European Payment Institutions Federation aisbl

EPIF feedback in response to European Commission public consultation on a fair & competitive digital economy – digital levy

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Introduction

EPIF welcomes the possibility to provide feedback to the European Commission consultation on a fair and competitive digital economy – digital levy. We understand the political and economic impetus to look at the current international tax system, which has not only driven the ongoing work at OECD level but also proposals by the European Commission at EU level and national proposals at individual country-level across the world.

There is a consensus that international tax rules should be updated to address the challenges resulting from the digitalization of the economy. The OECD recognized there is no such thing as the digital economy, rather the whole economy has become digitized, and therefore no separate set of rules should be imposed for digital activities. Taxpayers and tax authorities are currently burdened by a myriad of different measures seeking to address the tax challenges of the digitalization of the economy – corporate income taxes, OECD Pillars 1 and 2, existing DSTs, and now the digital levy. Continued pursuit of a multitude of international digital tax measures will lead to a high degree of unnecessary complexity, uncertainty, and inevitable multilayer taxation. To increase cross-border trade and support the recovery of the global economy, the EU and individual countries should be focused on simplifying their tax systems rather than add more complexity and unilateral measures. It is key for businesses that tax reforms are implemented in a globally coordinated and consistent manner, in order to provide certainty and stability for the global economy, foster growth in international trade, and minimize the risk of global tax and trade disputes. Therefore, an agreement at OECD level is far more preferable than a unilateral solution at EU or Member State level.

EPIF therefore supports the work of the OECD and believes a coordinated global solution is the only way to address the perceived imbalances in international taxation. We are concerned that the European Commission proposal on a digital levy may undermine and distract from the ongoing work at the OECD, particularly when the new U.S. Administration has recently expressed interest and commitment in re-engaging in multilateral discussions but while acknowledging time is needed for countries to achieve consensus. Pursuing an EU digital levy is likely to make it more difficult to reach a global agreement if other countries consider that the EU will go ahead with the digital levy regardless of an OECD solution (as indicated in the Impact Assessment).

EPIF therefore encourages the EU to focus all its efforts on reaching a globally agreed solution at the OECD level to reform the international tax framework. Given the importance of the issue, countries should be given sufficient time to achieve a global consensus. The **digital levy should not operate on top off the proposed OECD two-pillar system.** The introduction of a digital levy that departs or expands from any agreement reached by the OECD/G20 Inclusive Framework on BEPS will bring about risks of double or multiple taxation which would hinder economic growth. This is an undesirable outcome, particularly given the post COVID-19 recovery ahead.

The European Commission **consultation provides no indication as to the design details of the proposed digital lev**y. It is therefore hard for EPIF members to respond to some of the questions in the consultation. Equally, some of the **questions seem to be based on a number of assumptions that are not clear to us**. One example of this is the references to cross-border businesses. The assessment of the competitive impact of a digital levy on trade will depend significantly on whether the European Commission understands cross-border business to refer to intra-EU trade or to trade between the EU and third countries where such a levy might not be introduced or other enforcement standards apply.

The design of a digital levy should follow a number of important fundamental principles. On the basis that no consensus can be found at international level through the OECD and that important fundamental principles are respected EPIF could support the introduction **of a profit based digital levy by the EU as a last resort. The aim would be to avoid the inevitable proliferation of unilateral digital taxes adopted by the EU Member States**. In such case, the EU digital levy should replace existing or planned national digital services taxes. The national digital services taxes should be revoked.

Moreover, EU taxation rules are being adopted in the form of Directives. This leaves sufficient flexibility and interpretation to national tax authorities. Any **digital levy should be designed in a way to ensure uniform application and enforcement** (both legally and in practice) within the EU. Otherwise, it will lead to a further fragmentation of the EU Single Market.

Scope of the digital levy

The scope of a possible digital levy should be based on a thorough economic impact analysis and not target digital companies without justification. The digital economy is the fastest growing, most vibrant part of the economy that will drive future prosperity in Europe. The digital economy should therefore **not be ring-fenced and targeted with specific tax measures. Any new measures must be future-proof to support the continued growth and expansion of Europe's digital businesses[1].**

Independent studies have shown that digital companies are not undertaxed and are in fact paying similar rates of corporate income tax to traditional companies. For example, ECIPE's study[2] written by Matthias Bauer that reviewed this matter and concluded there was no material difference in rates. Professor Spengel from the University of Mannheim, whose work was quoted in the Commission's DST proposals, also made similar points and stated the work cited in the DST work on tax rates of digital companies had been misinterpreted by the Commission[3].

