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Proposal for a

COUNCIL DIRECTIVE

on the common system of a digital services tax on revenues resulting from the provision of certain digital services

{SWD(2018) 81} - {SWD(2018) 82}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Digital Single Market is one of the main political priorities of the European Commission[1], which aims at opening up digital opportunities for people and businesses in a market of over 500 million EU consumers. In order to deliver on its potential, the Digital Single Market needs a modern and stable tax framework which stimulates innovation, tackles market fragmentation and allows all players to tap into the new market dynamics under fair and balanced conditions. Ensuring fair taxation of the digital economy is also part of the European Commission's agenda on a fair and efficient tax system in the European Union[2].

The digital economy is transforming the way we interact, consume and do business. Digital companies are growing far faster than the economy at large, and this trend is only set to continue. Digital technologies bring many benefits to society and, from a tax perspective, they create opportunities for tax administrations and offer solutions to reduce administrative burdens, facilitate collaboration between tax authorities, as well as addressing tax evasion.

However, policy makers are currently struggling to find solutions which can ensure a fair and effective taxation as the digital transformation of the economy accelerates, given that the existing corporate taxation rules are outdated and do not capture this evolution. In particular, 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 contents and data collection have become core activities for the value creation of digital businesses.

At the international level, the Organisation for Economic Co-operation and Development (OECD) already recognised, in its Action 1 report[3] which was released in 2015 as part of the OECD/G20 Base Erosion and Profit Shifting (BEPS) project, that digitalisation and some of the resulting business models present challenges for international taxation. Following that report, the G20 Finance Ministers reiterated their support for the OECD's work on taxation and digitalisation. Hence, the OECD has been working on an interim report[4] on the taxation of the digital economy which was presented to the G20 Finance Ministers in March 2018. The interim report examines the need to adapt the international tax system to the digitalisation of the economy and identifies the elements to be taken into account by those countries wishing to introduce interim measures to address the tax challenges arising from digitalisation.

At Union level, such challenges were identified in the Communication of the Commission "A Fair and Efficient Tax System in the European Union for the Digital Single Market"[5], adopted on 21 September 2017. The current initiative was also mentioned in President Juncker's letter

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1 COM(2015) 192 final.
2 COM(2015) 302 final.
3 OECD (2015), 'Addressing the Tax Challenges of the Digital Economy: Action 1 – 2015 Final Report', OECD Publishing, Paris.
4 OECD (2018), 'Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS', OECD Publishing, Paris.
5 COM(2017) 547 final.

of intent accompanying the State of the Union Address 2017[6]. As regards Member States, several EU Finance Ministers co-signed a political statement ("Joint initiative on the taxation of companies operating in the digital economy") that supported EU law compatible and effective solutions "based on the concept of establishing a so-called 'equalisation tax' on the turnover generated in Europe by the digital companies"[7]. This was followed by the conclusions adopted on 19 October 2017 by the European Council[8] that underlined the "*need for an effective and fair taxation system fit for the digital era*". Furthermore, the ECOFIN Council Conclusions of 5 December 2017[9] noted the interest of many Member States for temporary measures, such as a levy based on revenues from digital activities in the Union, and considered that these measures could be assessed by the Commission.

This proposal answers these calls for action, and addresses in an interim way the problem that the current corporate tax rules are inadequate for the digital economy.

The current corporate tax rules were conceived for traditional businesses. The existing tax rules are built on the principle that profits should be taxed where the value is created. However, they were mainly conceived in the early 20th century for traditional "brick and mortar" businesses and define what triggers a right to tax in a country (where to tax) and how much of corporate income is allocated to a country (how much to tax) largely based on having a physical presence in that country. That means that non-tax residents become liable to tax in a country only if they have a presence that amounts to a permanent establishment there. However, such rules fail to capture the global reach of digital activities where physical presence is not a requirement anymore in order to be able to supply digital services. Moreover, digital business have different characteristics than traditional ones in terms of how value is created, due to their ability to conduct activities remotely, the contribution of end-users in their value creation, the importance of intangible assets, as well as a tendency towards winner-takes-most market structures rooted in the strong presence of network effects and the value of big data.

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, notably in the case of business models heavily reliant on user participation. This poses a double challenge from a tax perspective. Firstly, the input obtained by a business from users, which actually constitutes the creation of value for the company, could be located in a tax jurisdiction where the company carrying out a digital activity is not physically established (and thus not established for tax purposes according to the current rules) and where therefore the profits generated from such activities cannot be taxed. Secondly, even where a company has a permanent establishment in the jurisdiction where the users are located, the value created by user participation is not taken into account when deciding how much tax should be paid in each country. This has also consequences from the perspective of the risk to

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6 State of the Union 2017. Letter of intent to President Antonio Tajani and to Prime Minister Jüri Ratas, 13 September 2017, accessible at https://ec.europa.eu/commission/sites/beta-political/files/letter-of-intent-2017_en.pdf.

7 Political statement: joint initiative on the taxation of companies operating in the digital economy – http://www.mef.gov.it/inevidenza/banner/170907_joint_initiative_digital_taxation.pdf submitted by Germany, France, Italy and Spain to the Estonian Presidency of the Council in September 2017.

8 European Council meeting (19 October 2017) – Conclusions (doc. EUCO 14/17).

9 Council Conclusions of 5 December 2017 – Responding to the challenges of taxation of profits of the digital economy (FISC 346 ECOFIN 1092).

artificially avoid permanent establishment rules, creates distortion of competition between digital market players, and has a negative impact on revenues.

The Commission has acknowledged that the ideal approach would be to find multilateral, international solutions to taxing the digital economy given the global nature of this challenge. The Commission is working closely with the OECD to support the development of an international solution. However, progress at international level is challenging, due to the complex nature of the problem and the wide variety of issues that need to be addressed, and reaching international consensus may take time. This is why the Commission has decided to take action and is proposing today to adapt the corporate tax rules at Union level so that they are fit for the characteristics of digital businesses[10] and to recommend that Member States extend this comprehensive solution to their double taxation treaties with non-Union jurisdictions[11]. Whilst the ECOFIN Council also stressed in its conclusions of 5 December 2017 its preference for a global solution endeavouring to closely monitor future international developments and consider appropriate responses, it welcomed EU action. Despite the present proposals, work at the OECD level is essential in order to reach a global consensus on this topic. The Commission will closely follow the developments.

In the wait of the comprehensive solution, which may take time to adopt and implement, Member States face pressure to act on this issue, given the risk that their corporate tax bases are significantly eroded over time, and also due to the perceived unfairness of the situation. While unilateral measures are in place or are concretely planned in 10 Member States for addressing this problem in a limited way, the trend has been increasing and the measures adopted are very diverse in terms of scope and their rationale. Such uncoordinated measures taken by Member States individually risk further fragmenting the Single Market and distort competition, hampering the development of new digital solutions and the Union's competitiveness as a whole.

Hence, it is necessary for the Commission to act and to propose a harmonised approach on an interim solution that tackles this problem in a targeted way. To this extent, this proposal sets out the common system of a tax on the revenues derived from the supply of certain digital services by taxable persons (hereinafter "Digital Services Tax" or "DST"). The specific objective of this proposal is to put forward a measure that targets the revenues stemming from the supply of certain digital services and that is easy to implement and helps to level the playing field in the interim period until a comprehensive solution is in place.

This is in line with the general objectives of this proposal, whose aim is:

– to protect the integrity of the Single Market and to ensure its proper functioning;

– to make sure that the public finances within the Union are sustainable and that the national tax bases are not eroded;

– to ensure that social fairness is preserved and that there is a level playing field for all businesses operating in the Union; and

[10] Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence (COM(2018) 147 final).

[11] Commission Recommendation relating to the corporate taxation of a significant digital presence (C(2018) 1650 final).

– to fight against aggressive tax planning and to close the gaps that currently exist in the international rules which makes it possible for some digital companies to escape taxation in countries where they operate and create value.

- **Consistency with existing policy provisions in the policy area**

This proposal is part of the efforts being undertaken at Union and international level in order to adapt the current tax framework to the digital economy.

At international level, the challenge of ensuring that all actors in the digital economy are fairly taxed on their income was already identified under the Action 1 of the OECD/G20 BEPS project and the OECD has been working on an interim report on the taxation of the digital economy which was presented to the G20 Finance Ministers in March 2018.

At Union level, fair tax rules for the taxation of the digital economy are part of the Commission's fair taxation agenda, which will complement the improvements of the corporate tax framework achieved in recent years. In this respect, the Commission relaunched in 2016 the proposal on a Common Consolidated Corporate Tax Base (CCCTB)[12], which will provide a competitive, fair and robust framework for taxing companies in the Single Market. In the area of VAT, the Commission is also addressing the challenges posed by the digital economy with its proposal on e-commerce which the Council adopted in December 2017[13], which is in line with other legislative measures laid down in the 2016 Action Plan on VAT[14].

