

Thursday 13 December 2018

P8_TA(2018)0524

Corporate taxation of a significant digital presence *

European Parliament legislative resolution of 13 December 2018 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)

(2020/C 388/48)

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, by the Danish Parliament, the Irish Houses of the Oireachtas, the Maltese Parliament and the Netherlands House of Representatives, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to Rule 78c of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0426/2018),
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.

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Amendment 1
Proposal for a directive

Recital 1

Text proposed by the Commission

- (1) 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. Although the need to adapt corporate tax rules to the digital economy is recognised at international level by bodies such as the G20, reaching an agreement at global level is likely to be challenging.

Amendment

- (1) 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. Although the need to adapt corporate tax rules to the digital economy is recognised at international level by bodies such as the G20, reaching an agreement at global level is likely to be challenging **and not taking place in the near future.**

Amendment 2
Proposal for a directive

Recital 1 a (new)

Text proposed by the Commission

Amendment

- (1a) ***In the digital age, now that data has become a new economic resource in addition to labour and traditional resources in the past, and as too often multinational companies that heavily rely upon digital activities make tax arrangements allowing them to avoid or evade taxes, a new approach needs to be developed 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.***

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Amendment 3
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 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.

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 **and urgent** 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 resulted in sufficient progress which illustrates the need to advance on this matter at Union level. Notwithstanding the difficulties of reaching a global agreement and the action taken by the Union with this Directive, such an agreement should still be pursued with great effort. In the absence of a common Union approach, however, Member States will adopt unilateral solutions, which will lead to regulatory uncertainty and which will be difficult for companies which operate cross-border and for tax authorities. As called for by the European Parliament's Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA) and by its Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE2), an empowered UN tax body should be installed to serve as the forum for debates and discussions on global agreements and other matters related to the international tax system.**

Amendment 4
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.**

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Amendment 5
Proposal for a directive
Recital 4

Text proposed by the Commission

- (4) The European Council Conclusions of 19 October 2017 underlined the need for an effective and fair taxation system fit for the digital era and looked forward to appropriate Commission proposals by early 2018⁽¹⁵⁾. The ECOFIN Council Conclusions of 5 December 2017 underlined that a globally accepted definition of permanent establishment and the related transfer pricing and profit attribution rules should also remain pivotal when addressing the challenges of taxation of profits of the digital economy” and encourages “close cooperation between the EU, the OECD and other international partners in responding to the challenges of taxation of profits of the digital economy”⁽¹⁶⁾. In this regard, Member States should be required to include rules in their national corporate income tax systems in order to exercise their taxing rights. Therefore, the various applicable corporate taxes in the Member States should be clarified. These rules should extend the definition of a permanent establishment and establish a taxable nexus for a significant digital presence in their respective jurisdictions. In addition, general principles for allocating taxable profits to such a digital presence should be laid down. In principle, those rules should apply to all corporate taxpayers irrespective of where they are tax resident, whether in the Union or elsewhere.

⁽¹⁵⁾ European Council meeting (19 October 2017) — Conclusions (doc. EUCO 14/17).

⁽¹⁶⁾ Council conclusions (5 December 2017) — Responding to the challenges of taxation of profits of the digital economy (FISC 346 ECOFIN 1092).

Amendment

- (4) The European Council Conclusions of 19 October 2017 underlined the need for an effective and fair taxation system fit for the digital era and looked forward to appropriate Commission proposals by early 2018⁽¹⁵⁾. The ECOFIN Council Conclusions of 5 December 2017 underlined that a globally accepted definition of permanent establishment and the related transfer pricing and profit attribution rules should also remain pivotal when addressing the challenges of taxation of profits of the digital economy” and encourages “close cooperation between the EU, the OECD and other international partners in responding to the challenges of taxation of profits of the digital economy”⁽¹⁶⁾. In this regard, Member States should be required to include rules in their national corporate income tax systems in order to exercise their taxing rights. Therefore, the various applicable corporate taxes in the Member States should be clarified. These rules should extend the definition of a permanent establishment and establish a taxable nexus for a significant digital presence in their respective jurisdictions. In addition, general principles for allocating taxable profits to such a digital presence should be laid down. In principle, those rules should apply to all corporate taxpayers irrespective of **their size and of** where they are tax resident, whether in the Union or elsewhere. **Furthermore, the common rules set out in this Directive call for a broader harmonisation of the corporate tax base in the Union for all corporations. This is why this Directive should not hamper or delay works on the proposal for a Common Consolidated Corporate Tax Base.**

⁽¹⁵⁾ European Council meeting (19 October 2017) — Conclusions (doc. EUCO 14/17).

⁽¹⁶⁾ Council conclusions (5 December 2017) — Responding to the challenges of taxation of profits of the digital economy (FISC 346 ECOFIN 1092).

