

MINUTES

Conference 11th of February 2014 – European Parliament How to adapt taxation applying to cultural and audiovisual goods and services in the digital era?

Panel debate 1 :

Integrating digital multinationals into tax regimes and the creative economy in Europe

*Chaired by **Carole Tongue**, Chair of the UK Coalition for Cultural diversity and former MEP
Introduction by **Pervenche Berès**, MEP, Chair of the committee on employment and social affairs.
Speakers: **Lorena Boix-Alonso**, Head of Unit, Converging media and content, DG Connect at
European Commission; **Patrice Chazerand**, Director in charge of Digital Economy and Trade
Groups, DigitalEurope; **Pierre Lescure**, supervisor of the mission on “Culture at the digital era”
commissioned by the French government; **Radu Mihaileanu**, writer and movie director; **Walter
Zampieri**, Head of the culture and policy unit, DG Education and Culture, European Commission.*

Pervenche Bérés introduced the first panel debate by congratulating the European coalitions for cultural diversity for their activism. She gave meaningful examples to demonstrate the power and wealth of internet multinationals, as well as their aggressive planning strategies. She explained how complicated the problem is, and reminded the audience that users’ activity, through which multinationals can exploit data and develop their programs, is nothing but an unpaid work. Moreover, although countries could consider low taxes as being a driver for economic attractiveness and growth, Pervenche Beres underlined that this strategy is “never an investment in the interest of the country, nor an investment over the long-term”. To prove her point, she gave the example of Ireland, whose development strategy, based on low corporate taxes, led to the development of niche real estate markets, which was detrimental to its economy. She also underlined the responsibility of political leaders – not only head of states and governments but also the European institutions - to put an end to Member states free-riding behaviors. Finally, she mentioned the coming European elections and hopes that this topic will be central to debates. According to her, only citizens’ mobilization could force Member States to act.

Catherine Tongue, who chaired the debate, presented the European coalitions for cultural diversity, their objectives and the reason why they organized this conference. Although very different topics, she explained the close link between taxation and culture, and the challenges brought by the digital revolution. She also showed that barely a day passes without headlines that point out the issue of aggressive fiscal planning.

Patrice Chazerand presented DIGITALEUROPE and reminded the audience that, among the 'Big Four', it only represents Apple. According to him, since most of the economy is now digitized, taxing the digital technology means taxing the economy itself. As for taxation of cultural goods and services, Patrice Chazerand quoted Saint Exupéry: "délivrez l'homme et il créera", as to say that freedom feeds culture. "We should not kill the goose that lays the golden eggs" he said, and instead of building a fortress Europe or blame the United States, "we should analyze the multinationals' recipe for success, and get inspiration from it". One way to go is to create partnerships between the culture/entertainment and ICT sectors. Indeed, "ICT brings the world to creators, they give opportunities for massive collaboration, they multiply instant outlets for creators and they drive local growth".

Walter Zampieri presented the high level expert group on taxation of the digital economy, which was launched by the European Commission last November, and aims at analyzing established tax regimes for digital companies and make concrete proposals to fight against aggressive fiscal planning. The group will release a final report by the end of June. Walter Zampieri also tried to show how creators and multinationals could work together. On that matter, he proposed to turn this issue into an opportunity, as long as we first establish a level playing field. "All the possibilities offered by the digital platforms are also opened to traditional creators, and then you can reach the whole world more easily" he said. Also, "digital multinationals are hungry for quality content". Finally, he mentioned a proposal from the French authorities at the last Culture Council meeting in November, to ask the future Commission to come up with a genuine cultural strategy in the digital era. First reactions from other Member States are positive so far.

Pierre Lescure presented the mission on « Culture at the digital era » he supervised last year. This mission was commissioned by the French government and aimed at adapting current regulations. As he pointed out, it was not aimed at creating new taxes. "All we want is for current funding and taxation systems applying to cultural goods and services to be adapted so that they can still be functioning in the digital era", he explained. According to him, this adaptation is quite an easy thing to do but it requires political will in Europe. Pierre Lescure also reminded the time when Bill Gates, founder of Microsoft, wanted to get all digital copyrights over Picasso's work, in order to control its distribution. Finally, he noted that cultural diversity is what makes Europe different and unique, especially when compared with other continents, and that it should be protected and promoted for that very reason.

Radu Mihaileanu reminded the audience that, contrary to what some people might suggest, artists and creators are not dinosaurs who refuse to use digital technology or do not know how to use it. Yet, he believes that we should consider technology for what it truly is, that is to say a tool, and use this tool in order to create. He expressed his surprise to see that firms, whose development is based on the exploitation of user data, and therefore on the transparency of our intimacy, are not open about their own benefits and money transfers. As for audiovisual creation, he asked the relevant stakeholders that decide to convert from analog technology to digital technology to keep on contributing to creation funding systems, since they keep on using cultural works. He concluded his speech by giving a glimpse of the future, where Google is likely to control artificial intelligence. "Imagine if one firm controls artificial intelligence, what would then happen to cultural diversity and democracy? he asked.

