**SPECIAL LEGISLATIVE PROCEDURE – Consultation**

**Follow up to the European Parliament legislative resolution on the proposal for a Council directive laying down rules relating to the corporate taxation of a significant digital presence**

**1. Rapporteurs:** Dariusz ROSATI (EPP / PL)

**2. Reference numbers:** 2018/0072 (CNS) / A8 0426/2018 / P8\_TA-PROV(2018)0524

**3. Date of adoption of the resolution:** 13 December 2018

**4. Legal basis:** Article 115 of the Treaty on the Functioning of the European Union

**5. Competent Parliamentary Committee:** Committee on Economic and Monetary Affairs (ECON)

**6. Commission's position:**

The Commission welcomes the resolution but cannot accept all amendments. Many amendments do not run counter to the aim and purpose of the directive but are redundant.

**Amendments 1, 2, 4 and 5 on recitals clarifying the problem definition and amendments 1, 2 and 3 on the rationale of the proposal and on a United Nation (UN) tax body**

The Parliament wants to include in the recitals that not enough progress has been made at the level of the Organisation for Economic Co-operation and Development (OECD) and that the directive should serve as a basis for work at international level. Furthermore, the Parliament emphasises the need for a common Union approach given the drawbacks of unilateral solutions.

*Commission's position:* the Commission agrees with the spirit of this part of the amendments. However, the Commission believes that the considerations set out in the amendments have already been sufficiently expressed in the recitals and the explanatory memorandum to the Commission’s proposal. The Commission shares the Parliament’s concerns on unilateral solutions and thinks that these are addressed in particular by its proposal for a Digital Services Tax.

The Parliament wants to include in a recital a reference to the conclusion of two Parliamentary Committees on the establishment of an empowered UN tax body.

*Commission's position:* the Commission cannot accept the second part of the amendment. Recitals cannot be used to express ambitions and wishes which are out of scope of the proposal in question.

**Amendment 4 on need to address the tax challenges of digital economy**

The Parliament wants to include a reference to the conclusion of two Parliamentary Committees on the need to address the tax challenges connected to the digital economy.

*Commission's position:* the Commission welcomes the support for its proposal and agrees on the need to address the tax challenges connected to the digital economy. However, the Commission does not think that the references to the conclusions of two Parliamentary Committees were of direct relevance for this directive.

**Amendment 5 on the Common Consolidated Corporate Tax Base (CCCTB)**

The Parliament believes that a broader harmonisation of corporate taxes is needed and that this directive should not hamper the work on the CCCTB.

*Commission's position:* the Commission fully supports the spirit of the amendment but does not think that this should be mentioned in the recitals as they are intended to clarify the underlying proposal.

**Amendment 6 on a Union model of a tax treaty amendment**

The Parliament wants the Commission to make a proposal for a Union model for a tax treaty amendment to be used by Member States to amend tax treaties with third countries so as to reflect the concept of a significant digital presence.

*Commission's position*: the Commission fully supports the spirit of the amendment. Indeed, the Commission believes it has already done so with its Recommendation on tax treaties (C(2018) 1650 final) which was part of the digital tax package adopted on 21 March 2018.

**Amendment 23 on an alternative for the profit split method**

The Parliament wants to delete the possibility for the taxpayer to prove that another method than the profit split method is more appropriate.

*Commission's position:* the Commission cannot accept this amendment. Although the Commission thinks that in most cases the profit split method is the appropriate one, removing the possibility to apply another method would be contrary to the current internationally agreed transfer pricing guidelines.

**Amendments 9 and 20 on tax neutrality, a small physical presence and corporate tax rates**

The Parliament wants to emphasise that Union tax law should respect tax neutrality, the free movement of services and not discriminate between Union and non-Union companies.

*Commission's position:* the Commission does not have any objections against the spirit of this part of the amendment but does not think that it is needed*.*

The Parliament also thinks that rules are needed for digital businesses having only a small physical presence in a Member State.

*Commission's position:* the Commission does not have any objections to the spirit of this part of the amendment but does not think that it is needed. It is not relevant whether a physical presence is small but rather whether it constitutes a permanent establishment and if so how much profit may be allocated to it.

Parliament wants to state explicitly that each Member State can set its own corporate tax rate.

*Commission's position:* the Commission cannot accept this part of the amendment as it does have value added beyond a description of the current reality*.*

**Amendment 10 on the Common Consolidated Corporate Tax Base**

Parliament believes that the solutions in the Directive should become an integral part of the directive for a Common Corporate Tax Base (CCTB) and the Directive for a Common Consolidated Corporate Tax Base.

*Commission's position:* the Commission fully supports the spirit of the amendment but does not think that this should be mentioned in the recitals as these are intended to clarify the provisions of the directive. The Commission has sufficiently explained the relation between the proposed directive and the CCCTB proposal both in the Explanatory Memorandum of the proposal for a Council directive laying down rules relating to the corporate taxation of a significant digital presence (SDP) and in the Communication which is part of the digital taxation package adopted on 21 March 2018.