This proposal is part of a package which also includes a proposal for a Directive on a comprehensive solution[15], a Recommendation to Member States to reflect the comprehensive solution in their double taxation treaties with non-Union jurisdictions[16] and a Communication setting the context and explaining the articulation between the proposals[17]. The principles underpinning this proposal and, in particular, the notion of user value creation are aligned with the proposal for a Directive on a comprehensive solution and the Recommendation, as explained in the Communication. Notably, this interim measure covers those cases where the contribution of users to the creation of value for a company is more significant, while the concept of user value creation is also the factor which the comprehensive solution aims to reflect in the corporate tax framework.

- **Consistency with other Union policies**

This proposal is also consistent with the Digital Single Market strategy[18], where the Commission committed to ensure access to online activities for individuals and businesses under conditions of fair competition, as well as to open up digital opportunities for people and business and enhance Europe's position as a world leader in the digital economy.

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12 COM(2016) 685 final and COM(2016) 683 final.

13 Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29.12.2017, p. 7).

14 COM(2016) 148 final.

15 COM(2018) 147 final.

16 C(2018) 1650 final.

17 COM(2018) 146 final.

18 COM(2015) 192 final.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposed Directive is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU). This provision enables the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Economic and Social Committee, to adopt provisions for the harmonisation of Member States' legislation concerning other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.

• Subsidiarity (for non-exclusive competence)

The proposal is consistent with the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union (TEU). In the wait of a common and coordinated action at Union level to reform the corporate tax framework to cover the digital activities of companies, Member States may introduce unilateral interim measures to address the challenges of taxing the digital economy companies. Some of such measures, which can be of a very diverse nature, are already in place or are being planned by Member States. In this respect, EU action is necessary in order to mitigate the fragmentation of the Single Market and the creation of distortions of competition within the Union due to the adoption of such divergent unilateral actions at national level. Moreover, an EU solution rather than different national policies entails a reduction in the compliance burden for businesses subject to the new rules, and also gives a strong sign to the international community as to the commitment of the EU to act when it comes to ensuring the fair taxation of the digital economy.

• Proportionality

The preferred option is consistent with the principle of proportionality, that is, it does not go beyond what is necessary to meet the objectives of the Treaties, in particular the smooth functioning of the Single Market. As follows from the subsidiarity test, it is not possible for Member States to address the problem without hampering the Single Market. Moreover, the present proposal aims at setting a common structure of the tax, while leaving sufficient margin of manoeuvre for Member States when it comes to actual setting of certain administrative aspects related to the measure, such as accounting, record-keeping and other obligations intended to ensure that the DST due is effectively paid. Member States can also adopt measures concerning the prevention of evasion, avoidance and abuse with respect to DST, and they retain the capacity to enforce payment of DST and to carry out tax audits according to their own rules and procedures. See also section 9.4.2 of the impact assessment accompanying this proposal[19].

• Choice of the instrument

A Directive is proposed, which is the only available instrument under Article 113 of the TFEU.

[19] SWD(2018) 81 final.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Stakeholder consultations

The consultation strategy has focused on three main groups of stakeholders: Member States' tax administrations, businesses, and citizens. The two main consultation activities consisted in the open public consultation, which received a total of 446 replies over 12 weeks (from 26 October 2017 to 3 January 2018), and a targeted survey sent to all tax administrations within the Union. The members of the Platform for Tax Good Governance (made up of all tax authorities within the Union and 15 organisations representing businesses, civil society, and tax practitioners) have also been informed about this initiative and their opinions sought out. Spontaneous contributions have also been taken into account. As can be seen in Annex 2 of the impact assessment accompanying this proposal, a tax on the revenues stemming from the provision of certain digital services was found to be the preferred option for an interim solution by stakeholders (10 out of 21 national tax authorities, as well as 53% of the respondents to the open public consultation).

• Impact assessment

The impact assessment for the proposal was considered by the Commission's Regulatory Scrutiny Board on 7 February 2018. The Board issued a positive opinion on the proposal together with some recommendations, which have been taken into account in the final version of the impact assessment. The opinion of the Board, the recommendations and an explanation of how they have been taken into account are included in Annex 1 of the Staff Working Document accompanying this proposal[20]. See Annex 3 of that document for an overview of who would be affected by this proposal and how.

The impact assessment of this proposal examined several possible options for an interim solution. Due to several legal constraints it became nonetheless clear that the focus ought to be on a tax on revenues resulting from the provision of certain digital services. Several options were considered as regards the design of such DST (see section 9.2 of the impact assessment), and in particular its scope (which services are covered), the application of a turnover threshold (which businesses are covered), the tax rate, and the collection of the tax.

As explained in the impact assessment, the preferred design of this option is a tax with a narrow scope, levied on the gross revenues of a business resulting from the provision of certain digital services where user value creation is central, and where only businesses above two revenue-related thresholds would qualify as taxable persons liable for the payment of the tax.

4. BUDGETARY IMPLICATIONS

The proposal will have no implications for the EU budget.

5. OTHER ELEMENTS

• Implementation plans and monitoring, evaluation and reporting arrangements

The Commission will monitor the implementation of the Directive once adopted and its application in close cooperation with Member States and evaluate whether this initiative is

[20] SWD(2018) 81 final.

functioning properly and the extent to which its objectives have been achieved, based on the indicators set out in section 10 of the impact assessment accompanying this proposal.

- **Detailed explanation of the specific provisions of the proposal**

Definitions (Article 2)

This Article provides definitions of various concepts necessary for applying the provisions in the Directive.

Taxable revenues (Article 3)

This Article defines which revenues qualify as taxable revenues for the purposes of this Directive.

DST is a tax with a targeted scope, levied on the revenues resulting from the supply of certain digital services characterised by user value creation. The services falling within the scope of DST are those where the participation of a user in a digital activity constitutes an essential input for the business carrying out that activity and which enable that business to obtain revenues therefrom. In other words, the business models captured by this Directive are those which would not be able to exist in their current form without user involvement. The role played by the users of these digital services is unique and more complex than that traditionally adopted by a customer. These services can be provided remotely, without the provider of the services necessarily being physically established in the jurisdiction where the users are and value is created. Therefore, such business models are responsible for the greatest difference between where profits are taxed and where value is created. However, what is subject to taxation are the revenues obtained from the monetisation of the user input, not the user participation in itself.

There are several ways in which user participation can contribute to the value of a business. For instance, digital businesses can derive data about users' activities on digital interfaces, which is typically used in order to target advertising at such users, or which can be transmitted to third parties for consideration. Another way is through the active and sustained engagement of users in multi-sided digital interfaces, which build on network effects where, broadly speaking, the value of the service increases with the number of users using the interface. The value for such interfaces lies with the connections between users and the interaction between them, which may often imply users uploading and sharing information within the network. Such multi-sided digital interfaces may also facilitate the provision of underlying supplies of goods or services directly between users, which constitutes another clear form of user participation.

Based on the several forms of user participation described above, the revenues included in the scope of this tax (taxable revenues) would be those derived from the provision of any of the following services (taxable services), as set out in Article 3(1):

– services consisting in the placing on a digital interface of advertising targeted at users of that interface; as well as the transmission of data collected about users which has been generated from such users' activities on digital interfaces;

– services consisting in the making available of multi-sided digital interfaces to users, which may also be referred to as "intermediation services", which allow users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users.

The supply of advertising services consisting in the placing on a digital interface of a client's advertising targeted at users of that interface is defined in Article 3(1)(a) in a broad sense in line with the business models examined. This is because the placing of such advertising in a

digital context constitutes the way in which the company enabling the advertising to appear on a digital interface typically monetises user traffic and the user data taken into account for the purposes of the placement. The definition of the service does not take into account whether the supplier of the advertising service owns the digital interface on which the advertisement appears. However, it is clarified in Article 3(3) that in cases where the supplier of the advertising service and the owner of the digital interface are different entities, the latter is not considered to have provided a taxable service falling within Article 3(1)(a). This is in order to avoid possible cascading effects or double taxation of the same revenues (part of the revenues obtained by the entity placing a client's advertising will be paid to the owner of the digital interface where such an advertisement is to appear, in exchange for the renting of digital space in that interface).

Intermediation services are defined in Article 3(1)(b) by reference to multi-sided digital interfaces enabling users to find other users and to interact with them, which is the aspect allowing the providers of such services to profit from network effects. The capacity of these interfaces to create a link between users distinguishes intermediation services from other services which may also be seen as facilitating the interaction between users, but where users cannot get in touch with each other unless they have already established contact by other means, such as instant messaging services. The value creation for such other services, which can be generally defined as communication or payment services, lies with the development and sale of support software which enables that interaction to take place, and it is less attached to the users' involvement. Therefore, communication or payment services remain outside the scope of the tax, as clarified in Article 3(4)(a).

