



## **Dáil Éireann**

**Roghchoiste Bhuan-Ordú 103**

**Tuarascáil faoi Bhuan-Ordú 105 ar an Togra le haghaidh Treorach  
ón gComhairle maidir le Comhbhonn Comhdhlúite Cánach  
Corparáide (COM(2011)121)**

**11 Bealtaine 2011**

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## **Dáil Éireann**

**Standing Order 103 Select Committee**

**Report under Standing Order 105 on the Proposal for a Council  
Directive on a Common Consolidated Corporate Tax Base  
(COM(2011)121)**

**11 May 2011**

## STANDING ORDER 103 SELECT COMMITTEE

### REPORT UNDER STANDING ORDER 105 ON THE PROPOSAL FOR A COUNCIL DIRECTIVE ON A COMMON CONSOLIDATED CORPORATE TAX BASE (COM(2011)121)

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## STANDING ORDER 103 SELECT COMMITTEE

### REPORT UNDER STANDING ORDER 105 ON THE PROPOSAL FOR A COUNCIL DIRECTIVE ON A COMMON CONSOLIDATED CORPORATE TAX BASE (COM(2011)121)

#### Introduction

1. The principle of subsidiarity is defined in Article 5(3) 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.

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:<sup>1</sup>

(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?

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...”*

4. It is very clear from the Treaties then that, as with any new draft legislative act, the CCCTB proposal

- must be supported by a sufficiently ‘detailed statement’ to allow a judgement 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.’

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<sup>1</sup> House of Lords Note, *Subsidiarity: Assessing an EU Proposal* (November 2009).

### **Opinion of the Committee**

5. The Committee has had specific regard to the Treaty provisions and is of the opinion that the CCCTB proposal does not comply with the principle of subsidiarity. The reasons are set out in the following paragraphs.
6. The Commission has not adequately met the procedural requirements (in Protocol 2, Article 5) to provide a *detailed statement* with sufficient quantitative and qualitative indicators, to allow national parliaments to fully assess all the subsidiarity implications in a cross-border proposal of this nature. It is hard to conclude with insufficient evidence that EU legislative action is both necessary and of greater benefit than individual action.
7. The proposal does not meet the comparative efficiency requirements in the necessity or greater benefit tests.

It is not established by the Commission's proposal or impact assessment that

- a. EU legislation is entirely justified as the best way to meet the broader objectives of the proposal. It is not demonstrated that actions by Member States alone (ie informal co-ordination or bilateral solutions) may not be equally effective in tackling the fiscal impediments to cross-border activity that will apparently be addressed
- b. 27 different national corporate tax systems inherently impede the proper functioning of the internal market. In effect the proposal would introduce a second parallel system for operation within each member state which would not improve the simplicity and efficiency of corporate tax systems in the EU
- c. There is a greater benefit arising from the limited scope of the proposal as published which appears to be geared towards the needs of very large companies, rather than smaller companies. Start-up SME's need to see the existing barriers to operating and trading throughout the 27 member states being tackled. That aspect is missing from the proposal and as such the proposal may not be fulfilling its stated objectives.

Indeed this omission has led to some concern that the proposal may suit the larger member states more. This is borne out by research findings showing that Ireland would be among a group of six countries (with Portugal, Poland, Finland, the Czech Republic and Bulgaria) whose businesses will be hardest hit by the CCCTB.

8. It is clear from the Impact Assessment that the proposal may have significant and possibly unequal cost implications between individual member states. There is a lack of concrete and quantified evaluations to justify such a policy outcome, particularly against the clear risk of decreasing budget revenues from corporate taxes, along with the estimated reductions in GDP, employment and foreign-direct investment that a number of member states will experience.

