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NOTE

From:	Presidency
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Subject:	Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services – General approach

Delegations will find in the Annex a Presidency compromise on the abovementioned proposal.

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.

¹ OJ C , , p. .

² OJ C 367, 10.10.2018, p. 73–77

(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.

(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 2017⁵ 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.

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 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).

(5) Given that 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 level⁶ 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 a factor (user value creation) also underpins the action with respect to corporate tax rules.

(7a) This Directive should not prevent a Member State from maintaining or introducing taxes, duties or charges which cannot be characterised as similar to DST, having regard in particular to its scope, function and other special features, provided that those taxes, duties or charges are not limited solely to digital companies but are charged on all taxpayers, whether digital or non-digital.

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).

(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 regarding tax collection and administrative cooperation.

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

(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 to users 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 sale of data collected about users and generated from 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 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.

(13a) 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.

(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. In such circumstances the interaction between users remains ancillary to the 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 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). 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) *moved to (13a)*

(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 sale of data collected about users should cover only data which has been generated from users' activities in digital interfaces. Data which has been generated from sensors or other means and collected digitally without users' activities in digital interfaces should not be covered by the Directive. 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) The provision of regulated financial services by regulated financial entities should not fall within the scope of DST. However, the provision of non-regulated services by regulated financial entities could fall within the scope of DST. Regulated financial entity refers to providers of financial services who are subject to supervision under a Union or equivalent non-Union framework, as determined by a Union legal act.

(19) Some regulated services provided by regulated financial entities through digital interfaces, such as trading execution services, may be seen as an intermediation service for the purposes of DST. However, the user does not in such circumstances play a central role in the creation of value for the financial entities making available a digital interface. Instead, the value lies with the capacity of such a regulated 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 this regard, other trading venues, exchange platforms or facilities dealing in other asset classes which are regulated under the domestic law of a Member State may also exhibit similar features. The non-classification of such an entity as a “regulated financial entity” under the Directive does not alter the fact that the making available of a digital interface by such an entity goes beyond the mere facilitation of transactions between users of such an interface, and thus could be outside the scope of the tax. 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) *deleted*

(21) Since data transmission by regulated financial entities 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 are only viable if carried out by companies with a certain size. 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.⁸ 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. In particular, it is important for the EU to provide a favourable environment for R&D activities and innovation, in particular for start-ups in the fast-growing digital sector. Thus additional taxes for such companies should be avoided. The threshold should safeguard businesses operating in the traditional economy that are in the process of becoming more digitalised. It should be set at Union level in order to disregard differences in market sizes which may exist within the Union.

⁸ See Article 2 of the Proposals for a Council Directive on a Common (Consolidated) Corporate Tax Base (C(C)CTB) (COM(2016) 683 final, COM(2016) 685 final).

(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 group. The revenues obtained by an entity from supplies to other entities belonging to the same group 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 group revenues. The fact that the thresholds in Article 4 are assessed for the group as a whole does not change the fact that each entity providing the taxable services in the group individually is a taxable person. Where one or more taxable persons established in the European Union belong to a group, the group shall be permitted to nominate a single entity established within the Union for the purposes of paying DST and of fulfilling the obligations on behalf of each taxable person in that group. This option should ease the compliance and administrative burden on businesses.

(27) This Directive should not prevent a Member State from allowing businesses to deduct the DST paid 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 for each transaction 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.

(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. 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,⁹ including that which may be necessary in relation to Internet Protocol (IP) addresses. 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 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.

⁹ 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).

(36) Taxable persons providing taxable services are liable for the payment of DST, as well as subject to a series of administrative obligations. Identification, declaration of DST (DST return) and payment of DST should be carried out in respect of each Member State where the taxable person is liable to DST. To minimise the burden for businesses, it is proposed that the identification procedure and the DST return have a harmonised format. The precise details of such harmonised formats should be agreed through implementing legislation. The DST return should contain the same information and should have the same format in all Member States. Therefore the same DST return should be sent to each Member State where DST is due. The taxable person should indicate in that DST return all relevant DST identification numbers given to that same person. The fact that all Member States where DST is due know the information concerning DST liability of the same taxpayer in other Member States constitutes an immediate “exchange of information” giving each Member State the complete picture within the Union for each taxpayer.

(36a) DST is 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.

(36b) A taxable person not established in the European Union should nominate an entity established in a Member State belonging to the same group as the taxable person or a tax representative established in one Member State for the purposes of paying DST and fulfilling the administrative obligations on behalf of the taxable person. This requirement should guarantee the quality of the DST management. The nominated group entity or tax representative should be responsible for ensuring the tax compliance of the third-country business, including filing the DST declarations in due form. He should also be liable for the DST of the business in order to secure the payment of the tax due to the national tax administrations. Where a taxable person not established in the European Union fails to fulfil its DST obligations, Member States may require an entity established in the European Union belonging to the same group as the taxable person to pay DST and fulfil the obligations on behalf of the taxable person.

