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From: Seàn O' Fearghail
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To: President of the Council of the European Union

Subject: 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
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- Reasoned opinion on the application of the Principles of Subsidiarity and Proportionality

Delegations will find attached the above mentioned Reasoned Opinion.¹

¹ English translation of the Opinion is available on the Interparliamentary EU Information Exchange website (IPEX) at the following address:
<http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20150239/itcam.do>



DÁIL ÉIREANN

AN TUARASCÁIL Ó ROGHCHOISTE
BHEAN-ORDÚ 112 AR AN TOGRA LE
HAGHAIDH TREOIR ÓN gCOMHAIRLE LENA
LEASAITEAR TREOIR 2013/34/AE MAIDIR
LE NOCHTADH FAISNÉISE CÁNACH IONCAIM
AG GNÓTHAIS AGUS BRAINSÍ ÁIRITHE
(COM(2016)198).

Rith Dáil Éireann an Ráta seo istigh ag an
gCruinniú de Dháil Éireann a bhí ann an 15ú
lá seo de Mheitheamh, 2016.

REPORT OF THE STANDING ORDER 112
SELECT COMMITTEE ON THE PROPOSAL
FOR A COUNCIL DIRECTIVE AMENDING
DIRECTIVE 2013/34/EU AS REGARDS
DISCLOSURE OF INCOME TAX INFORMATION
BY CERTAIN UNDERTAKINGS AND BRANCHES
(COM(2016)198).

The within Resolution was passed by Dáil
Éireann at its Meeting on this 15th day of
June, 2016.

Cathaoirleach Dháil Éireann

Le cur go dtí:
For transmission to:

President of the Council of the European Union

Go ndéanann Dáil Éireann:

- (1) an Tuarascáil chomhaontaithe a thabhairt dá hairé ó Roghchoiste Bhuan-Ordú 112 faoi Bhuan-Ordú 114 ar an Togra le haghaidh Treoir ó Pharlaimint na hEorpa agus ón gComhairle lena leasaítear Treoir 2013/34/AE maidir le nochtadh faisnéise cánach ioncaim ag gnóthais agus brainsí áirithe, COM(2016)198, a leagadh faoi bhráid Dháil Éireann an 9 Meitheamh 2016 de réir Bhuan-Ordú 114(3)(b);
- (2) ag féachaint don Tuarascáil réamhráite, agus le linn a feidhmeanna faoi alt 7(3) d'Acht an Aontais Eorpaigh, 2009 a fheidhmiú, an tuairim a shealbhú nach ndéanann COM(2016)198, Togra le haghaidh Treoir ó Pharlaimint na hEorpa agus ón gComhairle lena leasaítear Treoir 2013/34/AE maidir le nochtadh faisnéise cánach ioncaim ag gnóthais agus brainsí áirithe, prionsabal na coimhdeachta a chomhlíonadh ar na cúiseanna atá leagtha amach i mír 3 den Tuarascáil; agus
- (3) a thabhairt dá hairé, de bhun Bhuan-Ordú 114(3)(d), go gcuirfead cóip den Rún seo mar aon leis an Tuarascáil réamhráite chuig Uachtarán Pharlaimint na hEorpa, Uachtarán na Comhairle agus Uachtarán an Choimisiúin.

Tha Dáil Éireann:

- (1) notes the agreed Report of the Standing Order 112 Select Committee under Standing Order 114 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, which was laid before Dáil Éireann on 9th June, 2016 in accordance with Standing Order 114(3)(b);
- (2) having regard to the aforementioned Report, and in exercise of its functions under section 7(3) of the European Union Act 2009, is of the opinion that COM(2016)198, 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, does not comply with the principle of subsidiarity for the reasons set out in paragraph 3 of the Report; and
- (3) notes that, pursuant to Standing Order 114(3)(d), a copy of this Resolution together with the aforementioned Report shall be sent to the Presidents of the European Parliament, the Council and the Commission.



Roghchoiste Bhuan-Ordú 112

COM (2016) 198

Togra le haghaidh Treoir ó Pharlaimint na hEorpa agus ón gComhairle lena leasaítear Treoir 2013/34/AE maidir le nochtadh faisnéise cánach ioncaim ag gnóthais agus brainsí áirithe.

Meitheamh 2016

Standing Order 112 Select Committee

COM (2016) 198

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

June 2016

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STANDING ORDER 112 SELECT COMMITTEE

Report under Dáil Standing Order 114 on COM (2016) 198 - 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.

1. Introduction

1.1 The principle of subsidiarity is defined in Article 5(3) of the Treaty on European Union (TEU) as follows:

"Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level".

Article 5(3) also gives specific responsibility to national parliaments to ensure that EU institutions apply the principle in accordance with Protocol 2 on the application of the principles of subsidiarity and proportionality.

