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The Symbolic Significance of Digital Services Tax and its Practical Consequences

SUMMARY: Global companies providing digital services utilise the public services of the countries from which they derive their revenue generating datasets. Despite this, they do not necessarily contribute to supporting public burden in these countries. The present study aims to demonstrate the importance of digital services taxation not only in terms of increasing tax revenue, but also in terms of symbolic significance. It is argued that global digital companies should provide a fair contribution, in the form of a percentage of the revenue generated from the use of citizens' data, to those countries from which these data are derived. In other words, states should also receive a fair share of the exploitation of what can be considered as the "new oil", namely data. After analysing the political and legal environment and reviewing theories of state philosophy, the authors conclude that the success of joint action at EU level on this symbolic issue is highly questionable and therefore action at level of individual Member States may be needed.

KEYWORDS: digital services tax, data, hegemony, global digital companies

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Digital services include data-driven information and communication technology services, online platforms and platform-based services. In this area, global companies have emerged that in many cases have not only achieved hegemony in their own markets, but which have also grown to become some of the largest companies in the world. A common feature of these companies is that they owe their success to the online environment and the ever-increasing significance of data. Naturally, the question arises as to what

extent this success is attributable to the quality of data processing, as opposed to the data themselves (Colangelo, Maggolino, 2017); however, a joint study by the German and French competition authorities found that there is a certain amount of data against which competitors cannot feasibly compete, even if they benefit from high quality data processing, unless they also have access to a similar amount of data (Autorité de la Concurrence, Bundeskartellamt, 2016).

Besides Apple, which has also been engaged in device manufacturing from the onset, and Microsoft, which also produces software, the services of the world's five most valuable

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companies – Apple, Google, Microsoft, Amazon, and Facebook – practically owe their existence to the online environment and data (Forbes, 2020). Given the notable changes brought about to society and the economy by these corporations, their significance nowadays far exceeds their actual size. Today, up to 30-40% of advertising is spent online, with half to two-thirds of this spending ending up in the hands of Google or Facebook (Hungarian Advertising Association, 2020). Each day, the average user spends 58 minutes on Facebook and 53 minutes on Instagram (BroadBand Search, 2020; Marketing Land, 2019), which means that there is increasingly fierce competition to capture the attention of users and their related data, given that such data fuels the revenue-generating advertising market.

Despite their huge growth in terms of size, global companies offering digital services do not necessarily contribute to supporting the public burdens they utilise in those countries from which they derive their revenue generating datasets. Instead, transnational corporations are established in countries where they are able to obtain the largest tax reliefs, thus achieving the best tax optimisation and paying significantly less tax than their competitors. This phenomenon is particularly prevalent in the European Union, where the above-mentioned global companies take advantage of the slow-moving bureaucratic institutional system of the EU and are easily able to reach an agreement with the selected Member State, given the difficulties associated with proving an alleged case of illegal state aid, which is only possible after a lengthy court proceeding, if at all.

In this present study, the authors intend to demonstrate that the taxation of global companies offering digital services is important not only in terms of increasing tax revenue, but also in terms of symbolic significance.

However, this symbolic standpoint has the practical consequence that the success of EU-wide joint action is highly questionable; therefore, action at the level of individual Member States may be required.

GLOBAL DIGITAL COMPANIES AS CHAMPIONS OF TAX EVASION

By default, large multinational corporations have access to creative tax advice that helps them optimise their tax. Based on the 2018 estimates of the OECD, the total annual loss of government revenue across all countries of the world was at least USD 100-240 billion in 2015, which corresponds to 4-10% of the total global corporate income tax revenue (OECD, 2020a). One well-known example of a creative tax avoidance technique is the “Double Irish, Dutch sandwich” arrangement, which involves the shifting of revenue from an Irish subsidiary to a Dutch company with no employees, and then from this Dutch company to an Irish-owned offshore company (Tepper, Hearn, 2019). This circumstance can be attributed to the fact that when it comes to global trade, competition (for investors) takes place between states, as opposed to between companies, largely due to such tax reliefs. On the other hand, the characteristics of the digital sector further facilitate such tax evasion practices. Current tax regulations are a hundred years old and are therefore based on physical presence; thus, they stipulate that physical presence should be used to determine which state has tax jurisdiction over what company (State Audit Office of Hungary, 2020). However, due to the specifics of their operations, global companies offering digital services are able to provide their services in a given country and obtain profits from the added value generated in that country without having an actual physical presence there. Consequently, global

companies offering digital services can evade their local tax obligations more easily than traditional multinational corporations, the latter of which have already demonstrated great creativity in this area. While domestic companies and SMEs pay their taxes, global companies offering digital services manage to avoid paying EUR 60 billion in taxes each year (Tepper, Hearn, 2019). The European Commission claims that the tax burden on companies offering digital services is around half of what traditional companies are required to pay, which further increases tensions (European Commission, 2018a).

