

# Procedure file

Basic information		
CNS - Consultation procedure Directive	<a href="#">2018/0072(CNS)</a>	Awaiting final decision
Corporate taxation of a significant digital presence		
Subject 3.30.06 Information and communication technologies, digital technologies 3.45.04 Company taxation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Economic and Monetary Affairs	 <a href="#">ROSATI Dariusz</a>	31/05/2018
		Shadow rapporteur	
		 <a href="#">TANG Paul</a>	
		 <a href="#">FOX Ashley</a>	
		 <a href="#">JEŽEK Petr</a>	
		 <a href="#">JOLY Eva</a>	
		 <a href="#">VALLI Marco</a>	
		 <a href="#">KAPPEL Barbara</a>	
		Committee for opinion	Rapporteur for opinion
 Internal Market and Consumer Protection	The committee decided not to give an opinion.		
 Legal Affairs	The committee decided not to give an opinion.		
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3646</a>	06/11/2018
European Commission	Commission DG	Commissioner	
	<a href="#">Taxation and Customs Union</a>	MOSCOVICI Pierre	

Key events			
21/03/2018	Legislative proposal published	<a href="#">COM(2018)0147</a>	Summary

19/04/2018	Committee referral announced in Parliament		
06/11/2018	Debate in Council	<a href="#">3646</a>	
03/12/2018	Vote in committee		
05/12/2018	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A8-0426/2018</a>	Summary
12/12/2018	Debate in Parliament		
13/12/2018	Results of vote in Parliament		
13/12/2018	Decision by Parliament	<a href="#">T8-0524/2018</a>	Summary

### Technical information

Procedure reference	2018/0072(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 115
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Awaiting final decision
Committee dossier	ECON/8/12577

### Documentation gateway

Legislative proposal	<a href="#">COM(2018)0147</a>	21/03/2018	EC	Summary
Document attached to the procedure	<a href="#">SWD(2018)0081</a>	21/03/2018	EC	
Document attached to the procedure	<a href="#">SWD(2018)0082</a>	21/03/2018	EC	
Committee draft report	<a href="#">PE627.747</a>	18/09/2018	EP	
Amendments tabled in committee	<a href="#">PE629.429</a>	17/10/2018	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A8-0426/2018</a>	05/12/2018	EP	Summary
Text adopted by Parliament, 1st reading/single reading	<a href="#">T8-0524/2018</a>	13/12/2018	EP	Summary
Commission response to text adopted in plenary	<a href="#">SP(2019)44</a>	23/01/2019	EC	

## Corporate taxation of a significant digital presence

**PURPOSE:** to ensure that the activities of digital companies are fairly taxed.

**PROPOSED ACT:** Council Directive.

**ROLE OF THE EUROPEAN PARLIAMENT:** the Council adopts the act after consulting the European Parliament but without being obliged to follow the opinion of the latter.

**BACKGROUND:** rapid transformation of the global economy as a result of digitalisation is putting new pressures on corporate tax systems both at Union level and internationally, and calling into question the ability to establish where digital companies should pay their taxes and how much they should pay. The application of the current corporate tax rules to the digital economy has led to a misalignment between the place where the profits are taxed and the place where value is created.

The current rules no longer fit the present context where online trading across borders with no physical presence has been facilitated, where

businesses largely rely on hard-to-value intangible assets, and where user generated content and data collection have become core activities for the value creation of digital businesses.

This proposal comes at a time when policy makers are struggling to find solutions that can ensure fair and effective taxation as the digital transformation of the economy accelerates, and when the existing corporate taxation rules are too outdated for such changes.

The [Commission communication](#) on 'A fair and efficient tax system in the European Union for the digital single market' adopted on 21 September 2017, indicated that new international rules are needed specific to the challenges raised by the digital economy in order to determine where the value of businesses is created and how that value should be attributed for tax purposes.

The European Council Conclusions of 19 October 2017 underlined the need for an effective and fair taxation system fit for the digital era.