1.2 The test established by Article 5(3) TEU is, in effect, a "comparative efficiency" exercise, involving a "necessity" test and a "greater benefits" test:

- (i) *Necessity* - Is action by the EU necessary to achieve the objective of the proposal? Can the objective of the proposal only be achieved, or achieved to a sufficient extent, by EU action?
- (ii) *Greater Benefits* - Would the objective be better achieved at EU level – i.e. would EU action provide greater benefits than action at Member States level?

1.3 To assist national parliaments in their evaluation of subsidiarity compliance, Article 5 of Protocol 2 provides explicitly that

"Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States..."

1.4 Therefore, any new draft legislative act,

- must be supported by a sufficiently 'detailed statement' to allow a judgment to be made by national parliaments on its compliance with the principle of subsidiarity
- must clearly satisfy both the *necessity* and *greater benefit* tests
- must, under the principle of conferral set down in Article 5(2) of the TEU, show that the Union is acting 'only within the limits of the

competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein.¹

2. Scrutiny by the Select Committee

The Select Committee (hereinafter referred to as the "Committee") has scrutinised this proposal at three meetings, concluding with a decision to issue a reasoned opinion.

- 2.1 The Committee considered this proposal at its meetings on 11 May 2016, 1 June 2016, and 8 June 2016.
- 2.2 At its meeting of 11 May the Committee agreed to seek submissions from four stakeholder organisations. Submissions received are available [online](#).¹
- 2.3 At its meeting of 1 June the Committee considered the submissions received from stakeholders. The Committee agreed to invite officials of the Department of Jobs, Enterprise and Innovation to a meeting of the Committee to further discuss the proposal and to be briefed on the outcome of a public consultation conducted by the Department.
- 2.4 On 8 June 2016 the officials from the Department of Jobs, Enterprise and Innovation attended at Committee and briefed it on the results of the public consultation undertaken by it. Following the Committee's consideration of these matters, the Committee agreed to submit a reasoned opinion on the proposal.

3. Opinion of the Select Committee

The Committee has had specific regard to the Treaty provisions and is of the opinion that the proposal does not comply with the principle of subsidiarity. The reasons are set out in the following paragraphs:-

- 3.1 While the Committee is supportive of measures encouraging greater corporate social responsibility generally, including measures providing for fair and transparent accounting and reporting arrangements by large corporations; it is of the opinion that the proposed Directive represents a tax measure rather than an accounting measure, and therefore questions the use of the Accounting Directive as the appropriate means of achieving its objectives in this case. The Committee acknowledges that the Commission itself refers to "tax policies and administration" in its assessment of the proposal on the basis of the principle of Subsidiarity.
- 3.2 The Committee does not agree that a subset of the information shared by tax authorities in Country-by-Country Reporting (CbCR) under the Anti-Tax Avoidance Package can be said to fulfill a different purpose when published publically.
- 3.3 The Committee is of the opinion that the objectives of the proposal fall generally within the area of tax policy rather than accounting and thus impinges on a national competency.

¹ Submissions received. Available at:

http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/so112/submissionsandpresentations/

- 3.4 The Committee is concerned that this proposal cedes responsibility for an element of tax policy from Member States to the Commission without clearly establishing benefits which do not already arise from the Directive on Administrative Cooperation.
- 3.5 With regard to the creation of a list of non-cooperative tax jurisdictions, given that tax matters are the remit of National Parliaments, the Committee is of the opinion that the Member States are best placed to determine which states are to be deemed non-cooperative tax jurisdictions.
- 3.6 The proposal, in *Article 48g* sets out in broad terms the criteria to be used by the Commission to populate a list of non-cooperative tax jurisdictions. The absence of clearly defined criteria or a standardised test to determine what constitutes a non-cooperative tax jurisdiction could result in a list which may be deemed to be overly political in nature, lacking in transparency and thus credibility. Furthermore the apparent fluidity of reporting requirements in non-cooperative tax jurisdictions is inconsistent with the objectives of the proposal. The absence of ongoing reporting could hamper both public scrutiny and data on the long-term efficacy of the list. Therefore, the Committee is of the opinion that the Commission proposal may result in an ineffective mechanism which may be both opaque and arbitrary.
- 3.7 The Committee is further concerned that the reporting threshold of EUR 750 million is potentially subject to change in future reviews. The Committee notes that Multinational Enterprises (MNEs) straddling the turnover threshold of EUR 750 million may face reporting requirements one year and not the next as their fortunes change. Therefore, it is recommended that the threshold not be based on turnover in the given year, but rather, on the average turnover in a certain time period e.g. the previous three years. This would grant MNEs greater certainty as to their reporting obligations.
- 3.8 The Committee notes that submissions it received highlighted that the information to be published under *public* CBCR as proposed is insufficient to achieve the stated aims of the Directive. Stakeholders outlined this position from two standpoints:
- 3.8.1 Those opposing the proposal stated that the information could be taken out of context and could lead to reputational damage to MNEs as a result of misinterpretations of the tax information being published.
- 3.8.2 Alternatively, those supporting the proposal stated that the information requirements are insufficient, in particular with regard to the aggregation of reporting outside of the EU. Being of the opinion that such aggregation "negate[s] the entire point of CBCR – which is to understand the disaggregated distributional picture."
- 3.9 The Committee is satisfied that the above points, taken together, clearly demonstrate that the proposed Directive breaches the principle of subsidiarity.