THE SYMBOLIC SIGNIFICANCE OF TAXING THE DIGITAL SECTOR

It is necessary to clarify that the entire modern economy is practically digital in the sense that there is no longer a single economic sector left that is not utilising digital data in one form or another (State Audit Office of Hungary, 2020; IMF, 2018). For this reason, it would be useful to specifically talk about digital economic activity in the narrow sense, i.e. the digital sector.

The taxation of global companies offering digital services is not only justified by the fact that certain countries receive significantly lower tax revenues from the activities of companies providing global and cross-border digital services than is justified (State Audit Office of Hungary, 2020), but also from a symbolic point of view. Social existence is not possible without taxes, as evidenced by the fact that all major social turning points in history have also been tax revolutions [see, for example, when the French revolutionary assembly voted to abolish the privileges of the nobility and the clergy and introduced the concept of sharing public burdens (Piketty, 2014)]. As demonstrated below, the taxation

of the digital sector also represents a similar turning point.

It was in 2017 that the Economist first described data as the “new oil” (The Economist, 2017). The Economist was definitely right about one thing, namely that similarly to oil, data need to be extracted and processed. Certain analysts believe that the very reason popularity was gained by Facebook over MySpace and Google over Yahoo! is that they were able to produce solutions that were more attractive in terms of demand (Boutin, Clemens, 2017).

If data truly are the “new oil”, then of course whoever possesses the data has considerable power. In this regard, global superpowers are pursuing different strategies. On the one hand, China essentially considers its data to be national strategic assets and adopts total government oversight in this area. On the other hand, in the US the private sector once again dominates with significant market concentration (European Commission, 2020a). However, Europe appears to be losing in this respect, as evidenced by the fact that European data assets are essentially being moved to the US and into the hands of global companies providing digital services (Chaire Castex de Cyberstrategie, 2020).

Such a flow of data into the US would not be an issue in itself if sufficient compensation was provided for these data. It is worth mentioning at this point that in the past oil not only made certain companies rich, but also the states from which it was extracted. This meant that through the taxation of the revenue generated using the resources of a country, it could be ensured that the nation in question received a fair share of the utilisation of its own territorial resources. In this regard, the EU has been slow to move when it comes to the taxation of global companies providing digital services, given that this issue has only been raised in recent years. It is particularly painful that the EU has

been unable to accomplish the introduction of a single EU-level digital tax vis-à-vis the US (Euractiv, 2019a). The fact that the US is threatening a trade war (Tax Foundation, 2020a) if large companies providing digital services from the States are taxed in Europe is not a coincidence and is very telling. It should be noted that the US has also consistently opposed other European regulatory initiatives concerning global digital companies (PaRR Global, 2020).

Despite global capitalism, every nation continues to favour itself. Global capitalism is no different from competition in general: there are winners and losers. The great paradox of global capitalism is that contrary to its name, it is very much driven by national interests and the winner is also announced at the national level. Nations and their interests have always been lurking in the background of global capitalism, given the importance of their historical, linguistic, cultural, and legal characteristics, and, furthermore, the psychological implications of belonging to a nation (Egresi, Pongrácz, Sziget et al., 2016).