(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, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No182/2011 of the European Parliament and of the Council.¹⁰

(39) Since the tax administrations of all Member States rely in principle on the same data, the Directive provides for an exchange of information with regard to any changes of the declared revenues resulting from tax audits and control measures. Changes to the figures contained in a DST return initiated by the taxable person should be made only by means of amendments to that return and should be submitted by the taxable person electronically to each Member State where DST was due not later than three years after the date on which the initial return was required to be submitted. The provisions on the official secrecy of information are aligned with the Directive 2011/16/EU.¹¹ 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 and 2010/24/EU,¹² 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.

¹⁰ 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).

¹¹ 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).

¹² 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).

(40) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents,¹³ Member States have 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.

(42) The DST is supposed to be only an interim solution until a comprehensive solution is in place (see recital 6). Therefore, a fixed date of expiry combined with a review clause and a link to the developments at global level ensure this interim character,

HAS ADOPTED THIS DIRECTIVE:

¹³ OJ C 369, 17.12.2011, p. 14.

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 a business through either a company or a structure that is transparent for income tax purposes;
- (1a) 'established within the Union' means having established a business in the Union or a fixed establishment there;
- (1b) 'not established within the Union' means having neither a business in the Union nor a fixed establishment there;
- (2) 'group' means all entities including a parent undertaking and all its subsidiary undertakings pursuant to Article 2 paragraph 11 of Directive 2013/34/EU of the European Parliament and of the Council¹⁴;

¹⁴ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (3) 'digital interface' means any software, including a website or a part thereof and applications, including mobile applications, accessible by users;
- (3a) 'multi-sided digital interface' means a 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;
- (4) 'user' means any individual or any legal person or legal arrangement, whatever its nature is, that accesses a digital interface with a device;
- (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;
- (5a) 'targeted advertising' means any form of digital commercial communication aimed at promoting a product, a service or a brand, targeted at users of a digital interface based on data collected on them.
- (5b) 'sale of user data' means any form of transmission of data for consideration (including e.g. licensing of data).
- (6) 'Internet Protocol (IP) address' means a series of alphanumeric characters assigned to networked devices to facilitate their communication over the internet;
- (7) 'tax period' means a calendar year.
- (8) 'regulated financial service' means the financial services for which a regulated financial entity is authorised.
- (9) 'regulated financial entity' means a provider of financial services who is subject to authorisation and supervision under any harmonisation measure adopted by the Union for the regulation of financial services, including providers subject to non-Union supervisory frameworks which are considered to be equivalent to Union measures, as determined in accordance with a Union legal act.

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 targeted advertising;
 - (b) the making available to users of a multi-sided digital interface;
 - (c) the sale 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 of regulated financial services by regulated financial entities;
 - (c) *deleted*

5. Point (c) of paragraph 1 shall not include
 - (a) the sale of data generated from sensors;
 - (b) the sale of data by a regulated financial entity.
6. *deleted*
7. Revenues resulting from the provision of a service falling within paragraph 1 by an entity belonging to a group 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 group 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 providing the taxable services described in Article 3(1) 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 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 group, the thresholds in 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. However, each entity within the group providing the taxable services described in Article 3(1) and not the group as a whole shall qualify as a taxable person if the conditions in paragraph 1 are fulfilled.

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 for each transaction 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.
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 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. The percentage for calculating the proportion of taxable revenues shall be rounded off to two decimal places for this purpose.

If the amount contains at least three decimal places and the value of the third decimal is six or more, the second decimal is increased by one. If the value of the third decimal is four or less, the second decimal remains the same. If the value of the third decimal is five, the second decimal remains the same in case it is even and is increased by one in case it is odd. If a digit is 9 and has to be increased by one according to the above rules, then the previous digit is increased by one and the rounded digit is 0.

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. Without prejudice to paragraph 1 and Article 4(1) where one or more taxable persons established within the Union belong to a group, that group shall be permitted to nominate a single entity established within the Union and belonging to the group for the purposes of paying DST and fulfilling the obligations in this Chapter on behalf of each taxable person in the group who is liable to DST.

3. Where a taxable person not established within the Union belongs to a group of which one or more entities are established in the Union, the taxable person shall nominate one of those entities for the purposes of paying DST and fulfilling the obligations in this Chapter on behalf of the taxable person.
4. Where a taxable person not established within the Union belongs to a group of which one or more entities are established in the Union, and where the taxable person has not fulfilled its obligations pursuant to paragraph 3, Member States may require one of those entities to pay DST and fulfil the obligations in this Chapter on behalf of the taxable person.
5. A taxable person not established within the Union and not part of a group shall nominate a tax representative established in one Member State for the purposes of paying DST and fulfilling the obligations in this Chapter on behalf of that taxable person.
6. Where a taxable person is not established within the Union, and where that taxable person belongs to a group with no entities established in the Union, the taxable person shall nominate a tax representative established in one Member State 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.
7. Where an entity or a tax representative is appointed in accordance with paragraphs (2) to (6) of this Article, the reference to the taxable person in this chapter shall include the reference to the tax representative or nominated entity for the purposes of this Chapter.

