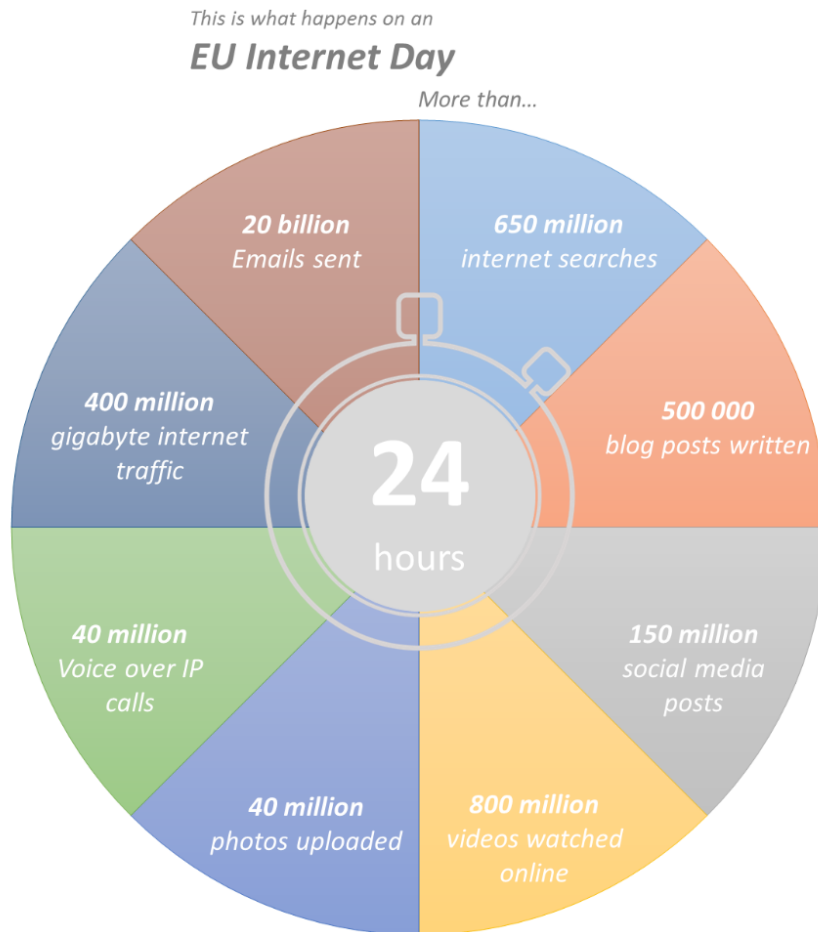


Mag. Christoph Schlager

# Taxation of the Digital Economy – State of Play

# Background



Source: [http://europa.eu/rapid/press-release\\_MEMO-18-2141\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-2141_en.htm)

