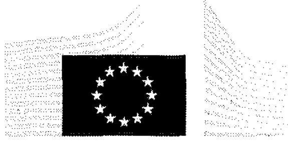

EUROPEAN COMMISSION

Brussels, 28.7.2016
C(2016) 5007 final

Dear President,

The Commission would like to thank the Dáil Éireann for its Reasoned Opinion on the Commission proposal for a Directive amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches {COM(2016) 198 final}.

The Commission proposal forms part of a broader package of ambitious measures designed to tackle corporate income tax avoidance by companies, which is a political priority for the Commission. The Commission fully supports the international consensus to fight base erosion and profit shifting on the basis of the OECD Action Plan and is working proactively on its implementation within the Union.

The Commission takes seriously the concerns expressed by the Dáil Éireann as regards the proposal's compliance with the principle of subsidiarity. The Commission is pleased to have this opportunity to provide a number of clarifications regarding its proposal and trusts that these will allay the Dáil Eireann's concerns.

The international nature of tax planning requires multilateral and co-ordinated actions by countries hosting multinational firms. One of these actions, supported by the G20, consists in furthering transparency towards tax authorities. The global issue of corporate tax avoidance is also relevant within the Single Market. The Single Market has provided extensive opportunities for businesses to locate their activities according to their needs. This freedom may have, to a certain extent, given rise to the exploitation of legislative loopholes that require counter-measures.

Measures on corporate transparency on the payment of taxes would have no direct effect on the taxation of companies. For this reason, all the measures on corporate tax transparency included in the Commission's proposal cannot be regarded as relating to fiscal provisions affecting the establishment or functioning of the internal market in the sense of Article 115 of the Treaty on the Functioning of the European Union.

Mr Seán Ó FEARGHAÍL T.D.
President of Dáil Éireann
Houses of the Oireachtas
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The Commission believes that, beyond the remarkable work of tax authorities in the EU, further public scrutiny on the basis of specific country-by-country reporting to be published by companies would foster further corporate social responsibility in the internal market for paying taxes where profits are made. This may also contribute to fairer tax competition between the Member States. In the impact assessment accompanying the proposal, the Commission thoroughly considered the principles of subsidiarity and proportionality and concluded that action at EU level is justified on both accounts. In terms of respecting the principle of subsidiarity, the Commission concluded that EU action is justified in order to address the cross-border nature of numerous tax planning structures and transfer pricing arrangements which allow multinational enterprises to easily relocate their tax base from one jurisdiction to another. In terms of respecting the principle of proportionality, the Commission proposes that only very large multinational companies disclose such information, thus leaving smaller businesses untouched.

The Commission notes with interest the Dáil Éireann's recommendation that the threshold of EUR 750 million in revenues to determine those companies within the scope should be based on an average turnover in a certain time period, possibly three years.

The Commission also paid utmost attention to ensure that nothing in its proposal could undermine the global implementation of the OECD Action Plan on Base Erosion and Profit Shifting, in particular Action 13[1]*. As of the end of June 2016, a total of 44 countries have signed the Multilateral Competent Authority Agreement for the automatic exchange of country-by-country reports.*

As regards the information to be published, the proposal strikes the right balance, considering the need for transparency whilst avoiding that such transparency impinges on the competitiveness of businesses or induces undue reputational damage. The information to be disclosed would be limited to what is strictly necessary to enable scrutiny by EU citizens. Yet, there would be enough information to meet the intended objectives. In particular, the Commission proposes that companies disclose disaggregated information as regards their activities in any given tax jurisdiction that the Union will have deemed to not comply with good tax governance standards.

Finally, the criteria set out in Article 48(g) of the Commission's proposal to draw up a list of tax jurisdictions that do not comply with good tax governance standards reflects what has been communicated and further explained in the Commission's Communication of 28 January 2016 on an external strategy for effective taxation[2]*. This Communication was welcomed by the Economic*

[1] As part of the OECD/G20 plan to fight Base Erosion and Profit Shifting, the OECD published in October 2015 Action 13 which contains final Guidance on Transfer Pricing Documentation and Country-by-Country Reporting. Specifically, this Action requires the preparation and filing of a Country-by-Country Report with the relevant tax authorities as part of a multinational company's documentation on transfer pricing. The plan also includes the exchange of such reporting between tax authorities that have joined the plan.

[2] COM(2016) 24 final.

and Financial Affairs Council configuration (Ecofin) in May. The Code of Conduct Group was invited to start working on the list on a preliminary basis.

The Commission hopes that these clarifications address the issues raised by the Dáil Éireann and looks forward to continuing our political dialogue in the future.

Yours faithfully,

Margrethe Vestager
Member of the Commission