



Council of the
European Union

Brussels, 14 April 2016
(OR. en)

7949/16
ADD 2

DRS 6
COMPET 156
ECOFIN 289
FISC 53
CODEC 461

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 12 April 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: SWD(2016) 118 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE IMPACT ASSESSMENT assessing the potential for further
transparency on income tax information Accompanying the document
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

Delegations will find attached document SWD(2016) 118 final.

Encl.: SWD(2016) 118 final



Strasbourg, 12.4.2016
SWD(2016) 118 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

assessing the potential for further transparency on income tax information

Accompanying the document

**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 final }
{ SWD(2016) 117 final }

Executive Summary Sheet

Impact assessment on further corporate transparency on income taxes

A. Need for action

Why? What is the problem being addressed?

An environment of complex tax rules and fiscal secrecy has allowed some Multinational Enterprises (MNEs) to engage in aggressive tax planning strategies. Unlike small and medium sized undertakings (SMEs) or individual taxpayers, MNEs are capable of taking advantage of loopholes in domestic and international tax laws enabling them to shift profits from one country to the next in order to reduce their tax bill. It is estimated that countries in the EU lose EUR 50-70 billion each year to tax avoidance by MNEs. Recent reports have disclosed the low amount of taxes paid by certain MNEs putting into question the overall efficiency and fairness of the tax systems in the EU.

At international level, the G20 has endorsed the OECD/BEPS initiative which was subsequently implemented in the EU through the Anti-Tax Avoidance Package (ATAP).¹ This initiative requires disclosure of CBCR information to tax authorities only with the aim to ensure further compliance of MNEs with national tax laws.

The lack of public scrutiny has been identified as the problem to be addressed. Public scrutiny through greater transparency by MNEs would be an additional tool enabling to fight base erosion and profit shifting, building on reputational effects and democratic debates.

What is this initiative expected to achieve?

The over-arching objective of this initiative is to achieve further public transparency on corporate income taxes by ways of a country-by-country reporting (CBCR) to be published by MNEs. By promoting greater disclosure of tax-related information, the initiative seeks 1) to geographically align corporate income taxes with actual economic activity; 2) to foster corporate responsibility to contribute to welfare through taxes, and 3) to promote fairer tax competition in the EU through an informed democratic debate on how to remedy market and regulatory shortcomings.

What is the value added of action at the EU level?

Due to the cross-border nature of many of the tax practices, activities and arrangements available to MNE groups, national legislation may not be sufficient to address the challenges associated with base erosion and profit shifting.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Different policy options have been considered from a labelling system to which MNEs could voluntarily subscribe to mandatory reporting systems. Key questions examined by the Commission were as follows: should a public CBCR cover EU-controlled operations or all operations worldwide? Should the information reported be broken down only for EU Member States or also for third-countries? What should be the scope of coverage: large companies (at least 20,000 EU groups) or only very large companies (at least 1,900 EU groups / 6,500 groups worldwide)? Finally, should the information disclosed be limited to basic information (income tax paid, income tax accrued) or also cover contextual information (turnover, profit before tax, and number of employees)?

The preferred option, which is the result of this impact assessment, is that mandatory public CBCR should be prepared by all EU and non-EU MNEs with activities in the EU and a consolidated turnover above EUR 750 million. The information should be broken down by EU Member State and aggregated for the rest of the world. The type of information to be disclosed would include income tax paid and accrued as well as other contextual information: the nature of the activities, turnover, number of employees, profit before tax. This option could well coexist with international initiatives such as the OECD BEPS scheme transposed in the EU through the Anti-Tax Avoidance Package (ATAP). The preferred option responds to stakeholders' concerns about the distortions in

¹ European Commission, [Anti-Tax Avoidance Package](#), 28 January 2016. This package proposes inter alia to revise the Directive on Administrative Cooperation to include a country-by-country reporting to be exchanged between Member States' tax authorities on key tax-related information submitted by MNEs

the single market without compromising EU competitiveness, causing undue administrative burden or generating further tax conflicts and the risk of double taxation.

Who supports which option?

NGOs and other civil society organisations support a public CBCR as far reaching as possible in terms of information provided and details per country. In their view, monitoring tax practices would promote corporate and social responsibility, strengthen the democratic process and perhaps encourage MNEs to reallocate their tax bases in a fairer way.

Businesses are concerned about the risks of unilaterally disclosing sensitive information to competitors, administrative burden and double taxation risks. Most of them call for CBCR to remain available only to tax authorities under the G20/OECD BEPS scheme.

C. Impacts of the preferred option

What are the benefits of the preferred option?

Significant societal benefits and some positive economic impacts are expected from the preferred option. It will indeed respond to increased demand for transparency in the tax affairs of MNE groups. It could also contribute to increasing public trust in the fairness of the tax systems.

Furthermore, public transparency would enhance companies' corporate responsibility by making public their tax contribution to local welfare. In this way this may incentivize companies to pay tax where they actually make profits. Finally, through a more informed democratic debate, the initiative would contribute to promoting fairer tax competition in the EU.

Further corporate tax transparency is not expected to have a significant impact on growth and jobs in the EU.

What are the costs of the preferred option?

In terms of economic impact, the preferred option infers no significant costs nor any administrative burden as very large MNE groups will have to submit a CBCR to tax authorities pursuant to the recent revision of the Administrative Cooperation Directive. MNEs would be able to prepare their public CBCR on the basis of these submissions. With this initiative all very MNE groups would have the same disclosure requirement whether they are established in the EU or in a third-country. The competitiveness of MNEs would therefore not be affected. The risk of generating further tax conflicts and double taxation with a CBCR that any tax authority can freely use would be limited as tax information would only be broken down within the EU where more efficient dispute resolution mechanisms are in place. This initiative is not expected to have negative social or environmental impacts.

How will businesses, SMEs and micro-enterprises be affected?

The measure targets only MNEs that are the best equipped to engage into tax planning activities, that is enterprises whose consolidated turnover exceeds EUR 750 million.

In order to cover MNEs which are established in a third country, certain of their subsidiaries or branches in the EU will nevertheless have new obligations. These are the medium-sized and large subsidiaries, or alternatively branches of a comparable size. They will have the duty of publishing in the EU the CBCR drawn up by their ultimate parent. Alternatively, an option is foreseen to enable a non-EU MNEs to designate one EU subsidiary or branch which will have the duty to publish the CBCR.

Will there be significant impacts on national budgets and administrations?

An impact on the amount of income tax paid by MNEs is uncertain but this initiative will deliver additional incentives for MNEs to pay tax where they actually make profit. Furthermore, public scrutiny will enable a better informed democratic debate on the causes and consequences of aggressive tax planning which could prevent mismatches, loopholes and harmful tax measures.

Will there be other significant impacts?

No – none expected.

D. Follow up

When will the policy be reviewed?

The Commission will monitor implementation of the policy in cooperation with Member States. The first evaluations should be carried out a few years after companies have begun to publish their country-by-country reports. Findings could form the basis of a report communicated to Parliament and the Council in due time.