- Work of OECD – Task Force Digital Economy

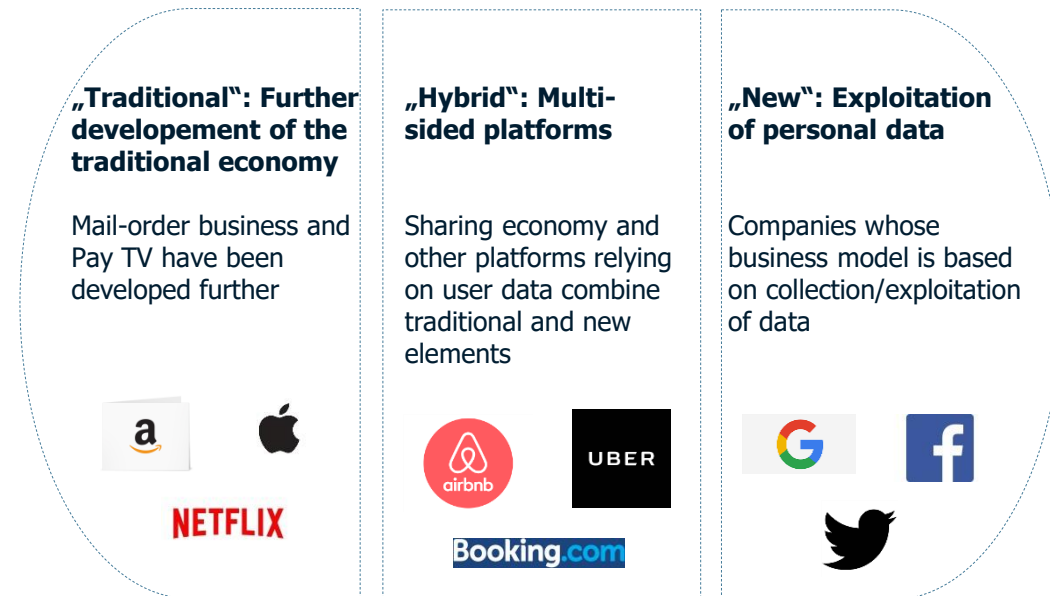
- Broad debate in tax literature

e.g. Hongler & P. Pistone, *Blueprints for a New PE Nexus to Tax Business Income in the Era of the Digital Economy*, IBFD White Paper (20 Jan. 2015), p. 15 et seq., W. Hellerstein, *Jurisdiction to Tax in the Digital Economy: Permanent and Other Establishments*, 68 Bull. Intl. Taxn. 6/7, p. 346 et seq. (2014), Journals IBFD; Y. Brauner & A. Baez, *Withholding Taxes in the Service of BEPS Action 1: Address the Tax Challenges of the Digital Economy*, IBFD White Paper (2 Feb. 2015); D.W. Blum, *Permanent Establishments and Action 1 on the Digital Economy of the OECD Base Erosion and Profit Shifting Initiative – The Nexus Criterion Redefined?*, 69 Bull. Intl. Taxn. 6/7, p. 314 et seq. (2015), Journals IBFD; E. Lopez, *An Opportunistic, and yet Appropriate, Revision of the Source Threshold for the Twenty-First Century Tax Treaties*, 43 Intertax p. 6 et seq. (2015); M. Olbert & C. Spengel, *International Taxation in the Digital Economy: Challenge Accepted?*, 9 World Tax J. (2017), p. 3 et seq., Journals IBFD; G. Kofler, G. Mayr & C. Schlager, *Digitalisierung und Betriebsstättenkonzept*, RdW p. 368 et seq. (2017); and C. Staringer, *Virtual? Reality!*, SWI p. 341 et seq. (2017), G. Kofler, G. Mayr & C. Schlager, *Taxation of the Digital Economy: A Pragmatic Approach to Short-Term Measures*, ET 4 p. 123 et seq. (2018)

- Proposals of European Commission

# Background

- No ringfencing of the Digital Economy – but how does value creation differ?
  - In literature, e.g. G. Kofler, G. Mayr & C. Schlager, ET 4 (2018)
  - Interim Report of the Task Force Digital Economy, OECD



- EU-Commission proposed:

Comprehensive/Long Term Solution

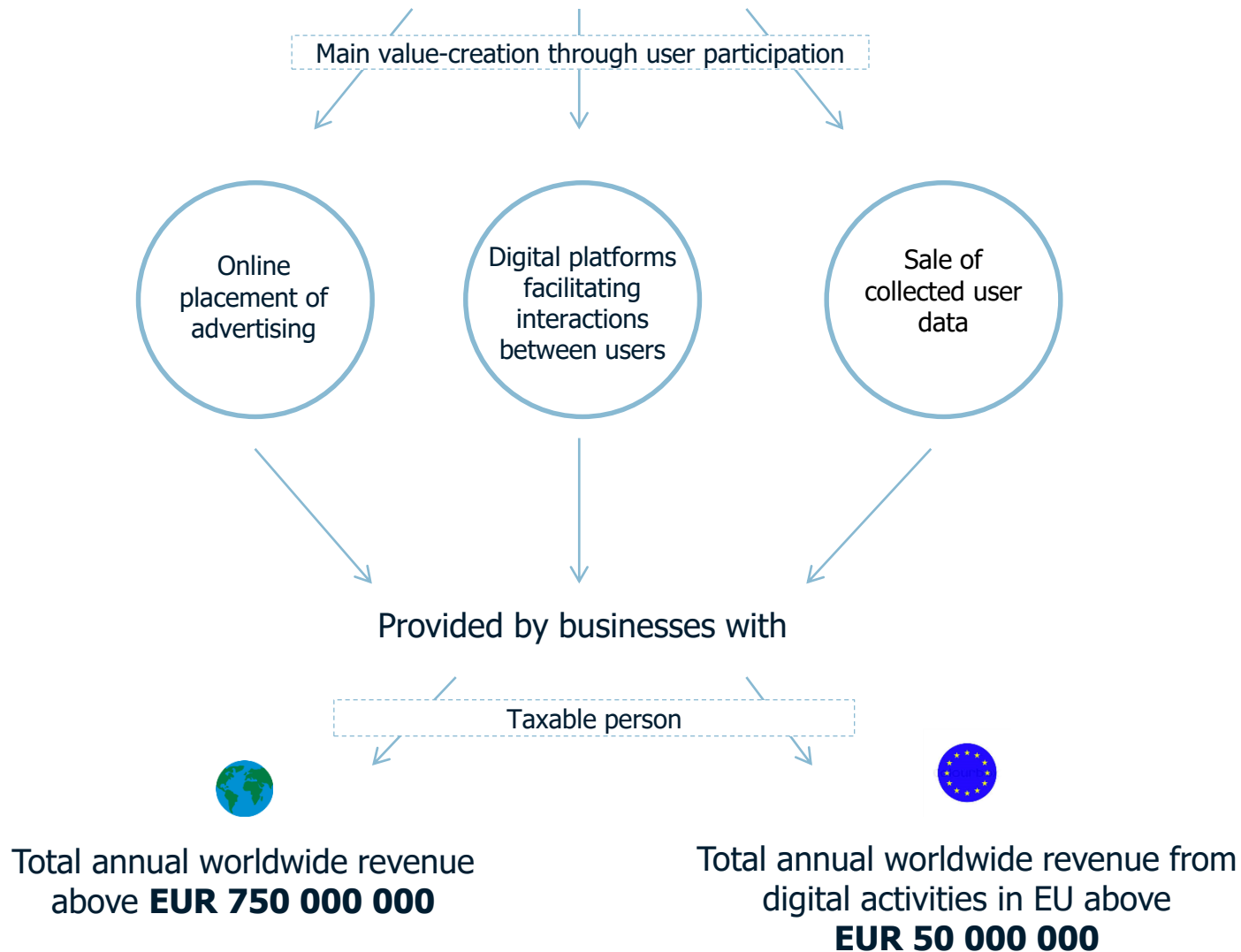
Directive on common EU solution for digital activities