For cases involving multi-sided digital interfaces that facilitate an underlying supply of goods or services directly between the users of the interface, the revenues obtained by users from those transactions remain outside the scope of the tax. The revenues resulting from retail activities consisting in the sale of goods or services which are contracted online via the website of the supplier of such goods or services (which may involve what is usually referred to as "e-commerce") are also outside the scope of DST, because the value creation for the retailer lies with the goods or services provided and the digital interface is simply used as a means of communication.

Article 3(4)(a) also clarifies that services by an entity to users through a digital interface consisting in the supply of digital content such as video, audio or text, either owned by that entity or which that entity has acquired the rights to distribute, are not to be regarded as intermediation services and should therefore be excluded from the scope of the tax, given that it is less certain the extent to which user participation plays a central role in the creation of value for the company. It is necessary to clarify this point because some suppliers of digital content through a digital interface might allow some sort of interaction between the recipients of such content and could thus be seen as falling within the definition of multi-sided digital interfaces providing intermediary services. However, in such circumstances the interaction between users remains ancillary to a supply of digital content where the sole or main purpose for a user is to receive the digital content from the entity making available the digital interface (e.g. the supply of a video game by an entity to a user through a digital interface would constitute a supply of digital content by that entity falling outside the scope of DST, regardless of whether such a user is able to play against other users and therefore some sort of interaction is allowed between them).

The supply of digital content by an entity to users through a digital interface, which is a service outside the scope of DST, should be distinguished from the making available of a multi-sided digital interface through which users can upload and share digital content with other users, or the making available of an interface that facilitates an underlying supply of

digital content directly between users. These latter services constitute a service of intermediation by the entity making available the multi-sided digital interface and therefore fall within the scope of DST, regardless of the nature of the underlying transaction. Hence, Article 3(4)(a) emphasises that the supply of digital content falling outside the scope of DST must be made by the entity making available the digital interface through which the digital content is supplied, not by users of that interface to other users.

Taxable services consisting in the transmission of data collected about users are defined in Article 3(1)(c) by reference to data which has been generated from such users' activities on digital interfaces. This is because the services within the scope of DST are those using digital interfaces as a way to create user input, rather than those services using interfaces as a way to transmit data generated otherwise. DST is therefore not a tax on the collection of data, or the use of data collected by a business for the internal purposes of that business, or the sharing of data collected by a business with other parties for free. What DST targets is the transmission for consideration of data obtained from a very specific activity (users' activities on digital interfaces).

Points (b) and (c) of Article 3(4) explain that services regulated in points (1) to (9) of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council[21] and provided by trading venues or systematic internalisers, as defined in that Directive, or by regulated crowdfunding service providers do not fall within the scope of DST. In addition, services consisting in the facilitation of the granting of loans and provided by regulated crowdfunding service providers do not fall within the scope of DST. Regulated crowdfunding service providers refers to providers of services who are subject to any future Union rules adopted under Article 114 of the TFUE for the regulation of crowdfunding services.

Multi-sided digital interfaces which allow users to receive or to know about the existence of trade execution services, investment services or investment research services, such as those made available by the entities referred to above, often imply user interaction. However, the user does not play a central role in the creation of value for the entity making available a digital interface. Instead, the value lies with the capacity of such an entity to bring together buyers and sellers of financial products under specific and distinctive conditions which would not occur otherwise (compared, for instance, to transactions concluded outside such interfaces directly between the counterparties). A service consisting in making available a digital interface by such an entity goes beyond the mere facilitation of transactions in financial instruments between users of such an interface. In particular, the regulated services which are excluded from the scope of this Directive aim at providing a safe environment for financial transactions. The entity providing these services therefore determines the specific conditions under which such financial transactions can be executed in order to guarantee essential elements such as the quality of execution of the transactions, the level of transparency in the market and fair treatment of investors. Finally, such services have the essential and distinct objective of facilitating funding, investments or savings.

As regards crowdfunding platforms, investment and lending based crowdfunding is outside the scope of the tax because the providers of such services play the same role as that of trading venues and systematic internalisers, and hence do not constitute mere intermediation. However, services provided by crowdfunding platforms which are not investment and lending based and constitute intermediation, such as donation or reward based crowdfunding, or

[21] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

services provided by such platforms consisting in the placing of advertising, fall within the scope of this Directive.

Since data transmission by trading venues, systematic internalisers and regulated crowdfunding service providers is limited to and forms part of the provision of the regulated financial services described above and is regulated as such under Union law, the provision of data transmission services by those entities should also be excluded from the scope of DST, as laid down in Article 3(5).

Article 3(2) clarifies that DST is levied on the gross revenues of a business resulting from the provision of the services falling within the scope of the tax, net of value added tax and other similar taxes.

Article 3(7) clarifies that revenues resulting from the provision of taxable services between entities of a consolidated group for financial accounting purposes do not qualify as taxable revenues.

In accordance with Article 3(8), where an entity of a consolidated group for financial accounting purposes provides a taxable service to a third party but the remuneration for such a service is obtained by another entity within the group, the remuneration is deemed to have been obtained by the entity providing the taxable services. This provision is a safeguard in order to preclude an entity providing taxable services and obtaining the revenues derived from such services through another entity of the same group from escaping DST liability.

Taxable person (Article 4)

In accordance with Article 4(1), an entity above both of the following thresholds qualifies as a taxable person for the purposes of the DST:

– the total amount of worldwide revenues reported by the entity for the latest complete financial year for which a financial statement is available exceeds EUR 750 000 000; and

– the total amount of taxable revenues obtained by the entity within the Union during that financial year exceeds EUR 50 000 000.

The first threshold (total annual worldwide revenues) limits the application of the tax to companies of a certain scale, which are those which have established strong market positions that allow them to benefit relatively more from network effects and exploitation of big data and thus build their business models around user participation. Such business models, which lead to higher differences between where profits are taxed and where value is created, are those falling within the scope of the tax. The economic capacity of the businesses qualifying as taxable persons should be seen as indicating their capacity to attract a high volume of users, which is necessary for such business models to be viable. Moreover, the opportunity of engaging in aggressive tax planning lies with larger companies. That is why the same threshold has been proposed in other Union initiatives, such as the CCCTB. Such a threshold is also intended to bring legal certainty and make it easier and less costly for businesses and tax authorities to determine whether an entity is liable to DST, especially given that some of them may not record separately the revenues from the activities falling within the scope of this tax. This threshold should also exclude small enterprises and start-ups for which the compliance burdens of the new tax would be likely to have a disproportionate effect.

The second threshold (total annual taxable revenues in the Union), in contrast, limits the application of the tax to cases where there is a significant digital footprint at Union level in relation to the revenues covered by DST. This threshold is set at Union level in order to disregard differences in market sizes which may exist within the Union.

If the business belongs to a consolidated group for financial accounting purposes, the thresholds have to be applied in respect of total consolidated group revenues, as set out in Article 4(6).

Whether established in a Member State or in a non-Union jurisdiction, a business meeting both conditions above would qualify as a taxable person. Depending on where the taxable person is established, the scenarios where DST liability may arise can involve a taxable person established in a non-Union jurisdiction having to pay DST in a Member State, a taxable person established in a Member State having to pay DST in another Member State, or a taxable person established in a Member State having to pay DST in that same Member State.

Place of taxation (Article 5)

Article 5 determines which proportion of the taxable revenues obtained by an entity has to be treated as obtained in a Member State for the purposes of this tax. In line with the concept of user value creation that underpins the objective scope of DST, this provision determines that DST is due in the Member State or Member States where the users are located.

This approach follows the logic that it is the user involvement in the digital activities of a company the one generating the value for that company, which may not necessarily entail a payment from the users' side (e.g. viewers of advertising on a digital interface); or which may involve payment from some users only (e.g. multi-sided digital interfaces where only certain users have to pay for accessing the interface, while other users have free access). Therefore, it is the Member State where the user is located the one with taxing rights in respect of DST, regardless of whether the user has contributed in money to the generation of revenue for the company. Specific rules to determine when a user is deemed to be located in a Member State are provided.

The taxable revenues resulting from the provision of a taxable service have to be treated for the purposes of this Directive as obtained in a Member State in a tax period if a user with respect to such services is deemed to be located in that Member State in that tax period according to the rules in Article 5(2), which have to be applied for each type of taxable service. In the case of users involved in a taxable service which are located in different Member States or non-Union jurisdictions, the taxable revenues obtained by an entity from the provision of that service would have to be distributed to each Member State proportionally and according to the several allocation keys laid down in Article 5(3) for each type of taxable service. Such allocation keys have been set out taking into account the nature of each of the taxable services and, in particular, what triggers the receipt of revenues for the provider of the service.

