentive towards prevention or recycling for those purchasing waste management services. Prevention – minimising the use of materials ultimately destined to become waste – is mainly driven by procurement, transport and handling costs. Recycling is mainly driven by the value of the materials after reprocessing and by legally-binding targets.

Increasing the price of waste collection by increasing VAT could have also unintended consequences, such as littering and dumping garbage to public places like forests, parks etc.

For a number of respondents stimulating a more economical waste management could better be achieved by means of policy instruments other than VAT. Other ways of promoting and incentivising the efficient use of resources should be investigated. Notably, it was pointed out that the EU should further promote reuse and recycling by supporting the development of good practices rather than recommending the increase of taxes.

Q5. In your view, how can the reduced VAT rate for housing be best applied in order to take the resource efficiency element into account, and how should/can this be achieved with a minimum of increase in the administrative burden for businesses, in particular SME's, providing supplies of goods and services in the housing sector?

An important number of respondents indicated that taxation is not the right, or the only vehicle to influence behaviour in this area and that other tools are more efficient. Building regulations are already effective in improving the efficiency of housing developments. The EU VAT system seems an inappropriate tool for stimulating a more economical use of resources.

The resource element should therefore not have to be taken into account when applying a VAT reduced rate; this could better be achieved by means of other policy instruments.

Directive 2010/31/EU⁴ (Energy Performance of Buildings Directive), Directive 2012/27/EU⁵ (Energy Efficiency Directive), certificates for energy services, eco-design and voluntary eco-labelling were mentioned. Regional policy and the possibility to use ERDF funds for energy efficiency and renewable energy development helped to support major investments in social housing in some Member States. Efficient use of resources should be pursued by other means or public policy. Appropriate building regulations would be more efficient.

Some other respondents oppose restricting the application of reduced VAT rates to supplies that improve resource efficiency. This would produce burdensome procedures for social housing providers, many of whom are already undertaking energy efficiency investment to a considerable degree.

Concerning the **way for reduced VAT rate for housing to be best applied in order to take the resource efficiency element into account**, some respondents suggested applying the differentiation of the VAT rates to energy efficient products or construction products made of recycled materials that contractors have to buy. A lower VAT rate for construction products made of recycled materials could compensate the disadvantage in price and ease market access for such products.

Several respondents suggested maintaining (or introducing) national fiscal incentives, maintaining the reduced VAT for all materials used in the production cycle of building and creating a further reduction for those products with a brand that demonstrate its eco-sustainability.

While some call for reduced rates on energy saving Do It Yourself (DIY) products, others assert that reduced VAT rates should apply both to the purchase of energy efficient products and their installation by professionals.

Others suggest that any energy saving materials, products or any equipment enabling the use of alternative energies should only benefit from a reduced VAT rate if their purchase is linked to the installation service.

Another category of respondents assert that achieving energy efficient renovation and retrofitting of houses through the introduction of a reduced rate of VAT on energy efficient materials, products and appliances is a misleading and counter-productive approach. Having a reduced rate applicable exclusively to energy saving products will encourage building owners to carry out renovation works on a DIY basis or by undeclared workers, thus promoting illegal practices and denying the State its revenues.

Several possible ways for granting priority to products meeting the sustainability and environmental protection requirements were suggested. For example a general positive list; a VAT reduction based on more general criteria combined with certified companies; a more general reduction based on categorisation of the relevant subsectors or on the type of special work performed combined with some obligations on customers (no cash-in-hand payments, only bank payments) to fight illicit employment or tax fraud; for the best

⁴ [Directive 2010/31/EU](#) of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings - OJ L 153, 18.6.2010, p. 13–35

⁵ [Directive 2012/27/EU](#) of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC Text with EEA relevance - OJ L 315, 14.11.2012, p. 1–56

–in-class products within the individual product families (A or A+ for either building material family) based on objective criteria.

Some other respondents asserted that the existence of a reduced rate of VAT on the renovation of housing is a tool that is already integrated into a global sustainable development policy. In order to keep home owners motivated to make improvements to homes (to increase the energy efficiency of older homes) the reduced VAT rate is a powerful incentive. Although reduced VAT rates might not explicitly support resource efficiency, but they facilitate meeting the objectives of the above directives by stimulating renovation activities. These are increasingly regulated by European rules on energy efficient buildings.

