



Position Paper

24 June 2016

Comment on a 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

Executive Summary

The counter effects of the European Commission's pursuit of transparency will be an increase in compliance costs to companies and a risk to foreign direct investment in the EU. Additionally, the Public Country by Country Reporting (PCbCR) will distort competition.

As a consequence, we strongly need a debate on how much transparency is justified and at what cost? As Chambers of Industry and Commerce we favour transparency to tackle abuse and to support companies paying their taxes. But we are against an excess of transparency that hurts business and investment in the EU. We consider the OECD Base Erosion and Profit Shifting (BEPS) guidelines the right way to address loopholes in international and European tax law. Implementing these would allow tax administrations as the competent authorities to evaluate tax data correctly, to exchange information between EU member states and address any bad practices. It makes little sense for the EU to develop an additional set of tax rules that are not sufficiently in line with the OECD BEPS measures.

We jointly call on the EU institutions to change or repeal the proposal on PCbCR in order to avoid unnecessary harm to the EU economy.

General remarks

While the Country by Country-Reporting (CbCR) proposal formally adopted at ECOFIN on May 25th is mainly addressed to the tax authorities of those member states in which multinational companies (MNCs) are active in order to exchange information and flag out those that engage in aggressive tax planning and/or tax avoidance, the Public Country by Country Reporting (PCbCR) proposal for a directive published by the Commission on April 12th provides for the publication of a report on the following information on the company's website.

- nature of the activities,
- number of employees,
- total net turnover,
- profit before tax,
- amount of income tax due,
- amount of tax paid,
- accumulated earnings.

Disclosure of business data and sensitive commercial information

The proposed PCbCR provides for the publication of country specific information and the disclosure of sensitive business data that would allow foreign companies to draw conclusions on trade secrets and the potential of market exploitations of their competitors.

By way of example, if a European company is working on a big project in a single EU country competitors on a global level will gain insight into their project structures. Competitors may then gain unjustified competitive advantages that will strengthen their market position. This distortion of competition may in particular arise between European and US-based companies, but could distort competition between EU companies and any company outside of the EU. These companies could easily gain access to important information concerning their European competitors, while in return no comparable information would be available to European companies. This imbalance would constitute a significant competitive disadvantage for the European economy and ultimately put the EU as a business and investment destination at risk. As a consequence, the EU could suffer a loss in tax revenue that would otherwise be generated in the Member States, should MNCs decide to take their investment elsewhere or not establish operations in the first place. Wording of the items to be disclosed differs slightly between the two regimes. Draft legislation is also unclear and not explicit in its meaning on the types of data to be recorded.

Additional burden for multinational corporations (MNCs)

The introduction of a mandatory PCbCR would lead to substantial costs, in particular as special reporting standards would need to be developed. Additional costs would occur for the auditing and interpretation of the published information. Overall it would mean increased costs linked to administrative overheads. Furthermore, the additional compliance and auditing costs will most likely not grow proportionally with the size of the company. The proposal does not provide any technical assessment or guidelines as to how data could be collected and presented in a way that would not cause additional burden for businesses.

Addressing tax confidentiality and risk of misinterpretation of data

For the reasons listed in the previous sections we believe that the EU should be more concerned about the thorough protection of confidentiality according to the highest national standards of financial and tax data provided by businesses to tax authorities. It is imperative that the current level of protection should be strengthened or at the least maintained.

Businesses pay tax on the basis of rules established by sovereign governments and enforced by tax authorities. We consider the latter to be the competent authorities able to process such complex data and to ensure that the rules are respected. Furthermore, the latter are the entities best positioned to safeguard the sensitivity of such information if properly regulated. With the public effecting its own scrutiny regarding tax amounts paid by individual companies, we would open up the risk of creating uncertainty for businesses and also undermine the role of tax authorities.

Furthermore, PCbCR is not ideal for an informed discussion on companies' tax liabilities, considering that a proper assessment requires full access to accounts, which is clearly not appropriate for public disclosure due to the commercial sensitivity. Coming up with conclusions using a limited list of financial variables risks a complete misinterpretation of data. Moreover, the proper interpretation of tax information requires a certain level of expertise, which may not be present in all interested parties. This could lead to wrong conclusions that could harm the reputation of certain companies.

BEPS Guidelines and beyond

In order to safeguard the competitiveness of European companies and the EU as an investment destination, the EU must ensure that international agreements are adopted multilaterally on a global level and implemented accordingly.

Competitiveness of EU countries should be the primary concern of the European Commission- the uncertainty that will be encouraged by the Commission through this process will not support existing businesses or the EU's attractiveness as a location for international investment. The EU should instead focus on aligning its policies with OECD BEPS proposals so as to provide certainty to EU based companies. A common international tax framework is a more desirable outcome than EU specific measures which may put the European business community and a competitive disadvantage.

As PCbCR is not an OECD recommendation, the EU is under no obligation to implement it. It is also unlikely that comparable Public Country by Country Reporting initiatives will be applied multilaterally. Therefore the competitiveness of EU companies will be negatively affected and as a consequence the EU will experience a reduction in investment. This comes at a critical time when the Commission itself is trying to boost investment in the EU through new mechanisms under the EU Fund for Strategic Investment.

On the other hand, it is not good policy making to propose and introduce new regulations that go beyond current existing rules, particularly before these rules (OECD BEPS recommendations) have been implemented, applied and evaluated. In this respect, we strongly recommend the European Parliament and European Council to wait until the OECD CbCR proposal has been implemented and evaluated before considering any further measures.

Legal basis

The European Commission based its proposal on Art. 50 Treaty on the Functioning of the European Union TFEU (right of establishment, corporate law), which means that decisions are made by qualified majority voting in Council and that the European Parliament is fully involved through the ordinary legislative procedure. This is highly questionable as the reporting obligations proposed by the Commission concern tax information. As the proposal for a standard VAT return or for a non-public CbCR show, the legal basis for the collection and reporting of tax information is usually Art. 113 et seqq. TFEU. Also a number of member states take the view that - as the underlying policy is taxation policy - the decision should be made unanimously.

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