In the case of a taxable service consisting in the placing of advertising on a digital interface, the number of times an advertisement has appeared on users' devices in a tax period in a Member State is taken into account for the purposes of determining the proportion of revenues to be allocated in that tax period to that Member State.

As regards the making available of multi-sided digital interfaces, in order to determine the proportion of taxable revenues to be allocated to a Member State, a distinction is made between cases where the interface facilitates underlying transactions directly between users and cases where it does not. In cases involving the facilitation of underlying transactions, the allocation of taxable revenues in a tax period to a Member State is carried out on the basis of the number of users who conclude such a transaction in that tax period while using a device in that Member State. This is because that is the action usually generating revenues for the entity making the interface available. Taxing rights over the revenues of the business making

available the interface are allocated to Member States where the users concluding underlying transactions are located, irrespective of whether the users are the sellers of the underlying goods or services or the buyers. This is because both of them generate value for the multi-sided digital interface through their participation, given that the role of the interface is to match supply and demand. However, if the intermediation service does not involve the facilitation of underlying transactions, revenues are typically obtained through periodic payments after having registered or opened an account on a digital interface. Hence, for the purposes of allocating taxable revenues to a Member State in a tax period, the number of users in that tax period holding an account which was opened using a device in that Member State, whether opened during that tax year or an earlier one, is taken into account.

As regards the transmission of data collected about users, the allocation of taxable revenues in a tax period to a Member State takes into account the number of users from whom data transmitted in that tax period has been generated as a result of such users having used a device in that Member State.

Article 5(4) further clarifies that, for the purposes of determining the place of taxation, the place from which the payment for the taxable services is made is not to be taken into account. For cases involving the provision of underlying goods or services directly between the users of a multi-sided digital interface, the place where such underlying transactions take place is not taken into account either.

Based on the provision in Article 5(5), the users are deemed to be located in the Member State of the Internet Protocol (IP) address of the device used by them or, if more accurate, any other method of geolocation. The IP address is a simple and effective proxy for determining the user location. Moreover, if the taxable person is aware by other means of geolocation that the user is not located in the Member State where the IP address indicates, that taxable person would still be able to rely on that other means of geolocation to determine the place of taxation.

Chargeability, calculation of the tax and rate (Articles 6-8)

In accordance with Article 6, the new tax will be chargeable in a Member State on the proportion of taxable revenues obtained by a taxable person in a tax period that is treated as obtained in that Member State.

Article 7 lays down the rule on how DST should be calculated.

Article 8 sets out a single rate across the Union of 3%.

Obligations (Articles 9-19)

Articles 9 to 19 provide the set of obligations which would have to be fulfilled by taxable persons with DST liability.

Article 9 clarifies that the taxable person providing taxable services is liable for the payment of the tax and the fulfilment of the obligations set out in Chapter 3. It also sets out that a consolidated group for financial accounting purposes has the option to nominate a single entity within that group for the purposes of paying DST and fulfilling the obligations in Chapter 3 on behalf of each taxable person in that group who is liable to DST.

In order to manage the administrative aspects related to this tax, a One-Stop-Shop (OSS) simplification mechanism is made available to all taxable persons. The functioning of the OSS is based on the idea that a taxable person with DST liability in one or more Member State should enjoy a single contact point (the Member State of identification) through which all his DST obligations can be fulfilled (identification, submission of the DST return, and payment). That Member State of identification is responsible to share that information with

the other Member States where DST is due, as well as to transfer the proportion of DST collected on behalf of such other Member States.

As explained in Article 10, "Member State of identification" means the Member State where a taxable person is liable for the payment of DST, unless he has DST liability in more than one Member State, in which case he may choose the Member State of identification among them.

The fact that a taxable person may be resident for corporate income tax purposes in a Member State has no impact in determining the Member State of identification for the purposes of the DST, given the different nature of the tax. This also intends not to impose a disproportionate administrative burden on Member States where a taxable person may be established for corporate taxation purposes, but where he may not have any DST liability. Therefore, a taxable person with DST liability in several Member States will be able to make use of the OSS in his Member State of identification in respect of all his DST obligations, and regardless of whether he is tax resident for corporate income tax purposes there. For instance, a taxable person with DST liability in two Member States (Member State A, where he is resident for corporate income tax purposes, and Member State B, where he is not resident for corporate income tax purposes) which has chosen Member State B as Member State of identification, will be able to fulfil his DST obligations in respect of both Member States A and B through the OSS.

Article 10 establishes an obligation for a taxable person to notify via a self-declaration system the Member State of identification that he is liable for the payment of DST in the Union, as well as the details to be notified. That taxable person will obtain an identification number in accordance with Article 11. If a taxable person ceases to be liable to DST in the Union, he has to notify the Member State of identification that information in accordance with Article 12, and the Member State of identification will delete that taxable person from their identification register. Article 13 clarifies the rules concerning a possible change in the Member State of identification.

Moreover, that taxable person must submit a DST return in the Member State of identification under Article 14, with the details specified in Article 15. In particular, that means having to declare, for each Member State where DST is due for the relevant tax period, the total amount of taxable revenues treated as obtained by a taxable person in that Member State together with the DST due on that amount. The total DST due in all Member States and the information about the thresholds applicable for the purposes of Article 4 will also have to be reported.

Payment arrangements are governed by Article 16, which also specifies that possible refunds of the tax to taxpayers, once the DST due has been already transferred from the Member State of identification to the Member State where that DST was due, should be made by the latter directly to that taxable person. In order to avoid discrepancies in the functioning of the OSS, a provision regulating possible DST return amendments has been introduced in Article 17. Article 18 concerns accounting, record-keeping and anti-fraud measures which are for Member States to set up. This provision also clarifies that the existence of a OSS and a Member State of identification does not change the fact that DST is owed by the taxable person directly to each Member State where DST is due, and that such a Member State is entitled to enforce the payment of DST directly against the taxable person liable for it and to carry out tax audits and control measures.

Article 19 establishes that every Member State has to appoint a competent authority for the purposes of managing all administrative obligations in respect of DST, as well as the administrative cooperation requirements set out in Chapter 4.

Administrative cooperation as regards obligations (Articles 20-23)

Provisions laid down in Articles 20-23 govern the necessary exchanges between Member States as regards the identification of taxable persons and the submission of DST returns, as well as the transfer of funds corresponding to DST payments by the Member State of identification to the other Member States where DST is due.

2018/0073 (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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with a special legislative procedure,

Whereas:

(1) The global economy is rapidly becoming digital and, as a result, new ways of doing business have emerged. Digital companies are characterised by the fact that their operations are strongly linked to the internet. In particular, digital business models rely to a large extent on the ability to conduct activities remotely and with limited or no physical presence, on the contribution of end-users to value creation, and on the importance of intangible assets.

(2) The current corporate taxation rules were mainly developed during the 20th century for traditional businesses. They are based on the idea that taxation should take place where value is created. However, the application of the current rules to the digital economy has led to a misalignment between the place where profits are taxed and the place where value is created, notably in the case of business models heavily reliant on user participation. It has therefore become evident that the current corporate tax rules for taxing the profits of the digital economy are inadequate and need to be reviewed.

(3) That review constitutes an important element of the Digital Single Market[3], given that the Digital Single Market needs a modern and stable tax framework for the digital economy to stimulate innovation, tackle market fragmentation and allow all players to tap into the new market dynamics under fair and balanced conditions.

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1 OJ C , , p. .

2 OJ C , , p. .g

3 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions 'A Digital Single Market Strategy for Europe' (COM(2015) 192 final of 6.5.2015).

(4) In its Communication "A Fair and Efficient Tax System in the European Union for the Digital Single Market"[4] adopted on 21 September 2017, the Commission identified the challenges that the digital economy posed for existing tax rules, and committed to analyse the policy options available. The ECOFIN Council conclusions of 5 December 2017[5] invited the Commission to adopt proposals responding to the challenges of taxing profits in the digital economy, while taking note also of the interest expressed by many Member States for temporary measures aimed at revenues resulting from digital activities in the Union that would remain outside the scope of double tax conventions.

(5) Given the problem of taxing the digital economy is of a global nature, the ideal approach would be to find a multilateral, international solution to it. The Commission is actively engaged in the international debate for that reason. Work at the OECD is currently ongoing. However, progress at international level is challenging. Hence, action is being taken to adapt the corporate tax rules at Union level[6] and to encourage agreements to be reached with non-Union jurisdictions[7], so that the corporate tax framework can be made to fit the new digital business models.

(6) Pending such action, which may take time to adopt and implement, Member States face pressure to act on this issue, given the risk that their corporate tax bases are being significantly eroded over time. Uncoordinated measures taken by Member States individually can fragment the Single Market and distort competition, hampering the development of new digital solutions and the Union's competitiveness as a whole. This is why it is necessary to adopt a harmonised approach on an interim solution that will tackle this issue in a targeted way until a comprehensive solution is in place.