Hegemony can essentially only be achieved in world trade by exploiting and utilising the resources of other nations. While historically this could be achieved through war, colonialism, the slave trade or – in peacetime – through capital and people, nowadays it is achieved through cyber-attacks or simply the extraction of data, for which US data monopolies are exceptionally well-suited tools. The fact that in certain cases companies and nations are supportive toward one another while participating in the struggle for hegemony in the form of global trade is, of course, not necessarily the result of noble national principles but due to the concentrated nature of (political/economic) elites at the national level.¹ It is not by accident that US data monopolies have remained intact for so long. For instance, in

2012, the Federal Trade Commission was considering antitrust action against Google but ultimately decided to refrain from acting due to political reasons, namely because the second largest supporter of the campaign for the re-election of *Barack Obama* was none other than Google (Tepper, Hearn, 2019). However, President *Trump* has also slammed the EU for taking decisive (protective) action against US data monopolies (Politico, 2019). In comparison, it is certainly noteworthy that on 20 October 2020 the United States Attorney General and the Attorneys General of 11 Republican states filed a lawsuit against Google under Section 2 of the Sherman Act, according to which they asked the court to break up the corporation.²

The European Court of Justice in its preliminary ruling adopted in July 2020 (in which it declared that the framework provided by the EU-US Privacy Shield is no longer a valid mechanism for fulfilling the privacy requirements of the EU when personal information is transferred from the European Union to the United States)³ implied the reason why the US Government is not opposed to the success of US-based global digital companies in Europe. According to the court, the reason is that the level of protection required by the General Data Protection Regulation of the EU (GDPR⁴) and the EU Charter of Fundamental Rights with respect to personal information does not have to be satisfied if the data of EU data subjects are used in the US in a way that violates their rights under EU law (e.g. if their data are utilised by the US Government), given that they no longer have access to an effective protection mechanism.

Consequently, these US-based global digital companies further strengthen the hegemony of the United States around the world, while the data protection regulations and tax policies of the EU fail to offer Europe any protection in this struggle.

THE EXPLOITATION OF EUROPE

The flow of European data into the US is not surprising given that the EU is the world's most open economy (European Commission, 2020b). It is particularly painful that these European data assets have been lost despite the existence of supposedly advanced European data protection regulations. This loss places the EU in a disadvantageous position in a number of areas, such as when competing internationally in the development of artificial intelligence (AI). While large corporations in the United States invest considerable funds into AI development (the value of North American investments ranges from EUR 12.1-18.6 billion), the value of European private investment lags far behind in this area, totalling only EUR 2.4-3.2 billion in 2016 (European Commission, 2018b).

It appears that the aforementioned ruling of the European Court of Justice at the end of July 2020 will finally put an end to the transfer of European data assets to the US. This view is also supported by the reaction of Facebook, which announced in September 2020 that it intends to take legal action against the Irish Data Protection Commission's decision to ban it from transferring data from the European Union to the United States under the mechanism used so far (Reuters, 2020). However, the European Court of Justice's ruling found the resolution of the Commission on the Privacy Shield to be invalid due to formal reasons, with the Court holding that that the Commission had unlawfully concluded that the level of protection stipulated by the GDPR and the EU Charter of Fundamental Rights was also applicable to data transferred from the EU to the US. However, this ruling does not provide any meaningful solution for the future protection of European data assets, since it specifies EU regulations and protection levels

as the minimum standards applicable to the transfer of data to the US which, as discussed below, are inherently insufficient.

For a while the GDPR appeared to represent the voice of the EU in the new digital world economy, which is characterised by a struggle for data. The EU intended to approach the subject in a more sympathetic manner and to strengthen the individual rights related to the processing of personal information. However, it was so successful at this that it acted against the development of its own data market, which proved to be particularly detrimental to its position in the great international race to develop and use AI (Tóth, 2019; European Commission, 2018b), given that the regulatory framework of the GDPR prevents the conclusion of data exchange and access agreements. This is because pursuant to Article 4 Paragraph (2) of the GDPR, the sharing of data constitutes data processing; therefore, it is subject to the conditions specified in Article 6 Paragraph (1) and the requirements are even more stringent if the personal data fall into one of the special categories listed under Article 9.

From the point of view of legal certainty and the GDPR, it is more favourable when data sharing is subject to statutory provisions, mainly because otherwise it may also have competition law consequences (anti-competitive agreements or abuse of dominant position as shown by the German Facebook decision⁵). The issue of the GDPR not being adequate to promote the flow of data has even been discussed in an expert report by the Commission in the context of data portability, due to the fact that it only serves as a solution to the migration of historic data and does not facilitate continuous data sharing (Crémer, Montjoye, Schweitzer, 2019).