9. In effect then, much of the justification for the proposal is based on assumptions and there is insufficient data available on the implications of this new policy. The Commission itself concedes as much in the Explanatory Memorandum which states that the

*'...impact on the revenues of Member States will ultimately depend on national policy choices with regard to possible adaptation of the mix of different tax instruments or applied tax rates. In this respect, it is difficult to predict the exact impacts on each of the Member States'.*

And yet the proposal would legislate to effectively redistribute the EU corporate tax base amongst Member States, based on new allocation factors. The main weakness not addressed in the proposal or impact assessment is why would the 27 member states legislate for such an unequal policy outcome?

10. Also, by linking the financial impact from the Directive to national policy decisions on direct tax, there is a potential blurring of the competency responsibilities involved. Under the Treaties the Commission does not have competence in the area of direct corporate tax. No EU legislation should be proposed that indirectly impacts on national sovereignty as a means of remedying any negative financial impact that flows therefrom.

#### **Recommendation of the Committee**

The Standing Order 103 Select Committee, at its meeting on 11 May 2011, agreed the Report under Standing Order 105 on the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base. The Committee, pursuant to Standing Order 105(3)(b), recommends the reasoned opinion contained in paragraphs 6 to 10 of this Report for agreement by the Dáil and the Chairman shall table the motion at Appendix 1 before the Dáil in accordance with Standing Order 105(3)(c).



Charles Flanagan, T.D.

Chairman

11 May 2011

MOTION FOR INCLUSION ON DÁIL ORDER PAPER

“That Dáil Éireann:

- (1) notes the Report of the Standing Order 103 Select Committee on the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (COM(2011)121) which was laid before Dáil Éireann on 11 May, 2011 in accordance with Standing Order 105(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 the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base does not comply with the principle of subsidiarity for the reasons set out in paragraphs 6 to 10 of the Report, and
- (3) notes that, pursuant to Standing Order 105(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.”

— *Charles Flanagan, Chairman of the Committee.*

STANDING ORDER 103 SELECT COMMITTEE

MEMBERSHIP



Charles Flanagan T.D.  
(FG)  
(Chairman)



Liam Twomey T.D.  
(FG)  
(Vice-Chairman)



Damien English T.D.  
(FG)



Ciara Conway T.D.  
(LAB)



Stephen Donnelly T.D.  
(TG)



Pádraig MacLochlainn  
(SF)



Alex White T.D.  
(LAB)



Joe Costello T.D.  
(LAB)



Michael McGrath T.D.  
(FF)



Olivia Mitchell T.D.  
(FG)



Denis Naughten T.D.  
(FG)



Kieran O'Donnell T.D.  
(FG)



David Stanton T.D.  
(FG)

STANDING ORDERS 103 TO 107

**103.** (1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Select Committee which shall stand conferred with the powers set out in Standing Orders 105, 106 and 107.

(2) The Dáil shall, not later than the third sitting day following such reassembly, appoint thirteen members to the Select Committee established under paragraph (1) of this Standing Order, of whom five shall constitute a quorum, and in so doing, shall –

- (a) define the functions to be performed by the Select Committee, and
- (b) define the powers, if any, to be devolved upon the Select Committee under Standing Order 83.

**104** (1) A Select Committee on which powers have been conferred under Standing Orders 105, 106 or 107 and which has been joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee may nevertheless decide to act as a Select Committee of the Dáil in respect of a specified matter or matters or for a specified time period for the purpose of exercising the said powers.

(2) It shall be an instruction to a Select Committee on which powers have been conferred under Standing Orders 105, 106 or 107 that it shall not enter into consideration of any matter comprehended by the aforementioned Standing Orders where such matter is already under consideration by another Select Committee.

(3) Each Select Committee on which powers have been conferred under Standing Orders 105, 106 or 107 shall have power to request of another Select Committee of either House on which such powers have been similarly conferred that a joint meeting of both Committees be held to consider a specific matter or matters of common activity and, in the case of any such joint meeting –

- (a) the Chairman of the requesting Committee shall act as Chairman and, in the unavoidable absence of the Chairman, the provisions of Standing Order 90(2) and (3) shall apply;
- (b) the quorum provisions of both Committees shall apply with the modification that each such quorum shall be halved and then rounded up to the next nearest whole number; and
- (c) the orders of reference of the two Committees shall apply only insofar as they are common to both.

