

ACT COMMENTS ON THE EUROPEAN COMMISSION'S INCEPTION IMPACT ASSESSMENT ON A DIGITAL LEVY

REFERENCE DOCUMENT

European Commission's [Inception Impact Assessment & Public Consultation](#) on a Digital Levy.

CONTEXT

This paper's aim is to give feedback on the Commission's Inception Impact Assessment on a Digital Levy and outline the Association of Commercial Television in Europe's views on the taxation of large tech companies. With a view to reaching a global solution in the context of the ongoing G20 and OECD discussions, we welcome the Commission's pro-active role in seeking harmonisation in the digital single market and its leading role in the debate.

ACT VIEW

The Association of Commercial Television in Europe ("ACT") represents Europe's 29 leading Commercial Broadcasters in Europe. ACT members make up a substantial portion of the thousands of television services and on-demand audiovisual media services available in Europe. The AV sector is responsible for over a million local jobs across the EU directly, and another million indirectly, and a steady contributor to the tax authorities in the Member States where it operates.

As such, the ACT is a keen supporter of Europe's drive to address the challenges and opportunities brought about by online platforms. As a highly regulated industry, bearing full responsibility over editorial content and ads catered to viewers, commercial broadcasters reinvest a considerable share of their earnings in Europe's creative and cultural economy, pay substantial direct and indirect levies in the Member States and deliver major positive externalities through investment in news and a genuine commitment upholding cultural diversity. ACT supports an approach that strives to achieve a level playing field for businesses in the EU to ultimately benefit civil society. Online platforms currently enjoy significant regulatory advantages, including in the area of taxation and this needs to be addressed. We therefore support in principle EU rules, including fair taxation, that are fit for purpose in the digital economy and that allow companies to compete on equitable terms.

Our main concern stems from the reliance of Commercial Broadcasters on advertising revenues across their service offerings, including on digital broadcast services. The scope and definition of digital activities/transactions or companies subject to the initiative will be key in this respect. This revenue enables a significant proportion of the population to access a diverse, plural content offering for free or at competitive rates. As the Commission is aware, many of the companies that are currently able to avoid taxation in Europe, which the digital levy aims to tax, namely social media, online market places, and other online platforms 1) also often rely on advertising for much of their revenues and 2) are also in the business of delivering content to consumers. Indeed, broadcasters are increasingly offering all kinds of new online BVoD, AVoD, SVoD services, as well as using targeted advertising, and all of these services should not fall within the scope of the new tax to the extent that they already pay a fair rate of tax in Europe. In other words, additional taxes should only fall where they are not already being paid, and in order to achieve equal treatment. This principle has and should continue to be the driving principle behind an EU DST. It should not mutate into a more general attempt to

generate new revenue streams from all online activity. In this context, we urge real caution in the drafting of the future digital levy given the serious risk that businesses such as ours end up inadvertently being taxed twice.

Broadcasters' experience with digital taxes at national level has shown that the way they are implemented can have a very negative impact on traditional taxpaying companies, such as Broadcasters, or can contribute to a level playing field and more transparency. Adequate thresholds, scope of activities taxed, where the funds are allocated and transparency measures are important factors in this respect. We would like to relay the following three examples which illustrate this:

- The impact of the Austrian digital advertising tax has been rather positive on traditional media companies. The tax is framed as an online specific 'sales tax' alternative to the tax for traditional media companies ("Werbeabgabe"). Therefore, to our knowledge, there is no double taxation: the tax focuses on online advertising and its thresholds are set at 750 mn worldwide and 25 mn from online advertising services in Austria. Part of the revenues are allocated to a fund which supports media's digital transition. Finally, the disclosure of these tax revenues shines a light on the scale of these platforms' revenues in the country.
- Unfortunately, the Spanish digital tax is not only intended to tax the digital income of large international operators, but it applies to all companies that obtain (i) a turnover of more than 750 million worldwide (all income included, not just digital) and (ii) more than 3 million digital revenues. Therefore, it will be fully applied to multiple broadcasters, causing a double taxation situation.
- Finally, the new Polish draft bill introducing a tax on advertising revenues, currently under consultation, affects broadcasters. Its thresholds are set at 1 mn PLN (220 000 EUR) advertising revenues for radio, linear TV, cinemas and outdoor advertising, at 15 mn PLN (3.350 mn EUR advertising revenues for print media and at 750mn EUR worldwide and 5mn EUR advertising revenues in Poland (joint conditions) for digital services.