However, the same number of contributors stated that it would in practice be extremely complex to use reduced VAT rates accurately to take account of different levels of resource efficiency in new housing because environmental requirements for new housing are set at both national and local government levels.

A number of respondents stressed that social and environmental policies should not be put into competition. Resource efficiency should not come at the cost of increasing poverty or marginalising the most vulnerable people in society.

Several respondents expressed their concern about the incoherence of treatment between resource efficiency and energy use. It is illogical that energy can be charged at a reduced rate but not energy saving measures. A solution might be that any Member State that applies reduced rates to energy consumption should be required to apply reduced rates to measures that seek to reduce energy consumption. The application of VAT reduced rates should therefore be synchronized with the EU 2020 goals of increasing the energy efficiency and securing energy resources),

A number of respondents were in favour of maintaining the current reduced rates whilst others asserted that the current reduced rates should be extended notably to demolishing slums. Demolishing slums in order to have them replaced by new buildings is the most efficient way of achieving three EU objectives: the regeneration of urban centres, social cohesion and boosting the efficiency of residential buildings.

Inversely, some other respondents explain that reduced rates should apply to building products emanating from building renovations or building demolition properly dismantled and collected with the view to be effectively recycled. For others, given the clear public benefits to preserving historic buildings, a reduced VAT rate for repair and maintenance, and alterations, would help offset any extra costs that may be incurred from installing energy efficient technologies in them.

In contrast, some respondents stated that reduced rates should be abolished as they create built-in distortions in the VAT system and for the sake of clarity and uniformity of the EU VAT system it would be desirable to have no reduced VAT rates. This however should be followed by lowering the standard VAT rate and specifying a maximum VAT rate to open up for possibilities to use other taxes or EU or national policies

Concerning the **administrative burden for businesses**, a number of respondents asserted that reduced rates have significant compliance costs not only on businesses but also on tax authorities. This is mainly due to costly and resource-intensive clarification of interpretation in borderline cases. Separating one from the other and defining exactly which activities that increase resource efficiency and which do not would be difficult. The administrative burden would be disproportionate in particular for SMEs. Therefore,

associated complication of tax laws and increase to costs must be proportionate to the objectives pursued by the reduction targets.

A few respondents alleged that there is no impact on administrative burdens for companies installing energy efficiency materials because the VAT system is simple to administer, and businesses across the EU are quite used to completing VAT returns with differential rates of VAT where these apply. There is therefore unlikely to be any material impact on administrative burdens for these businesses.

3.4. Similar goods and services should be subject to the same VAT rate

Q6. Do you agree that those electronic services that would qualify for the reduced rate will have to be precisely defined in a uniform way at an EU level or do you consider that a broad definition in the VAT Directive would be sufficient?

The large majority of replies concern on-line and off-line publications (books, newspapers and magazines). Only a few refer to on-line and off-line radio and television broadcasting.

Quite a number of respondents advocate for the application of the same VAT rate to similar goods and services as well as the need to precisely and uniformly define in a at an EU level those electronic services that would qualify for the reduced rate. A precise definition reduces the ability of Member States to interpret the terms too liberally, potentially resulting in a distortion of tax rates.

However, the question of precise definition needs to be seen in a much broader context and needs to be taken into consideration as it could mean modifications to national implementations of EU legislation. Therefore, some believe that it would add complexity if the EU adopted its own precise definition.

Others acknowledge that a definition of electronic services that would qualify for the reduced rate is necessary in order to avoid uncertainty. However, a significant number of respondents pointed out the need for a definition sufficiently broad and robust enough to cater for future technological developments. Any definition would have to be dynamic in order to adapt to advances in technology. A broad framework identifying key characteristics rather than a statutory definition would be more appropriate in order to avoid the risk of becoming obsolete by failing to meet the pace of technological developments and thus having to regularly refine it.

A few respondents stress that the setting of definitions inevitably leads to borderline issues. Several respondents prefer the use of their national definition in particular for newspapers whereas some other respondents asserted that there is no need to precisely define on-line magazines on the grounds that in the many pieces of EU legislation that directly or indirectly impact the magazine sector, no precise definition of magazines can be found. Most texts make do with a reference to the words “periodical”, “magazine” or “journal” (i.e. Orphan Works Directive 2012/28/EU).