Article 10
Identification

1. A taxable person shall identify in each Member State where that taxable person is liable to DST.
2. The identification shall be made electronically by no later than 30 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. *deleted*
4. The identification 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;
 - (i) IBAN or OBAN number.
5. The taxable person shall notify each Member State where it is liable to DST of any changes in the information under paragraph 4 within 30 days after the change has occurred.

6. When an entity or tax representative is appointed under Article 9(2) to (6) the information provided by that nominated entity or tax representative under this Article with respect to each taxable person in the group or each represented taxable person shall also include information with respect to itself in relation to the items listed in 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. A Member State where DST is due shall allocate to the taxable person an individual DST identification number and shall notify the taxable person of that number by electronic means within 30 days from the day on which the notification under Article 10 was received.

When a tax representative is nominated under Article 9(5) or (6), a Member State where DST is due shall allocate to the tax representative an individual DST identification number and shall notify the tax representative of that number by electronic means within 30 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 referring to the Member State where DST is due. 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
deleted

Article 13
deleted

Article 14
DST return

1. A taxable person shall submit to each Member State, where it is liable to DST, a DST return for each tax period. The return shall be submitted electronically within 90 days following the end of the tax period covered by the return.
2. Where a taxable person has made use of the option in Article 9(2) or is obliged under 9(3) or 9(6) to nominate an entity or a tax representative, that entity or tax representative shall be permitted to file a consolidated DST return on behalf of all taxable persons in the group.

Article 15
DST return information

1. The DST return shall show the following information:
 - (a) all DST identification numbers allocated by Member States under Article 11; when a tax representative is nominated under Article 9 (5) or (6), the DST identification numbers of the representative.
 - (b) for all Member States where DST is due for the relevant tax period, the total amount of taxable revenues treated as obtained by the taxable person in those Member States, together with the amount of DST due on that amount in those Member States.

2. The DST return shall also show, with respect to the tax period, the total amount of worldwide revenues and the total amount of taxable revenues within the Union applicable for the purposes of Article 4(1).
3. Member States may require the return to be made out in their national currency. A conversion shall be made pursuant to Article 4(2).
4. *deleted*
5. *deleted*
6. The Commission may adopt implementing acts to determine a common format for the DST return. Those implementing acts shall be adopted in accordance with the procedure provided for in Article 24(2).

Article 16

Payment arrangements

1. The DST due from a taxable person in each Member State for a tax period shall be paid by the taxable person in each Member State, where it is liable to DST no later than 90 days following the end of the tax period concerned.
2. *deleted*
3. Payment shall be made to the bank account designated by each Member State.
4. *deleted*
5. Member States may require the payment to be made in their national currency.
6. *deleted*
7. *deleted*

Article 17

DST return amendments

1. Changes to the figures contained in a DST return initiated by the taxable person 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 all Member States where DST was due not later than three years of the date on which the initial return was required to be submitted.
3. Any additional payment by a taxable person of DST due derived from the amendments in paragraph 1 shall be made at the same time when the amended DST return is submitted.

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.
2. Member States shall foresee that the taxable person has to be able to demonstrate that non-declared online advertising revenues were obtained from non-targeted advertising.
3. *deleted*
4. Each Member State where DST is due shall enforce payment of the DST against the relevant taxable person. To that extent, the rules and procedures of each 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. *deleted*

Chapter 4

ADMINISTRATIVE COOPERATION

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 Chapter 3 and in this Chapter, 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*.

Article 20

Exchange of information

The competent authority of each Member State shall communicate within 30 days to the competent authority of all other Member States where the taxable person is liable to DST any changes in the declared revenues referred to in Article 15 (1) (b) and (2) because of tax audits and control measures. Information communicated between Member States in any form pursuant to this Directive, shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it. Such information may be used for the administration and enforcement of the domestic laws of all the Member States concerning the taxes referred to in Article 2 of Directive 2011/16/EU.

Article 21
Means of information exchange

1. Information and documentation to be transmitted under this Chapter shall be transmitted by electronic means using CCN network.
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 2021 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 2022.

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.
3. The Commission shall by 31 December 2020 prepare a report assessing the progress made on the revisions to the international corporate tax standards to address the challenges arising from digitalisation agreed at the OECD level, accompanied, if appropriate, by a proposal to postpone the application of this Directive or to repeal this Directive.
4. This Directive shall expire upon the entry into application of the revisions to the international corporate tax standards to address the challenges arising from digitalisation agreed at OECD level, or by 31 December [X] at the latest.

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