(7) That interim solution should establish the common system of a digital services tax ('DST') on revenues resulting from the supply of certain digital services by certain entities. It should be an easy-to-implement measure targeting the revenues stemming from the supply of digital services where users contribute significantly to the process of value creation. Such factor (user value creation) also underpins the action with respect to corporate tax rules, as described in recital (5).

(8) The following elements of DST should be defined: the taxable revenues (what is taxed), the taxable person (who is taxed), the place of taxation (what proportion of taxable revenues is deemed to be obtained in a Member State and when), chargeability, calculation of the tax, rate, and related obligations including a One-Stop-Shop collection mechanism.

(9) DST should be applied to revenues resulting from the provision of certain digital services only. The digital services should be ones that are largely reliant on user value creation where the difference between the place where the profits are taxed and the place where the users are established is typically greatest. It is the revenues obtained from the processing of user input that should be taxed, not the user participation in itself.

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4 Communication from the Commission to the European Parliament and the Council 'A Fair and Efficient Tax System in the European Union for the Digital Single Market' (COM(2017) 547 final of 21.9.2017).

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

6 Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence (COM(2018) 147 final).

7 Commission Recommendation relating to the corporate taxation of a significant digital presence (C(2018) 1650 final).

(10) In particular, taxable revenues should be those resulting from the provision of the following services: (i) the placing on a digital interface of advertising targeted at users of that interface; (ii) the making available of multi-sided digital interfaces which allow users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users (sometimes referred to as "intermediation" services); and (iii) the transmission of data collected about users and generated from such users' activities on digital interfaces. If no revenues are obtained from the supply of such services, there should be no DST liability. Other revenues obtained by the entity providing such services but not directly stemming from such supplies should also fall outside the scope of the tax.

(11) Services consisting in the placing on a digital interface of a client's advertising targeted at users of that interface should not be defined by reference to who owns the digital interface through which the advertising appears on a user's device, but rather by reference to the entity responsible for enabling the advertising to appear on that interface. This is because the value for a business placing a client's advertising on a digital interface lies with user traffic and the user data which is typically taken into account for the purposes of the placement, regardless of whether the interface belongs to the business itself or to a third party who is renting out the digital space where the advertisement will appear. However, it should be clarified that in cases where the supplier of the advertising service and the owner of the digital interface are different entities, the latter should not be considered to have provided a taxable service for DST purposes. This is in order to avoid possible cascading effects and double taxation.

(12) Services provided by multi-sided digital interfaces should be defined by reference to their capacity to enable users to find other users and to interact with them. The differential aspect of multi-sided digital interfaces is that they allow a user interaction which could not take place without the interface matching users with each other (in other words, the interface allows users to get in touch with other users). Some services typically referred to as communication or payment services, such as instant messaging services, e-mail services or e-payment services, may also be seen as facilitating the interaction between users through a digital interface, but users cannot usually get in touch with each other unless they have already established contact by other means. The revenues resulting from the supply of communication or payment services should therefore remain outside the scope of the tax because such suppliers do not operate as a marketplace, but rather produce support software or other information technology instruments allowing customers to reach out to other persons with whom they already have a relationship in most cases.

(13) For cases involving multi-sided digital interfaces that facilitate an underlying supply of goods or services directly between users of the interface, the underlying transactions and the revenues obtained by users from those transactions should remain outside the scope of the tax. The revenues resulting from retail activities consisting in the sale of goods or services which are contracted online via the website of the supplier of such goods or services, and where the supplier does not act as an intermediary, should also be outside the scope of DST because the value creation for the retailer lies with the goods or services provided and the digital interface is only used as a means of communication. Whether a supplier is selling goods or services online on his own account or providing intermediation services would be determined by taking into account the legal and economic substance of a transaction, as reflected in the arrangements between the relevant parties. For instance, a supplier of a digital interface where third-party goods are made available could be said to provide an

intermediation service (in other words, the making available of a multi-sided digital interface) where no significant inventory risks are assumed, or where it is the third party effectively setting the price of such goods.

(14) Services consisting in the supply of digital content by an entity through a digital interface should be excluded from the scope of the tax, regardless of whether the digital content is owned by that entity or that entity has acquired the rights to distribute it. Even if some sort of interaction between the recipients of such digital content may be allowed and therefore the supplier of such services could be seen as making available a multi-sided digital interface, it is less clear that the user plays a central role in the creation of value for the company supplying the digital content. Instead, the focus from the perspective of value creation is on the digital content itself which is supplied by the entity. Therefore the revenues obtained from such supplies should fall outside the scope of the tax.

(15) Digital content should be defined to mean data supplied in digital form, such as computer programmes, applications, games, music, videos or texts, irrespective of whether they are accessed through downloading or streaming, and other than the data represented by a digital interface itself. This is to capture the different forms which digital content can take when acquired by a user, which does not alter the fact that the sole or main purpose from the user's perspective is the acquisition of the digital content.

(16) The service described in recital (14) should be distinguished from a service consisting in the making available of a multi-sided digital interface through which users can upload and share digital content with other users, or the making available of an interface that facilitates an underlying supply of digital content directly between users. These latter services constitute a service of intermediation and should therefore fall within the scope of DST, regardless of the nature of the underlying transaction.

(17) Taxable services consisting in the transmission of data collected about users should cover only data which has been generated from such users' activities in digital interfaces, but not data which has been generated from sensors or other means and collected digitally. This is because the services within the scope of DST should be those using digital interfaces as a way to create user input which they monetise, rather than services using interfaces only as a way to transmit data generated otherwise. DST should therefore not be a tax on the collection of data, or the use of data collected by a business for the internal purposes of that business, or the sharing of data collected by a business with other parties for no consideration. What DST should target is the generation of revenues from the transmission of data obtained from a very specific activity (users' activities on digital interfaces).

(18) Services regulated in points (1) to (9) of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council[8] and provided by trading venues or systematic internalisers, as defined in that Directive, or by regulated crowdfunding service providers should not fall within the scope of DST. In addition, services consisting in the facilitation of the granting of loans and provided by regulated crowdfunding service providers should not fall within the scope of DST. Regulated crowdfunding service providers refers to providers of services who are

[8] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

subject to any future Union rules adopted under Article 114 of the TFUE for the regulation of crowdfunding services.

(19) Multi-sided digital interfaces which allow users to receive or to know about the existence of trade execution services, investment services or investment research services, such as those made available by the entities referred to above, often imply user interaction. However, the user does not play a central role in the creation of value for the entity making available a digital interface. Instead, the value lies with the capacity of such an entity to bring together buyers and sellers of financial products under specific and distinctive conditions which would not occur otherwise (compared, for instance, to transactions concluded outside such interfaces directly between the counterparties). A service consisting in making available a digital interface by such an entity goes beyond the mere facilitation of transactions in financial instruments between users of such an interface. In particular, the regulated services which are excluded from the scope of this Directive aim at providing a safe environment for financial transactions. The entity providing these services therefore determines the specific conditions under which such financial transactions can be executed in order to guarantee essential elements such as the quality of execution of the transactions, the level of transparency in the market and fair treatment of investors. Finally, such services have the essential and distinct objective of facilitating funding, investments or savings.

(20) As regards crowdfunding platforms, investment and lending based crowdfunding should be outside the scope of the tax since the providers of such services play the same role as that of trading venues and systematic internalisers, and hence do not constitute intermediation. However, services provided by crowdfunding platforms which are not investment and lending based and constitute intermediation, such as donation or reward based crowdfunding, or services provided by such platforms consisting in the placing of advertising, should fall within the scope of this Directive.

(21) Since data transmission by trading venues, systematic internalisers and regulated crowdfunding service providers is limited to and forms part of the provision of the regulated financial services described above and is regulated as such under Union law, the provision of data transmission services by those entities should also be excluded from the scope of DST.

(22) Only certain entities should qualify as taxable persons for the purposes of DST, regardless of whether they are established in a Member State or in a non-Union jurisdiction. In particular, an entity should qualify as a taxable person only if it meets both of the following conditions: (i) the total amount of worldwide revenues reported by the entity for the latest complete financial year for which a financial statement is available exceeds EUR 750 000 000; and (ii) the total amount of taxable revenues obtained by the entity within the Union during that financial year exceeds EUR 50 000 000.

(23) The first threshold (total annual worldwide revenues) should limit the application of DST to the companies of a certain scale, which are the ones mainly able to provide those digital services for which user contribution plays a fundamental role, and which heavily rely on extensive user networks, large user traffic, and the exploitation of a strong market position. Such business models, which depend on user value creation for obtaining revenues and are only viable if carried out by companies with a certain size, are the ones responsible for the higher difference between where their profits are taxed and where value is created. Moreover, the opportunity of engaging in aggressive tax

planning lies with larger companies. That is why the same threshold has been proposed in other Union initiatives[9]. Such a threshold is also intended to bring legal certainty, given that it would make it easier and less costly for companies and tax authorities to determine whether an entity is liable to DST. It also excludes small enterprises and start-ups for which the compliance burdens of the new tax would be likely to have a disproportionate effect.