**105.** (1) In accordance with Article 6 of Protocol No. 2 to the Treaty on European Union and the Treaty on the Functioning of the European Union (*Protocol on the Application of the Principles of Subsidiarity and Proportionality*) as applied by section 7(3) of the European Union Act 2009, the Dáil may empower a Select Committee to form a reasoned opinion that a draft legislative act (within the meaning of Article 3 of the said Protocol) does not comply with the principle of subsidiarity.

(2) All draft legislative acts forwarded to the Dáil under Article 4 of the said Protocol shall stand referred to a Select Committee empowered under this Standing Order.

(3) It shall be an instruction to a Select Committee empowered under this Standing Order that –

- (a) in forming a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, the Committee shall consult with such other Committees and such



stakeholders as it considers appropriate;

- (b) where the Committee is of the opinion that a draft legislative act does not comply with the principle of subsidiarity, it shall submit a reasoned opinion to this effect by way of a report which shall be laid before the Dáil;
- (c) where a report has been laid by the Committee under paragraph (3)(b) of this Standing Order, the Chairman shall forthwith table a motion thereon under section 7(3) of the European Union Act 2009, and such motion shall be given priority on the Order Paper in accordance with Standing Order 28; and
- (d) where the Dáil agrees the motion referred to in paragraph (3)(c) of this Standing Order, the Ceann Comhairle shall cause a copy of the Resolution, together with a copy of the report referred to in paragraph (c), to be sent to the Presidents of the European Parliament, the Council and the Commission.

106. (1) The Dáil may empower a Select Committee to consider such notifications under –

- (a) the third subparagraph of Article 48.7 of the Treaty on European Union (*general passerelle*: change from unanimity to qualified majority or from special legislative procedure to ordinary legislative procedure) as applied by section 7(1) of the European Union Act 2009, and
- (b) the third subparagraph of Article 81.3 of the Treaty on the Functioning of the European Union (*family law passerelle*: change to ordinary legislative procedure for measures concerning family law with cross-border implications) as applied by section 7(2) of the European Union Act 2009,

as may be referred to the Committee from time to time by the Dáil.

(2) It shall be an instruction to a Select Committee empowered under this Standing Order that –

- (a) in considering such notifications, the Committee shall consult with such other Committees and such stakeholders as it considers appropriate;
- (b) where the Committee is opposed to the decision to which the notification refers, it shall lay a report to this effect before the Dáil;
- (c) where a report has been laid by the Committee under paragraph (2)(b) of this Standing Order, the Chairman shall forthwith table a motion thereon under section 7(1) or 7(2) of the European Union Act 2009, as appropriate, which shall be given priority on the Order Paper in accordance with Standing Order 28; and
- (d) where the Committee is not opposed to the decision to which the notification refers, it shall send a Message to this effect to the Dáil in accordance with the procedure set out in Standing Order 87.

(3) The Ceann Comhairle shall cause a copy of all Resolutions made by the Dáil under paragraph (2)(c) of this Standing Order to be sent to the President of the European Council or the Council as appropriate, together with a copy of the Report to which the Resolution refers.

107. (1) In accordance with Article 8 of Protocol No. 2 to the Treaty on European Union and the Treaty on the Functioning of the European Union (*Protocol on the Application of the Principles of Subsidiarity and Proportionality*) as applied by section 7(4) of the European Union Act 2009, the Dáil may empower a Select Committee to consider whether any act of an institution of the European

Union infringes the principle of subsidiarity.

