



EUROPEAN COMMISSION

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*Mr Miloš VYSTRČIL  
President of the Senát  
Valdštejnské náměstí 17/4  
CZ – 118 01 PRAGUE 1*

*Dear President,*

*The Commission would like to thank the Senát for its Opinion on the Commission proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU {COM(2021) 565 final}.*

*In the Commission's view, action is necessary in the field covered by the proposed Directive, considering that Member States continue to experience tax revenue losses due to persisting practices of tax evasion and aggressive tax planning. According to available estimates, Member States lose tens of billions of euros to tax avoidance each year.<sup>1</sup> Recent media reports such as the Panama and Pandora Papers confirm the salience and magnitude of the problem.*

*In this light, it is necessary that solutions be found at the EU level, as the use of legal entities and arrangements without substance for tax avoidance or tax evasion purposes is usually not limited to the territory of only one Member State. Any measures confined to a single Member State would not be appropriate to effectively tackle the problem. A patchwork of individual actions, if at all, at national level could render some Member States vulnerable to regulatory and tax arbitrage, especially if national action in some Member States does not impose substance requirements. Additionally, as shell entities are commonly used to erode the tax base of a jurisdiction other than the one where the shell entity is located, certain Member States might not have sufficient motivation to introduce robust rules at national level. Hence, EU level action is also needed to ensure a common level of protection against the problem and a robust level playing field.*

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<sup>1</sup> Within the EU, tax avoidance is estimated at between EUR 35 billion and EUR 70 billion of tax revenues lost per year. Source: Dover, R., Ferrett, B., Gravino, D., Jones, E., & Merler, S. (2015) Bringing transparency, coordination and convergence to corporate tax policies in the European Union, European Parliamentary Research Service, PE 558.773.

*The Commission is of the view that it would not be possible to effectively combat tax evasion and tax avoidance related to the use of shell entities on the basis of current legislation. This was demonstrated through reviewing Member States' anti-tax avoidance rules in preparation of the legislative proposal.<sup>2</sup> The review indicates that some Member States have developed targeted rules or practices, including criteria on substance, to counter abuse by shell entities in the area of taxation. However, most Member States do not apply targeted rules, but may solely rely on their general anti-abuse rule. Typically, Member States apply such rules on a case-by-case basis and not systematically, and only ex-post, after transactions have taken place. Even amongst the few Member States that have developed targeted rules at national level, rules differ significantly, and primarily reflect national tax systems and priorities, rather than address the internal market dimension. It follows that the majority of existing rules do not address the case where the existence of a shell entity has spill-over effects in jurisdictions other than the one where the shell is located.*

*In addition to measures taken at Member States' level, the preparation of the proposal also took into account recent EU actions to tackle tax avoidance and tax evasion, namely the Directive on Administrative Cooperation and its amendments as well as the Anti-Tax Avoidance Directive. Despite their usefulness and benefits in tackling tax avoidance and tax evasion, these provisions present some limitations when it comes to tackling tax abuse by shell entities. In particular, at EU level, there are currently no legislative measures defining substance of an entity or arrangement for tax purposes.*

*The Commission agrees with the Sénat on the need to assess the risk of increasing the administrative burden for taxpayers and of administrative costs for tax authorities. The expected administrative burden of the proposal has been analysed in the Impact Assessment. The conclusion is, however, that the proposal is expected to generate a mild administrative burden. There are several reasons backing such conclusion. First of all, the proposal contains a substance test which is expected to minimize the number of entities ultimately facing tax consequences. It is acknowledged that the number of entities having to report will be higher than the entities, which will eventually face tax consequences. However, provisions for carving-out regulated sectors upfront and other entities at low risk of avoidance or evasion will further contribute to minimizing the administrative burden. Finally, due consideration has been paid to ensuring that the process for reporting be aligned with existing administrative processes; namely, the yearly tax return cycle, and be based on information that entities are reasonably expected to have already at their disposal.*

*Discussions between the Commission and the Council concerning the proposal are now ongoing and the Commission remains hopeful that an agreement among Member States will be reached in the near future. In that context, the Commission will take the Sénat's Opinion into due account.*

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<sup>2</sup> Commission Staff Working Document Impact Assessment accompanying the document Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU, SWD(2021) 577 final

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Senát and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič*  
*Vice-President*

*Paolo Gentiloni*  
*Member of the Commission*