On the other hand, although the GDPR explicitly states that natural persons must be permitted to exercise control over their own personal data, this right to informational

self-determination has proven to be easily eroded and evaded. Although users must accept privacy policies and general terms and conditions when using data-driven online services, these are often worded in such a lengthy and complicated manner that most consumers have difficulty understanding them or simply do not wish to spend time reading them (OECD, 2016). Certain studies have shown that it would take the average user more than 200 hours annually to carefully read these documents for every online transaction they enter into (OECD, 2016). These findings clearly demonstrate that such tools are in fact unsuitable for reducing the information asymmetry of consumers; therefore, the OECD has called for the introduction of actual solutions which protect consumers and promote informed decision-making (OECD, 2016). Furthermore, the Hungarian National Authority for Data Protection and Freedom of Information established in a 2015 resolution (NAIH, 2015) that the information provided in connection with the consent required for complex data processing must be structured and easy to understand, which can primarily be achieved by using appropriate text layouts. The question remains as to whether this is a feasible and effective solution to the issues outlined above. It seems that the only real solution would be the elaboration of data protection regulations that target the “left out, left behind” business model itself, as this model does not give users a choice about whether or not their personal data are transferred.

Since the level of data protection provided by the EU does not reflect or follow the above principles, therefore the compliance with these regulation makes only the exploitation of European data assets possible. However, in addition to reinforcing data protection in Europe, measures should be taken in the field of taxation, which is the subject of this present study.

REGULATORY REAR-GUARD ACTIONS OF EUROPE AGAINST EXPLOITATION

The competition existing among nations in the global economy as explained above can be accurately described by the periphery–semi-periphery–centre model. In this model, the centre is defined by innovation and high value-added work, the periphery by exploitation by and defence (closure) against the centre, while the semi-periphery generally seeks to address the challenges it encounters by alternating between the strategies of openness and closure (Egresi, K., Pongrácz, A., Szigeti, P., Takács, P., 2016). If one wishes to be optimistic it could be claimed that the regulations themselves represent the EU’s innovative response to global digital capitalism (Euractiv, 2019b); however, in the context of the struggle for hegemony, it appears more like a defensive reaction that is typical of the periphery.

The EU is not very well-equipped for this struggle for hegemony as, unlike the US, it lacks linguistic and cultural unity, as well as the feeling of belonging to a single nation, which drive nation-states in their fight for hegemony. Consequently, it is questionable whether it will be able to take unified action in regard to a symbolic matter like the taxation of US-based data monopolies. Looking at the issue of taxation only, past experience does not fill one with confidence. However, it should be noted that other areas of the European regulatory framework have also brought disappointment in the struggle to mitigate the harmful effects of the digital sector. Besides data protection and taxation, which is the subject of this study, competition law must also be mentioned where only in 2019 the first substantial EU-level processes (primarily following the example of individual Member States)⁶ were initiated. It is thanks to the approval of the European Commission that Google became an unavoidable player in online advertising

following the acquisition of DoubleClick in 2008 (Autorité de la Concurrence, 2018), as this merger enabled it to interlink browsing and search data, which the Commission did not consider a realistic threat.⁷

The fact that the General Court of the EU overturned the decision of the European Commission, according to which Apple was supposed to repay EUR 13 billion in unpaid taxes to the Irish budget due to illegal state aid in July 2020, on the ground that it could not be proven that the company received preferential treatment from the Irish government, is a significant loss on the taxation front.⁸

So far, the EU has attempted to handle the issue of digital taxation through the use of both a temporary and a long-term solution. As regards to the proposal of an EU-wide digital tax, on the one hand, the EU intended to reduce the risk of fragmentation of the single market as a result of the appearance of unilateral national measures and, on the other hand, it hoped to facilitate the adoption of policies that would assist in the resolution of the global debate surrounding tax base erosion and profit shifting (BEPS) by reinforcing the commitment of the EU and determining the direction its new concepts would take. Consequently, the European Commission presented a package on a Fair and Efficient Tax System in the EU for the Digital Single Market on 21 March 2018. The interim proposal of the Commission envisaged a Council Directive that would tax revenues generated by currently tax-exempt digital services such as the sale of online advertising space, intermediary activities (activities which facilitate the sale of goods and services) and the sale of user data. The tax would have only applied to companies which reached the following threshold: annual worldwide revenue exceeding EUR 750 million and annual EU-wide revenue exceeding EUR 50 million. The Commission proposed a uniform