IMPACT ASSESSMENT: the preferred option for addressing the issue within the EU is a standalone Directive to modernise permanent establishment rules and profit allocation rules.

CONTENT: the proposal aims to address the tax challenges posed by the digital economy by putting in place a comprehensive solution in the current corporate tax systems in the Member States. In concrete terms, it would allow Member States to tax the profits that are made in their territory, even if a company is not physically present there.

Scope: the proposal affects corporate taxpayers that are incorporated or established in the EU, as well as enterprises that are incorporated or established in a non-Union jurisdiction with which there is no double taxation treaty with the Member State where a significant digital presence of the taxpayer is identified. The proposal does not affect enterprises that are incorporated or established in a non-Union jurisdiction with which there is a double taxation treaty in force with the Member State of the significant digital presence.

Significant digital presence: for the purposes of corporate tax, a permanent establishment shall be taken to exist if a significant digital presence exists through which a business is wholly or partly carried on.

A digital platform would be considered to have a taxable "digital presence" or a virtual stable establishment in a Member State if it meets one of the following criteria:

- 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 million;
- the number of users of one or more of those digital services who are located in that Member State in that tax period exceeds 100 000;
- the number of business contracts for the supply of any such digital service exceeds 3 000.

Profits attributable to the significant digital presence: the proposal sets out principles for attributing profits to a digital business. These principles should better capture the value creation of digital business models that highly rely on intangible assets.

Particular attention would be paid to the fact that a significant portion of the value of a digital enterprise is created where users are located and where user data is collected and processed and where digital services are provided.

Incorporation into the Common Consolidated Corporate Tax Base (CCCTB): the Commission is willing to work with the Member States and the Parliament to examine how the provisions of this Directive can be incorporated into the CCCTB.

In this respect, the Commission welcomes the amendments in the reports of the Committee on Economic and Monetary Affairs of the European Parliament on the Common Corporate Tax Base and the CCCTB as a good base for further work on ensuring a fair taxation of digital activities. (Please see [2016/0336\(CNS\)](#) and [2016/0337\(CNS\)](#)).

## Corporate taxation of a significant digital presence

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The Committee on Economic and Monetary Affairs adopted, in the framework of the consultation procedure, the report by Dariusz ROSATI (EPP, PL) on the proposal for a Council directive laying down the rules relating to the corporate taxation of a significant digital presence.

The committee recommended that the European Parliament approve the Commission's proposal subject to the following amendments:

Objective: the proposal aims to ensure that the activities of digital businesses are taxed in the EU in a fair way. It would apply to entities, irrespective of their size and where they are resident for corporate tax purposes, whether in a Member State or a third country.

Members stressed the importance of putting in place a fair and sustainable system of digital taxation, which will ensure digital companies to pay their taxes where their real economic activity occurs.

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.

Digital services: digital services covered shall include the sale of goods or services ordered online via digital interfaces (e-commerce platforms). Digital services shall not include the services listed in Annex III.

Significant digital presence: for the purposes of corporate tax, a permanent establishment shall be taken to exist if a significant digital presence exists through which a business is wholly or partly carried on.

A digital platform would be considered to have a taxable digital presence or a virtual stable establishment in a Member State if it meets one of the following criteria:

- 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 million;
- the number of users of one or more of those digital services who are located in that Member State in that tax period exceeds 100 000;
- the number of business contracts for the supply of any such digital service exceeds 3 000;
- the volume of data in the form of digital content collected by the taxpayer in a taxable year exceeds 10 % of the groups overall stored digital content.

A taxpayer shall be required to disclose to the tax authorities all information relevant to the determination of the significant digital presence.

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.

Profits attributable to significant digital presence: Members believe that the profits attributable to or in respect of the significant digital presence shall be proportionate to the economic reality of the business activity in the corresponding Member State.

The economically significant activities carried out by the significant digital presence through a digital interface shall include, inter alia, the collection, storage, processing, analysis, exploitation, transmission, deployment and sale of data at the user level.

