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Comments of ITIF  
Before the  
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In the Matter of

How to Incentivize Innovation and Cooperation  
Without Hampering Fair Competition

Inception Impact Assessment

Digital Levy

January 14, 2021

## **INTRODUCTION**

The European Commission has published an Inception Impact Assessment to receive feedback about a so-called Digital Levy to be introduced as a legislative proposal later in 2021.<sup>1</sup> Following the Special Meeting of the European Council on July 21, 2020, the head of States and governments of the European Union suggested joint recovery efforts from the Covid-19 crisis.<sup>2</sup> The European Council mandated the European Commission to “put forward in the first semester 2021 proposals on a carbon border adjustment mechanism and a digital levy, with a view to their introduction at the latest by January 1, 2023.”<sup>3</sup>

Consequently, the ongoing public consultation on the Digital Levy is aimed at creating a new tax before January 1, 2023. Despite the European Council’s Conclusions of June 2020, we advise the European Commission not to introduce such a tax. Indeed, the planned Digital Levy is a misguided recommendation on the European Council’s part for multiple reasons. More reasonable recommendations are elaborated for the European Commission’s considerations.

## **WHY THE IDEA OF A EUROPEAN DIGITAL LEVY SHOULD BE ABANDONED**

The EU’s should not adopt a Digital Levy for several reasons:

First, the digital levy is a misnomer: it is not a “levy” intended to pay for the debt accrued with the Covid-19 crisis. Indeed, a “levy” is considered a legal seizure of property to satisfy an outstanding debt. Thus, a levy implies the taxation of property for the payment of a debt. Accordingly, the European Commission plainly writes that the digital levy “will help address the issue of fair taxation related to the digitalization of the economy [...]”<sup>4</sup> This digital levy is explicitly suggested as part of the debt repayment made necessary from

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<sup>1</sup> European Commission, “Inception Impact Assessment”, Ref. Ares(2021)312667, January 14, 2021, <https://ec.europa.eu/info/law/better-regulation/> (noting that “while digitalization can increase productivity and consumer welfare, and should thus be fostered and nurtured, it is also of paramount importance to ensure that digital companies contribute their fair share to society, since a prolonged unequal distribution of rights and responsibilities undermines the social contract.”).

<sup>2</sup> European Council, “Special Meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – Conclusions”, (Brussels, July, 2020), <https://www.consilium.europa.eu/media/45109/210720-euco-final-conclusions-en.pdf> (where it has been decided, at A29, that “the Union will over the coming years work towards reforming the own resources system and introduce new own resources.”).

<sup>3</sup> Ibid, A29.

<sup>4</sup> European Commission, “Inception Impact Assessment,” Ref. Ares (2021)312667, January 14, 2021, <https://ec.europa.eu/info/law/better-regulation/>

the Covid-19 crisis.<sup>5</sup> Consequently, the digital levy is portrayed as an unavoidable repayment tool designed after debts generated by the Covid-19 crisis. The digital levy evolves from the Covid-19 crisis – however, nothing can be further from the truth. Indeed, the “digital tax” – or colloquially but more straightforwardly referred to as the “GAFA tax”<sup>6</sup> – has been unsuccessfully proposed by the European Commission in 2018.<sup>7</sup> Many Member States have introduced similar national digital taxes.<sup>8</sup> Therefore, it is untrue to argue that the proposal is a digital levy aimed at repaying Covid-19 related debts. Instead, it is a long-planned digital tax to increase the price of digital services enjoyed by consumers to tax transactions rather than profits or value creation as suggested by international tax law principles.<sup>9</sup>

Second, the digital tax is a misguided attempt to develop the Single Market: whereas the Home State laws and fiscal rules often apply in the Host State to overcome regulatory and jurisdictional barriers. To incentivize cross-border trade, the proposed EU Digital Tax may revert the general principle by applying the Host State rule instead of (or also of) the Home State rules.<sup>10</sup> The fact that consumers are located in other States than the

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<sup>5</sup> Ibid, 1 referring to the European Council conclusion of June 2020 and stating the “need to support the EU’s borrowing and repayment capacity, the European Council tasked the Commission [...] The digital levy is one of them.”.