3% tax rate which would have applied to revenues obtained from the provision of digital services if a significant portion of the value was generated by users. The proposed long-term solution would have defined the concept of “significant digital presence” in light of the OECD-BEPS initiative, which would exist when the taxpayer had no physical presence within the territory of a Member State; therefore, it would have served as a legal basis for taxing companies offering digital services. A company would have been liable to pay the proposed tax if it met at least one of the following criteria in a specific fiscal year: its annual revenue exceeded EUR 7 million; it had more than 100,000 users in a single Member State; or it had more than 3000 B2B contracts concerning digital services. This way, a proportional share of the profits would have become taxable in the Member State where the company had a taxable digital presence. The tax rate applied would have been equivalent to the tax rate applied to taxpayers with a physical presence in the relevant Member State. This tax would have also applied to corporate taxpayers that were located in a jurisdiction outside the EU if their own state had not entered into a double-taxation agreement with the Member State where the taxpayer had been determined to have a significant digital presence.

In this regard the US is in an advantageous position, as the EU is only entitled to adopt a resolution regarding tax matters if all Member States unanimously agree on its contents. Naturally, if states are using tax reliefs as a tool in the competition for capital in global trade, we should not be surprised that, for instance, the concept of a single EU-wide digital tax failed due to Ireland at the end of 2019 (Euractiv 2019a). The official communication stated that the Member States would wait for the relevant developments expected to unfold within the OECD by the end of 2020 (Council of the European Union, 2019). However, we

should not have any illusions: the US will not support the initiative currently on the table in the OECD as long as its conditions are binding; the US would prefer participation in the new tax plan to be optional for global companies (Bloomberg, 2020). On 15 July 2020, the European Commission adopted a new tax package as part of which it will be able to expand the scope of EU rules on tax transparency to also include digital platforms, with the aim of ensuring that operators which generate their revenue by selling products or services on such platforms bear a fair share of the relevant tax liability (European Commission, 2020c). According to the new proposal, the exchange of data concerning the revenue of sellers generated via online platforms would become automatic between Member States. It is important that the proposal does not discuss the above-mentioned issues related to digital taxation, given that the EU is still waiting on the developments of the OECD in this regard.

Within the OECD, the issue of taxing the digital sector was integrated into the BEPS initiative in 2015, which was initially launched in 2013 and which was referred to earlier. The aim of the OECD-BEPS initiative, which encompasses 15 different areas of action (including the digital sector) is to equip governments with the national and international tools required to successfully combat tax evasion. The OECD has proposed a two-pillar approach to address the current situation (OECD, 2020b). Pillar One focuses on the reallocation of taxing rights (nexus), which would predominantly be based on sales instead of physical presence. A new nexus would be created when a company has a permanent and significant presence in the economy of a jurisdiction, for example through interaction and engagement with consumers. In order to avoid its dependence on physical presence, the creation of the nexus would be

determined by a revenue threshold. After it has been established that a state is entitled to tax a certain non-resident company, the joint initiative also proposes a way to calculate the share of the profits to be allocated to the relevant jurisdiction. Pillar Two, which is also referred to as the “Global Anti-Base Erosion” (GloBE) proposal, would include measures aimed at mitigating the risks arising from the practice of transferring profits into countries where multinational companies are subject to exceptionally low taxes or no taxes at all. The GloBE proposal focuses on ensuring that at least a minimum level of tax is paid, aims to reduce the incentive to reallocate profits and also seeks to restrict the competition between different tax jurisdictions.

MEMBER STATE INITIATIVES FOR THE INTRODUCTION OF A DIGITAL TAX

Since the future success of EU-wide measures is highly questionable, the following Member States – on their own initiative (not for the first time in relation to the challenges brought about by the digital economy⁹⁾ – have adopted or are currently considering adopting the short-term proposal of the Commission described above (KMPG, 2020). *See Table 1.*

The above member states have not changed the worldwide threshold specified in the EU proposal; however, they have obviously tried to adjust the domestic threshold to match their own size (Council of the European Union, 2019).

