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SGD

Dear President,

I would like to thank you for the reasoned opinion of the Narodno Sabranie on the Commission proposal for a Directive on a Common Consolidated Corporate Tax Base (CCCTB) {COM(2011)121}, in which you raise concerns in relation to the compliance of the proposal with the principles of subsidiarity and proportionality.

In responding to the Opinion, I will begin with some general remarks on the political context of this proposal and its compliance with the principles of subsidiarity and proportionality, before returning to the specific points raised in the Opinion in greater detail.

National corporate tax systems operate within a context of globalisation, international tax competition and companies which increasingly look beyond borders for market opportunities. However, the co-existence of 27 highly disparate sets of tax rules in the single market means that companies are faced with significant tax obstacles which may discourage and impede their cross-border activities. This divergence in national tax rules reduces the transparency of tax systems and creates obstacles in the internal market which give rise to significant distortions and compliance costs for businesses.

The situation is particularly acute for small and medium sized enterprises (SMEs), which often lack the resources to overcome these inefficiencies and therefore face strong disincentives to expand across borders. Without further action, there is a real risk that this situation will persist, creating unnecessary compliance costs in the single market.

In this context, the CCCTB proposal offers Member States the opportunity to consider corporate taxation from a more sustainable and transparent perspective, whilst allowing businesses to enjoy easier access to the single market. The Commission is convinced that only concerted action at the level of the European Union can address the challenges of corporate taxation in a single market in a systematic manner and thereby secure benefits for businesses and national public finances.

The Commission has taken great care to ensure that this proposal respects fully the principles of subsidiarity and proportionality. The reasoning is set out in the explanatory memorandum and recitals to the Directive [COM(2011) 121 final], as well as in the accompanying impact assessment report (IAR) [SEC(2011) 315 final].

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In the view of the Commission, the objectives which the proposed Directive seeks to achieve could not be attained by Member States acting alone. Given that the aim of the legislation is to tackle fiscal impediments to efficient cross-border operations resulting mainly from the fragmentation created by 27 disparate tax systems, further uncoordinated action by Member States would not address the fundamental problems and would risk perpetuating or exacerbating them.

The proposal sets out an option for companies of choosing a single set of rules for computing, consolidating and sharing the tax bases of associated enterprises across the Union. Considering the scale and effects of the proposed action, its objectives, to attenuate the distortions resulting from the current interaction of 27 national tax regimes and create more favourable conditions for cross-border investment in the single market, would be better achieved at Union level.

The rules set out in the proposal, such as relief for cross-border losses, tax-free internal group restructurings and the elimination of complex intra-group transfer pricing, address issues that are intrinsically cross-border in nature and could only be resolved within a context of common regulation. National initiatives are unlikely to be as effective at tackling these issues and may create further distortions in the market, notably double taxation or non-taxation. Common rules are also a prerequisite for creating a 'one-stop shop' for companies or groups of companies operating across the EU.

According to the IAR, the CCCTB is indeed expected to create more favourable conditions for cross-border investment in the internal market. It is estimated that it would allow substantial tax-related savings connected with the costs of establishing abroad through a medium sized subsidiary. A representative large parent would save around 62% of the estimated costs incurred in the current situation. The savings would reach 67% in the case of a medium-sized parent. Further, companies would be likely to derive considerable benefits from the reduction in compliance time and costs. Current costs are to be reduced by 7%, which is equivalent to up to EUR 0.7 billion across the EU. The possibility to offset losses across national borders within the same group could also lead to annual savings of EUR 1.3 billion for companies in the EU.

I would like to emphasise that the proposal is proportionate to what is necessary to achieve the objectives of the Treaties.

It does not affect the Member States' sovereignty over the setting of their own corporate tax rates. The CCCTB proposal deals with harmonising the corporate tax base, which is a prerequisite for curbing the identified tax obstacles and rectifying the elements that distort the concept of a single market; it does not entail harmonisation of tax rates.

The CCCTB proposal is also designed as an optional system. It does not oblige companies that do not intend to operate across borders to implement the common rules and bear the associated costs. Naturally, national tax authorities will have to meet certain one-off financial and administrative costs for the purpose of switching to the new system. It is also true that administrations may choose to maintain their domestic corporate tax rules alongside the CCCTB, which would add to the current

cost of running their tax systems. However, in both cases, it is expected that the mid-term positive impact of the CCCTB will outweigh the additional costs.