<sup>6</sup> Johannes Becker, Joachum Englisch, “EU Digital Services Tax: A Populist and Flawed Proposal”, Kluwer International Tax Blox, March 16, 2018, <http://kluwertaxblog.com/2018/03/16/eu-digital-services-tax-populist-flawed-proposal/> (noting that “the fact that the tax mostly falls on US firms is, to put it mildly, debatable from the viewpoint of the prohibition of de-facto discrimination under international trade law.”). The idea was first suggested by French Minister of Economic Affairs Bruno Le Maire, see Romain Dillet, “European Union plans to tax tech giants on local revenue”, March 5, 2018, <https://techcrunch.com/2018/03/05/european-union-plans-to-tax-tech-giants-on-local-revenue/> .

<sup>7</sup> European Commission, Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services, COM(2018) 148 final, March 21, 2018, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/proposal\\_common\\_system\\_digital\\_services\\_tax\\_21032018\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/proposal_common_system_digital_services_tax_21032018_en.pdf) 8 (the proposal included a “Digital Services Tax” or “DST” described as “a tax with a targeted scope, levied on the revenues resulting from the supply of certain digital services characterized by user value creation.”). See Mehreen Khan, Jim Brunsten, “EU states fail to agree plans for digital tax on tech giants”, November 6, 2018, <https://www.ft.com/content/75eb840a-e1bc-11e8-a6e5-792428919cee> (reporting that “the EU has abandoned hopes of agreeing a temporary Europe-wide tax on big online companies by the end of the year after a Nordic-led group opposed the measure, arguing it would impede European entrepreneurs and invite retaliation from the US.”).

<sup>8</sup> See Office of the United States Trade Representative, Initiation of Section 301 Investigations of Digital Services Taxes, Docket No. USTR-2020-0022, <https://ustr.gov/sites/default/files/assets/frn/FRN.pdf> (reviewing national digital taxes).

<sup>9</sup> Johannes Becker, Joachum Englisch, “EU Digital Services Tax: A Populist and Flawed Proposal”, Kluwer International Tax Blox, March 16, 2018, <http://kluwertaxblog.com/2018/03/16/eu-digital-services-tax-populist-flawed-proposal/>

<sup>10</sup> See, for a general discussion on how the EU encourages Home States rules to favor cross-border trade within the Single Market, Eva Lomnicka, “The Home Country Control Principle”, *European Business Law Review* 11, Issue 5 (2000) 324-336, <https://kluwerlawonline.com/journalarticle/European+Business+Law+Review/11.5/270507> (noting that, as a default principle, “the law of the home State of the provider of the service is generally given the dominant role unless performance is effected through a branch when the law of the host State applies.”). This can be said to be derived from

State of the service provider's location does not change from traditional business. There are multiple services already provided in places where the services providers do not have establishments, but products are also sold in places where the seller is not established. The buyer's jurisdiction does not "reach out" to tax that company in other states. Tax service providers have adopted a business strategy relying on the scale "without mass" and on disruptive digital innovation will inevitably constitute unfair competition by an artificial distortion of the level-playing field between digitalized and less digitalized market actors who reach consumers through different distribution channels. Suppose the EU wants to adopt that new principle that out-of-region sellers should be taxed (in addition to a VAT on the product) for merely exporting to another market. In that case, the EU should impose similar taxes on companies in industries such as autos, appliances, and chemicals. These companies are no different from digital ones: they all export a good or service to another market.

The EU tries to justify this tax grab on the faulty concept of user-created value. Under international tax treaties, jurisdictions can tax exporters' revenues like car companies, appliance makers, and chemical companies if they add value in the market where they sell. The EU has generated a logic that consumers are the ones that add value in the market of sales. This makes little sense.

