

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

523TH EESC PLENARY SESSION OF 22 AND 23 FEBRUARY 2017

Opinion of the European Economic and Social Committee on the proposal for a Council directive on double taxation dispute resolution mechanisms in the European Union*(COM(2016) 686 final — 2016/0338 (CNS))**(2017/C 173/05)*Rapporteur: **Krister ANDERSSON**

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| Consultation | Council of the European Union, 16 February 2017 |
| Legal basis | Article 115 of the Treaty on the Functioning of the European Union |
| Section responsible | Economic and Monetary Union and Economic and Social Cohesion |
| Adopted in section | 2 February 2017 |
| Adopted at plenary | 22 February 2017 |
| Plenary session No | 523 |
| Outcome of vote | 174/0/2 |
| (for/against/abstentions) | |

1. Conclusions and recommendations

1.1. The EESC welcomes the Commission proposal for a Council Directive to improve double taxation dispute resolution mechanisms in the EU.

1.2. The EESC agrees with the Commission that double taxation is one of the biggest tax obstacles to the Single Market. There is an urgent need for mechanisms ensuring that cases of double taxation are resolved more quickly and more decisively when they arise between Member States.

1.3. The EESC recognises that eliminating double taxation is not by itself sufficient to create a level playing field in the area of taxation. It believes that the EU needs a common positive, forward-looking framework for corporate taxation.

1.4. The EESC is pleased that the proposed directive adds targeted enforcement blocks to address the main identified shortcomings in the Union Arbitration Convention ⁽¹⁾.

1.5. The EESC very much welcomes the fact that in circumstances where Member States do not automatically start the arbitration procedure, the taxpayer can ask its national court to take the necessary steps for setting up an arbitration committee to deliver a final, binding decision on the case within a fixed timeframe.

⁽¹⁾ Convention on the elimination of double taxation in connection with the adjustments of profits of associated enterprises (90/436/EEC).

1.6. The EESC supports the Commission initiative to extend its monitoring of countries' performance in all cases of double taxation disputes in cross-border situations on a yearly basis, in order to assess whether the objectives of the directive are met.

1.7. The Committee also welcomes the flexibility provided to Member States to agree bilaterally on a case by case basis to alternative dispute resolution mechanisms. This facilitates solutions in multilateral situations where the dispute at stake has to be solved not only at the EU level but also in relation to third countries through bilateral treaties.

1.8. The EESC endorses the provision that the competent authorities may publish the final decision, subject to the consent of each of the taxpayers concerned.

1.9. The Committee would like to stress the urgency of implementing this proposal. The number of cases of double or multiple taxation is increasing in size and magnitude. There is no room for delay.

2. Background and Commission proposal

2.1. One of the main problems that businesses operating across border currently face is double taxation. There are already mechanisms in place that deal with the resolution of double taxation disputes. They are the Mutual Agreement Procedures (MAP) which are foreseen in Double Taxation Conventions (DTCs) entered into by Member States as well as in the Union Arbitration Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

2.2. Although the existing mechanisms work well in many cases, there is a need to make them work better regarding access for taxpayers to those mechanisms, coverage, timeliness and conclusiveness. Moreover, the traditional methods of resolving disputes no longer fully fit with the complexity and risks of the current global tax environment.

2.3. The proposed directive focusses on business and companies, the main stakeholders affected by double taxation situations. It builds on the existing Union Arbitration Convention, which already provides for a mandatory binding arbitration mechanism, but broadens its scope to areas which are not currently covered and adds targeted enforcement blocks to address the main identified shortcomings, as regards enforcement and effectiveness of this mechanism. As a result, all double taxation disputes involving cross-border transactions within the EU and impacting on business profits fall within the scope of the proposal.

2.4. The proposal adds an explicit obligation of result for Member States as well as a clearly defined time limit. Situations which characterise double non-taxation or cases of fraud, wilful default or gross negligence are excluded.

2.5. The directive allows for a Mutual Agreement Procedure (MAP), initiated by the complaint of the taxpayer, under which the Member States must freely cooperate and reach an agreement within two years.

2.6. The initial MAP phase is complemented with an arbitration procedure which provides for solving the dispute by way of arbitration within a timeline of 15 months in the case that Member States failed to reach an agreement during the initial amicable phase. This arbitration procedure is mandatory and starts automatically. It ends with the issuance of a final mandatory binding decision by the competent authorities of the Member States involved.

2.7. Enhanced transparency is one of the objectives of the proposed directive. The competent authorities may publish the final arbitration decision and more detailed information, subject to agreement by the taxpayer. In the event that the taxpayer does not consent, the competent authorities shall publish an abstract of the decision.

3. General comments

3.1. The EESC welcomes the Commission proposal for a Council Directive, as part of the Corporate Tax Package, to improve double taxation dispute resolution mechanisms in the EU. There is an urgent need for mechanisms ensuring that cases of double taxation are resolved more quickly and more decisively when they arise between Member States.