Lorena Boix Alonso welcomed this debate, since she believes it is morally desirable that everybody contributes to collective efforts, in the context of the current economic crisis. She presented the AVMS Directive, and focused more specifically on the promotion of European works. She explained that the scope of application is completely neutral: there is no distinction of nationality companies, or of sector. Therefore, digital companies established in the EU also have to apply these obligations. Yet, she explained that obligations are different according to Member states: promotion can be done through financial contributions, quota systems and/or prominence of European works in the catalogue, and it is up to MS to decide which obligation(s) to put into place. The European Commission is currently analyzing the recent consultation's contributions and evaluating the overall system, but it is clear that there won't be any reform of the directive during this mandate. Moreover, studies were ordered to the European audiovisual observatory and a meeting with stakeholders was organized, in order to evaluate the implementation of the directive, and focus more on VOD providers.

Panel debate 2 :

Are we applying the right fiscal policy to culture?

*Chaired by **Pascal Rogard**, president of the French coalition for cultural diversity
Introduction by **Françoise Castex**, MEP, vice-president of the Committee on Legal affairs
Speakers: **Richard Charkin**, executive director of Bloomsbury Publishing Plc and vice-president of International Publishers Association ; **Michel Lambot**, co-president of the PIAS label and of IMPALA ; **Catherine Sustek**, member of cabinet of Androulla Vassiliou, European Commissioner for Education and Culture; **Jacques Toubon** French delegate for the taxation of cultural goods and services and former French minister of Culture.*

Françoise Castex introduced the second panel debate by expressing her regrets that the EU is still not able to come up with a global taxation strategy, which would be efficient against internal dumping. As for culture, she insisted that one should not reduce funding problems to the VAT issue. Yet, she mentioned two parliamentary reports, written by MEPs Jean-Marie Cavada and by Marie-Thérèse Sanchez Schmid, who both proposed to apply the same VAT rate to physical and digital books, with no differentiation according to the type of device. Unfortunately, those two reports are not legally binding. Finally, she alluded to other specific funding systems, which are proving to be efficient, but are different from usual taxation systems, like private copying levies. The latter is the focus of a report she wrote, which was adopted this very same day in the Committee of legal affairs.

Pascal Rogard paid tribute to MEPs for being very active in the fight for cultural exception last year. According to him, the position of the European Commission, who was willing to negotiate on audiovisual services with the United States, was beyond understanding. Indeed, the EU ratified the UNESCO convention on the protection and promotion of the diversity of cultural expressions in 2005 and should therefore refuse systematically to include audiovisual services in international free trade agreements. He also reminded the audience of what happened in 2013, and the defensive attitude that the cultural sector had to adopt in view of several EC initiatives (e.g. the new Cinema communication). He called on the new European Commission to be less hostile to cultural diversity

and creation, and he thanked once again the three European Commissioners, Androulla Vassiliou, Michel Barnier and Antonio Tajani, who opposed the inclusion of audiovisual services in the TTIP negotiations.

Michel Lambot explained, through well-chosen metaphors, the complex financial and legal arrangements that internet giants use, namely the “Double Irish” and the “Dutch Sandwich”, to pay lower taxes. He also stressed how difficult it is for music firms to compete with these new players. He clearly indicated that his intention was not to stop paying taxes, since he believes that it is the core of our social and democratic society. He simply wants firms to compete on an equal basis.

Richard Charkin explained the job of a book publisher, and the reality of the whole book production chain. According to him, what matters is the content, not the format, and nothing can justify different tax regimes for similar cultural goods. For instance, it is a nonsense that, in UK, there is a 20 points difference between physical and ebooks VAT rates. He took the view that, if Asia may lead the world of hardware manufacture, and the United States may lead the software industry, Europe could become a hub for what he calls “cultureware”, and make cultural diversity and multilingualism its competitive advantage.

Jacques Toubon recalled the history of the fight for a reduced VAT rate applied to ebooks, and the evolving positions of the European institutions throughout the years. He found it surprising that the European Commission would seriously believe that an e-book is not a book but a digital service, and that, consequently, would launch an infringement procedure against France and Luxembourg for having reduced the VAT rate on ebooks. According to him, this only proves the ideological nature of the EC’s decision, and might reflect a will to put an end to all exceptions and reduced rates. Jacques Toubon also pointed out that France is not the only country in favour of identical VAT rates for cultural goods: Luxembourg, Poland, Holland, Spain, Italy, Belgium and Germany have adopted a similar position on this topic. He emphasized the necessity to create a equal playing field between internet multinationals and European firms, so that the latter can create efficient and competitive digital services. He urges the EU to better defend “the works of the mind”, which is the distinctive characteristic of the European civilization, and calls on the future European Commission to take culture better into account in its policies.

Catherine Sustek welcomed this initiative, since she believes now is the time to speak about these issues and for the cultural sector to put together a strategy. Indeed, the European elections and the renewal of the European Commission mean that there won’t be new EC initiatives for a few months, and that future decision-makers will need guidance as soon as the institutions are running again. She also emphasized that, when defending a cause, it is important to approach all Directorates Generals, and not only DG EAC, since there are very different views within the EC itself. For instance DG Taxud does not necessarily see the whole picture when it comes to VAT issues, and has what she calls an “accountant vision”. She reminded the commitment of the European Commissioner for education and culture, Androulla Vassiliou, to support cultural diversity and same VAT rates for similar goods. Yet, Catherine Sustek underlined the fact that Member States might be reluctant to open debates on sensitive issues like taxation. She stressed that no political text on the VAT review will be published

under this mandate, but an impact assessment will be available before the summer. Finally, she pointed out that the 2015 reform on electronic services should remove some of the pressure on the subject.