

Opinion of the European Economic and Social Committee on the proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches

[COM(2016) 198 — 2016/0107 (COD)]

(2016/C 487/09)

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Consultation	European Parliament, 28/04/2016 Council, 28/04/2016
Legal basis	Article 50(1) of the Treaty on the Functioning of the European Union
Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	08/09/2016
Adopted at plenary	21/09/2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	204/7/16

1. Conclusions and recommendations

1.1. The EESC endorses the Commission proposal, which aims to make the taxation system more transparent through country-by-country reporting, and considers that this measure will boost public confidence in the European Union.

1.2. Tax transparency is a useful tool for ensuring recognition of the contribution made by multinational enterprises to public revenue in the place in which they operate.

1.3. The EESC points out that public opinion and particularly business is calling for the country-by-country system to include disclosure of specific data regarding compliance with tax requirements (previously established by other regulatory instruments at European, Member State and capital market level).

1.4. A level playing field is guaranteed when all operators active in the single market have a fair tax burden on profits made in the European single market, regardless of the way in which they are organised in the global market.

1.5. While the standards proposed by the Commission are minimal and lower than those set by the OECD as regards the data that must be reported, the proposal for a directive is calling for them to be publicly disclosed in order to ensure consistency with the companies' codes of ethics and public accountability to all consumers, partners and taxpayers in the EU. The EESC therefore considers that the set of data to be provided must be that established by the BEPS standards which the EU and most Member States have already adopted, given that this regulatory instrument deals with transparency and is not intended to scale back existing international commitments.

1.6. The EESC considers that the regulatory instruments set out in the Commission's anti-tax-avoidance package must ensure that large and/or multinational enterprises which meet their tax commitments honestly are not put at a disadvantage by the aggressive tax planning of other multinational enterprises.

1.7. The EESC recommends that the data be disclosed in one of the internationally-used languages included among the official languages of the EU in order to achieve the objective of giving the public genuine access to data for the whole single market.

1.8. With a view to simplifying the administrative burden inherent in disclosing and managing data at EU level, the EESC considers that Member States should be required to establish a public register for country-by-country reporting, to include an EU-wide standardised system.

1.9. Given the Member States' and Commission's Open Government Partnership commitments, the publication of data on a portal should take the form of an open system, enabling civil society and business to access and use the data easily.

1.10. The EESC considers that, in order to resolve the underlying problems, the Commission must produce a more ambitious package which pursues the ongoing tax harmonisation and ensures that the resources needed for the Member States' investment programmes, social protection and economic growth are collected efficiently, proportionately and without discrimination, avoiding both tax base erosion and the dangers of abuse and surcharging in some jurisdictions.

1.11. The EESC considers that the EUR 750 million threshold is too high and calls either for it to be reduced or for a schedule to be drawn up stipulating a gradual decrease in the threshold.

1.12. Clearer criteria must be established for defining tax good governance and listing tax jurisdictions which do not comply.

2. European Commission proposal

2.1. In March 2016, the European Commission presented a communication⁽¹⁾ setting out a proposal for a directive amending the Accounting Directive⁽²⁾. The proposal was submitted in connection with the anti-tax-avoidance package presented by the Commission in March 2016 as part of the Agenda for fairer, more transparent and more effective corporate taxation⁽³⁾.

2.2. Combating tax avoidance and aggressive tax planning is a priority for the European Commission. With this proposal, the Commission seeks to implement the principle of taxing profits where they are generated.

2.3. The proposal requires multinational enterprises with a turnover of more than EUR 750 million to disclose publicly the income tax they pay and other relevant tax-related information in a country-by-country report.

2.4. The proposal does not require micro or small enterprises to comply with any new obligations in relation to income tax.

2.5. The proposal for a directive amending Directive 2013/34/EU includes measures to implement Action 13⁽⁴⁾ of the OECD's BEPS action plan (Base Erosion and Profit Shifting) uniformly across the EU. These measures address improving the mechanism for the automatic exchange of information between Member State tax administrations and include information on year-end results for multinational corporations among the types of information to be exchanged.

2.6. The proposal responds to calls by the European Parliament to introduce EU-wide country-by-country reporting (CBCR) on corporate income tax.

⁽¹⁾ COM(2016) 198 final.

⁽²⁾ Directive 2013/34/EU.

⁽³⁾ http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/anti_tax_avoidance/timeline_without_logo.png

⁽⁴⁾ <http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm>

2.7. Between June and December 2015, the Commission held a broad consultation on the CBCR proposal. There were 400 respondents, including companies, industry associations, NGOs, members of the public and think tanks. Most individuals who responded to the consultation called for the EU to lead the debate, and if necessary to go beyond current international CBCR initiatives. Most of the companies that responded preferred a CBCR standard aligned with the OECD's BEPS standard.