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Amendment 6
Proposal for a directive
Recital 5

Text proposed by the Commission

- (5) However, the rules should not apply to entities that are tax resident in a non-Union jurisdiction with which the Member State of the significant digital presence has a Double Tax Convention in force, unless the Convention includes provisions on a significant digital presence which **creates** similar rights and obligations in relation to the non-Union jurisdiction as are created by this Directive. This is to avoid any conflict with Double Tax Conventions with non-Union jurisdictions, given that non-Union jurisdictions are not generally bound by Union law.

Amendment

- (5) However, the rules should not apply to entities that are tax resident in a non-Union jurisdiction with which the Member State of the significant digital presence has a Double Tax Convention in force, unless the Convention includes provisions on a significant digital presence which **create** similar rights and obligations in relation to the non-Union jurisdiction as are created by this Directive. This is to avoid any conflict with Double Tax Conventions with non-Union jurisdictions, given that non-Union jurisdictions are not generally bound by Union law. **Nevertheless, for the provisions contained in this Directive to be fully effective, Member States should be urged to adapt, where necessary, the Double Tax Conventions they currently have in force in order to include provisions on a significant digital presence creating similar rights and obligations in relation to non-Union jurisdictions as established by this Directive. The Commission may make a proposal to set up a Union model of a tax treaty amendment to be used in adapting the thousands of bilateral treaties concluded by each of the Member States.**

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Amendment 9
Proposal for a directive
Recital 8

Text proposed by the Commission

- (8) A key objective of this Directive is to improve the resilience of the internal market as a whole in order to address the challenges of taxation of the digitalised economy. This objective cannot be sufficiently achieved by the Member States acting individually because digital businesses are able to operate cross-border without having any physical presence in a jurisdiction and rules are therefore needed to ensure that they pay taxes in the jurisdictions where they make profits. Given this cross-border dimension an initiative at Union level adds value in comparison with what a multitude of national measures could attain. A common initiative across the internal market is required to ensure a harmonised application of the rules on a significant digital presence within the Union. Unilateral and divergent approaches by each Member State could be ineffective and fragment the Single Market by creating national policy clashes, distortions and tax obstacles for businesses in the Union. Since the objectives of this Directive can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Amendment

- (8) A key objective of this Directive is to improve the resilience of the internal market as a whole in order to address the challenges of taxation of the digitalised economy, **while respecting the principle of tax neutrality but also the free movement of services within the Single Market and without discriminating between Union and non-Union companies.** This objective cannot be sufficiently achieved by the Member States acting individually because digital businesses are able to operate cross-border without having any **or having only a small** physical presence in a jurisdiction and rules are therefore needed to ensure that they pay taxes in the jurisdictions where they make profits. Given this cross-border dimension an initiative at Union level adds value in comparison with what a multitude of national measures could attain. A common initiative across the internal market is required to ensure a harmonised application of the rules on a significant digital presence within the Union. Unilateral and divergent approaches by each Member State could be ineffective and fragment the Single Market by creating national policy clashes, distortions and tax obstacles for businesses in the Union. **Hence, specific attention should be paid to ensuring that the Union approach is fair and not discriminatory against any particular Member State.** Since the objectives of this Directive can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

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Amendment 10
Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

- (8a) *In order to set up a coherent and consistent tax base framework for all corporations, the concept of a significant digital presence and the solutions presented in this Directive should also become an integral part of the Council Directives on a Common Corporate Tax Base and on a Common Consolidated Corporate Tax Base.*

Amendment 40
Proposal for a directive
Recital 8 b (new)

Text proposed by the Commission

Amendment

- (8b) *If this proposal does not result in an agreement and therefore fails to eliminate distortions of competition and tax obstacles for businesses in the Union, the Commission should issue a new proposal based on Article 116 of the Treaty on the Functioning of the European Union, whereby the European Parliament and the Council act in accordance with the ordinary legislative procedure to issue the necessary directives.*

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Amendment 11
Proposal for a directive
Recital 9

Text proposed by the Commission

- (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 Council⁽¹⁷⁾, 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).

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 Council⁽¹⁷⁾, 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, ***with due regard to principles of necessity and proportionality***. Whenever possible, personal data should be rendered anonymous. ***The data that may be collected from users for the purposes of applying this Directive should be strictly limited to data indicating the Member State in which users are located, without allowing for identification 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).

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Amendment 12
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 **by...**~~[three years after the date of entry into force of this Directive]~~ and report to **the European Parliament and** the Council thereon, **notably on the administrative burden and additional costs for companies and especially small and medium-sized enterprises (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 subject to the new rules laid down in this Directive. The review should also examine if the types of services covered by this Directive or the definition of the significant digital presence should be changed.** 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. **That committee should publish its agendas and, prior to their selection, it should be ensured that members of that committee do not have any conflicts of interest. An observer of the European Parliament should be invited to attend meetings of the committee.**

Amendment 13
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 SMEs do not 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.**

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Amendment 14
Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) ***As the provisions laid down in this Directive are meant to provide a permanent and comprehensive solution to the question of digital taxation, the interim solution of a digital services tax as provided for in the Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services shall automatically cease to apply once the provisions laid down in this Directive become applicable.***

Amendment 15
Proposal for a directive
Article 2 — paragraph 1

Text proposed by the Commission

Amendment

This Directive applies to entities irrespective of where they are resident for corporate tax purposes, whether in a Member State or in a third country.