These are therefore the Member States that – similarly to the EU proposal – would tax the income generated from currently tax-exempt digital services such as the sale of online advertising space, intermediary activities (activities which facilitate the sale of goods and services) and the sale of user data. Austria is imposing a 5% tax on digital advertising

Table 1

DIGITAL TAXES IN SOME MEMBER STATES

Country	Effective from	Tax rate	Affected taxpayers	
			Worldwide revenue threshold	Domestic revenue threshold
Belgium	proposal	3%	EUR 750 million from digital services	EUR 5 million from digital services
Czech Republic	2021	5% if data sharing and advertising revenue is higher than approx. EUR 188 thousand, or in the case of intermediary service providers above EUR 200 thousand users	EUR 750 million in total	approx. EUR 3.7 million from digital services
United Kingdom	1 April 2020	2%	GBP 500 million	GBP 25 million
France	1 January 2019 retroactive	3%	EUR 750 million in total	EUR 25 million
Italy	1 January 2020	3% of the portion of the global revenue that originates from Italy	EUR 750 million in total	EUR 5 million from digital services
Spain	proposal	3%	EUR 750 million in total	EUR 3 million from digital services

Source: KPMG, 2020

revenue only, effective from 1 January 2020, if the worldwide revenue of a company reaches EUR 750 million and its revenue from online advertising activities within Austria reaches EUR 25 million.

The US announced that it had launched an investigation against all of the above Member States and the federal government has already proposed a 100% tariff on French goods with a total value of USD 2.4 billion (Tax Foundation, 2020b).

In Hungary, advertisement tax was introduced by Act XXII of 2014 on Advertisement Tax in 2014 with multiple

progressive tax rates between 0% and 50%. A Commission investigation established in 2015 that this tax constituted state aid since the progressive tax rates differentiated between undertakings with high advertising revenues and ones with low advertising revenues, and provided a selective advantage to small enterprises based on their size.¹⁰ As a result, Hungary replaced the progressive tax rates with two fixed rates: a 0% rate applicable to the portion of the revenue below HUF 100 million, and a 5.3% rate, which was later increased to 7.5%, applicable to the portion above this amount. However, the

General Court¹¹ annulled the aforementioned Commission decision in 2017, as the Court did not find any evidence that the progressive structure of the advertisement tax provided a selective advantage and thus constituted state aid. Despite this, Hungary suspended the tax until 31 December 2022. The European Court of Justice has also commented on this Hungarian tax. In its 3 March 2020 ruling,¹² the Court of Justice declared that a piece of legislation adopted by a Member State which imposed a registration obligation on advertising service providers resident in another Member State with respect to their advertisement tax obligations did not infringe the freedom to provide services under Article 56 of the TFEU. In contrast, the Court declared that the provisions of the legislation which specified that service providers resident in a Member State other than Hungary which failed to comply with their registration obligation should receive several consecutive fines within a few days, the combined amount of which could reach several millions of Euros, did infringe the freedom to provide services under Article 56 of the TFEU. The Court justified its decision by stating that the legislation did not provide such service providers with the opportunity and time needed to fulfil their obligations and submit any comments they may have had before the resolution stipulating the final combined amount of these fines was adopted.

COLLECTING DIGITAL SERVICES TAX

The collection of digital services tax obviously poses a challenge for a state that intends to impose such a tax on a taxpayer that does not reside in the country. It is, however, exactly one of the main features of providing digital services that the provider does not need to be physically present in a country in order

to generate revenue there. Therefore, non-resident taxpayers can evade their obligations related to the payment of local revenue-based taxes easily and without consequences. However, the above-mentioned Hungarian case may offer some interesting insight in this regard. Within the framework of the advertisement tax introduced under Act XXII of 2014 on Advertisement Tax, Hungary imposed a tax on revenues generated through advertisements published online and required the publishers of such advertisements to register with the Hungarian Tax Authority if they were not resident in the country for tax purposes or face exorbitant fines. Having failed to comply with this registration obligation, Google was fined by the Hungarian Tax Authority, whose decision it appealed against before a Hungarian court. It therefore appears that it is precisely global companies offering digital services that are particularly sensitive to ensuring that their reputations are maintained (OECD, 2014); consequently, they cannot afford to bypass the domestic legal obligations existing in a country just because the country in question cannot take action against them locally. Although this means that smaller digital service providers, especially ones that are not resident in the EU, can ignore the tax liability, whereas those generating the highest revenues cannot. It should be noted that the Competition Authority has had similar experiences in its competition cases, as seen in the case in which Facebook paid the HUF 1.2 billion fine imposed on it even though it did not have a physical presence in Hungary (Növekedés.hu, 2020).