A few respondents think that a more general approach would be sufficient, more practical and future-proof.

Some other respondents indicated, however, that there is a need for detailed guidelines or definitions supported by mandatory rules which could be adopted in implementing regulations as has been done for electronically supplied services in general.

Certain respondents underlined the importance of ensuring that prospective definitions appropriate for taxation purposes are laid down, rather than making use of the product of agreements obtained in a different context and for different purposes. Given these constraints, it is likely that agreeing definitions that are both future-proof and acceptable to all Member States would involve lengthy and challenging negotiation.

A number of respondents asserted that a simple technical adaptation of Annex III would be sufficient. However, this adaptation only concerned publications.

References to definitions laid down in the Audiovisual Media Services Directive (Directive 2010/13/EU⁶) or in Council Regulation (EC) No 1777/2005⁷ were also evoked.

Some respondents indicated that the option for Member States to apply a reduced rate should not depend on how a newspaper or a magazine should be defined. It depends on the recognition by EU and Member States of the essential role of newspapers in all formats and on all platforms for press freedom, democracy as well as education of citizens and literacy

Q7. Considering the need for a uniform and future-proofed approach at EU level, what should be the definition of an e-book in EU-law?

Respondents almost unanimously called for an equal VAT treatment of printed books and e-books. Where a VAT reduced rate (or even a zero or super-reduced rate) is allowed for printed books it should also be applicable to e-books. The rationale behind this is that a book is a book whatever its format. They both deliver the same content to the end-user.

A very limited number of respondents considered (or questioned) e-books as not being similar to printed books. They are not exchangeable products and therefore there is no need to apply the same VAT rate on their supplies, nor is it necessary to define an e-book.

Features for a future-proofed definition of an e-book

Without proposing a definition of an e-book, many responses converged in describing the features for a future proofed definition of an e-book. Respondents generally consider that a broad definition of book encompassing books whatever the means of transfer of information would be sufficient. This definition should be uniform at EU level. Some suggested having a definition in a Council regulation or in interpreting guidelines.

Some respondents found it difficult to propose a definition that would be flexible enough to keep pace with technological evolution. They proposed defining books from the point

⁶ [Directive 2010/13/EU](#) of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Text with EEA relevance) - OJ L 95, 15.4.2010, p. 1–24

⁷ [Council Regulation \(EC\) No 1777/2005](#) of 17 October 2005 laying down implementing measures for Directive 77/388/EEC on the common system of value added tax - OJ L 288, 29.10.2005, p. 1–9

of view of the consumers' needs they satisfy. Indeed, from the point of view of the consumers, content is more important than the type of data carrier.

Proposed definitions of an e-book

Many respondents took as starting point that the need to have such a definition has been artificially created by the exclusion in Article 98, paragraph 2, second subparagraph, of the VAT Directive, of electronically supplied services or by the wording of Annex III, point 6, of the VAT Directive which limits the scope of the reduced rate solely to books with a physical means of support. Books, be they provided on physical means or digitally, are still books.

A large majority of respondents - many of whom are European and national publishers or bookseller associations - think that a minor adaptation to the VAT Directive would be sufficient. They propose an adaptation of Annex III, point 6, of the VAT Directive in this way:

*"supply, including on loan by libraries, of books (including brochures, leaflets and similar matter, children's picture, drawing or colouring books, music written or in manuscript form, maps and hydrographic or similar charts), newspapers and **serials, accessible on all means of support and formats (including -but not limited to- print, digital, audio) and via any technological means (both offline and online), other than material wholly or predominantly devoted to advertising**".*

In case the adaptation of Annex III is not deemed to be sufficient, they propose the following definition:

"An electronic book is a work, conceived as a whole in one part or within a finite number of parts by its publisher/author(s), consisting predominantly of textual, photographic and/or graphic content or else in the reading or in the audio rendering of the same content, which is made publicly available in an electronic format. An electronic book can be interactive and can contain non-textual elements, presented in different formats (such as audio, video, hypertext), functionally connected to that predominant content."

Other comparable or less detailed definitions were also proposed.