It is clear that these benefits could not be realised through an approach based on tax coordination alone. While the Commission has consistently promoted the coordination of national tax practices, experience has shown that this approach is slow and the results have hitherto been modest. Moreover, tax coordination typically addresses only specific, targeted issues and is not sufficient to address the wide variety of problems faced by companies in the single market.

The Commission is therefore convinced that the proposed CCCTB Directive represents the most proportionate response to the serious problems identified and is fully in line with the principle of subsidiarity.

Turning to the other specific points raised in the Opinion, the Narodno Sabranie suggests that the CCCTB proposal could be detrimental to the integration of the single market because it would create a 'scissor's effect' between the Member States. As a result, certain Member States may find that their progress in 'catching-up' with other Member States is impeded. The Commission firmly believes that, on the contrary, the CCCTB offers the potential for significant cost savings and cross-border growth to companies throughout the EU. The full potential of the single market can only be exploited if all companies are given the chance to benefit from the opportunities of the single market, which in turn will increase the growth potential of the EU as a whole.

The Commission is encouraged by the fact that the Narodno Sabranie shares its concern for the competitiveness of the EU as a whole. The Commission believes that a scheme such as the CCCTB can contribute decisively to enhancing the attractiveness of, and growth in, the single market. A system which allows foreign multinational enterprises to establish themselves in and treat the EU as a single marketplace for tax purposes offers a more competitive environment than 27 tax systems interacting within a fragmented regulatory framework. Europe competes for investment with its trading partners on the global markets. By working collectively, the EU as a whole would emerge stronger in international competition.

The Commission agrees that 'corporate tax is an essential instrument for economic growth and employment stimulation'. The CCCTB aims to enhance fair tax competition within the EU by making it more transparent. To this end, it provides for a set of common rules for the tax base and leaves the rates to be determined by the Member States.

The Commission notes that the present area of taxation falls under shared competence. Article 115 TFEU provides the legal base for measures in this area. It is on this basis that the Commission has adopted the present proposal, with the aim of reducing the tax-related obstacles that businesses face in the situations covered by the proposal.

The Narodno Sabranie also expresses concern that the CCCTB could generate indirect pressure on national tax rates. Member States' budgetary choices are likely to depend on a variety of factors. For instance, the number of companies to opt for the

CCCTB may be one of the elements to consider in this regard. The impact on the revenues of Member States will ultimately depend on national policy choices with regard to possible adaptations of the mix of different tax instruments or applied tax rates.

The Narodno Sabranie further suggests that the CCCTB scheme does not eliminate transfer pricing but moves it to a different level (i.e. relations between the group and third parties). The Commission wishes to stress that most transactions or dealings which are subject to transfer pricing compliance obligations would naturally take place within the group. Therefore, the number of adjustments to the 'arm's length' principle would be significantly reduced under the CCCTB.

The Narodno Sabranie is of the view that the Directive envisages a complete separation of fiscal from accounting rules and that it will introduce 'a tax balance with taxable income and costs which is to serve as ground for the common tax base determination'. However, the CCCTB does not address accounting, which will be governed by national rules. There is no provision for the introduction of a tax Balance Sheet with taxable incomes and costs. Instead, the system is designed to use the results of the Profit & Loss Account as a basis and adjust them for taxation pursuant to the common tax rules.

Finally, the Narodno Sabranie is concerned in relation to the possible negative impacts of the CCCTB on investment in Bulgaria. In this respect, I would like to set the results of the IAR in the appropriate context. Whilst market growth is one of the primary objectives underlying the CCCTB, the potential long-term beneficial effects stemming from cross-border business expansion in the form of setting up a subsidiary or branch in another Member State could not be fully captured in the model used to estimate the macroeconomic impacts. Moreover, as explained in the IAR, the working assumption adopted in the modelling exercise for the optional scenarios (i.e. CCTB and CCCTB), namely that only and all multinationals opt in to the new system, might lead to an underestimation of the positive effects of the policy.

It is also worth reflecting that gathering quantitative evidence on the extent to which taxes act as a barrier to cross-border investment is a difficult task, as the potential additional investment which would take place in the absence of such barriers is not directly measurable. The claim that tax-related issues are perceived as a barrier which de facto limits, if not impedes, cross-border investment is substantiated in section 2.3 of the IAR, which reports on the results of the survey on international sourcing in Europe administered by Eurostat. According to this source, amongst the different types of barriers to international sourcing, taxation issues are considered 'very important' by around 12% of the respondents.

I would like to thank you again for the Opinion of the Narodno Sabranie and I hope that these explanations serve to clarify the points raised in the Opinion. I look forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*