Opinion of the European Economic and Social Committee on

'Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence'

(COM(2018) 147 final — 2018/0072 (CNS))

'Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services'

(COM(2018) 148 final — 2018/0073 (CNS))

(2018/C 367/14)

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Consultation	Council of the European Union, 11.4.2018
Legal basis	Articles 113 and 115 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	27.6.2018
Adopted at plenary	12.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	175/6/3

1. **Conclusions and recommendations**

1.1. The EESC welcomes the fact that the Commission is taking digital tax initiatives, giving further momentum to international discussions by providing a clear example of how the current tax principles could be transformed.

1.2. The EESC considers the entire economy to be digitalized and, like the Commission, strongly believes that the solution must ultimately be a global one in order to better harness the benefits of globalisation, with proper global governance and global rules. The EESC therefore welcomes close cooperation between the Commission, Member States and the OECD to support the development of an international solution.

1.3. The EESC believes that it is very important to develop new principles on how to attribute corporate profits to an EU country and tax them, in dialogue with trading partners, in order to avoid any escalation of trade and tax tensions between major economic players in the world. The EESC underlines the need for fair and consensus-based solutions.

1.4. The EESC believes that the impact assessment should be complemented by an analysis of what impact the interim measure will have on investments, start-ups, jobs and growth. It also needs to show how the proposal will affect SMEs.

1.5. The interim measure proposed by the Commission to tax certain digital services does not tax corporate profits but instead turnover. The EESC underlines that this approach is different from the global corporate tax system, which is based on the taxation of profits but it recognizes that for digital companies that do not have a physical presence, the country of sales will not receive corporate profit taxes.

1.6. The EESC is concerned that such a shift in taxation will benefit larger economies with many consumers at the expense of smaller exporting economies. The EESC underlines that any solution, whether short or longer term, to the taxation of digital business models must result in a fair and equal economic outcome for all economies in the EU.

1.7. When assessing the effective level of taxation of the digital sector, the EESC underlines the need to take into account the changes in the tax codes going forward due to the ongoing implementation of BEPS rules, and, in particular, to consider the substantially increased level of taxation in the US of US digital firms operating in the EU, due to changes in the US Tax Code.

1.8. The EESC notes that there is no sunset clause or other mechanism ensuring that the interim tax measure is withdrawn when a longer-term solution is found. The EESC strongly encourages the Council to develop such rules if the interim measure should be introduced.

1.9. The EESC stresses that the proposal to implement a turnover tax has initiated an intensive international debate, which was one of the purposes of the initiative. Europe now needs to come to a common position, in the ongoing discussions at the OECD.

2. **Introduction and background**

2.1. With its communication entitled *Time to establish a modern, fair and efficient taxation standard for the digital economy*, published on 21 March 2018, the Commission presented its legislative package for a harmonised reform of the EU's corporate tax rules for digital activities. The package contains two Council Directives accompanied by a soft-law recommendation relating to the corporate taxation of a significant digital presence.

2.2. In particular, the Commission proposed two new Directives: i) a long-term proposal, establishing rules and provisions for 'digital presence' (digital PE) ([1]) which aims to reform corporate tax rules so that profits are registered and taxed where businesses have significant interaction with users through digital channels rather than where they make their profits: ii) a short-term proposal, an interim turnover tax on the provision of certain types of digital services ([2]). The EU single market needs a stable tax framework that is up-to-date with digital business models. This should stimulate innovation by providing a stable environment for businesses to invest in and enabling them to grow. Companies engaged in digital services, like all other companies, must contribute to public finances and share the tax burden needed to finance public services ([3]).

2.3. Specifically, the long-term proposal lays down rules establishing a taxable nexus for digital businesses operating across borders in the case of a non-physical commercial presence, as well as principles for attributing profits to a digital business which would better capture the value creation of digital businesses. These measures would apply to companies which fulfil one of the following criteria: i) threshold exceeding EUR 7 million in annual revenue in a Member State; ii) more than 100 000 users in a Member State in a taxable year; or iii) over 3 000 business contracts for digital services created between the company and business users in a taxable year.