When comparing printed books to e-books, many respondents acknowledged the fact that e-books may also include additional features such as background music, video and/or an additional material. Opinions in this respect are divergent: certain respondents consider that the definition of an e-book should be limited to the exact replication of a printed book, others consider that the definition of an e-book should also include those additional features that are inevitable with electronic media and can be considered as "ancillary" to it (e.g. reading, searching, extracting and index links) and finally others consider that besides this features such as audio, video and customisation functions should also be included in the definition. When referring in the e-book definition to the equivalent printed book, some respondents drew attention to the fact that increasingly some books are "born digital" i.e. without a printed equivalent. This should be kept in mind when defining an e-book, so as not to exclude such books and future proof against technical innovations in "reading a book".

Some respondents proposed, in addition to defining characteristics, referring to products which are considered eligible for, or have been allocated, an International Standard Book Number (ISBN). This international system allocates a unique identifier to all books published, including e-books.

Q8. Considering the need for a uniform and future proofed approach at EU level, what should be the definition of on-line newspapers and on-line periodicals in EU-law?

Respondents unanimously claim for an equal VAT treatment of traditional newspapers and periodicals on the one hand and their on-line version on the other hand. The VAT reduced rate (or even zero or super reduced rate) currently applicable to newspapers and periodicals should be extended to on-line newspapers and on-line periodicals.

A very limited number of respondents questioned whether e-publications⁸ are not similar to printed ones. They are not exchangeable products and therefore there is no need to apply the same VAT rate on their supplies, nor is it necessary to define an on-line newspaper or an on-line periodical.

Proposed definitions of on-line newspapers and on-line periodicals

Some respondents pointed out the need for a definition that should be an EU-wide uniform one. This definition could be broad, meaning that all means for the transfer of information could be covered by the category of the reduced rate. The definition could be given in a Council Regulation.

However, nearly all those respondents that are European and national newspaper or periodical publishers concur in saying that there is no need to have a uniform definition of on-line newspapers or periodicals at EU level. A straightforward technical change in Annex III of the VAT Directive is all that is required to achieve this goal. Indeed, the definition of a newspaper or a periodical at national level is in their view closely connected to the political, historical and cultural history of each Member State and would also have repercussions on other fundamental aspects of the press (constitutional, legal and economic) which are Member States' exclusive competence. Some Member States have a specific national definition for newspapers and periodicals (whether in print or in digital forms) in order to achieve certain objectives based on national press policy, legislation and constitutional principles. A European wide definition of an online newspaper or periodical could therefore challenge national definitions and have an unintended impact on other important public policy objectives (e.g. press freedom, culture, media pluralism) which are of Member States' exclusive competence. The extension of Annex III should however be done in such a way that it is future-proof and leaves room for innovations in the publications sector, thus not limited to the exact reproduction of the printed newspaper or periodical in digital forms (e.g. PDF versions), but also including websites, apps etc.

Some respondents suggested the following adaptation to Annex III, point 6, of the VAT Directive:

*“supply including on loan by libraries, of books (including brochures, leaflets and similar matter, children’s picture, drawing or colouring books, music written or in manuscript form, maps and hydrographic or similar charts), newspapers and **serials, accessible on all means of support and formats (including – but not limited to –print,***

⁸ The wording "publication" refers to newspapers as well as to periodicals. "E-publication" refers to their on-line version.

digital, audio) and via any technological means (both offline and online), other than material wholly or predominantly devoted to advertising”

Nevertheless, and only in the event a definition is considered inevitable, some respondents suggested adding the following definition:

"A serial is a scientific, academics, or practitioner learned publication, involving collections of articles published in volume format from time to time, online and/ or in physical form, consisting predominantly of textual, graphical or diagrammatic content. An electronic serial can be interactive and can contain non-textual elements, presented in different formats (such as audio, video, hypertext), functionally connected to that predominant content."

Also, only in the event a definition is considered inevitable, the following definition of an on-line newspaper/periodical was suggested:

"The digitised material reproduction of a respective newspaper or periodical adding interactive elements provided that in each case such elements are an extension of the published content (including editorial content and advertisements) of the respective print newspaper or periodical."

The following definition of an on-line newspaper/periodical was also suggested:

"A serial publication containing news on current events and items of special or general interest, issued at least once per week in an electronic format designed to be read on a computer, a handheld device, or other electronic devices. The term on-line newspaper and on-line periodical does not include a website or media file containing an electronically formatted newspaper or periodical for which most of the value to consumers is derived from audio or video content that could not be delivered in a printed format."