(24) The second threshold (total annual taxable revenues in the Union) should limit the application of the tax to cases where there is a significant digital footprint at Union level in relation to the type of revenues covered by DST. It should be set at Union level in order to disregard differences in market sizes which may exist within the Union.

(25) To comply with the existing legal framework, any entity qualifying as a taxable person and obtaining taxable revenues treated as obtained in a Member State should be subject to DST in that Member State, irrespective of whether that entity is established in that Member State, in another Member State or in a non-Union jurisdiction.

(26) Special rules should be set out for entities belonging to a consolidated group for financial accounting purposes. The revenues obtained by an entity from supplies to other entities belonging to the same group for financial accounting purposes should be excluded from the scope of the new tax. For the purposes of determining whether an entity is above the applicable thresholds and thus qualifies as a taxable person, the thresholds should be applied in respect of total consolidated group revenues.

(27) In order to alleviate possible cases of double taxation where the same revenues are subject to the corporate income tax and DST, it is expected that Member States will allow businesses to deduct the DST paid as a cost from the corporate income tax base in their territory, irrespective of whether both taxes are paid in the same Member State or in different ones.

(28) The taxable revenues of an entity should be treated as obtained in a Member State in a tax period if the users with respect to a taxable service provided by that entity are located in that Member State. A user should be deemed to be located in a Member State in a tax period on the basis of certain specific rules, determined for each of the taxable services and based on the place where a user's device has been used.

(29) Where the users with respect of a given taxable service are located in different Member States or non-Union jurisdictions, the relevant taxable revenues obtained from that service should be allocated to each Member State in a proportional way on the basis of certain specific allocation keys. Such keys should be set out depending on the nature of each taxable service and the distinctive elements triggering the receipt of revenues for the provider of such a service.

(30) In the case of a taxable service consisting in the placing of advertising on a digital interface, the number of times an advertisement has appeared on users' devices in a tax period in a Member State should be taken into account for the purposes of determining the proportion of taxable revenues to be allocated in that tax period to that Member State.

[9] See Article 2 of the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) (COM(2016) 683 final).

(31) As regards the making available of multi-sided digital interfaces, in order to determine the proportion of taxable revenues to be allocated to a Member State, a distinction should be made between cases where the interface facilitates underlying transactions directly between users and cases where it does not. In cases involving the facilitation of underlying transactions, the allocation of taxable revenues in a tax period to a Member State should be carried out on the basis of the number of users who conclude such a transaction in that tax period while using a device in that Member State. This is because that is the action usually generating revenues for the business making the interface available. Taxing rights over the revenues of the business making available the interface should be allocated to Member States where the users concluding underlying transactions are located, whether the users are the sellers of the underlying goods or services or the buyers. This is because both of them generate value for the multi-sided digital interface through their participation, given that the role of the interface is to match supply and demand. However, if the intermediation service does not involve the facilitation of underlying transactions, revenues are typically obtained through periodic payments after having registered or opened an account on a digital interface. Hence, for the purposes of allocating taxable revenues to a Member State in a tax period, the number of users in that tax period holding an account which was opened using a device in that Member State, whether opened during that tax year or an earlier one, should be taken into account.

(32) As regards the transmission of data collected about users, the allocation of taxable revenues in a tax period to a Member State should take into account the number of users from whom data transmitted in that tax period has been generated as a result of such users having used a device in that Member State.

(33) Identifying the place where a user's device has been used and, therefore, the place of taxation should be possible due to the Internet Protocol (IP) address of the user's device or, if more accurate, other means of geolocation. The place of taxation should not take into account whether users have contributed in money to the generation of the revenue, the place from where the payment in exchange for the supplies giving rise to a DST liability has been made, or the place where a possible supply of underlying goods or services contracted via a multi-sided digital interface has been made.

(34) Any processing of personal data carried out in the context of DST should be conducted in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council[10], including that which may be necessary in relation to Internet Protocol (IP) addresses or other means of geolocation. In particular, regard should be given to the need to provide appropriate technical and organisational measures to comply with the rules relating to the lawfulness and security of processing activities, the provision of information and the rights of data subjects. Whenever possible, personal data should be rendered anonymous.

(35) The taxable revenues should be equal to the total gross revenues obtained by a taxable person, net of value added tax and other similar taxes. Taxable revenues should be recognised as obtained by a taxable person at the time when they become due, regardless of whether they have actually been paid by then. DST should be chargeable

[10] 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).

in a Member State on the proportion of taxable revenues obtained by a taxable person in a tax period that is treated as obtained in that Member State, and should be calculated by applying the DST rate to that proportion. There should be a single DST rate at Union level in order to avoid distortions in the Single Market. The DST rate should be set at 3%, which achieves an appropriate balance between revenues generated by the tax and accounting for the differential DST impact for businesses with different profit margins.

(36) Taxable persons providing taxable services should be liable for the payment of DST, as well as responsible to fulfil a series of administrative obligations. A simplification mechanism in the form of a One-Stop-Shop (OSS) should be set up for taxable persons with DST liability in one or more Member States, so that all their DST obligations can be fulfilled at once (identification, submission of the DST return, and payment). The obligations should be fulfilled in a single Member State (Member State of identification), which should collect the information and the payment of the DST on behalf of other Member States where the DST is due, and subsequently share that relevant information and the collected DST amounts with them. Such a mechanism is without prejudice to DST being owed by the taxable person directly to each Member State where DST is due. Accordingly, each Member State where DST is due should be entitled to enforce payment of DST directly against the taxable person liable for it, as well as to carry out tax audits and control measures aimed at examining a taxable person's DST liability. Such enforcement and control measures should be governed by the rules and procedures applicable in each Member State where DST is due.

(37) Member States should be able to lay down accounting, record-keeping or other obligations aimed at ensuring that the DST due is effectively paid, as well as other measures to prevent tax evasion, avoidance and abuse.

(38) In order to ensure uniform conditions for the implementation of this Directive as regards the administrative obligations to be fulfilled and the exchanges of information between Member States necessary for the functioning of the OSS, implementing powers should be conferred on the Commission. The Commission should also be able to propose common rules concerning accounting, record-keeping or other obligations to be laid down by Member States. Those powers should be exercised in accordance with Regulation (EU) No182/2011 of the European Parliament and of the Council[11].

(39) Member States should, wherever necessary, make use of the provisions adopted by the Union regarding administrative cooperation in tax matters such as Council Directives 2011/16/EU[12] and 2010/24/EU[13], or of other measures available internationally, such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Article 26 of the OECD Model Tax Convention and the OECD Model Agreement on Exchange of Information in Tax Matters.

(40) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[14], Member States have

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11 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

12 Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

13 Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1).

14 OJ C 369, 17.12.2011, p. 14.

undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(41) The objectives of this Directive aim at protecting the integrity of the Single Market, ensuring its proper functioning and avoiding distortion of competition. Since those objectives, by their very nature, cannot be sufficiently achieved by Member States but can rather 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 of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS DIRECTIVE:

Chapter 1

SUBJECT MATTER AND DEFINITIONS

Article 1
Subject matter

This Directive establishes the common system of a digital services tax ('DST') on the revenues resulting from the provision of certain digital services.

Article 2
Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) 'entity' means any legal person or legal arrangement that carries on business through either a company or a structure that is transparent for tax purposes;

(2) 'consolidated group for financial accounting purposes' means all entities that are fully included in consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or a national financial reporting system;

(3) 'digital interface' means any software, including a website or a part thereof and applications, including mobile applications, accessible by users;

(4) 'user' means any individual or business;

(5) 'digital content' means data supplied in digital form, such as computer programmes, applications, music, videos, texts, games and any other software, other than the data represented by a digital interface;

(6) 'Internet Protocol (IP) address' means a series of digits assigned to networked devices to facilitate their communication over the internet;

(7) 'tax period' means a calendar year.

Article 3
Taxable revenues

1. The revenues resulting from the provision of each of the following services by an entity shall qualify as 'taxable revenues' for the purposes of this Directive:

   (a) the placing on a digital interface of advertising targeted at users of that interface;

   (b) the making available to users of a multi-sided digital interface which allows users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users;

   (c) the transmission of data collected about users and generated from users' activities on digital interfaces.

2. The reference in paragraph 1 to revenues shall include total gross revenues, net of value added tax and other similar taxes.