(2) It shall be an instruction to a Select Committee empowered under this Standing Order that –

(a) in considering whether an act of an institution of the European Union infringes the principle of subsidiarity, the Committee shall consult with such other Committees and such stakeholders as it considers appropriate;

(b) where the Committee is –

(i) of the opinion that an act of an institution of the European Union infringes the principle of subsidiarity; and

(ii) wishes that proceedings seeking a review of the act concerned be brought to the Court of Justice of the European Union,

it shall lay a report to this effect before the Dáil; and

(c) where a report has been laid by the Committee under paragraph (2)(b) of this Standing Order, the Chairman shall forthwith table a motion thereon under section 7(4) of the European Union Act 2009, which shall be given priority on the Order Paper in accordance with Standing Order 28.

Ceann Comhairle



Speaker of Dáil Éireann

Mr. Jose Manuel Barroso  
President of the European Commission  
European Commission  
Rue de la Loi 200  
1049 Brussels  
Belgium

17 May 2011

**Re: Reasoned opinion of Dáil Éireann on the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB): COM(2011)121**

Dear President Barroso

I am writing to inform you that Dáil Éireann, at its meeting today, considered the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base COM(2011)121 (CCCTB) under Article 5(3) of the Treaty on European Union and Protocol 2 on the application of the principles of subsidiarity and proportionality and is of the opinion that the proposal does not comply with the principle of subsidiarity.

Under Standing Orders of Dáil Éireann, a Select Committee was conferred with the power to consider the CCCTB Proposal for compliance with subsidiarity. The Committee was obliged under Standing Orders to report back to Dáil Éireann if it was of the opinion that the proposal did not comply with the principle of subsidiarity. The Committee duly reported to the Dáil and a motion on the Report of the Committee was considered and adopted by the Dáil at its meeting today.

In accordance with Standing Orders, I have enclosed a copy of the Resolution of Dáil Éireann together with the Reasoned Opinion and a copy of the Report of the Committee. I have also sent this letter to the Presidents of the European Parliament and the Council and the Irish Minister for Finance.

Yours sincerely,

Seán Barrett TD  
Ceann Comhairle

Dáil Éireann  
Dublin 2  
Tel: 01 618 3343  
Fax: 01 618 4100

Email:  
ceann.comhairle@oireachtas.ie  
Website:  
www.ceanncomhairle.ie



## DÁIL ÉIREANN

**TUARASCÁIL Ó ROGHCHOISTE BHUAN-  
ORDÚ 103 AR AN TOGRA LE HAGHAIDH  
TREORACH ÓN gCOMHAIRLE MAIDIR LE  
COMHBHONN COMHDHLÚITE CÁNACH  
CORPARÁIDE (COM(2011)121).**

Rith Dáil Éireann an Rún seo istigh ag an  
gCruinniú de Dháil Éireann a bhí ann an 17ú  
lá seo de Bhealtaine, 2011.

**REPORT OF THE STANDING ORDER 103  
SELECT COMMITTEE ON THE PROPOSAL  
FOR A COUNCIL DIRECTIVE ON A  
COMMON CONSOLIDATED CORPORATE  
TAX BASE (COM(2011)121).**

The within Resolution was passed by Dáil  
Éireann at its Meeting on this 17th day of  
May, 2011.

Cathaoirleach Dháil Éireann

Le cur go dtí:

For transmission to:

*President of the European Commission*

Go ndéanann Dáil Éireann:

- (1) a thabhairt dá haire an Tuarascáil ó Roghchoiste Bhuan-Ordú 103 ar an Togra le haghaidh Treorach ón gComhairle maidir le Comhbhonn Comhdhlúite Cánach Corparáide (COM(2011)121) a leagadh faoi bhráid Dháil Éireann an 12 Bealtaine, 2011 de réir Bhuan-Ordú 105(3)(b);
- (2) ag féachaint don Tuarascáil réamhluaite, agus i bhfeidhmiú a feidhmeanna faoi alt 7(3) d'Acht an Aontais Eorpaigh, 2009, a mheas nach bhfuil an Togra le haghaidh Treorach ón gComhairle maidir le Comhbhonn Comhdhlúite Cánach Corparáide i gcomhréir le prionsabal na coimhdeachta, ar na cúiseanna a leagtar amach i míreanna 6 go 10 den Tuarascáil, agus
- (3) a thabhairt dá haire, de bhun Bhuan-Ordú 105(3)(d), go gcuirfear cóip den Rún seo mar aon leis an Tuarascáil réamhluaite chuig Uachtaráin Pharlaimint na hEorpa, na Comhairle agus an Choimisiúin.