Variants of these kinds of definitions referring to other periodicals (daily, weekly, monthly, etc.) or excluding exclusive or major advertising content were also proposed.

Some respondents proposed that the definition of an on-line newspaper or an on-line periodical should be the digital version of the "off-line" corresponding newspaper or periodical. However, respondents generally underlined the need to take account of technology advances and not to restrict the definition just to the printed word. They wanted to include articles and content with embedded links or other media that can be accessed to enhance the reading experience (e.g. include links to other articles on the same or connected subjects or to advertisements in video clip form which the reader can choose to access in the same way that a reader can choose to read a paper advertisement).

A number of respondents proposed the following definitions:

"Online newspapers: serial publications or frequently updated website containing news on current events of special or general interest of which the content has in majority been written and/or edited by journalists employed or remunerated by the publisher that are published online and/or in a machine-readable format, and accessed via any electronic device, computer, smartphone or e-book reader. Newsreaders and similar websites that automatically search, gather and publish news and information from other sources without manual intervention are excluded from this definition."

"Online periodicals: magazines or other journals that are accessible online or in any electronic format and that are issued at regularly recurring intervals in any electronic format, which can be viewed on an electronic device, computer, smartphone or e-book reader."

Some respondents proposed that in a parallel to the proposed definition of e-books, reference should be made to the International Standard Serial Number (ISSN) when defining on-line newspapers/periodicals. The ISSN identifies the title of a serial and stays the same from issue to issue unless the title changes, at which point a new ISSN needs to be assigned.

In comparison with e-books, some respondents found it even more difficult to propose a definition for on-line newspapers and periodicals, since a certain level of interactive content is in these cases unavoidable (e.g. comments/forums). However if the underlying social policy is to enhance sharing of information, one should not focus on the necessity of having something that is "identical" to a newspaper but rather on something that is the electronic "replacement" for a newspaper/periodical but performing the same social function.

Q9. Are the definitions laid down in the Audiovisual Media Services Directive sufficiently clear were a reduced VAT rate allowed for on-line radio and television broadcasting?

Most of the respondents consider that on-line and off-line radio and television services should be treated on the same footing for purposes of applying the VAT reduced rate and that differentiation based on the type of distribution channel is no longer sustainable.

Features for a future-proofed definition of on-line radio and television broadcasting

In order to avoid cross-border effects, a certain number of respondents think there is a need for an EU-wide definition that should be broad enough to encompass all means for transfer of information. In this case, there would be no need for a reference to the definitions laid down in the Audiovisual Media Services Directive (hereafter "AMS Directive"). The use of a Council Regulation was also mentioned.

Generally respondents considered the definitions in the AMS Directive as sufficiently clear where a reduced VAT rate is also allowed for on-line radio and television broadcasting. Some respondents thought either a number of scenarios might still not be clear or definitions might be difficult to apply in the future due to the rapid technological developments in this sector. Linking the application of VAT reduced rates in this sector to another Directive might bring unexpected results. Integrating those definitions in the VAT Directive would imply the potential need for a constant revision of those definitions.

The AMS Directive makes a distinction between "traditional television" (i.e. linear audiovisual media services⁹) and "on-demand television" (i.e. non-linear audiovisual

⁹ Means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule.

media services¹⁰). A certain number of respondents questioned this distinction which they consider as artificial since from the consumer's perspective they provide the same services, i.e. reception of information or entertainment. They consider that both services should be covered by the VAT reduced rate. Moreover, were VAT reduced rates not applicable to all audiovisual media services, the mere reference to the AMS Directive would no more be sufficient and additional definitions would need to be introduced. This distinction will not lead to simplification in a context of increasing technological convergence between "off-line" television and "on-line" television. Commercial convergence will also need to be taken into consideration (e.g. "Triple play", "Connected TV" offers) as well as the involvement of intermediaries in electronically supplied services. Other respondents consider that where the content goes beyond that provided via the linear broadcasting (traditional television and radio broadcasts) the provision should be that of electronic services and taxed accordingly.

Some respondents drew attention to the fact that on-line radio is not covered by the AMS Directive. A definition would be needed here.