In most digital markets, the vast majority of the value is created by companies, not users, which is why major digital companies employ hundreds of thousands of workers—just like traditional companies—to create value. A more accurate view, as the OECD report does, the users' supply of data as another input into the firm's supply chain, similar to its purchases of data storage and broadband access, but wherein the purchase price is the free use of the platform or service. Firms do not pay corporate income taxes on the income others derive from selling them inputs, only on profits from the value, they themselves add. Moreover, while this type of purchase theoretically could be subject to tax, countries rarely capture barter agreements when there is no cash payment on either side of the transaction.

In addition, the overall argument that users create most of the value overlooks the fact that the distinguishing value lies in the technology, customer service, and business model of the social networking site, not the user content. Facebook did not beat MySpace because it had more users or better content; it provided a better platform. Moreover, digitalized companies employ tens of thousands of workers and invest billions of dollars to support and continually improve their services. They, not users, are the ones adding value.

Moreover, this distinction that consumers create value in only some digital markets is weak. In a study on this issue by the OECD, it is only the third factor OECD identifies—the involvement of users in specific digitalized business models—that is relatively unique to narrowly defined digital companies that provide only certain kinds of digital services, such as Internet search and social media applications. However, even here, this distinction is likely to erode. Indeed, OECD has written that these digital factors, including user involvement, "will become common features of an even wider number of businesses as digitalization

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the general mutual recognition principle, see Christine Janssens, "The Principle of Mutual Recognition in EU Law," (Oxford: Oxford University Press, 2013).

continues.”<sup>11</sup> Moreover, it rightly points out that “since the degree of user participation may not closely correlate with the degree of digitalization, a pure focus on data and user participation without reference to other characterizing factors may imply that the tax challenges affect only a specific, more limited group of digitalized businesses.”

Enacting such a digital level will mean that the competition on the merits guaranteed by the level-playing field across business actors shall deteriorate in a given industry. Rather than addressing a perceived distorted “level playing field”<sup>12</sup>, the digital tax would ultimately artificially create an uneven level playing field where companies that have invested in disruptive digital solutions may be sanctioned rather than incentivized. The Inception Impact Assessment wrongly states that “the new initiative can mitigate distortions and the risk of fragmentation of the EU single market resulting from the uneven playing field between operators in the digital sphere as well as the digital sector and other sectors of the economy.”<sup>13</sup> Unless one considers that different levels of technologies and innovation between competition constitute an “uneven playing field” between rivals, the current competition takes place on the merits – where merits are primarily assessed in terms of digital innovation and its associated efficiencies for the benefit of consumers and society. More specifically, to tax digital services, significantly irrespective of innovative merits may be tantamount to generate a regulation-enabled status quo bias towards traditional business models and innovation laggards. Disruption shall be delayed when it is most needed. Competition shall wane when it is most promising.

Third, the digital tax pursues a misguided objective of unilateral taxation: under-cutting international efforts at the OECD<sup>14</sup> and G20<sup>15</sup> to optimally design and coordinate States’ responses to the fiscal challenges brought about by an economy characterized by higher levels of intangible goods, the EU Digital Levy would ultimately prevent the adoption of an international solution because of undue interference. EU and U.S. talks on a digital tax broke in 2020 when the European Council mandated to European Commission to

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<sup>11</sup> Organization for Economic Cooperation and Development, Tax Challenges Arising from Digitalisation–Interim Report 2018: Inclusive Framework on BEPS, 24.

<sup>12</sup> European Commission, “Inception Impact Assessment,” Ref. Ares (2021)312667, January 14, 2021, <https://ec.europa.eu/info/law/better-regulation/>

<sup>13</sup> Ibid. 2.