3. Point (a) of paragraph 1 shall apply whether or not the digital interface is owned by the entity responsible for placing the advertising on it. Where the entity placing the advertising does not own the digital interface, that entity, and not the owner of the interface, shall be considered to be providing a service falling within point (a).

4. Point (b) of paragraph 1 shall not include:

   (a) the making available of a digital interface where the sole or main purpose of making the interface available is for the entity making it available to supply digital content to users or to supply communication services to users or to supply payment services to users;

   (b) the supply by a trading venue or a systematic internaliser of any of the services referred to in points (1) to (9) of Section A of Annex I to Directive 2014/65/EU;

   (c) the supply by a regulated crowdfunding service provider of any of the services referred to in points (1) to (9) of Section A of Annex I to Directive 2014/65/EU, or a service consisting in the facilitation of the granting of loans.

5. Point (c) of paragraph 1 shall not include the transmission of data by a trading venue, systematic internaliser or regulated crowdfunding service provider.

6. In paragraphs 4 and 5:

   (a) 'trading venue' and 'systematic internaliser' have the meanings given in points (24) and (20) respectively of Article 4(1) of Directive 2014/65/EU;

   (b) 'regulated crowdfunding service provider' means a provider of crowdfunding services who is subject to authorisation and supervision under any harmonisation measure adopted under Article 114 of the Treaty for the regulation of crowdfunding services.

7. Revenues resulting from the provision of a service falling within paragraph 1 by an entity belonging to a consolidated group for financial accounting purposes to another entity in that same group shall not qualify as taxable revenues for the purposes of this Directive.

8. If an entity belonging to a consolidated group for financial accounting purposes provides a service falling within paragraph 1 and the revenues resulting from the provision of that service are obtained by another entity in the group, those revenues shall be deemed for the purposes of this Directive to have been obtained by the entity providing the service.

9. Services falling within paragraph 1 are referred to in Chapters 2 and 3 as 'taxable services'.

Article 4
Taxable person

1. 'Taxable person', with respect to a tax period, shall mean an entity meeting both of the following conditions:

   (a) the total amount of worldwide revenues reported by the entity for the relevant financial year exceeds EUR 750 000 000;

   (b) the total amount of taxable revenues obtained by the entity within the Union during the relevant financial year exceeds EUR 50 000 000.

2. Where an entity reports or obtains revenues in a currency other than euro, the revenues shall be converted into euro for the purposes of paragraph 1 by applying the exchange rate as published in the *Official Journal of the European Union* on the last date of the relevant financial year or, if there is no publication on that day, the rate published on the previous day.

3. In paragraphs 1 and 2, 'the relevant financial year' means the financial year covered by the latest available of the financial statements issued by the entity before the end of the tax period in question.

4. The rule in Article 5(1) shall apply in determining under paragraph 1(b) whether taxable revenues are obtained within the Union.

5. Taxable revenues shall be recognised for the purposes of this Directive as having been obtained at the time when they fall due, irrespective of whether the relevant amounts have actually been paid.

6. If the entity referred to in paragraph 1 belongs to a consolidated group for financial accounting purposes, that paragraph shall be applied instead to the worldwide revenues reported by, and taxable revenues obtained within the Union by, the group as a whole.

Chapter 2

PLACE OF TAXATION, CHARGEABILITY AND CALCULATION OF THE TAX

Article 5
Place of taxation

1. Taxable revenues obtained by an entity in a tax period shall be treated for the purposes of this Directive as obtained in a Member State in that tax period if users with respect to the taxable service are located in that Member State in that tax period.

   The first subparagraph applies irrespective of whether such users have contributed in money to the generation of those revenues.

2. With respect to a taxable service, a user shall be deemed to be located in a Member State in a tax period if:

   (a) in the case of a service falling within Article 3(1)(a), the advertising in question appears on the user's device at a time when the device is being used in that Member State in that tax period to access a digital interface;

   (b) in the case of a service falling within Article 3(1)(b):

      (i) if the service involves a multi-sided digital interface that facilitates the provision of underlying supplies of goods or services directly between users, the user uses a device in that Member State in that tax period to access the digital interface and concludes an underlying transaction on that interface in that tax period;

      (ii) if the service involves a multi-sided digital interface of a kind not covered by point (i), the user has an account for all or part of that tax period allowing the user to access the digital interface and that account was opened using a device in that Member State;

   (c) in the case of a service falling within Article 3(1)(c), data generated from the user having used a device in that Member State to access a digital interface, whether during that tax period or any previous one, is transmitted in that tax period.

3. For each tax period, the proportion of an entity's total taxable revenues that is treated under paragraph 1 as obtained in a Member State shall be determined as follows:

   (a) as regards taxable revenues resulting from the provision of services falling within Article 3(1)(a), in proportion to the number of times an advertisement has appeared on users' devices in that tax period;

   (b) as regards taxable revenues resulting from the provision of services falling within Article 3(1)(b):

      (i) if the service involves a multi-sided digital interface that facilitates the provision of underlying supplies of goods or services directly between users, in proportion to the number of users having concluded underlying transactions on the digital interface in that tax period;

      (ii) if the service involves a multi-sided digital interface of a kind not covered by point (i), in proportion to the number of users holding an

account for all or part of that tax period allowing them to access the digital interface;

(c) as regards taxable revenues resulting from the provision of services falling within Article 3(1)(c), in proportion to the number of users from whom data transmitted in that tax period has been generated as a result of users having used a device to access a digital interface, whether in that tax period or a previous one.

4. For the purposes of determining the place of taxation of the taxable revenues subject to DST, the following elements shall not be taken into account:

(a) if there is an underlying supply of goods or services directly between the users of a multi-sided digital interface referred to in Article 3(1)(b), the place where that underlying supply takes place;

(b) the place from which any payment for the taxable service is made.

5. For the purposes of this Article, 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 accurate, any other method of geolocation.

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

Article 6
Chargeability

DST shall be chargeable in a Member State on the proportion of taxable revenues obtained by a taxable person in a tax period that is treated under Article 5 as obtained in that Member State. The DST shall become due in that Member State on the next working day following the end of that tax period.

Article 7
Calculation of the tax

DST shall be calculated for a Member State for a tax period by applying the DST rate to the proportion of taxable revenues referred to in Article 6.

Article 8
Rate

The DST rate shall be 3%.

Chapter 3

OBLIGATIONS

Article 9
Person liable for payment and fulfilment of obligations

1. DST shall be payable and the obligations in this Chapter shall be fulfilled by the taxable person providing the taxable services.

2. A consolidated group for financial accounting purposes shall be permitted to nominate a single entity within that group for the purposes of paying DST and fulfilling the obligations in this Chapter on behalf of each taxable person in that group who is liable to DST.

Article 10
Identification

1. A taxable person shall notify the Member State of identification that the taxable person is liable to DST in one or more Member States.

2. The notification shall be made electronically by no later than 10 working days following the end of the first tax period for which the taxable person is liable to DST under this Directive ('the first chargeable period').

3. The Member State of identification shall be:

   (a) the Member State in which the taxable person is liable to DST for the first chargeable tax period;

   (b) if the taxable person is liable to DST for that tax period in more than one Member State, such one of those Member States as the taxable person chooses.

4. The notification required under paragraph 1 shall include at least the following information with respect to the taxable person:

   (a) name;

   (b) trading name, if different from the name;

   (c) postal address;

   (d) electronic address;

   (e) national tax number, if any;

   (f) contact name;

   (g) telephone number;

   (h) Member States where the taxable person is liable to DST;

   (i) IBAN or OBAN number.

5. The taxable person shall notify the Member State of identification of any changes in the information provided under paragraph 4.

6. When an entity is nominated under Article 9(2), the information provided by that nominated entity under this Article with respect to each taxable person in the group

shall also include information with respect to itself in relation to the items listed in points (a) to (g) of paragraph 4.

7. The Commission may adopt implementing acts to determine a common format for the notification required under this Article. Those implementing acts shall be adopted in accordance with the procedure provided for in Article 24(2).

Article 11
Identification number

1. The Member State of identification shall allocate to the taxable person an individual identification number for the purposes of DST and shall notify the taxable person of that number by electronic means within 10 working days from the day on which the notification under Article 10 was received.

2. Each individual identification number shall have a prefix in accordance with ISO code 3166 Alpha 2 by which the Member State of identification may be identified. However, Greece and the United Kingdom shall use the prefix 'EL' and 'UK' respectively.

3. Member States shall take the measures necessary to ensure that their identification systems allow taxable persons to be identified and shall keep an identification register with all the individual identification numbers allocated by them.

Article 12
Deletion from the identification register

1. A taxable person shall notify the Member State of identification by electronic means in any of the following circumstances:

   (a) the taxable person ceases to obtain taxable revenues that are treated under this Directive as obtained in the Union;

   (b) the taxable person ceases to qualify as a taxable person;

   (c) the taxable person ceases to exist;

   (d) the taxable person ceases to be liable to DST in the Union for any other reason.