In addition, if an undertaking resident in another EU Member State is offering digital services to customers in Hungary, the collection of the taxes imposed on such an undertaking are subject to Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes,

duties, and other measures. This means that through the regulated cooperation between the tax authorities of the EU, the tax levied in Hungary is collected by the tax authority of the EU Member State where the taxpayer is resident upon the request of the Hungarian Tax Authority.

In addition to the above, the Hungarian advertisement tax act provides a further guarantee for the collection of the tax. The act states [see: Section 2 paragraph (2)] that the customer ordering the advertisement is liable to pay the tax unless the customer is able to submit a certificate from the publisher which proves that the publisher will pay the tax (including the case where the publisher fails to provide the customer with such a certificate despite a documented request to this effect).

Further provisions of the advertisement tax act also serve as a suitable basis for the introduction/expansion of the digital services tax in Hungary. The act specifies that those publishing online advertisements in Hungary are required to notify the Hungarian Tax Authority (register themselves) via a self-assessment system about their liability to pay digital services tax in Hungary and they must submit digital services tax return at the end of the fiscal year. In its decision regarding the Hungarian case referenced above (*Google v Hungarian Tax Authority*), the European Court of Justice declared in March 2020 that the provision of the Hungarian advertisement tax act which specifies that advertising service providers resident in another member state are required to register for advertisement tax in Hungary is in line with EU law.

In addition to the above, it would be worth including an additional guarantee against tax evasion in the legislation: if a member of company group preparing consolidated financial statements provides services subject to the tax to a third party but the consideration for such services is collected by another legal

entity within the group, for the purposes of this tax, the legal entity providing the taxable services should be considered to have received the consideration. This provision would act as a safeguard to prevent legal entities offering services which are subject to the tax (but generating revenue from such services via another legal entity belonging to the same group of company) from evading their digital services tax liability.

SUMMARY

The taxation of global companies offering digital services is important not only in terms of increasing tax revenue, but also in terms of symbolic significance. For many years traditional multinational corporations have been able to use their substantial resources to creatively optimise their tax. In the case of global companies providing digital services, this possibility has been further strengthened by the fact that current tax regulations are a hundred years old and based on physical presence. Consequently, such companies are able to generate substantial revenue in a country without being physically present there, while also evading the payment of tax. Although these companies have been responsible for bringing about a number of important social and economic changes, they have failed to make a fair contribution – in the form of a percentage of the revenue generated from the use of citizens’ data – to the public burden in those countries from which they have derived their revenue generating datasets. The loss of such data assets has affected the EU particularly severely, with its open economy proving to be completely vulnerable to such exploitation. Not even the European data protection regulations have been able to put an end to the migration of data, the most important raw material of the 21st

century, from the EU to the US. Meanwhile, the EU is trying to recover its money and is attempting, for instance, to create its own data environment that will allow it to take part in the international competition concerning artificial intelligence, in relation to which the US and China have been leading the way for a long time. If we consider data to be the “new oil” then continuing with the analogy, the issue is not that the data assets are leaving certain countries but that the source countries are not receiving their fair share of the profits generated using these resources. Digital services tax at least offers a symbolic solution to this. The fact that the EU was unable to introduce a unified digital services tax against the US was, of course, no coincidence. On the one hand, its Member States are competing with each other for investors and they are doing this by offering tax reliefs that only serve to further strengthen the position of these global companies, thus the introduction of such an EU-wide tax is not in the interest of all Member States. On the other hand, the US is threatening to engage in a trade war with European countries that introduce or consider introducing such a digital services tax, which is yet further proof that companies offering digital services from the States have become the flagships of US hegemony in the 21st century. It can confidently be said that data drain has taken up residence alongside brain and capital drain. In this regard, the EU has suffered the fate of periphery countries since the only options it has left are the defence mechanisms that are typical of the periphery. The EU is, in vain, trying to put a positive spin on this by proclaiming that its regulations are its own form of innovation; even if this was the case, these rear-guard actions are not particularly successful. The EU-wide digital services tax has failed, no effective legal tool has been found to combat fake news (European Commission, 2018c),