Broadcasters would benefit from greater clarity with regards to how the Commission intends to guarantee tax certainty and avoid double taxation. This is particularly important because a number of the digital activities referenced in question 33 of the public consultation are also offered by broadcasters, namely:

- online advertising services;
- streaming of content financed by subscription fees;
- streaming of content financed by advertising;
- online news outlet financed by subscription fees;
- online news outlet financed by subscription advertisement.

The upcoming initiative should therefore fully take into account the potential double taxation of traditional taxpaying companies such as our Commercial Broadcasters. This is in line with the precautionary approach of the Commission with regards to the following three "building blocks" in Section B on Objectives & Policy of the inception impact assessment: 1) the scope and definition of digital activities/transactions or companies subject to the initiative, 2) fairness considerations and 3) ensuring a forward-looking design. Addressing the rightful issue of tax avoidance by large online platforms should not be done at the detriment of broadcasters' revenues. In this context, we regret the fact that the potential impact of this initiative on the EU's stated objective of supporting media pluralism and cultural diversity is not referenced in Section C "Preliminary Assessment of Expected Impacts" as potential likely economic and social impacts. This should be addressed.

Additionally, we would like to draw your attention to some issues with the previous iteration of the Digital Levy: the Digital Services Tax.

We were quite troubled to read in the Council’s Legal Services 8 October 2018 report (12922/18) that the legal basis for the previous Digital Services Tax (Article 115 TFEU) “[did] not, as such, provide the answer to the question whether DST falls within the scope of double tax treaties concluded by Member States”. We note that the legal basis envisaged by the Inception Impact Assessment are both Article 113 (harmonisation of indirect tax rules to ensure the functioning of the internal market) and Article 115 (harmonisation of other tax rules to ensure the functioning of the internal market) of the Treaty on the Functioning of the European Union.

The DST recommended that a corporate income tax deduction should be permitted for the cost of the proposed Digital Services Tax, but that full credit should not be available against corporate income tax liabilities. This would give rise to double taxation for tax-paying EU resident companies already paying corporate income tax on the profits generated by in-scope activities.

A deduction system would only reduce the economic burden of the digital levy only by the marginal rate of corporate income tax (the average of which is approximately 22% among member states). A company with a high profit margin, for example 20%, paying tax at 22%, would see its total tax cost from in-scope activities increase by 50%, and the impact on lower margin businesses would be even greater: a business with a margin of 10% would see its tax cost from in-scope activities more than double. Such an outcome would not contribute to creating a level playing field for all businesses operating in the Union. Indeed, it would actually tilt the playing field a bit further in favour of global online platforms and against major European broadcasting groups who are creating substantial public value and local language content in Europe.

Television in Europe finances and supports a substantial creative and cultural ecosystem, we help to underwrite democracy and our services speak to European citizens and help to reflect them and their cultures. The application of double taxation would not only deplete the resources of this system but would hamper deployment of new services in Member States. This outcome would run contrary to the aims of the Digital Single Market and create a lose-lose situation for European culture and citizens, but it would also run counter to the Commission’s objective to support COVID recovery. It would also go against the goal of having fair competition online and advantage the very companies which already do not contribute appropriately. We would therefore encourage the Commission, in its efforts to rein in online platforms and subject them to European taxation, to devise a system which does not unfairly affect the European audiovisual sector.