**Amendments 11 and 19 on necessity/proportionality and personal data**

The Parliament thinks that due regard shall be given to the principles of necessity and proportionality. The Parliament also thinks that data collected from users should be limited to data on their location without identifying them. Member States’ tax authorities should be informed about the method used to determine the location of the users.

*Commission's position:* the Commission cannot support these amendments because they are redundant.

**Amendments 12, 28, 29, 34, 35, 36 and 37 on the evaluation and the Digitax committee**

The Parliament wants an evaluation of the directive to be carried out after three years instead of five years, which should also be reported to the Parliament. This evaluation should take into account the additional costs and administrative burden for SMEs, the impact on revenues, personal data, the internal market as a whole, the possible distortion of competition between companies subject to the new rules and the services covered by this directive.

*Commission's position:* the Commission does not support this amendment. Three years would be too short to carry out a proper evaluation. The Commission is not able to evaluate the impact as regards all the elements mentioned by Parliament.

The Parliament wants that the DigiTax Committee (which is the Committee in charge of examining questions on the application of the directive), publishes its agendas and that its participants should be cleared of any conflict of interest. The Parliament also wants an observer of the Parliament and ‘stakeholders’, including social partners, to be invited to attend meetings of the DigiTax Committee. The Parliament also wants to have to possibility to raise questions to the Committee. The DigiTax Committee shall draw up a report to be shared with the Parliament, the Council and the Commission. The DigiTax Committee shall verify the correct implementation of the Directive.

*Commission's position:* the Commission cannot accept this part of the amendment. The Commission does not think that publishing the agendas of the DigiTax Committee would have any added value. As regards membership, it is for the Member States to appoint their representatives to the DigiTax Committee and it is unclear what kind of conflict of interest should be avoided. As the DigiTax Committee is intended to discuss the application of the directive among tax administrators, the Commission does not believe that it is for the European Parliament to raise questions nor to appoint an observer. For the same reason the Commission does not think that other stakeholders should be invited. Finally, it is for the Commission to verify the correct implementation of the directive.

**Amendment 13 on small and medium-sized enterprises (SMEs)**

Parliament thinks that small and medium-sized enterprises (SMEs) should not fall unintentionally under the scope of the directive.

*Commission's position:* the Commission does not support this amendment. The Commission thinks that the thresholds are set sufficiently high as to prevent putting an unnecessary burden on SMEs.

**Amendments 14 and 39 on the link with the Digital Services Tax (DST)**

The Parliament wants to ensure that the provision of the DST will automatically cease to apply once the directive for a significant digital presence becomes applicable.

*Commission's position:* the Commission supports the spirit of the amendment but points out this issue should rather be addressed in the DST proposal. The latest compromise text of the DST proposal includes a sunset clause stating that the DST 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 2025 at the latest.

**Amendment 15 on the size of the entities in scope**

The Parliament wants to lay down explicitly that the Directive applies to entities irrespective of their size.

*Commission's position:* the Commission does not support this amendment as it is redundant.

**Amendment 21 on disclosing relevant information**

The Parliament wants to lay down that taxpayers shall disclose to the tax authorities all relevant information for determining the significant digital presence.

*Commission's position:* the Commission does not have any objections to the spirit of this amendment but does not think that it is needed because it is one of the obligations for taxpayers that should follow from national tax law.

**Amendment 23 on economically significant activities for profit allocation**

The Parliament wants to add exploitation and transmission of user-level data as economically significant activities for profit allocation.

*Commission's position:* the Commission could accept this amendment.

**Amendment 25 on allocating resources to national tax administrations**

The Parliament wants to lay down that the Member States shall allocate sufficient resources to their national tax administrations to be able to apply the rules of the directive.

*Commission's position:* the Commission does not support this amendment as this is a matter for the Member States.

**Amendment 26 on guidelines on a significant digital presence**

The Parliament wants the Commission to issue guidelines on how to identify, measure and tax a significant digital presence.

*Commission's position:* the Commission cannot support this amendment because the necessary elements to identify, measure and tax a significant digital presence are already included in the directive.

**Amendments 27 and 39 on administrative cooperation**

The Parliament wants to lay down that the exchange of information shall be automatic and mandatory as laid down in Council Directive 2011/16/EU.

*Commission's position:* the Commission does not have any objections to the spirit of these amendments but does not think that they are needed.

**Amendment 30 on delegated acts**

The Parliament wants to confer the power to adopt delegated acts to the Commission. Parliament should be informed about these delegated acts.

*Commission's position:* the Commission cannot accept this amendment as it is unclear what purpose the proposed delegated acts would serve. Furthermore, this amendment would certainly not be accepted by the Member States.

**Amendment 31 on appeal**

Companies should be allowed to appeal the decision that they provide digital services in accordance with national law.

*Commission's position:* the Commission does not support this amendment as this is a matter for the Member States.

**Amendment 33 on double tax treaties with third countries**

The Parliament wants the Commission to be mandated to negotiate tax treaties with third parties.

*Commission's position:* the Commission supports the spirit of the amendment but points out that the Member States are highly unlikely to give such a mandate to the Commission.