



2018/0072(CNS)

18.9.2018

DRAFT REPORT

on the proposal for a Council directive laying down rules relating to the corporate taxation of a significant digital presence
(COM(2018)0147 – C8-0138/2018 – 2018/0072(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Dariusz Rosati

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ***■*** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council directive laying down rules relating to the corporate taxation of a significant digital presence
(COM(2018)0147 – C8-0138/2018 – 2018/0072(CNS))**

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2018)0147),
 - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0138/2018),
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, the Danish Parliament, the Irish Houses of the Oireachtas, the Maltese Parliament and the Netherlands House of Representatives,
 - having regard to Rule 78c of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2018),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) The Base Erosion and Profit Shifting (BEPS) Action 1 report on "Addressing the Tax Challenges of the Digital Economy" released by the OECD

Amendment

(2) The Base Erosion and Profit Shifting (BEPS) Action 1 report on "Addressing the Tax Challenges of the Digital Economy" released by the OECD

in October 2015 set out various different approaches for taxing the digital economy which were further examined in the OECD "Tax challenges Arising from Digitalisation – Interim Report 2018". As the digital transformation of the economy accelerates there is a growing need to find solutions to ensure a fair and effective taxation of digital companies.

in October 2015 set out various different approaches for taxing the digital economy which were further examined in the OECD "Tax challenges Arising from Digitalisation – Interim Report 2018". As the digital transformation of the economy accelerates there is a growing need to find solutions to ensure a fair and effective taxation of digital companies. ***However, to date the OECD work on taxing the digital economy has not delivered sufficient progress, which illustrates the need for the Union to advance on this matter at Union level. This Directive should also serve as a basis for further work at the international level. In the absence of a common Union approach, Member States will adopt unilateral solutions, which will lead to regulatory uncertainty and will be difficult for companies which operate cross-border and for tax authorities.***

Or. en

Amendment 2

Proposal for a directive Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The European Parliament concluded in its final reports of the Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion and the Special Committees on Tax Rulings and Other Measures Similar in Nature or Effect the need to address the tax challenges connected to the digital economy.

Or. en

Amendment 3

Proposal for a directive

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) Any changes to Union tax law should respect the tax neutrality principle and should not discriminate between Union and non-Union companies.

Or. en

Amendment 4

Proposal for a directive

Recital 8 b (new)

Text proposed by the Commission

Amendment

(8b) The concept of a significant digital presence and the solutions presented in this Directive should also become an integral part of a Council Directive on a Common corporate tax base and a Council Directive on a Common consolidated corporate tax base.

Or. en

Amendment 5

Proposal for a directive

Recital 9

Text proposed by the Commission

Amendment

(9) It is necessary that any processing of personal data carried out in the context of this Directive, should be conducted in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁷, including obligations to provide appropriate technical and organisational

(9) It is necessary that any processing of personal data carried out in the context of this Directive, should be conducted in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁷, including obligations to provide appropriate technical and organisational

measures to comply with the obligations imposed by that Regulation, in particular those relating to the lawfulness of the processing, the security of the processing activities, the provision of information and the rights of data subjects, data protection by design and by default. Whenever possible, personal data should be rendered anonymous.

¹⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p.1).

measures to comply with the obligations imposed by that Regulation, in particular those relating to the lawfulness of the processing, the security of the processing activities, the provision of information and the rights of data subjects, data protection by design and by default. Whenever possible, personal data should be rendered anonymous, ***notably data regarding the geographical location of the user.***

¹⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p.1).

Or. en

Amendment 6

Proposal for a directive Recital 10

Text proposed by the Commission

(10) The Commission should evaluate the implementation of this Directive ***five*** years after its entry into force and report to the Council thereon. Member States should communicate to the Commission all information necessary for this evaluation. An advisory DigiTax Committee should be established to examine questions on the application of the Directive.

Amendment

(10) The Commission should evaluate the implementation of this Directive ***three*** years after its entry into force and report to ***the European Parliament and*** the Council thereon, ***notably on the administrative burden and additional costs for companies and especially SMEs.*** Member States should communicate to the Commission all information necessary for this evaluation. An advisory DigiTax Committee should be established to examine questions on the application of the Directive. ***An observer of the European Parliament should be invited to attend its meetings.***

Or. en

Amendment 7

Proposal for a directive Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Given the administrative costs for a significant digital presence, it should be ensured that small and medium-sized enterprises (SMEs) do not fall unintentionally fall within the scope of this Directive. The Commission should, as part of the review process, examine the extent to which this Directive adversely affects SMEs.

Or. en

Amendment 8

Proposal for a directive Article 4 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) the ***proportion*** of total revenues obtained in that tax period and resulting from the supply of those digital services to users located in that Member State in that tax period exceeds EUR 7 000 000;

(a) the ***amount*** of total revenues obtained in that tax period and resulting from the supply of those digital services to users located in that Member State in that tax period exceeds EUR 7 000 000;

Or. en

Amendment 9

Proposal for a directive Article 4 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. As establishing corporate tax rates is a sovereign decision of Member States,

each of them retains the right to fix the corporate tax rate that will be applicable to digital services' revenues on its own territory.

Or. en

Amendment 10

Proposal for a directive Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

- 1. By... [the date of entry into force of this Directive] the Commission shall issue guidelines for tax authorities on how a significant digital presence and digital services are to be identified, measured and taxed. Those rules shall be harmonised across the whole Union and shall be issued in all the official languages of the Union.**
- 2. Based on the guidelines referred to in the first paragraph, the Commission shall issue guidelines with a clear methodology for companies to self-assess whether and which of their activities are to be counted into the significant digital presence. Those guidelines shall be issued in all the official languages of the Union and shall be made available on the website of the Commission.**

Or. en

Amendment 11

Proposal for a directive Article 6 – paragraph 1

Text proposed by the Commission

1. The Commission shall evaluate the implementation of this Directive **five** years after its entry into force and report to the Council thereon.

Amendment

1. The Commission shall evaluate the implementation of this Directive **three** years after its entry into force and report to the **European Parliament and the** Council thereon. **Particular emphasis shall be placed on the effectiveness of tax collection across Member States and the impact of this Directive on companies and especially SMEs.**

Or. en

Amendment 12

**Proposal for a directive
Article 6 a (new)**

Text proposed by the Commission

Amendment

Article 6a

Appeal

The companies – both Union and non-Union - may appeal the decision that the services they provide are digital services in accordance with national law.

Or. en

Amendment 13

**Proposal for a directive
Article 7 – paragraph 2**

Text proposed by the Commission

Amendment

2. The DigiTax Committee shall consist of representatives of the Member States and of the Commission. The chair of the Committee shall be a representative of the Commission. Secretarial services for the Committee shall be provided by the

2. The DigiTax Committee shall consist of representatives of the Member States and of the Commission **and an observer of the European Parliament**. The chair of the Committee shall be a representative of the Commission. Secretarial services for the Committee shall

Commission.

be provided by the Commission.

Or. en

Amendment 14

Proposal for a directive

Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The DigiTax Committee shall verify and control the correct implementation of this Directive by companies. It shall be able to gather and to use data it gathers from national tax authorities to examine the proper implementation of the significant digital presence rules and to serve as a body facilitating cooperation between national tax authorities to minimize the possibility of double-taxation and double non-taxation.

Or. en