2. The Member State of identification shall delete the taxable person from the identification register at the end of the period of 60 working days following the end of the tax period during which the information referred to in paragraph 1 was notified.

3. Article 10 shall apply if, following deletion of a taxable person from the identification register, the taxable person becomes liable once again to DST in the Union. References in Article 10 to the first chargeable tax period shall be read accordingly.

Article 13
Change in the Member State of identification

1. Where a taxable person has chosen a Member State of identification under Article 10(3)(b), the taxable person shall be bound by that choice for the first chargeable

period for which notification is made under Article 10 and for the two following tax periods.

2. However, if the taxable person ceases to be liable to DST in that Member State of identification chosen under Article 10(3)(b), the taxable person shall change its Member State of identification in accordance with the requirements of Article 10.

3. Any change in a taxable person's Member State of identification shall be notified to the existing Member State of identification, and that change shall apply from the tax period following the tax period in which that information is notified. The existing Member State of identification shall delete the taxable person from the identification register in accordance with Article 12(2).

4. That taxable person shall notify the new Member State of identification in accordance with Article 10, and references in that Article to the first chargeable period shall be to the tax period from which the change applies.

Article 14
DST return

A taxable person shall submit to the Member State of identification a DST return for each tax period. The return shall be submitted electronically within 30 working days following the end of the tax period covered by the return.

Article 15
DST return information

1. The DST return shall show the following information:

   (a) the individual identification number referred to in Article 11;

   (b) for each Member State where DST is due for the relevant tax period, the total amount of taxable revenues treated as obtained by the taxable person in that Member State in that tax period, together with the amount of DST due on that amount in that Member State for that tax period;

   (c) the total DST due from the taxable person in all Member States for the relevant tax period.

2. The DST return shall also show, with respect to the tax period, the total amount of worldwide revenues and total amount of taxable revenues within the Union applicable for the purposes of Article 4(1).

3. The Member State of identification may require the return to be made out in their national currency.

4. Upon receipt of a DST return, the Member State of identification shall immediately allocate a DST return number to the return.

5. Member States shall take the measures necessary to ensure that their identification systems allow DST returns to be identified and shall keep a DST return identification register with all the individual DST return numbers allocated by them.

6. The Commission may adopt implementing acts to determine a common format for the DST return and the DST return number. Those implementing acts shall be adopted in accordance with the procedure provided for in Article 24(2).

Article 16
Payment arrangements

1. The total DST due from a taxable person in all Member States for a tax period shall be paid by the taxable person in the Member State of identification.

2. The total DST due shall be paid to the Member State of identification no later than 30 working days following the end of the tax period concerned and, in making the payment, the taxable person shall make reference to the relevant DST return number.

3. If a taxable person makes a payment without reference to the relevant DST return number, or the reference number does not correspond to any outstanding DST return, the Member State of identification may take steps to clarify the issue. If the issue remains unsolved, the payment shall be returned to the taxable person, and the payment shall not be considered to be made for the purposes of paragraphs 1 and 2.

4. Payment shall be made to a bank account designated by the Member State of identification.

5. The Member State of identification may require the payment to be made in their national currency.

6. A Member State of identification which receives a payment in excess of the total DST due as indicated in the relevant DST return shall reimburse the overpaid amount directly to the taxable person concerned.

7. Where a Member State of identification has received a payment in respect of a DST return subsequently found to be incorrect and amended under Article 17, and that Member State has already distributed that amount to each Member State where DST is due, those Member States where DST is due shall each reimburse their respective part of any overpaid amount directly to the taxable person.

Article 17
DST return amendments

1. Changes to the figures contained in a DST return shall be made only by means of amendments to that return and not by adjustments to a subsequent return.

2. The amendments referred to in paragraph 1 shall be submitted electronically to the Member State of identification within three years of the date on which the initial return was required to be submitted. Amendments after such period shall be governed by the rules and procedures applicable in each Member State respectively where DST is due.

3. Any additional payment by a taxable person of DST due derived from the amendments in paragraph 1 shall be made to the Member State of identification in accordance with Article 16, and references to 'total DST due' shall be read accordingly. Any reimbursements to a taxable person of DST paid derived from the amendments in paragraph 1 shall be made in accordance with Article 16(7).

Article 18

Accounting, record-keeping, anti-fraud, enforcement and control measures

1. Member States shall lay down accounting, record-keeping and other obligations intended to ensure that the DST due to the tax authorities is effectively paid. Such rules in a Member State shall apply to any entity with DST liability in that Member State, irrespective of the Member State of identification of that taxable person.

2. The Commission may adopt implementing acts to determine the measures to be taken pursuant to paragraph 1. Those implementing acts shall be adopted in accordance with the procedure provided for in Article 24(2).

3. Member States may adopt measures to prevent tax evasion, avoidance and abuse with respect to DST.

4. A Member State of identification chosen under Article 10 shall act on behalf of the other Member States where DST is due for the purposes of the obligations in this Chapter, but the DST shall be owed by the taxable person directly to each Member State where DST is due. Accordingly, each Member State where DST is due shall be entitled to enforce payment of the DST directly against the relevant taxable person. To that extent, the rules and procedures of each such Member State shall apply, including the rules and procedures relating to penalties, interest and other charges for late payment or non-payment of DST and the rules and procedures relating to the enforcement of debts.

5. Tax audits and control measures by Member States aimed at examining all the information and actions relevant to the calculation of a taxable person's DST liability in that Member State shall be governed by the rules and procedures applicable in that Member State.

Article 19

Appointment of competent authorities

Each Member State shall designate the competent authority to be responsible in that Member State for managing all aspects related to the obligations set out in this Chapter and in Chapter 4, and shall notify the name and electronic address of that authority to the Commission. The names and electronic addresses of the competent authorities shall be published by the Commission in the *Official Journal of the European Union*.

Chapter 4

ADMINISTRATIVE COOPERATION

Article 20
Exchange of information as regards identification

1. The Member State of identification shall transmit any notification received by it under Article 10 to the competent authority of each Member State where DST is due. The notification shall be transmitted within 10 working days from the day on which the notification was received.

2. The Member State of identification shall also inform each such Member State of the individual identification number allocated to the relevant taxable person under Article 11.

3. The Member State of identification shall also inform each Member State where DST is due of any deletion in the identification register made under Article 12 within 10 working days from the day on which the deletion has been made.

Article 21
Exchange of information as regards the DST return

1. The Member State of identification shall transmit DST returns and any amendments to DST returns submitted to it under Article 14 or 17 to the competent authority of each Member State where DST is due. The returns and amendments shall be transmitted within 10 working days from the day on which they were received.

2. If a DST return is submitted in a currency other than euro, the Member State of identification shall convert the amounts into euro by applying the exchange rate as published in the *Official Journal of the European Union* on the last date of the tax period covered by the return or, if there is no publication on that day, on the previous day of publication, and shall transmit that information to the relevant Member States alongside the return, or amendment, transmitted to them under paragraph 1.

3. The Member State of identification shall transmit to the competent authorities of each Member State where DST is due any other information needed to link each payment with a relevant DST return.

Article 22
Exchange of information as regards payment

1. The Member State of identification shall ensure that the amount that a taxable person has paid under Article 16 corresponding to the DST due in a Member State other than the Member State of identification is transferred to the competent authority of that other Member State. The transfer shall take place within 10 working days following the day on which the payment was received.

2. The amount referred to in paragraph 1 shall be transferred in euro to the bank account designated by that other Member State.

3. Member States shall notify the competent authorities of other Member States of the number of the bank account to be used for the purposes of paragraph 2.

4. Any amount received by the Member State of identification in a currency other than euro shall be converted into euro by applying the exchange rate as published in the *Official Journal of the European Union* on the last date of the tax period covered by the return or, if there is no publication on that day, on the previous day of publication.

5. If a taxable person pays a portion only of the total DST due from it, the Member State of identification shall ensure that that portion is transferred to the competent authorities of the Member States where DST is due in proportion to the tax due in each Member State. The Member State of identification shall inform the competent authorities of the Member States where DST is due thereof.

6. If a Member State where DST is due has reimbursed any overpaid amount directly to the taxable person under Article 16(7), that Member State shall inform the Member State of identification of the amount of those reimbursements.

Article 23
Means of information exchange

1. Information and documentation to be transmitted under this Chapter shall be transmitted electronically.

2. The Commission may adopt implementing acts to determine the technical details by which such information and documentation is to be transmitted. Those implementing acts shall be adopted in accordance with the procedure provided for in Article 24(2).

Chapter 5

FINAL PROVISIONS

Article 24
Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 25
Transposition

1. Member States shall adopt and publish, by [31 December 2019] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

   They shall apply those provisions from [1 January 2020].

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 26
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 27
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President