

News Media Europe submission to the European Commission public consultation on a fair and competitive digital economy – digital levy

April 2021

News Media Europe (NME) represents the progressive news media industry in Europe – over 2,500 media companies including newspapers, radio, television and internet. News Media Europe is committed to maintaining and promoting the freedom of the press, to upholding and enhancing the freedom to publish, and to championing the news brands, which are one of the most vital parts of Europe’s creative industries.

Introduction

The European Commission has set out strategic objectives on how to shape Europe’s digital future and to help ensure that Europe is fit for the Digital Age. Against this backdrop, the EU needs a modern, stable regulatory and tax framework to appropriately address the developments and challenges of the digital economy.

Work is ongoing at the G20 and OECD level to find a global solution that can support a reform of the international corporate tax framework in order to address some of the challenges related to the digitalisation of the economy. The purpose of these efforts is also to ensure that companies compete in Europe on fair terms.

General principles

News Media Europe and its members actively support these initiatives on fair taxation and their objectives. It is unfortunate that under current taxation rules applicable in the EU, certain digital business models, notably online platforms, are able to shift profits in such a manner that enables them to reduce their tax liability in the European Union in ways that undermine competition on fair terms.

Such platform businesses enjoy an unfair advantage in relation to other participants in the digital economy. For news media and news publishers in particular, this is of concern as such digital business models are competitors for various sources of revenue, such as advertising which constitutes a major source of income for the industry.

While both publishers and technology companies make advertisement revenues, such revenues end up being taxed differently because technology companies are able to shift their profits. Therefore, News Media Europe strongly believes that an improved level playing field in the taxation of the digital economy is warranted, not only to avoid a preferential treatment of certain digital business models, but also to avoid harming the at times fragile transition of the news media industry towards a more digital and sustainable future.

Indeed, it is essential to ensure that any digital taxation regime is formulated with an appropriate scope to achieve greater fairness in the online ecosystem. As such, any new tax should be strictly limited to platforms that currently do not pay their fair share of tax and

NEWS MEDIA EUROPE

which are not effectively covered under existing regulation. In other words, companies in the media sector that already pay their taxes should not be in the scope of any proposal.

Ensuring that all digital business models contribute fairly to the societies they do business in will strengthen the EU Digital Single Market and help even the level playing field for market participants. Moreover, this will also give recognition to the role of the free and democratic press at a time when it is more needed than ever.

Proposal for a European digital levy

As rightly explained in the Commission's inception impact assessment, any EU initiative in the field of fair taxation of the digital economy should be consistent with other initiatives on shaping Europe's digital future, such as the Digital Services Act. We believe it is equally important to take into consideration consistency with the European Democracy Action Plan (EDAP) and the European Media and Audiovisual Action Plan (MAAP).

Both of these plans call for an urgent reflection on how to promote a consistent approach to the freedom and pluralism of the media sector given its key role as a form of basic democratic infrastructure that is under severe economic and political pressure throughout the European Union. Ensuring good EU policies for media sector is accordingly recognised as a priority.

In recognition of this, and of the European Charter of Fundamental Rights which creates an obligation for law makers to assess the impact of all regulatory measures on the freedom and pluralism of the media, it is relevant to consider whether the scope of the proposed digital levy is appropriate, and if so whether it is proportionate.

In 2018, the Commission proposed a Digital Services Tax (DST) which, as under the current digital levy concept, proposed to tax online advertisement revenues, amongst other things. The taxation of advertisement revenues is clearly a tempting route for regulators since it is typically a common feature of platforms and online intermediation services.

However, advertisement is also a major source of revenues for the media sector. Unlike many technology giants, media companies are very often SMEs while larger ones have a stronger and clearer physical presence in the markets where they operate, which tend to follow national boundaries and leave no ambiguity as to where taxes are owed. As such, the case for identifying tax liability is much clearer in the media sector than for global technology companies that engage in profit shifting practices.

It must be recalled that the source of the problem that the digital levy seeks to address is large global technology companies that do not pay their fair share of taxes, in this sense too it is inappropriate to create additional taxes or to increase the tax liability of the media sector which risks becoming collateral damage in the question of how to tax tech giants.

Design of the European digital levy

Question 33 of the public consultation concerning activities that should be considered as digital activities in the context of a legislative measure clearly identifies news media as distinct activities in particular:

NEWS MEDIA EUROPE

- Online news outlets financed by subscription fees
- Online news outlets financed by advertisement

We are strongly concerned that inclusion of these activities in the scope of a proposed tax would not only affect media pluralism and freedom negatively at a difficult time for the sector, but also run counter to the European Commission initiatives on the Democracy Action Plan (EDAP) and the Media Action Plan (MAAP).

As stressed in the EDAP and the MAAP, it is essential that the EU ensures greater consistency and support in its broader approach to the media sector and to regulation that affects it. The media sector is particularly sensitive to additional regulation and already experiences an above-average and high density of EU regulation.

Yet, the impact assessment of the proposal shows that these considerations have not been identified nor assessed so far. We therefore urge the outright exclusion of the activities above, alongside any economic activities supporting or linked to the production of professional editorial news content and journalism, which would reflect an enhanced precautionary approach to the design of the proposed digital levy.

Drawing on earlier experience with the proposed Digital Services Tax in 2018, there are important concerns about increasing tax liability of national media companies, about risks associated with the double taxation of revenues, and about the risk of creating tax liability where there are no profits. It should be noted that the objective of the digital levy of leveling the playing field will not be met if it increases the tax burden of European media businesses.

The European news media industry is a modern industry that offers EU citizens news and experiences on all platforms and channels, both online and offline. Our industry innovates and invests in services, products, technology and content which underpin quality journalism in the digital economy. Our products remain, as they always have, a corner stone of democracy.

Conclusion

In conclusion, News Media Europe calls for:

- Exclusion of news related services from the scope of any future proposal, consistent with agreed political priorities in the European Media Action Plan (MAAP) and the Democracy Action Plan (EDAP).
- Ensure that the scope of any future proposal is focused on the problems the policy seeks to address eg. large technology companies that do not pay their fair share of taxes, which will also help foster a genuine level playing field.