4. Recommendation of the Select Committee

The Committee agreed this Report under Dáil Standing Order 114 on 9 June 2016.

The Committee, pursuant to Dáil Standing Order 114(3)(c) recommends the reasoned opinion contained in section 3 above, for agreement by Dáil Éireann.



Colm Brophy, T.D.
Chairman

9 June 2016

**MEMBERS OF THE
STANDING ORDER 112 SELECT COMMITTEE OF DÁIL ÉIREANN**

Deputies:

Maria Bailey T.D. (FG)
Colm Brophy T.D. (FG)
Seán Crowe T.D. (SF)
Timmy Dooley T.D. (FF)
Peter Fitzpatrick T.D. (FG)
Seán Fleming T.D. (FF)
Michael Harty T.D. (Ind)
Eoin Ó Broin T.D. (SF)
Fiona O' Loughlin T.D. (FF)
Anne Rabbitte T.D. (FF)
Brendan Ryan T.D. (Lab)

ORDERS OF REFERENCE

- | | |
|---|---|
| <p>D'ainneoin aon ní sna Buan-Orduithe—</p> <p>(1) go ndéanfaidh na hAoirí agus ainmníthigh eile trí chomhalta dhéag a cheapadh don Roghchoiste atá arna ainmniú faoi Bhuan-Ordú 112 (dá ngairfear Roghchoiste Bhuan-Ordú 112), agus is córam ceathrar;</p> <p>(2) fógróidh Aire nó Aire Stáit ainmneacha na gcomhaltaí a cheapfar faoi mhír (1) i dtreo go mbeidh a fhios ag an Dáil iad ar an gcéad lá a shuífidh sí tar éis a gceaptha;</p> <p>(3) ní bheadh feidhm ag Buan-Ordú 93(2) i gcás an Choiste seo, ar coiste é nach mbeidh faoi réir chóras d'Hondt maidir le leithroinnt na bpost mar Chathaoirligh;</p> <p>(4) beidh cruinniú ag an Roghchoiste más gá chun na feidhmeanna seo a leanas a chomhlíonadh:</p> <p>(a) breithniú a dhéanamh ar riachtanas ionchasach a bheith le tuairim réasúnaithe nach bhfuil dréacht-acht reachtúil ag comhlíonadh phrionsabal na coimhdeachta dár foráladh i mír (1) de Bhuan-Ordú 114;</p> <p>(b) cibé fograí faoi mhír (1)(a) agus (b) de Bhuan-Ordú 115 dá dtarchuirfear chuige ag Dáil Éireann, a bhreithniú; agus</p> <p>(c) sárúithe ionchasacha ar phrionsabal na coimhdeachta a bhreithniú, dár foráladh i mír (1) de Bhuan-Ordú 116; agus</p> <p>(5) na cumhachtaí a mhínítear iontu seo, beidh siad ar na cumhachtaí a bheidh ag an Roghchoiste—</p> | <p>That, notwithstanding anything in Standing Orders—</p> <p>(1) the Whips and other nominees shall appoint thirteen members to the Select Committee standing established under Standing Order 112 (which shall be called the Standing Order 112 Select Committee), and four shall constitute a quorum;</p> <p>(2) a Minister or Minister of State shall announce the names of the members appointed under paragraph (1) for the information of the Dáil on the first sitting day of the Dáil following their appointment;</p> <p>(3) Standing Order 93(2) will not apply in the case of this Committee, which shall not be subject to the d'Hondt system for the allocation of Chairman posts;</p> <p>(4) the Select Committee shall meet where necessary to perform the following functions:</p> <p>(a) to consider the potential requirement for a reasoned opinion that a draft legislative act does not comply with the principle of subsidiarity as provided for in paragraph (1) of Standing Order 114;</p> <p>(b) to consider such notifications under paragraph (1)(a) and (b) of Standing Order 115 as may be referred to it by Dáil Éireann; and</p> <p>(c) to consider potential infringements of the principle of subsidiarity as provided for in paragraph (1) of Standing Order 116; and</p> <p>(5) the Select Committee shall have the powers defined in—</p> |
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(a) Buan-Ordú 85; agus

(b) Buan-Orduithe 114, 115, agus 116.

(a) Standing Order 85; and

(b) Standing Orders 114, 115 and 116.