<sup>14</sup> OECD, “International community renews commitment to address tax challenges from digitalization of the economy”, October 12, 2020, <https://www.oecd.org/tax/beps/international-community-renews-commitment-to-address-tax-challenges-from-digitalisation-of-the-economy.htm>

<sup>15</sup> Jan Strupczewski, “Europe wants G20 to make taxing digital giants top priority this year”, Reuters, February 14, 2020, <https://www.reuters.com/article/us-eu-g20/europe-wants-g20-to-make-taxing-digital-giants-top-priority-this-year-idUSKBN2081HC> ; Leigh Thomas, “Wanted: global digital tax push after pandemic, U.S. vote stall talks, Reuters, October 7, 2020, <https://www.reuters.com/article/us-oecd-tax-idUSKBN26S26Y> (noting that “officials want G20 finance ministers to reinforce their commitment of a negotiated global deal rather than letting each country go its own way with national digital taxes, something that could add up to a hefty bill for companies.”).

unilaterally adopt such a tax.<sup>16</sup> With a change of the U.S. Administration<sup>17</sup>, the digital tax's unilateral adoption may evidence a lack of willingness by the EU to engage in talks and invite U.S. retaliation as the digital tax may violate World Trade Organization rules and enable the United States to retaliate based on Section 301.<sup>18</sup> Beyond the U.S. foreseeable retaliations and tensions generated by the EU digital levy, such levy may inevitably thwart all the OECD and G7 fora's ongoing efforts.<sup>19</sup> Indeed, how could tax discussions take place in an appeased atmosphere when the EU would have generated for its benefits on strong bargaining positions vis-à-vis other powers so much, so they are de facto bound to discuss based on the EU's default position? Such unequal bargaining power not only hinders optimal negotiation outcomes – it may prevent negotiations from taking place at first.<sup>20</sup>

Fourth, the digital tax is a misunderstanding of the current taxation paid by digital platforms – they indeed pay taxes based on their profits, as do all other industries.<sup>21</sup> The digital tax may inevitably tax revenues rather than profits, thereby generating economic inequalities and distorting competition. Aside from illegal tax

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<sup>16</sup> Natasha Lomas, "EU digs in on digital tax plan, after US quits talks, TechCrunch, June 18, 2020, <https://techcrunch.com/2020/06/18/eu-digs-in-on-digital-tax-plan-after-us-quits-talks/> (reporting that Commissioner Gentiloni warned that the Commission "will push ahead alone if necessary" the digital tax).

<sup>17</sup> William Horobin, Birgit Jennen, "US Treasury Secretary Janet Yellen Boosts Optimism for Global Tech Tax Accord, Bloomberg, January 28, 2021, <https://www.bloomberg.com/news/articles/2021-01-28/yellen-boosts-european-optimism-for-global-digital-tax-accord> .

<sup>18</sup> On U.S. highly probable retaliations, see Gary Clude Hufbauer, Zhiyao (Lucy) Lu, *The European Union's Proposed Digital Services Tax: A De Facto Tariff*, Peterson Institute for International Economics, June 2018, <https://www.piie.com/system/files/documents/pb18-15.pdf> 10 (noting that "the most measured US response to the DST would be a WTO case against the European Union, emphasizing the violation of its national treatment commitment in the GATS" and that "the United States might open a Section 301 investigations into the DST, to determine whether, in the language of the state, the tax is 'unreasonable, discriminatory, or unjustifiable.' If the finding is affirmative – a highly likely outcome – the US Trade Representative could fashion a proportional response, targeting EU exports, such as autos.")

<sup>19</sup> Andrea Shalal, "EU urges U.S. to return to negotiations at OECD on digital taxes", Reuters, July 10, 2020, <https://www.reuters.com/article/uk-usa-trade-france-eu/eu-urges-u-s-to-return-to-negotiations-at-oecd-on-digital-taxes-idUKKBN24B2F3> (noting that "a spokesman for the European Commission's delegation in Washington said the EU view fair taxation of the digital economy as a top priority and all business should pay their fair share of taxes."); Victor Mallet, "G7 nations struggle to reach compromise on digital tax, Financial Times, July 17, 2019, <https://www.ft.com/content/53ef927a-a8bc-11e9-b6ee-3cdf3174eb89> (reporting that "the source of the confrontation between the US and some of its European trading partners [lies on] how to allocate taxable profits between different jurisdictions in a digital age in which profits are generated in new ways and sometimes escape tax altogether.")