Member States shall allocate adequate staff, expertise and budget resources to their national tax administrations as well as resources for the training of staff to be able to attribute profits to the permanent establishment and to reflect the digital activities in that Member State.

In order to guarantee a uniform application of the Directive in the European Union, the exchange of information on tax matters shall be automatic and mandatory, as laid down by Council Directive 2011/16/EU.

Guidelines: by the date of the entry into force of the Directive at the latest, 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.

It 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. Members proposed that companies - whether established in the EU or outside shall be able to appeal against the decision that the services they provide are digital services in accordance with national law.

The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, and of the revocation of that delegation of powers by the Council.

Implementation and review report: the Commission shall evaluate the implementation of the Directive no later than three years after its entry into force and report to the European Parliament and the Council.

In this report, particular attention shall be paid to the impact of the system of taxation provided for in this Directive on Member States' revenues, the impact on users' personal data and the impact on the Single Market as a whole, with particular regard to the possible distortion of competition between companies subject to the new rules laid down in this Directive.

## Corporate taxation of a significant digital presence

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The European Parliament adopted by 439 votes to 58, with 81 abstentions, in the framework of a special consultation procedure (Parliaments consultation procedure) a legislative resolution on the proposal for a Council directive laying down the rules relating to the corporate taxation of a significant digital presence.

Parliament approved the Commission's proposal subject to the following amendments:

### Objective

The proposal aims to ensure that the activities of digital businesses are taxed in the EU in a fair way. It shall apply to entities, irrespective of their size and where they are resident for corporate tax purposes, whether in a Member State or a third country.

Given that data has become a new economic resource and that too often multinational companies that heavily rely upon digital activities make tax arrangements allowing them to avoid or evade taxes, Parliament stressed the need to develop a new approach in order to have a fair and sustainable system of digital taxation, which will ensure digital companies to pay their taxes where their real economic activity occurs.

### Significant digital presence

For corporate tax purposes, a permanent establishment shall be deemed to exist where there is a significant digital presence through which an enterprise carries out all or part of its business.

Every taxpayer shall be required to provide the tax authorities with all the information necessary to determine the existence of a significant digital presence.

The data that may be collected from users for the purposes of applying this Directive shall be strictly limited to data indicating the Member State in which users are located, without allowing for identification of the user.

### Profits attributable to or in respect of the significant digital presence

Members specified that the economically significant activities performed by the significant digital presence through a digital interface include, inter alia, the collection, storage, processing, analysis, exploitation, transmission, deployment and sale of user-level data.

Member States shall allocate adequate staff, expertise and budget resources to their national tax administrations as well as resources for the training of staff to be able to attribute profits to the permanent establishment and to reflect the digital activities in that Member State.

In order to guarantee a uniform application of the Directive in the European Union, the exchange of information on tax matters shall be automatic and mandatory, as laid down by Council Directive 2011/16/EU.

### Guidelines

By the date of the entry into force of the Directive at the latest, 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.

Based on these guidelines, 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.

Members proposed that companies - whether established in the EU or outside shall be able to appeal against the decision that the services

they provide are digital services in accordance with national law.

Member States shall provide a mandate to the European Commission to negotiate tax treaties with third countries in accordance with the rules set out in this Directive, in particular as regards to the inclusion of the definition of a significant digital presence for tax purposes.

#### Implementation report and review

The Commission shall evaluate the implementation of the Directive no later than three years after its entry into force and report to the European Parliament and the Council.

In this report, particular attention shall be placed on the administrative burden and additional costs for companies and especially SMEs, the impact of the system of taxation provided for in this Directive on Member States' revenues, the impact on users' personal data and the impact on the Single Market as a whole, with particular regard to the possible distortion of competition between companies.

The Committee on the Taxation of the Digital Economy (DigiTax Committee) shall verify and control the correct implementation of this Directive by companies. It shall draw up an annual report on its activities and findings and share it to Parliament, the Council and the Commission.

Lastly, the European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objections to such acts and of the revocation of such delegation of powers by the Council.