EUROPEAN COMMISSION

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C(2018) 4551 final

Dear Chairman,

The Commission would like to thank the Folketing for its Reasoned Opinions on the proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence {COM(2018) 147 final} and on the proposal for a Council Directive on a common system of a digital services tax on revenues resulting from the provision of certain digital services {COM(2018) 148 final}.

The Commission would first like to recall the general context of the proposals and their objectives. The digital economy is transforming the way we interact, consume and do business, bringing many benefits to society. To fully seize its potential, the Commission has made the Digital Single Market one of its top priorities. Fair and effective taxation is essential to support the Digital Single Market to deliver on its potential. It is important to provide an updated tax environment in which digital activities are recognised at their right worth and in which digitally oriented companies can grow, benefiting from a predictable business environment and a level playing field.

Against this background, the Commission has identified as general objectives behind its proposals (1) the integrity and proper functioning of the single market, (2) the sustainability of public finances, (3) ensuring fairness and a level playing field for all business and (4) the fight against aggressive tax planning.

With these proposals, the Commission is also responding to the European Council Conclusions of 19 October 2017, which underlined the need for an effective and fair taxation system fit for the digital era and looked forward to appropriate Commission proposals by early 2018.

The Commission takes due note of the concerns expressed by the Folketing as regards the conformity of the proposed Directives with the principle of subsidiarity, and in particular of its view that tax policies lie outside the European Union's remit.

In that regard, the Commission would like to make the following observations.

Mr Erik CHRISTENSEN
Chairman of the European Affairs Committee
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DK – 1240 COPENHAGEN

cc: Ms Pia KJÆRSGAARD
Speaker of the Folketing
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The legal basis for the proposal on rules for a significant digital presence is Article 115 of the Treaty on the Functioning of the European Union. This provision stipulates that the measures of approximation under this article shall directly affect the establishment or functioning of the internal market.

One of the key aspects of digital businesses is that they can easily conduct activity remotely and are very active in cross-border trade. The problems posed by the current corporate tax framework not keeping pace with the new features of the digital sector are not particular to a specific Member State, but constitute a common challenge for the European Union as a whole. In fact, such problems are of an international dimension because they are rooted in the international tax framework and concern cases where digital activities are performed cross-border.

The Commission finds that a common initiative across the internal market is required for a direct and harmonised application of the rules on a significant digital presence within the Union to ensure a level-playing field for all Member States and to provide taxpayers with legal certainty. Unilateral and divergent approaches by each Member State could be ineffective and fragment the single market by creating national policy clashes, distortions and tax obstacles for businesses in the European Union. If the objective is to adopt solutions that function for the internal market as a whole, the appropriate way forward is only through coordinated initiatives at the level of the European Union.

European action would be more effective and efficient than different national policies, as it would entail a reduction in the compliance burden for businesses subject to the new rules. Instead of fragmenting the market and adding cross-border tax obstacles to today's tax systems through unilateral measures, a coordinated European action would ensure that the issue is addressed without hurting the single market and its competitiveness. Uncoordinated action targeting the digital sector would undermine the existing work at European level on the wider corporate taxation rules.

As regards the proposal on a common system of a digital services tax, the legal basis is Article 113 of the Treaty on the Functioning of the European Union. This provision enables the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Economic and Social Committee, to adopt provisions for the harmonisation of Member States' legislation concerning other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.

A common and coordinated action at Union level to reform the corporate tax framework to cover the digital activities of companies is likely to take time. Meanwhile, Member States may introduce unilateral interim measures to address the challenges of taxing the digital economy companies. Some of these measures, which can be of a very diverse nature, are already in place or are being planned by Member States. As explained in the impact assessment accompanying the proposal, these national experiences vary significantly, and it is unlikely that, without a certain degree of coordination, the different Member States concerned will follow a common approach. Uncoordinated

national actions create complexity, contribute to distortions in the single market and enhance the risk of double taxation. In this respect, European action is necessary in order to mitigate the fragmentation of the Single Market and the creation of distortions of competition within the Union which may result from such divergent unilateral actions at national level.

Moreover, a European solution adds value compared to different national policies because it entails a reduction in the compliance burden for businesses subject to the new rules and also gives a strong sign to the international community as to the commitment of the European Union to act when it comes to ensuring the fair taxation of the digital economy. Moreover, common interim measures rather than divergent national ones will facilitate finding comprehensive solutions in the future.

On that basis, the Commission finds that the proposals comply with the subsidiarity principle.

Moreover, the Commission notes the example provided in the Folketing's Opinion concerning the tax paid in Denmark by 25 large digital companies, which is further evidence of the current challenges Member States face to ensure fair taxation when it comes to digital activities.

In response to the comment made in the Opinion that revenue from tax created through the proposals should not be directed towards the budget of the European Union, the Commission would like to point to its proposals for new own resources made on 2 May 2018 {COM(2018) 325 final}. As explained in the accompanying staff working document {SWD(2018) 172 final}, the Commission thoroughly analysed various possible new own resources, including the proposed Digital Services Tax. However, while the Commission considers that this tax has potential merits as an own resource, it was not retained for a variety of reasons.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Folketing and looks forward to continuing our political dialogue in the future.

Yours faithfully,

Frans Timmermans
First Vice-President

Pierre Moscovici
Member of the Commission