the GDPR has not meet expectations, and the tools of competition law have only achieved ambiguous – and sometimes even disappointing – results. The real results achieved so far have primarily been the product of domestic efforts or the cooperation of a few Member States, such as in the field of consumer protection. Of course, the fact that the EU has not been successful in the struggle for hegemony is not at all surprising. Without a unified identity, language and culture, i.e., without a psychological cohesive force, it is not even worth entering the battlefield. What we are left with is defensive and reactionary measures on the level of individual Member States. These are the practical consequences of the symbolic significance of digital services tax.

In general, taxes often possess a symbolic significance. Major social turning points are often tax revolutions at the same time (e.g. the tax exemption granted to the nobility by the so-called ‘Aranybulla’ (the Golden Bull) or the Hungarian laws of 1848 about the introduction of shared public burdens). The idea of digital services tax sends the message that the nations concerned also wish to take part in the exploitation of the new raw material of the 21st century. The European Member States which have undertaken to introduce a digital services tax even at the risk of a trade war have taken a significant symbolic step in addition to smartly increasing their tax revenue. Hungary should also consider catching up with these countries, especially given that Act XXII of 2014 on the advertisement tax provides an excellent foundation for the introduction/expansion/revival of the digital services tax in Hungary. While according to our current knowledge it is impossible to achieve a 100% collection rate, steps could be successfully taken against the largest technology companies in this field, based on the relevant experience of the Hungarian authorities.

NOTES

- ¹ Therefore, hegemony is based less on the state and more on the 'complex of international social relationships which connect the social classes of the different countries', which is especially apparent from the emergence of a transnational capitalist class. See Cox, Robert, W. (1993): Gramsci, Hegemony and International Relations: An Essay in Method. In: Stephen Gill (ed.) Gramsci, Historical Materialism and International Relations. Cambridge, Cambridge University Press.
- ² Department Files Complaint Against Google to Restore Competition in Search and Search Advertising Markets: <https://www.justice.gov/opa/pr/justice-department-sues-monopolist-google-violating-antitrust-laws>
- ³ For details, see C311/18, *Data Protection Commissioner v Facebook Ireland Ltd* ECLI:EU:C:2020:559.
- ⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4/5/2016, p. 1–88.
- ⁵ Bundeskartellamt prohibits Facebook from combining user data from different sources. https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2019/07_02_2019_Facebook.html.
- ⁶ For details, see the Digital Services Act initiative, the Commission's proposal on the New Competition Tool, the proceedings initiated against Amazon, Facebook, and Google by the European Commission, which were primarily inspired by the ruling of the German Competition Authority against Facebook https://ec.europa.eu/commission/presscorner/detail/mt/ip_19_4291; <https://www.reuters.com/article/us-eu-facebook-antitrust/eu-antitrust-regulators-raise-more-questions-about-facebooks-online-marketplace-idUSKBN21P22J>; <https://www.ft.com/content/a6183776-1a74-11ea-97df-cc63de1d73f4>; CNBC (2020) Google says it will pay some news publishers to license content, bowing to regulatory pressure <https://www.cnbc.com/2020/06/25/google-will-pay-some-news-publishers-to-license-content.html>.
- ⁷ For details, see COMP/M.4731, *Google/Double Click*, 340., 363.
- ⁸ For details, see T-778/16, *Ireland v Commission*, T-892/16, *Apple Sales International and Apple Operations Europe v Commission*.
- ⁹ The consumer protection coordinated action among Member States with respect to Airbnb (in 2018), social media (again in 2018), and in-app purchases (in 2014) are other examples related to online platforms.
- ¹⁰ For details, see European Commission, SA. 39235 (2015/C) (ex 2015/NN) state aid – Hungary, the advertisement tax introduced by Hungary. Brussels, 12.03.2015 C(2015) 1520 final. Online: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39235.
- ¹¹ For details, see T-20/17, *Hungary v European Commission* ECLI:EU:T:2019:448.
- ¹² For details, see C-482/18, *Google Ireland Limited v National Tax and Customs Authority, Hungary* ECLI:EU:C:2020:141.

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