In the interest of removing any legal ambiguity, EPIF would like to see **an explicit exclusion from the scope of the digital levy on profits for payment services**, including any conversion fees, pay-in fees for e-money products or complementary services to payment processing such as fraud detection based on machine learning.

Fundamental principles for the design of a digital levy

The design of a digital levy should be governed by the following **important fundamental principles**:

- Profit based: the EU should focus on using the design principles put forward by the OECD blueprints to ensure any new tax measure is profit-based and applies broadly to all businesses to reduce distortions.

[1] Studies have shown that a narrow definition of some firms as 'digital' causes distortions, see Copenhagen Economics 2018 Study, The proposed EU Digital Services Tax: effects on welfare, growth and revenues, and ECIPE 2018 Study Digital Companies and Their Fair Share of Taxes: Myths and Misconceptions

[2] ECIPE 2018 Study Digital Companies and Their Fair Share of Taxes: Myths and Misconceptions

[3] Professor Spengel's interview on the EC's proposal to tax the digital economy, 2018

Gross revenue based unilateral digital taxes should not be pursued as they are discriminatory and significantly disadvantage loss-making and low margin businesses.

- **Need for evidence-based rule making**: Economic studies refute the assumption that digital companies are making disproportionate profits. Among others, digital businesses require high ongoing levels of investment in technologies to remain secure and innovative. SMEs and other parties in the supply chain are negatively impacted by digital tax measures. With the current COVID restrictions, digital channels are an enabler for business to continue their economic activities and this will drive the economic recovery ahead.[4]
- **Proportionality**: EPIF supports the special treatment of SMEs and start-ups within the proposal. This not only applies to the design of the rules, such as the introduction of any thresholds, but also importantly to the compliance costs associated with any new requirements, including reporting requirements. Should the EU adopt any quantitative thresholds these need to be assessed as the EU as a whole, rather than on a country-by-country basis. This will otherwise negatively impact Europe's international competitiveness.
- **Corporate taxes should be channel and technology neutral** The digital economy is the fastest growing, most vibrant part of the economy that will drive future prosperity in Europe. The digital economy should therefore not be ring-fenced and targeted with specific tax measures. Any new measures must be future-proof to support the continued growth and expansion of Europe's digital businesses
- **Avoidance of double taxation**: The digital levy should not lead double or multiple taxation. Unilateral DSTs imposed by some Member States should be abolished.
- **The digital levy should be internationally compatible**: Importantly, the digital levy should be compliant with international tax agreements and trade commitments.
- **Treatment of financial services**: If the EU is to proceed with a digital levy, EPIF calls on the European Commission to take a proportionate and pragmatic approach to its design, excluding financial and payment services from its scope, in light of the particularities of the payments industry and its important role in the wider economy. We elaborate on this further down.

Specificities of payment companies

EPIF believes that it is important to reiterate the **essential role of the payments system to the wider economy.** The payments system is an infrastructure which is fundamental not only for the growth of the economy but also in upholding trust to the financial system which is crucial for financial stability and economic growth.

Payment institutions and the **complex value chains** within the payments sector are what makes transactions possible: between people, business and across countries and continents. In a global digital economy which is increasingly intertwined it is of utmost importance to not disrupt the flow through creating bottlenecks in the system for transactions to be able to proceed smoothly and fast. The reason why our members are successful businesses is because **they have harnessed current technology and are developing future technology to identify and meet gaps in the financial services market.** Our members feel strongly that the technology that drives their businesses is highly valuable and the value driven. There are concerns within the industry that a digital tax would hamper the possibilities of enhancing technological development in the payments sector.

[4] See again Copenhagen Economics 2018 Study, The Impact of an EU Digital Service Tax on German businesses. Deloitte Taj 2019 Study, The French Digital Service Tax, an Economic Impact Assessment ; Prometeia-Netcomm 2018 Study on the Italian DST (in Italian); IFO Institut, 2018 Study on the German DST (in German).

