



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Chair

MARKT. 59123						
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A	B	C	D	E	F	G

Brussels, 26 MARS 2009
SG-C2/RM/sq D(2009) 2516

NOTE FOR THE ATTENTION OF MR HOLMQUIST
DIRECTOR GENERAL, DG MARKT


Subject: Recommendations of the Impact Assessment Board on the draft staff working paper on the economic impact of the FISCO proposals (procedures for obtaining withholding tax relief on securities income)

Please find in annex the recommendations of the Impact Assessment Board on the draft Staff Working Paper on the above mentioned subject. Although as we agreed earlier your document is not a fully-fledged impact assessment, the Board has welcomed the opportunity to examine its quality and issue some recommendations.

I hope you find the recommendations useful, and suggest that you include a paragraph in the final version of the Staff Working Paper referring to the Board's examination and briefly explaining if and how the Board's recommendations have led to changes compared to the earlier draft. Such a cross-reference will contribute to the coherence of the file as it goes into the inter-service consultation and is presented to the College.

I suggest that procedurally we treat the Staff Working Paper and the Board's Recommendations in the same way as we would with a proper Impact Assessment Report. This means that it is the responsibility of your service to ensure that the Board's Recommendations are uploaded to CIS-Net and that they are submitted to the Registry together with the corresponding initiative and the Staff Working Paper when they are introduced for adoption by the College. More detailed instructions are available on the SG Manual of Operating Procedures.

Please note that once the College has adopted the corresponding initiative, the Board's opinion will be published on the Europa website, unless you inform us of the reasons - in accordance with Regulation 2001/1049 - why this should not be done in this particular case prior to the date of adoption. Please send (a copy of) such a request to the Impact Assessment Board mailbox: IMPACT ASSESSMENT BOARD


Alexander Italianer

Encl. Recommendations of the Impact Assessment Board

Copies H. Klaus (President's cabinet), C. Day, E. Golberg, M. Klingbeil, F. Genisson, J. Watson, O. Bailly, M. Vialle (SG), Board members and alternates



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Brussels, 26 MARS 2009
D(2009) 2517

IAB Recommendations

Title **Staff Working Paper on The Economic Impact of the FISCO Proposals (Procedures for Obtaining Withholding Tax Relief on Securities Income)**
(draft version of 23 February 2009)

Lead DG **DG MARKT**

(A) Context

Building on the Giovannini reports of 2001 and 2003 and the 2004 Commission Communication on "Clearing and Settlement in the European Union" – COM(2004)312-, in March 2005, the EU Clearing and Settlement Fiscal Compliance Experts' Group (FISCO) was created to give advice on the removal of fiscal compliance barriers to post-trading of EU cross-border securities transactions. Since then, the ECOFIN Council has underlined the importance of this issue on various occasions. In 2007, FISCO presented a report including its proposed solutions. This Staff Working Paper analyzes the economic impact of these solutions and is expected to accompany the Commission Recommendation on the procedures for obtaining withholding tax relief on securities income planned for the first half of 2009.

Although the document accompanying the proposed Recommendation is a Staff Working Paper rather than a fully-fledged Impact Assessment, the Board has welcomed the opportunity to examine it and to provide recommendations in view of its importance.

(B) Positive aspects

The draft working paper draws on an extensive consultation process and provides a wide-ranging evidence-based analysis of the issues. There is also much to commend in the three-pronged approach chosen to identify the likely economic impact (analysis of micro-data, macroeconomic modelling and simulations).

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance.

General recommendation: The working paper should analyze more extensively the risks posed by the fact that a non-mandatory solution is proposed for a problem which results in large part from the existing differences in relief procedures across

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Member States and classes of securities. While the paper analyzes in detail the drivers of costs and benefits for different stakeholders, it could provide a clearer comparison of these, qualify the results more explicitly in view of the limits of the different methodologies used, explain more clearly the data used and the assumptions made, and highlight the potential for administrative burdens reduction. This would also help to improve the readability of the paper for the non-specialist.