<sup>20</sup> See, for a general discussion, Omri Ben-Shahar, "A Bargaining Power Theory of Default Rules," *Columbia Law Review* 109 (2019) 396-430 (discussing how contractual negotiations fail due to uneven bargaining power).

<sup>21</sup> Joseph V. Kennedy, *Testimony Before the United States Trade Representative's Office, Hearing on 'France's Digital Services Tax'*, Docket No. USTR-2019-0009, August 19, 2019, [http://www2.itif.org/2019-testimony-digital-services-taxes.pdf?\\_ga=2.217254038.1489910282.1612803385-1843805428.1610409627](http://www2.itif.org/2019-testimony-digital-services-taxes.pdf?_ga=2.217254038.1489910282.1612803385-1843805428.1610409627).

evasion, which can be prosecuted under current national fiscal rules whenever evidenced, nothing can demonstrate that digital platforms pay less than required corporation taxes. Transaction-based taxes *à la Tobin*<sup>22</sup> would eventually fail to deliver the expected social benefits. Enforcement of current taxation can be improved, a new digital tax notwithstanding.

The Commission initially justified this selectivity by alleging the most extensive digital companies were not paying their “fair share” of taxes. At one point, the Commission estimated domestic digitalized companies paid an effective tax rate of only 8.5 percent, compared with 23.2 percent for the “traditional international business model.”<sup>23</sup> This estimate was criticized by the Commission’s Regulatory Scrutiny Board, which pointed to “significant shortcomings,” including the fact that it did “not show the urgency for the EU to act, before global progress is achieved at the OECD/G20 level.”<sup>24</sup>

At least two studies have shown that large digital companies often paid higher effective tax rates than their peers in more traditional industries even before the recent reforms. Although he found, “The current system of international corporate taxation, as it is enforced in most countries inside and outside the EU, is fundamentally flawed and in need of substantial reform,” economist Matthias Bauer has argued that digital industries neither call for nor deserve separate tax policies based on their alleged avoidance of significant taxation.<sup>25</sup> His analysis shows digital companies often pay far more in taxes than many large and well-known traditional companies based in the EU. Copenhagen Economics’s study made a similar finding, pointing out digital companies often benefit from tax provisions meant to encourage large research expenditures, which economists have shown benefit society as much, if not more, than the companies doing the research.<sup>26</sup> These companies are also more likely to rely on equity funding, which raises their effective rates.

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<sup>22</sup> Magnus Wiberg, We tried a Tobin tax, and it didn’t work, Financial Times, April 15, 2013, <https://www.ft.com/content/b9b40fee-9236-11e2-851f-00144feabdc0> ; Randall W. Forsyth, Why a Financial Transaction Tax is Doomed to Fail, Barron’s, March 6, 2019, <https://www.barrons.com/articles/why-a-financial-transaction-tax-is-doomed-to-fail-51551875400>

<sup>23</sup> European Commission, A Fair and Efficient Tax System in the European Union for the Digital Single Market, Communication from the Commission to the European Parliament and the Council, Brussels, COM(2017) 547, September 21, 2017, 6, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/communication\\_taxation\\_digital\\_single\\_market\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/communication_taxation_digital_single_market_en.pdf).

<sup>24</sup> European Commission, Regulatory Scrutiny Board, Opinion: Impact Assessment/Fair Taxation of Digital Economy, Brussels, SEC(2018), January 24, 2018, 1, <http://ec.europa.eu/transparency/regdoc/rep/2/2018/EN/SEC-2018-162-1-EN-MAIN-PART1.PDF>.

<sup>25</sup> Matthias Bauer, “Corporate Tax Out of Control: EU Tax Protectionism and the Digital Services Tax” (European Policy Information Center and European Center for International Political Economy, February 2019), 9, <https://ecipe.org/wpcontent/uploads/2019/02/Corporate-Tax-Out-of-Control.pdf>.