2.4. The short-term proposal, the interim turnover tax, would apply, as an indirect tax, to activities whose revenues are created: i) from selling online advertising space; ii) from digital intermediary activities which allow users to interact with other users and which can facilitate the sale of goods and services between them; and iii) from the sale of data generated from user-provided information. This tax would only apply to companies with total annual worldwide revenues of EUR 750 million, and EU revenues of EUR 50 million each year. If applied at a 3 % rate, Member States could generate an estimated EUR 5 billion in revenues each year.

2.5. The Commission's proposal is to combine the new Directives with amendments to the Common Consolidated Corporate Tax Base (CCCTB), ensuring that Member States' corporate tax systems and the proposed CCCTB have rules which address the challenge of taxation of the digital economy ([4]).

([1]) COM(2018) 147 final.
([2]) COM(2018) 148 final.
([3]) COM(2018) 146 final.
([4]) COM(2018) 146 final. For further information, see OJ C 434, 15.12.2017, p. 58.
https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/common-consolidated-corporate-tax-base

2.6. Looking ahead, the Commission strongly believes that the solution must be a global one, and is working closely with the Organisation for Economic Cooperation and Development (OECD) to support the development of an international solution in line with the OECD's interim report on taxation of the digital economy, published on 16 March 2018.

3. **General comments**

3.1. The EESC considers the entire economy to be digitalised. Given the rapid development of business models, in particular in the area of digital services, it is of the utmost importance to also develop our tax systems. The digitalised economy transcends borders and there is a growing need for the tax framework to be up-to-date with digital business models.

3.2. The EESC, like the Commission, strongly believes that the solution must ultimately be a global one in order to better harness the benefits of globalisation, with proper global governance and global rules. The EESC therefore welcomes the close cooperation between the Commission, Member States and the OECD to support the development of an international solution.

3.3. In parallel to international discussions, and following its Communication ([5]) published in September 2017, the Commission is now proposing solutions at EU level. As the Commission states ([6]), this will give further impetus to international discussions by providing a clear example of how the principles under discussion at international level can be transformed into a modern, fair and efficient corporate taxation framework adapted to the digitalised economy.

3.4. The EESC considers a level playing field in the area of corporate taxation to be very important. Recent years have demonstrated that individual companies have been able to make use of specific tax rules in some Member States, reducing their effective tax rate to almost zero. The lack of transparency has contributed to such an outcome. Some of the cases have involved multinationals active in the area of digital services. The Committee therefore shares the Commission's ambition to continue to address aggressive tax planning behaviour and non-transparency by Member States to ensure equal treatment of firms and promote European competitiveness.

3.5. The EESC welcomes the fact that the Commission is taking digital tax initiatives, giving further momentum to international discussions by providing a clear example of how the current tax principles could be transformed. The proposal of implementing a turnover tax has initiated an intensive international debate, which was one of the purposes of the initiative. Europe now needs to come to a common position, in the ongoing discussions at the OECD.

3.6. The EESC agrees with the Commission that any solution proposed at EU level must also take into account the global dimension, and recognises, like the Commission, that 'these proposals are the Commission's contribution to shaping the consensus-based solution that the OECD intends to seek by 2020. They provide an example of how the principles being discussed at international level can be operationalised' ([7]).

3.7. It is very important to develop new principles on how to attribute corporate profits to an EU country and tax them, in dialogue with trading partners, in order to avoid any escalation of trade and tax tensions between major economic players in the world. The EESC underlines the need for fair and consensus-based solutions.

3.8. The present corporate tax systems in the world are based on assessing the corporate profit attributable to each relevant jurisdiction. Taxation should be based on where value is created. Given the difficulties of telling where in the value chain profit emerges, there is a need to find universal principles of how to assess where value is created. Such rules have been developed within the comprehensive work of the OECD, formulating tax principles and definitions of how to price goods and services (transfer pricing rules) for companies within a business group.

([5]) COM(2017) 547 final.
([6]) COM(2018) 146 final, p. 5.
([7]) COM(2018) 146 final, p. 6.

3.9. The EESC believes that the international tax rules need to be revised from time to time as business models evolve. The current rules have very recently been revised in connection with the Base Erosion and Profit Shifting (BEPS) agreement ([8]). The new rules and definitions are now being implemented. They are expected to substantially reduce the opportunity for aggressive tax planning and erosion of tax bases ([9]).