Interim Solution

Directive on common system of tax on certain digital activities

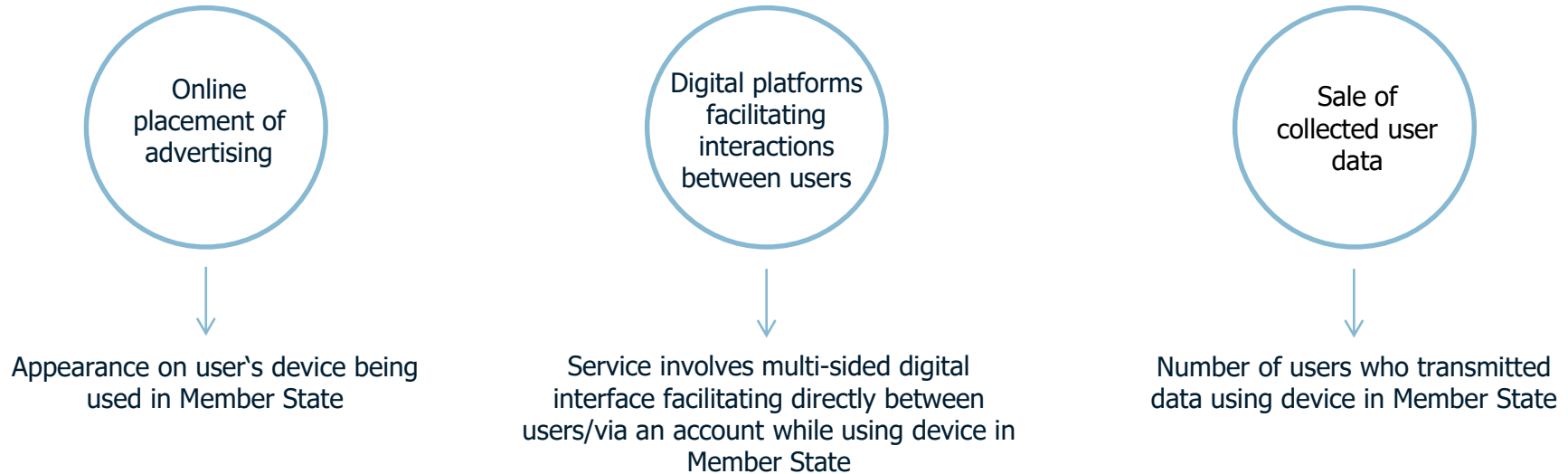
# Interim Solution

**3%** DST on revenues from:



# Interim Solution

- DST due in Member State where user is located:

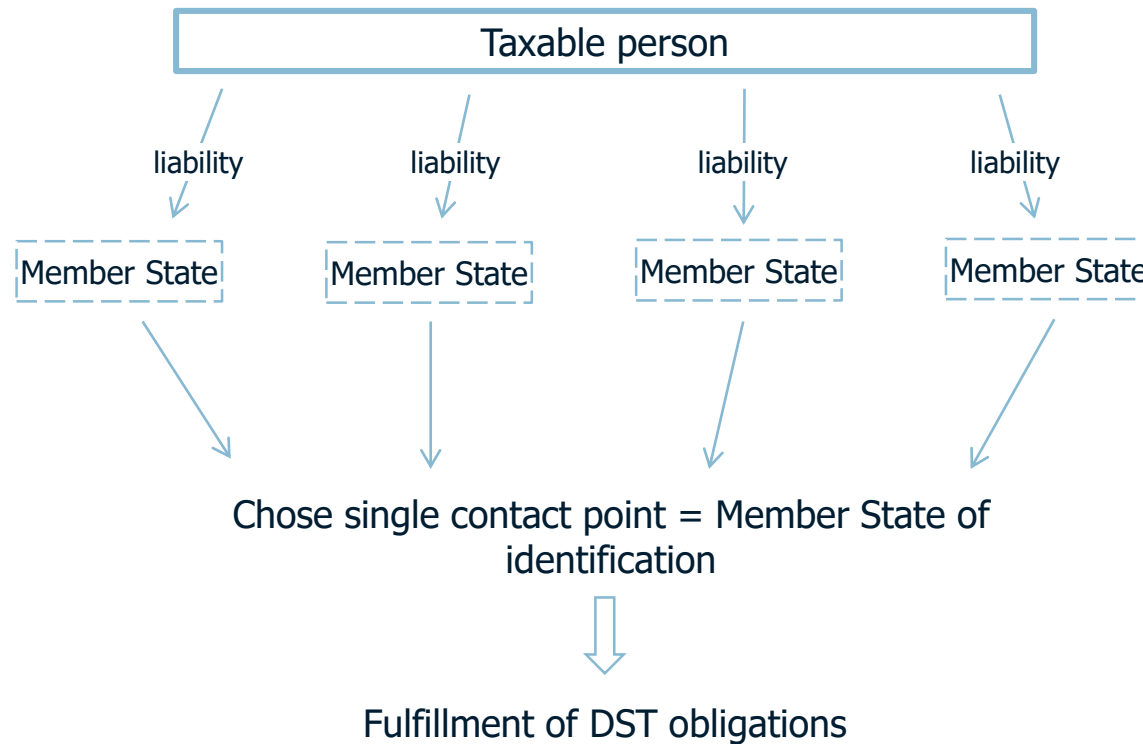


- DST chargeable in Member State:

- ➔ on proportion of Taxable revenues obtained by Taxable person in a Tax period

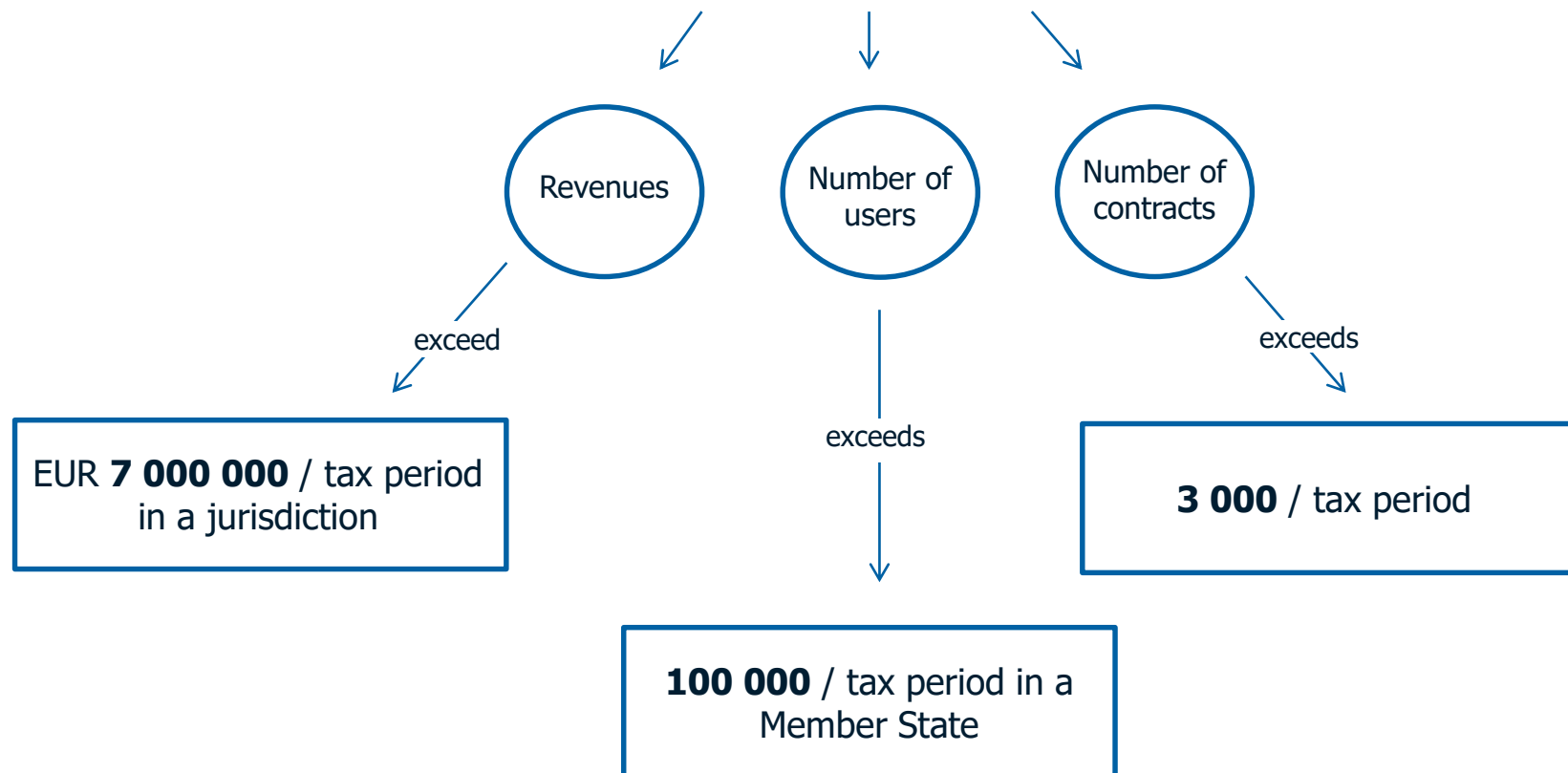
# Interim Solution

- Taxable person providing taxable services → liable for tax payment
- One-Stop-Shop (OSS) simplification mechanism:



# Comprehensive Solution: Digital PE

- Tax profits of companies without physical presence
- Significant digital presence → taxable nexus



# Comprehensive Solution

- Profits attributable to businesses' significant digital presences in Member States

determined by

Functional analysis



Including economically significant activities performed through presence via digital interface



# Comprehensive Solution

- Authorised OECD approach (AOA) remains principle for profit attribution
  - profits attributable to PE are those that PE would have derived if it were separate and independent enterprise

- Focus on:



Rules integrated into Member States'