<sup>26</sup> Helge Sigurd Nss-Schmidt et al., “The Proposed EU Digital Services, Tax: Effects on Welfare, Growth and Revenues” (Copenhagen Economics, September 2018),

In sum, the argument that digital companies do not pay enough taxes in total is false. The real argument is over the distribution of that tax revenue among different countries. Because some countries are dissatisfied with the current distribution, they act unilaterally to increase their tax revenues. This is not to say that profit shifting is not a real issue. It is the only issue that is valid. Companies, digital or not, should not shift profits in ways that violate international tax agreements' spirit. That, not the digital services levy, is what the EU should be focused on.

Having reviewed the reasons why the proposed digital tax is unfounded, we shall now discuss the European Commission's suitable actions to adopt.

## **WHY THE EUROPEAN COMMISSION IS ADVISED MORE REASONABLE DIRECTIONS**

The European Commission should sustain the Inception Impact Assessment's baseline scenario: halt any EU Digital tax adoption unilaterally.<sup>27</sup> Ongoing international efforts need to be preserved. The OECD and G20 fora are ideal and necessary places to improve fiscal discussions – not fora to ignore and backstab. If the EU wants to be credible with its calls for transatlantic tech partnership<sup>28</sup>, it must stick to ongoing efforts of discussions, particularly the OECD BEPS track 1 on profit shifting; otherwise, multilateralism and any future multilateral initiatives may lack credibility.

The European Commission is also strongly recommended to prevent national digital taxes from being adopted: fragmentation of the Digital Single Market increases with fragmented digital taxes across the EU Member States. While the Digital Markets Act is in part aimed at avoiding the fragmentation of the Digital Single Market<sup>29</sup>, the European Commission should not allow national governments of the EU to adopt national digital taxes that provide no tangible benefits for consumers and business users, but only harm to innovation and crystallize further the fragmentation of the Digital Single Market. The European Commission must take exclusive competence in that area to prevent national initiatives that are harmful to the efficiency and attractiveness of the Digital Single Market.

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<https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/7/457/1537162175/copenhageneconomicsstudy-on-the-eu-dst-proposal-13-september.pdf>.

<sup>27</sup> European Commission, "Inception Impact Assessment," Ref. Ares (2021)312667, January 14, 2021, <https://ec.europa.eu/info/law/better-regulation/>.

<sup>28</sup> European Commission, "Joint Communication to the European Parliament, the European Council and the Council. A new EU-US agenda for global change" JOIN(2020) 22 final, December 2, 2020, [https://ec.europa.eu/info/sites/info/files/joint-communication-eu-us-agenda\\_en.pdf](https://ec.europa.eu/info/sites/info/files/joint-communication-eu-us-agenda_en.pdf).

<sup>29</sup> European Commission, "Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets act), COM(2020) 842 final, December 15, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0842&from=en>.

Moreover, the European Commission needs to preserve the fundamental of taxation where profits, not turnover, are the taxation base. Transactions cannot be taxed unless a flawed Tobin tax for digital innovation is to be adopted. Profits and value creation are the basis for taxation – and only the improvements of BEPS Pillar 1 (not Pillar 2) can ensure that fair taxation is enforced in all sectors of the economy, including, but not exclusively, the digital sector.

In that regard, the European Commission needs to focus its efforts on addressing base erosion and profit shifting as part of the OECD's efforts in the Base Erosion and Profit Shifting ("BEPS") project 1 pillar.<sup>30</sup> The BEPS efforts need to be strengthened and hastened due to the popular pressure and speed at which the economies are become digitalized. Nevertheless, unilateral digital tax adoption undermines the efforts toward BEPS success. Against this background, it appears necessary to update the BEPS 1 considering the Covid-19 crisis and considering the burning pressure constituted by the European Council's mandate to create a Digital Tax by 2023. Therefore, fragmenting the "unified approach"<sup>31</sup> with a digital levy is ineffective in ensuring the success of BEPS Pillar 1 and inefficient in creating fair competition in the digital economy. The Inception Impact Assessment of the European Commission may well argue that the digital levy is "intended to not interfere with the ongoing work at the G20 and OECD level on a reform of the international corporate tax framework" – in practice, it will inevitably interfere and prevent the success of such work. Therefore, the European Commission is advised to halt any unilateral initiative.