3.10. It is important that other developments in the corporate tax area are in line with the achievements already made in BEPS. One of the principles in BEPS is to allocate profits to countries in accordance with where value is created.

3.11. The EESC would like to underline the need for proper impact assessments. The EESC believes that the impact assessment is not sufficiently comprehensive. The Commission has not analysed what impact the interim measure will have on investments, start-ups, jobs and growth. Nor does the impact assessment show how the proposals will affect SMEs.

3.12. The revenue impact for smaller and larger economies also needs to be analysed as well as the effect stemming from the measures operating alongside BEPS implementation in various countries and the US tax reform.

3.13. The EESC is concerned that by taxing turnover, with the negative cascading effects explicitly recognised by the Commission, the development of digital services, and in particular start-ups, could be harmed. The cascading effect arises when the services are sold several times and taxed each time.

3.14. The EESC considers that the ceiling of EUR 7 million for creating a permanent establishment from which the new regime would apply, should be increased. It would be preferable if the deliberations in the Council resulted in an outcome that does not risk hampering digitalisation but instead enhanced the functioning of the single market. When assessing the effective level of taxation of the digital sector, the EESC underlines the need to take into account the changes in the tax codes going forward due to the ongoing implementation of BEPS rules, and, in particular, to consider the substantially increased level of taxation in the US of US digital firms operating in the EU, due to changes in the US Tax Code ([10]).

3.15. Taxing turnover instead of profit and levying taxes where sales take place instead of where value is created constitutes a fundamental change from the current principles of taxation. The EESC is concerned that such a shift in taxation will benefit larger economies with many consumers at the expense of smaller exporting economies. The EESC underlines that any solution, whether short or longer term, to the taxation of digital business models must result in a fair and equal economic outcome for all economies in the EU.

3.16. The interim measure proposed means that even unprofitable businesses would be taxed. The EESC underlines that the current global corporate tax system is based on the taxation of profits but it recognises that for digital companies that do not have a physical presence, the country of sales will not receive corporate profit taxes.

3.17. The EESC notes that there is no sunset clause or other mechanism ensuring that the interim tax measure is withdrawn when a longer-term solution is found. The EESC strongly encourages the Council to develop such rules if the interim measure should be introduced.

4. **Specific comments**

4.1. The flat rate of 3 %, one of the factors set by the European Commission, can only be considered on a provisional basis, with a proper evaluation necessary. Furthermore, a degree of flexibility could be contemplated in order to take account of the taxable capacity of individual businesses.

4.2. The lack of cross-border profit and loss relief and the large number of transfer pricing and PE disputes within the EU frequently result in international double taxation, thus constituting significant barriers to the single market. Introducing a turnover tax on digital services which would not be credited against income taxes in other countries would further increase double taxation, thus adding yet another barrier to the single market. The EESC considers it important to avoid introducing measures that would lead to any form of double taxation.

([8]) OECD 2015.

([9]) In the EU, corporate profit shifting and base erosion by companies have been reported by the Commission to amount to EUR 50-70 bn, equivalent to 4 per thousand of GDP (COM(2018) 81 final).

([10]) 'Tax Cuts and Jobs Act', 22 December 2017.

4.3. The OECD method of developing the PE definition is a dynamic procedure where the changes in principle have found global acceptance. By deviating from this procedure by proposing a unilateral definition, the complexity of the international tax system increases as does the uncertainty for investors. Even in the unlikely event that the OECD would adopt the same definition in its expected final report on the digital economy in 2020, it would not be long until the two systems would deviate ([11]).

4.4. The EESC is concerned about having number of users of digital services as a criterion for a taxable nexus. The number of clicks on a website can easily be manipulated and companies risk losing control over which jurisdiction they are deemed to be operating in.

Brussels, 12 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

([11]) The reason for this is that the PE definition enacted by the EU through a Directive would develop through judgements from the European Court of Justice, whereas the OECD definition applied in the rest of the world would develop through international consensus expressed by the OECD through its continuous revisions.