This Directive applies to entities irrespective ***of their size and*** of where they are resident for corporate tax purposes, whether in a Member State or in a third country.

Amendment 19
Proposal for a directive
Article 4 — paragraph 6

Text proposed by the Commission

Amendment

6. The Member State where a user's device is used shall be determined by reference to the Internet Protocol (IP) address of the device or, if more accurately, any other method of geolocation.

6. The Member State where a user's device is used shall be determined by reference to the Internet Protocol (IP) address of the device or, if more accurately, any other method of geolocation, ***without allowing for identification of the user, in accordance with Regulation (EU) 2016/679. The Member States' tax authority shall be informed of the method used to determine the location of users.***

Amendment 21
Proposal for a directive
Article 4 — paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. A taxpayer shall be required to disclose to the tax authorities all information relevant to the determination of the significant digital presence in accordance with this Article.

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Amendment 23

Proposal for a directive

Article 5 — paragraph 5 — point a

Text proposed by the Commission

(a) the collection, storage, processing, analysis, deployment and sale of user-level data;

Amendment

(a) the collection, storage, processing, analysis, **exploitation, transmission,** deployment and sale of user-level data;

Amendment 25

Proposal for a directive

Article 5 — paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. 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.

Amendment 26

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.

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Amendment 27
Proposal for a directive
Article 5 b (new)

Text proposed by the Commission

Amendment

Article 5b

Administrative cooperation

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.

Amendment 28
Proposal for a directive
Article 6 — title

Text proposed by the Commission

Amendment

Review

Implementation Report and Review

Amendment 29
Proposal for a directive
Article 6 — paragraph 1

Text proposed by the Commission

Amendment

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

1. The Commission shall evaluate the implementation of this Directive **by...** [three years after **the date of** entry into force **of this Directive**] and report to the **European Parliament and the Council** thereon. **In that report, particular emphasis 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 subject to the new rules laid down in this Directive. The report shall also examine if the types of services covered by this Directive or the definition of the significant digital presence should be changed.**

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Amendment 30
Proposal for a directive
Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Exercise of the delegation

1. *The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
2. *The power to adopt delegated acts referred to shall be conferred on the Commission for an indeterminate period of time from... [date of entry into force of this Directive].*
3. *The delegation of power referred to may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*
4. *As soon as it adopts a delegated act, the Commission shall notify it to the Council.*
5. *A delegated act adopted shall enter into force only if no objection has been expressed by the Council within a period of two months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.*

Amendment 31
Proposal for a directive
Article 6 b (new)

Text proposed by the Commission

Amendment

Article 6b

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.

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Amendment 32
Proposal for a directive
Article 6 c (new)

Text proposed by the Commission

Amendment

Article 6c

Informing the European Parliament

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.

Amendment 33
Proposal for a directive
Article 6 d (new)

Text proposed by the Commission

Amendment

Article 6d

Mandate to the European Commission to negotiate tax treaties with third countries

Member States shall provide a delegation of powers to the Commission to negotiate on their behalf the revision or adoption of 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.

Amendment 34
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 Commission.

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 be provided by the Commission. **This Committee shall publish its agendas and its participants shall be cleared of any conflict of interest before their selection. Stakeholders, including social partners, shall be allowed to attend relevant meetings as observers.**

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Amendment 35

Proposal for a directive

Article 7 — paragraph 4

Text proposed by the Commission

4. The DigiTax Committee shall examine questions on the application of this Directive, as raised by the chair of the Committee, whether **on** the chair's own initiative or **at the** request of **the** representative of a Member State, and shall inform the Commission of its conclusions.

Amendment

4. The DigiTax Committee shall examine questions on the application of this Directive, as raised by the chair of the Committee, whether **at** the chair's own initiative or **upon** request **of the European Parliament or** of **a** representative of a Member State, and shall inform the Commission of its conclusions.

Amendment 36

Proposal for a directive

Article 7 — paragraph 4 — subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The DigiTax Committee shall draw up an annual report on its activities and findings and shall share this report with Parliament, Council and Commission.

Amendment 37

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.

Amendment 38

Proposal for a directive

Article 8 — paragraph 1

Text proposed by the Commission

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

Amendment

The data that may be collected from the users for the purposes of applying this Directive shall be limited to data indicating the Member State in which the users are located, without allowing for identification of the user. **Any processing of personal data carried out for the purposes of applying this Directive shall fully comply with Regulation (EU) 2016/679.**

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Amendment 39
Proposal for a directive
Article 9 a (new)

Text proposed by the Commission

*Amendment***Article 9a****Link with Digital Services Tax on Revenues**

Once this Directive becomes applicable, the Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services shall automatically expire.