Additionally, it is not in the European Commission's interest or European citizens to endorse the techlash.<sup>32</sup> In that regard, the European Commission may want to avoid tech-populism and adopt tech-opportunism: although politically popular to want to tax digitally innovative companies, digital companies are a way out of the Covid-19 crisis and constitute opportunities for traditional businesses to get digitalized. Accompanying

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<sup>30</sup> OECD, Addressing the Tax Challenges of the Digital Economy, OECD/G20 Base Erosion and Profit Shifting Project, (Paris: OECD Publishing, 2014), <https://www.oecd-ilibrary.org/docserver/9789264218789-en.pdf?expires=1612997728&id=id&accname=guest&checksum=1E7DE0411A851586BCB2878D4D2A0AED> ; OECD, "Tax Challenges Arising from Digitalisation – Economic Impact Assessment, Inclusive Framework on BEPS, (Paris: OECD Publishing, 2020), <https://www.oecd-ilibrary.org/docserver/0e3cc2d4-en.pdf?expires=1612998129&id=id&accname=guest&checksum=981E371E5354144F5FB3DEA3D9ED9679> .

<sup>31</sup> OECD, "Secretariat Proposal for a 'Unified Approach' under Pillar One, Public consultation document, 9 October 2019 – 12 November 2019, (Paris: OECD Publishing, 2019), <https://www.oecd.org/tax/beps/public-consultation-document-secretariat-proposal-unified-approach-pillar-one.pdf>

<sup>32</sup> Silvia Amaro, "Tech giants are the 'winner' of the coronavirus crisis and should pay more tax, Europe official says, CNBC, September 5, 2020, <https://www.cnn.com/2020/09/05/big-tech-needs-to-pay-more-tax-eus-gentiloni-says.html#:~:text=In%202018%2C%20the%20European%20Commission%2C%20the%20executive%20arm%20of%20the,it%20disproportionately%20impacted%20American%20firms.> ; Andrew Hill, Mehreen Khan, "The global hunt to tax Big Tech", Financial Times, November 2, 2018, <https://www.ft.com/content/79b56392-dde5-11e8-8f50-cbae5495d92b> ; Mark Scott, "In 2020, global 'techlash' will move from words to action", Politico, December 31, 2019, <https://www.politico.eu/article/tech-policy-competition-privacy-facebook-europe-techlash/> .

the digitalization of traditional businesses is essential to healing the economy. Taxing heavily on digital transactions to limit competition through innovation will not quicken our businesses' digital transformation.

Creating a fair and innovative digital economy require rules of the game which are understandable, fair, and applied predictably. Also, transaction costs created by regulatory barriers and fiscal barriers across countries should be minimized through multilateral discussions and global cooperation. Digital platforms need to flourish responsibly, meaning paying their fair share of tax in businesses' appropriate places. However, the legal principles surrounding fiscal rules should not be undermined for the sake of a politically attractive techlash. Equally, the economic incentives which power the digital revolution may not be ignored by applying some flawed Tobin tax to the new, disruptive, socially useful digital services already created or those yet to be created.

In conclusion, the European Commission must imperatively retain the baseline scenario identified in the Inception Impact Assessment for the success of multilateral cooperation discussions and for the sake of ensuring fair competition and maximum innovation in the European Union. It must take measures to prevent national digital taxes and strengthen the efforts in BEPS Pillar 1. The European Union's innovation gap may not be filled exclusively with regulation and taxation – competition through innovation is essential for the European Union to ensure that the next digital platforms will be EU-nurtured.

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