Finally no definition was proposed but a modification of Annex III, point 8, of the VAT Directive as follows:

“(8) reception of radio services, including on-demand radio services, and audiovisual media services”

4. FINAL OBSERVATIONS

The European Commission is grateful to all participants who took the time to make a submission. It was indeed very important to get feedback from stakeholders directly involved in the sectors covered by this public consultation. It was very informative to analyse all the comments, reports and statistical data provided by respondents.

Indeed, this public consultation was, as indicated at the moment of its launching, of a technical nature and the input provided by the stakeholders is an important part of the assessment process of the VAT rates structure that the Commission announced in its Communication on the Future of VAT.

¹⁰

Means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider.

Annex: Statistical data

Table 1 Total No. of replies per profile of respondent

Type of respondent	No. of replies		
	Registered in the Interest Representatives Register	Not registered in the Interest Representatives Register	Total
Business	9	47	56
SME	0	21	21
Large company	7	11	18
Multinational company	2	8	10
Not specified	0	6	6
Citizen	0	23	23
National Association	60	78	138
European Association	43	5	48
NGO	16	4	20
Tax Advisor or tax practitioner	2	5	7
Academic	0	4	4
Public authority	0	3	3
Other	18	16	34
TOTAL	148	185	333

Table 2 Total No. of replies per country and profile of respondent

COUNTRY	Total Number of replies per:												
	Businesses				Citizen	National Association	European Association	NGO	Tax advisor/ Tax practitioner	Academic	Public authority	Other	TOTAL per country
	SME	Large company	Multinational company	Not specified									
Austria		1			1	4							6
Belgium		5	1		1	13	44	7				5	76
Czech Republic										1			1
Denmark						1							1
Finland						1							1
France	1	3	3	1	8	24		4	1		2	5	52
Germany	19	4		2	5	31	1					3	65
Greece								1					1
Hungary						1		1					2
Ireland					1							1	2
Italy	1	1		1		15		2		1		5	26
Luxembourg		1											1
Poland					0				1				1
Portugal					2	2						2	6
Spain			1		4	15		2		1		1	24
Sweden						4				1			5
The Netherlands			1			5	1					1	8
United Kingdom		3	4	2	1	23	1	3	3		1	7	48
Non-EU							1					1	2
n.a.						0			2			3	5
TOTAL	21	18	10	6	23	138	48	20	7	4	3	34	333

Table 3 Total No. of replies per country and profile of respondent (Entities registered in the Register of Interest Representatives)

COUNTRY	Total Number of replies per:												
	Businesses				Citizen	National Association	European Association	NGO	Tax advisor/ Tax practitioner	Academic	Public authority	Other	TOTAL per country
	SME	Large company	Multinational company	Not specified									
Austria		1				3							4
Belgium		1				7	40	7				4	59
Denmark						1							1
Finland						1							1
France			2			13		3				1	19
Germany		3				13	1					2	19
Greece								1					1
Hungary								1					1
Italy		1				5		1				2	9
Luxembourg		1											1
Spain						4		1				1	6
The Netherlands						2						1	3
United Kingdom						11	1	2	1			3	18
Non-EU							1					1	2
n.a.									1			3	4
TOTAL		7	2			60	43	16	2			18	148

Table 4 Total No. of replies per country and profile of respondent (*Entities NOT registered in the Register of Interest Representatives*)

COUNTRY	Total Number of replies per:												
	Businesses				Citizen	National Association	European Association	NGO	Tax advisor/ Tax practitioner	Academic	Public authority	Other	TOTAL per country
	SME	Large company	Multinational company	Not specified									
Austria					1	1							2
Belgium		4	1		1	6	4					1	17
Czech Republic										1			1
France	1	3	1	1	8	11		1	1		2	4	33
Germany	19	1		2	5	18						1	46
Hungary						1							1
Ireland					1							1	2
Italy	1			1		10		1		1		3	17
Poland									1				1
Portugal					2	2						2	6
Spain			1		4	11		1		1			18
Sweden						4				1			5
The Netherlands			1			3	1						5
United Kingdom		3	4	2	1	12		1	2		1	4	30
n.a.									1				1
TOTAL	21	11	8	6	23	79	5	4	5	4	3	16	185