That Dáil Éireann:

- (1) notes the Report of the Standing Order 103 Select Committee on the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (COM(2011)121) which was laid before Dáil Éireann on 12th May, 2011 in accordance with Standing Order 105(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 the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base does not comply with the principle of subsidiarity for the reasons set out in paragraphs 6 to 10 of the Report, and
- (3) notes that, pursuant to Standing Order 105(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.

# DÁIL ÉIREANN

## REASONED OPINION ON THE PROPOSAL FOR A COUNCIL DIRECTIVE ON A COMMON CONSOLIDATED CORPORATE TAX BASE (COM(2011)121).

1. The Commission has not adequately met the procedural requirements (in Protocol 2, Article 5) to provide a *detailed statement* with sufficient quantitative and qualitative indicators, to allow national parliaments to fully assess all the subsidiarity implications in a cross-border proposal of this nature. It is hard to conclude with insufficient evidence that EU legislative action is both necessary and of greater benefit than individual action.
2. The proposal does not meet the comparative efficiency requirements in the necessity or greater benefit tests.

It is not established by the Commission's proposal or impact assessment that

- a. EU legislation is entirely justified as the best way to meet the broader objectives of the proposal. It is not demonstrated that actions by Member States alone (ie informal co-ordination or bilateral solutions) may not be equally effective in tackling the fiscal impediments to cross-border activity that will apparently be addressed.
- b. 27 different national corporate tax systems inherently impede the proper functioning of the internal market. In effect the proposal would introduce a second parallel system for operation within each member state which would not improve the simplicity and efficiency of corporate tax systems in the EU.
- c. There is a greater benefit arising from the limited scope of the proposal as published which appears to be geared towards the needs of very large companies, rather than smaller companies. Start-up SMEs need to see the existing barriers to operating and trading throughout the 27 member states being tackled. That aspect is missing from the proposal and as such the proposal may not be fulfilling its stated objectives.

Indeed this omission has led to some concern that the proposal may suit the larger member states more. This is borne out by research findings showing that Ireland would be among a group of six countries (with Portugal, Poland, Finland, the Czech Republic and Bulgaria) whose businesses will be hardest hit by the CCCTB.

3. It is clear from the Impact Assessment that the proposal may have significant and possibly unequal cost implications between individual member states. There is a lack of concrete and quantified evaluations to justify such a policy outcome, particularly against the clear risk of decreasing budget revenues from corporate taxes, along with the estimated reductions in GDP, employment and foreign-direct investment that a number of member states will experience.
4. In effect then, much of the justification for the proposal is based on assumptions and there is insufficient data available on the implications of this new policy. The Commission itself concedes as much in the Explanatory Memorandum which states that the

*'...impact on the revenues of Member States will ultimately depend on national policy choices with regard to possible adaptation of the mix of different tax instruments or applied tax rates. In this respect, it is difficult to predict the exact impacts on each of the Member States'.*

And yet the proposal would legislate to effectively redistribute the EU corporate tax base amongst Member States, based on new allocation factors. The main weakness not addressed in the proposal or impact assessment is why would the 27 member states legislate for such an unequal policy outcome?

5. Also, by linking the financial impact from the Directive to national policy decisions on direct tax, there is a potential blurring of the competency responsibilities involved. Under

the Treaties the Commission does not have competence in the area of direct corporate tax. No EU legislation should be proposed that indirectly impacts on national sovereignty as a means of remedying any negative financial impact that flows therefrom.

**17th day of May, 2011**