2.8. The proposal is supported by an impact assessment which was received positively by the Regulatory Scrutiny Board. Following the opinion of the Board, the impact assessment was improved.

2.9. The Commission estimates that around 6 000 companies will need to draw up a country-by-country report as they are active in the EU. Of those, only 2 000 companies are headquartered in the EU, a fraction of the total 7,5 million companies.

3. General and specific comments

3.1. The proposal calls for the rules set out in the OECD's BEPS action plan ⁽⁵⁾, which aims to combat aggressive tax planning at global level, to be implemented uniformly across the Member States. As it has pointed out in previous opinions ⁽⁶⁾, the EESC welcomes the Commission's initiative and supports its efforts to combat aggressive tax planning, a practice used by some multinational corporations which is estimated to erode Member States' tax bases by tens of billions of euros each year.

3.2. The Commission's anti-tax-avoidance package helps make tax practices more transparent and generates legitimate pressure in favour of a level playing field in terms of competition and performance between companies with access to tax planning instruments and those operating only at single-market level. This directive does not amend the principles of taxation; instead, it imposes greater transparency with regard to the way in which they are applied, in response to European public demand in the wake of the Luxleaks and Panama Papers scandals.

3.3. The proposal excludes 85-90 % of multinational companies, as only companies generating revenue in excess of EUR 750 million will be subject to CBCR requirements. The EESC considers this threshold to be too high and discriminatory. Leaving the majority of multinational corporations outside the scope of the directive could make it less effective.

3.4. The EESC considers that the EUR 750 million threshold should be gradually decreased and a schedule for this drawn up, following intermediate impact assessments.

3.5. The Commission proposes that the country-by-country report should include information described in Article 48c of the proposal. The EESC considers that this information should include a declaration by the company on any operations carried out in jurisdictions included in the list provided for in Article 48 g. Similarly, in order to ensure that the directive delivers the anticipated results, the list of types of information stipulated in the article should include data on assets and sales and a list of all subsidiaries and branches, as recommended by the OECD's BEPS standard.

3.6. The Commission proposes that the country-by-country report should be detailed and provide separate financial statements for each Member State in which the parent undertaking has subsidiaries or branches. For jurisdictions outside the EU, the proposal states that information must be provided in consolidated form. The EESC considers that the consolidated presentation of data might conceal aggressive tax planning operations, and thus make the directive less effective. The EESC urges the Commission to stipulate disclosure of detailed country-by-country reports for every tax jurisdiction in which the parent undertaking has subsidiaries or branches.

3.7. Article 48 g of the proposal provides for a list to be drawn up of tax jurisdictions that are uncooperative or do not comply with good governance standards in tax matters. The EESC has already endorsed ⁽⁷⁾ the proposal for an EU list of jurisdictions which refuse to apply good governance standards in tax matters. Currently, most Member States have their

⁽⁵⁾ <http://www.oecd.org/ctp/beps-actions.htm>

⁽⁶⁾ See EESC opinions *The fight against tax fraud and tax evasion* (OJ C 198, 10.7.2013, p. 34) and *Anti-tax-avoidance package* (OJ C 264, 20.7.2016, p. 93).

⁽⁷⁾ See EESC opinion *Tax transparency package* (OJ C 332, 8.10.2015, p. 64).

own systems of lists and penalties for financial transactions involving these jurisdictions. The EESC considers that an EU list with clear criteria for identifying uncooperative jurisdictions and penalties uniformly applicable by all Member States would be a much more effective instrument for combating tax avoidance and aggressive tax planning. The EESC therefore endorses the measures set out by the Commission in this strategy.

3.8. In order to meet the policy objective of greater transparency with regard to the taxation of companies, the EESC recommends establishing a national public register administered by the Member States' tax administrations so that the country-by-country report is freely accessible. With a view to easing working procedures and cutting red tape, the EESC recommends that the directive establish an EU-wide standard format so that data can be processed openly in line with Open Government Partnership commitments.

3.9. The EESC also considers that in order to ensure a uniform system of tax ethics across the single market, fiscal policies must be underpinned by greater harmonisation of tax principles and policies, with more emphasis on the principle of taxing income where it is generated, including for production and trade relationships between Member States.

3.10. Given the many requests from civil society organisations for greater transparency with regard to the taxation of multinational corporations, the EESC welcomes the Commission's initiative of including in the provisions of the directive the requirement that Member States disclose publicly the data set out in the country-by-country reports.

3.11. The proposal stipulates that the country-by-country report be published in the official language of the Member State in which the company operates. The EESC considers that in order to ensure that the public has access to the tax information included in the report, the information must also be published in at least one internationally-used language.

3.12. Given the damage done by the crisis to the administrative capacity of Member States' tax administrations, the EESC recommends that the Commission and the Member States should assign the human and financial resources needed to ensure that the new tax rules are implemented successfully.

Brussels, 21 September 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