3.2. The EESC agrees with the Commission statement that Europe needs a tax system that fits its internal market and that supports economic growth and competitiveness, attracts investment, helps to create jobs, fosters innovation and upholds the European social model. Taxation should provide stable revenues for public investment and growth-friendly policies. It should ensure that all businesses enjoy a level playing field, legal certainty and minimal obstacles when operating cross-border.

3.3. The EESC shares the concerns of the Commission that disagreement amongst Member States over who has the right to tax certain profits often results in companies being taxed twice or more on the same income. The most recent figures from the Commission indicate there are around 900 double taxation disputes ongoing in the EU, with EUR 10,5 billion at stake.

3.4. The Committee welcomes the Commission's work to ensure that all companies operating in the EU pay their taxes where profits and value are generated, but they should not be subject to double or multiple taxation of the same profits. This principle is essential for fair and effective taxation. The EESC agrees with the Commission that one of the biggest tax obstacles to the Single Market is double taxation.

3.5. The EESC very much welcomes the initiative by the Commission to address double taxation in a coordinated manner in the EU. It agrees with the Commission that to boost jobs, growth and investment, a favourable tax environment needs to be created for business, by reducing compliance costs and administrative burdens, and by ensuring tax certainty. The importance of tax certainty in promoting investment and growth has recently been recognised by the G20 leaders and has become the new global focus. Member States need to find a balance between implementing necessary reforms and providing a steady, clear and predictable tax environment for businesses.

3.6. The EESC recognises that eliminating double taxation is not by itself sufficient to create a level playing field in the area of taxation. It believes that the EU needs a common positive, forward-looking framework for corporate taxation. This is the rationale behind the Commission's proposal to re-launch the Common Consolidated Corporate Tax Base (CCCTB).

3.7. The EESC recognises that most Member States have bilateral tax treaties with one another to relieve double taxation and that there are procedures to resolve disputes. However, these procedures are long, costly and do not always result in an agreement. The Union Arbitration Convention provides some relief. However, its scope is limited to transfer pricing disputes and there is no recourse to repeal the interpretation of the rules.

3.8. The EESC is pleased that the proposed directive adds targeted enforcement blocks to address the main identified shortcomings in the Union Arbitration Convention, i.e. situations of denial of access, whether implicit or explicit, as well as prolonged and blocked procedures.

3.9. The EESC also welcomes the fact that a wider range of cases will be able to benefit from a mechanism, providing for mandatory binding resolution of disputes. These improvements to Dispute Resolution Mechanisms will save both businesses and administrations a considerable amount of time, money and resources and will reinforce tax certainty for companies in the EU.

3.10. The EESC very much welcomes the fact that in circumstances where Member States do not automatically start the arbitration procedure, the taxpayer can ask its national court to take the necessary steps for setting up an arbitration committee to deliver a final, binding decision on the case within a fixed timeframe. This will help to avoid uncertainty for the businesses involved and builds on mechanisms and good practices which are already applied in all Member States for cross-border disputes in areas other than taxation. However, the EESC would like to stress the necessity for Member States to ensure that the duration of these court proceedings is short to avoid significant delays in solving disputes.

3.11. The EESC supports the Commission initiative to extend its monitoring of countries' performance on all cases of double taxation disputes in cross-border situations on a yearly basis, in order to assess whether the objectives of the directive are met. Existing analysis shows that there are cases that are prevented from entering existing mechanisms, that are not covered by the scope of the Union Arbitration Convention or DTCs, that get held up without the taxpayer being informed about the reasons or that are not resolved at all. At this stage, the EESC does not find the performance at Member State level satisfactory and calls for close Commission scrutiny of the functioning of the directive when implemented and publication of its analysis and results.

3.12. The EESC agrees that the elimination of double taxation should be achieved through a procedure under which, as a first step, the case is submitted to the tax authorities of the Member States concerned with a view to settling the dispute using the Mutual Agreement Procedure. In the absence of such an agreement within a certain time frame, the case should be submitted to an Advisory Commission or Alternative Dispute Resolution Commission, consisting of both representatives of the tax authorities concerned and independent persons of standing. The tax authorities should take a final binding decision with reference to the opinion of an Advisory Commission or Alternative Dispute Resolution Commission.

3.13. The EESC recognises that an effective minimum standard for dispute resolution mechanisms needs to be established in the EU addressing comprehensively and with sufficient detail the procedural steps needed to ensure homogeneous and effective application.

3.14. The Committee also welcomes the flexibility provided to Member States to agree bilaterally on a case by case basis to alternative dispute resolution mechanisms. This facilitates solutions in multilateral situations where the dispute at stake has to be solved not only at the EU level but also in relation to third countries through bilateral treaties.

3.15. The EESC endorses the provision that the competent authorities may publish the final decision, subject to the consent of each of the taxpayers concerned.

3.16. The Committee would like to stress the urgency of implementing this proposal. The number of cases of double or multiple taxation is increasing in size and magnitude. There is no room for delay.

Brussels, 22 February 2017.

*The President
of the European Economic and Social Committee
Georges DASSIS*