Finally, it is important to draw attention to the fact that many companies in the payments sector are **start-ups.** EPIF believes any new tax proposal would need to be very carefully calibrated not to undermine the competitiveness of this group of companies.

Why payment services should be carved-out

EPIF strongly believes there are a number of industry-specific challenges and characteristics that merit a carve-out for the payments industry. Operationally, the payments industry is a complex, multi-party network that suffers from generally not being well understood even within the wider Financial Sector. It acts as an enabling utility for global commerce and involves very high volumes but very low margins. EPIF further underlines that the payments industry is already facing demands to provide bulk data and in some cases functionality to assist fiscal authorities in collecting taxes, particularly those arising from digital commerce.

Furthermore, digital services taxes are usually specifically targeted at revenues derived from social media platforms, online advertising, online search engines and online marketplaces. EPIF would recommend that the digital levy be equally targeted and narrowly defined in its scope. While the approach of defining the business activity scope narrowly will limit the need for an exhaustive list of exemptions, EPIF would request that **the provision of financial and payment services be specifically excluded** as some financial services could potentially overlap with any marketplace definition. These activities should not be considered to derive significant value from user participation, are already subject to unique tax regulatory regimes and in many cases require significant capital or infrastructure investments into each local market jurisdiction that they operate within.

Concluding remarks

EPIF considers that a digital levy could lead to trade tensions with other countries[5]. The US is pursuing Section 301 trade investigations against the EU and a number of EU countries, and the new US administration has stated it would look to respond if countries continue to move forward with unilateral digital taxes.

A digital levy would have a negative impact on the global economy when it is in a fragile state and the COVID pandemic is far from over. It has been shown through independent research[6] that SMEs, start-ups and other parties in the supply chain are negatively impacted by digital tax measures, which act as an effective tax on digitalisation and innovation. With the current COVID restrictions, digital channels are an enabler for business to continue their economic activities and this will drive the economic recovery ahead.

Although the details of the digital levy are currently ambiguous, we note the following points:

- It is **unclear how a "corporate income tax top-up" could function in respect of activities in the EU when companies operate from both within and outside the EU**, and when corporate income taxes are covered taxes under bilateral tax treaties.

[5] ECIPE 2019 Study Digital Service Taxes as Barriers to Trade ; ECIPE 2018 Study The Cost of fiscal unilateralism: Potential retaliation against the EU Digital Services Tax (DST)

[6] Copenhagen Economics 2018 Study, The Impact of an EU Digital Service Tax on German businesses. Deloitte Taj 2019 Study, The French Digital Service Tax, an Economic Impact Assessment ; Prometeia-Netcomm 2018 Study on the Italian DST (in Italian); IFO Institut, 2018 Study on the German DST (in German)

- It is unclear how such an EU digital levy measure would interact with an OECD solution. It would appear that there is a significant risk that the proposed mechanisms will duplicate the reallocation of profits under Pillar 1
- In terms of the "tax on revenues" and tax on B2B "digital transactions", these appear to unfairly target gross revenues of certain digital activities. It is concerning that the European Commission appears to be seeking to broaden the scope of existing national-level DSTs, which are themselves discriminatory and distortive.
- The EU should only consider a digital levy if the OECD process breaks down. In this event, the EU should focus on using the design principles put forward by the OECD blueprints to ensure any new tax measure is profit-based and applies broadly to all businesses to reduce distortions. Gross revenue based unilateral digital taxes should not be pursued as they are discriminatory
- Importantly, financial services and in particular payment services should be carved out from the scope of a digital levy.

Response to consultation

Question 18: To what extent are the tax systems in the EU adapted to the challenges of a global and digital economy?

☐ To a great extent
☐ To some extent
☐ To a little extent
☐ Not at all
☐ Don't know

Question 19: To what extent do you agree with the following statements on digital companies

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I don't know
Digital companies have created useful innovations and it is justified that they make large profits.			X			
Users participate in the creation of value of digital companies, e.g. by sharing their data.			X			
Many digital companies are emerging from the Covid-19 health crisis more profitable and with larger market shares.			X			
Digital companies benefit from the EU single market.			X			
Digital companies are treated differently by governments than non-digital companies of similar size.			X			

Question 20: To what extent do you agree with the following statements regarding taxation in the digital economy:

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I don't know
In the digital economy some digital activities are taxed less than non-digital economic activities.			X			
The sale of user data by digital companies should be taxed.			X			
Many digital companies do not pay their fair share of taxes.			X			
Tax authorities are not able to appropriately collect taxes on digital activities.			X			

Question 21: What are the most important taxation challenges that digitalisation brings **for businesses**? Please rank from 1 to 5 (1 being the most important challenge)

	1 (most important)	2	3	4	5 (least important)
Disadvantage for traditional businesses compared to digital competitors because of a different tax treatment.			X		
Uncertainty related to tax obligations when operating in different countries.	X				
Uncertainty related to future taxation solutions for new business models.		X			
Difficulties in identifying profits for different digital activities.				X	
Other (please specify)					

Question 22: If the response to question 22 is "other", please specify:

Please see our Cover Note,

Question 23: What are the most important taxation challenges that digitalisation brings **for national tax systems**? Please rank from 1 to 5 (1 being the most important challenge)

	1 (most important)	2	3	4	5 (least important)
Companies can easily service customers across various markets, without being located or resident in those market jurisdictions.	X				
Businesses acquire new sources of revenue (e.g. through gathering/exploitation of data, cloud computing, hosting, etc.) that are not properly taxed.					

Unfair advantage of companies operating cross-border over local companies, due to increased tax-planning opportunities.					
Difficulties to establish the tax liability of a company due to the complex value chain.					
Other (please specify)		X			

Question 24: If the response to question 23 is “other”, please specify:

Please see our Cover Note.

Question 25: There are several national approaches now to taxing digital companies. Are you aware of such measures?

☐ Yes
☐ No
☐ Don’t know

Question 26: If the response to question 25 is “yes”, for which EU countries are you aware of national approaches to the taxation of digital companies?

☐ Austria
☐ Belgium
☐ Bulgaria
☐ Croatia
☐ Cyprus
☐ Czechia
☐ Denmark
☐ Estonia
☐ Finland
☐ France
☐ Germany
☐ Greece
☐ Hungary
☐ Ireland
☐ Italy
☐ Latvia
☐ Lithuania
☐ Luxembourg
☐ Malta
☐ Netherlands
☐ Poland
☐ Portugal
☐ Romania
☐ Slovak Republic
☐ Slovenia
☐ Spain
☐ Sweden

Question 27: Which measures taken by EU countries at national level to tax the digital economy do you consider are most effective, and why?

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Question 28: How do you view the effort by individual EU countries to tax the digital economy? To what extent do you agree with the following statement:

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I don't know
EU countries face a specific, domestic context when it comes to digital activities on their territory and should be addressing these issues at national level.					X	
EU countries' policies would be more effective if coordinated on an EU level.			X			
A divergence between national policies risks fragmenting the European single digital market, and making these policies less effective.			X			

Possible solutions

Question 29: On what level do you think the problem of taxation of the digital economy is best solved? Please respond by ranking options in the order of importance/appropriateness (1 being the most important/appropriate)

	1 (most important)	2	3	4	5 (least important)
Subnational level				X	
National level			X		
EU Level		X			
Multilateral agreement involving countries beyond the EU	X				
A combination of the above					X

Question 30: Work is ongoing at the OECD and G20 to find a global consensus-based solution to the tax challenges arising from the digitalisation of the economy. One part of this discussion (Pillar 1) focuses on the reallocation of profits by expanding the taxing rights of market jurisdictions to compensate the digital activities performed remotely and directed at those market jurisdictions. To what extent do you see the objectives of these negotiations on Pillar 1 as complementary to the objectives of the digital levy?

- ☐ Strong complementarity
- ☐ Limited complementarity
- ☐ No complementarity
- ☐ Don't know

Question 31: To what extent do you think the following approaches would be useful as complementary actions to meet the objectives of this initiative?

	Very useful	Useful	Not useful	Don't know
An increase in the current corporate income tax (top-up) for all companies conducting certain digital activities in the EU.				X
A new tax on revenues created by certain digital activities conducted in the EU.				X
A new tax on all digital business-to-business transactions conducted in the EU.				X

Question 32: How important do you consider the following objectives of the digital levy proposal?