(1) The paper should analyze more extensively the risks posed by the non-mandatory nature of the proposal. The paper's discussion on the alternative legal tools available to the Commission (§ 1.3) is welcome. Given the decision to opt for a non-binding recommendation, however, the paper would benefit from a more explicit analysis of the risks this may entail for estimated benefits. This is particularly relevant since the difference in relief procedures across Member States (and classes of securities) is one of the key problem drivers. The paper should therefore analyse the extent to which expected benefits may vary depending on the degree to which Member States take-up the Commission's recommendations. Similarly, any risk that some benefits may simply fail to materialize under certain scenarios (such as the case of lacking "legal steadiness" or frequent overlapping audits) should be clearly identified and countervailing measures assessed. This analysis would help to provide a better background to assess the various measures suggested and their priority for current or future action.

(2) To facilitate the comparison of the expected benefits and costs, the paper should bring together more effectively the various strands of the analysis. The paper analyzes in detail the drivers of costs and benefits for the different stakeholders. It would, however, be useful if all these figures and factors were succinctly brought together through summary sections and/or tables at the end of each analytical chapter. A table would, for instance, allow an overview by showing the expected sign of the impact of individual actions on all the different components of costs and benefits analyzed. To exploit fully the potential synergies among the different methodological approaches, it would also be useful if the concluding section of each chapter could comment on the same factors (for instance, foregone tax relief, administrative costs for private and public actors, length of refunds execution and related opportunity costs). This would help to expand the final chapter in a manner that effectively draws together the results of the different analytical approaches adopted in chapters 3 to 6. Finally, greater quantification would be welcome for instance, regarding the cost arising from reconciling incoming credit notes - § 4.1.3 - and the share of foregone tax relief that can be tentatively attributed to threshold effects - § 4.2.2).

(3) Results should be qualified by indicating the limits of the methodologies used, and the underlying data and hypotheses should be consistently justified. Combining different approaches to the estimation of net benefits is useful given that each methodology has its own limitations. It would, however, be useful to briefly discuss these limits whenever relevant. Thus, for instance, in Chapter 4, foregone tax relief is viewed only as a cost due to the exclusive focus on intermediaries and investors. However, foregone tax relief is also a source of revenue for tax authorities. Also, as for all macroeconomic models, Chapter 5 relies on highly simplifying hypotheses including a (key) direct link between the cost of capital and the level of GDP. Some words of caution on this automatic link would seem to be warranted, not least to avoid disappointing findings in any quantitative ex post evaluation. Finally, while the report presents an impressive array of figures, their sources or, in the case of numerical assumptions, their

underlying justification, should be provided consistently (see, among the others, the assumption on interest rates in § 2.3 which is only explained in chapter 5, the figures under § 4.1.1 or the assumptions about average delays in refunds under § 5.3). Formal references (and, where possible web links) should also be added for all documents referred to (for instance, the FISCO reports, the 2006 impact assessment and the Giovannini reports quoted in § 1.1).

(4) The paper should discuss in more detail the impact in terms of administrative burden reduction. Paper work and information obligations are one of the main cost drivers associated with tax relief (page 36/37) and are directly targeted by the FISCO proposals. With this in mind, the paper would benefit from highlighting more explicitly the potential for reducing the administrative burdens associated with tax relief where possible estimating what this reduction might be.

(5) Readability for the non-specialist could be further improved. Although the nature of the paper is inevitably technical, further efforts could be made to increase its readability. Chapter 6, in particular, needs a more extensive explanatory text. Also, unless duplicating other material accompanying the planned Recommendation, it would be most useful to add annexes illustrating the relations among the different actors in a standard security withholding relief process and succinctly listing the key characteristics of current regimes in Member States. Finally, the text could comment on any interaction between the proposed measures, the on-going financial crisis and any relevant proposal for its solution. In doing so, the text could identify possible impacts on banks and households.

IAB scrutiny process

Reference number	2008/MARKT/043
Author DG	MARKT
External expertise used	No
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