	Very important	Important	Not important	Don't know
To increase legal certainty for companies.	X			
To ensure equal treatment among digital companies – both foreign and EU-based – operating in the EU.	X			
To level the playing field between traditional companies and digital companies operating in the EU.	X			

Question 33: Please select from the following list the activities which you think should be considered as digital activities in the context of a legislative measure:

☐ Online social networking services financed by advertisement or sale of user data
☐ Online social networking services financed by subscription fees
☐ Online search engines
☐ Online advertising services
☐ Number-independent interpersonal communication services
☐ Online gaming financed by advertisement or sale of user data
☐ Online gaming financed by subscription fees
☐ Standardised online teaching financed by advertisement or sale of user data
☐ Standardised online teaching financed by subscription fees
☐ Online intermediation services
☐ Online intermediation platforms for accommodation
☐ Online intermediation platforms for mobility
☐ Online intermediation platforms for utilities and communication (price comparison platforms for gas, electricity, phone etc.)
☐ Streaming of content (music and/or video) financed by subscription fees
☐ Streaming of content (music and/or video) financed by advertisement
☐ Online news outlets financed by subscription fees
☐ Online news outlets financed by advertisement
☐ Online sale of physical goods
☐ Online sale of physical services (plane ticket, hotel room, cleaning lady etc.)
☐ Online sale of software
☐ Cloud computing services
☐ Sale of user data
☐ Other (please specify)

Question 34: If response to question 33 includes "other", please specify:

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Question 35: How important do you see the following issues in the design of the taxation measure under consideration?

	Very important	Important	Not important	Don't know
The definition of digital activities or digital companies, which are subject to the tax.	X			
The type of tax envisaged (e.g. whether it would be a tax on specific activities, transactions, turnover or profits).	X			
The ability of the tax to cover companies with residency inside and outside of the EU.	X			
Fairness considerations, taking into account the possible impact on small and medium-sized enterprises (SMEs), digital companies with a dominant versus weak market position, or consumers.	X			
Potential behavioural reactions to avoid the payment of the new tax.	X			
Potential additional tax reporting requirements on companies.	X			
Additional administrative requirements for relevant tax authorities.	X			

Question 36: The accelerated development of the Digital Union will be characterised by the creation of fast growing companies albeit often accompanied by multiple failures. Against this background please indicate how you consider that Small and Medium Sized Enterprises (SMEs) should be treated by the current digital levy proposal.

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I don't know
SMEs should be excluded from the scope of the tax.			X			
SMEs should benefit from an exemption.			X			
SMEs should face a lower tax burden (e.g. though an allowance) than larger companies.			X			
SMEs should not be treated differently than larger companies.			X			

Question 37: What would you consider the minimal economic activity (in terms of revenue) a digital company should have in the EU in order to be liable to the digital levy?

- ☐ EUR 500 thousand
- ☐ EUR 1 million
- ☐ EUR 5 million
- ☐ EUR 10 million
- ☐ EUR 20 million
- ☐ Other, please specify
- ☐ Don't know

Question 38: If response to question 37 is “other”, please specify.

Over EUR500 million - Please see our Cover Note

Question 39: In order to identify where the revenues/profits are generated and how to determine the place of taxation, which of the following options do you consider the most appropriate.

- ☐ IP address of the user
- ☐ One method of geolocation, to be chosen by the taxable person
- ☐ One method of geolocation chosen by the taxable person from a pre-established list
- ☐ Two methods of geolocation chosen by the taxable person
- ☐ Two methods of geolocation chosen by the taxable person from a pre-established list
- ☐ Don’t know

Question 40: Possibility to upload position paper.

See our cover note attached.

ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

EPIF, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 190 authorised payment institutions and other non-bank payment providers as our members offering services in every part of Europe. **EPIF** thus represents roughly one third of all authorized Payment Institutions (“PI”) in Europe. All of our members operate online. Our diverse membership includes a broad range of business models, including:

- Three-party Card Network Schemes
- E-Money Providers
- E-Payment Service Providers and Gateways
- Money Transfer Operators
- Acquirers
- Digital Wallets
- FX Payment Providers and Operators
- Payment Processing Services
- Card Issuers
- Independent Card Processors
- Third Party Providers
- Payment Collectors

EPIF seeks to represent the voice of the PI industry and the non-bank payment sector with EU institutions, policy-makers and stakeholders. We aim to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment. It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

We wish to be seen as a provider for efficient payments in that single market and it is our aim to increase payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet).