EUROPEAN COMMISSION

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C(2017) 1465 final

Dear President,

The Commission would like to thank the Chambre des Députés for its Reasoned Opinion on the Commission's proposals for Council Directives on a Common Consolidated Corporate Tax Base {COM(2016) 683 final} and a Common Corporate Tax Base {COM(2016) 685 final} that it considers do not comply with the principles of subsidiarity and proportionality.

The Commission takes these concerns seriously and welcomes this opportunity to respond. Before addressing the specific points of the Reasoned Opinion in detail, however, the Commission would like to make some general remarks about the political context of the proposals and their compliance with the principles of subsidiarity and proportionality.

The Commission would like to recall that in the explanatory memorandum that accompanies each of the proposals, the Commission already set out its arguments on why the objectives of these proposals cannot sufficiently be achieved through initiatives undertaken by each Member State on an individual basis. The Commission also explained how EU-wide action could more effectively tackle distortions of a cross-border nature that result from the interaction of national tax systems.

The objectives sought to be achieved through the proposed system essentially aim to tackle problems that reach beyond a single Member State and therefore require a common approach. The proposals respond to the needs for increased growth and job creation in the internal market and also for countering aggressive tax planning. In the Commission's considered view, these challenges do not have a domestic focus, but arise in a cross-border framework. It is namely the interaction between different tax systems that generates opportunities for abuse or facilitates taking advantage of mismatches in the interaction of national corporate tax rules.

The Commission would like to point out that Article 115 of the Treaty on the Functioning of the European Union provides the legal base for measures in this area. The Commission is also of the opinion that the proposals do not impinge on Member States' power to design and implement their budgets, including on social and economic policies. The scheme does not go further than laying down common rules for the corporate tax base and leaves it to the Member States to determine, based on their fiscal priorities and objectives, the level at which

Mr Mars DI BARTOLOMEO
President of the Chambre des Députés
19, rue du Marché-aux-Herbes
L – 1728 Luxembourg

they wish to collect taxes. 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 revenue collection elements.

The Commission would also like to point out that although there are significant structural differences in the economies of Member States, differentiated individual action would not help in tackling the identified distortions in the internal market. Instead, it would risk exacerbating the negative effects of current disparities.

In response to the more technical comments in the Reasoned Opinion, the Commission would like to refer the Chambre des Députés to the attached Annex.

The Commission hopes that the clarifications provided in this letter address the issues raised by the Chambre des Députés and looks forward to continuing our political dialogue in the future.

Yours faithfully,

Frans Timmermans *First Vice-President*	*Pierre Moscovici* *Member of the Commission*

ANNEX

The Commission has carefully considered each of the issues raised by the Chambre des Députés in its Reasoned Opinion and is pleased to offer the following clarifications.

Tax rates

The Chambre des Députés puts forward that the proposals reduce the margin of Member States' discretion in determining their tax rates. Namely, if the common tax base is narrower than the national one, Member States will have to look for compensatory measures. The effect is likely to be disproportionately harsher on small open economies of the Union. On the other hand, the fact that tax competition will be limited to the rate could cause a so-called race-to-the-bottom effect.

The Commission wishes to stress that the proposals for a Common (Consolidated) Corporate Tax Base do not deal with the levels at which tax rates should be set at the national level. Instead, they harmonise the corporate tax base, which is a prerequisite for rectifying identified distortions in the internal market. Otherwise, Member States remain free to decide which tax rate to apply to the share of the base that they are allocated through the formula.

Where there is a harmonised tax base, tax competition tends to be transparent and without concealed harmful features. This is because the national nominal and effective rates would roughly coincide. In terms of impact on national tax revenues, a hypothetical 'race to the bottom' on tax rates would have a comparable effect to interventions that limit the scope of the tax base, while the latter create opportunities for aggressive tax planning and tax avoidance. Competing solely on tax rates against the background of a harmonised base would be more transparent, compared to the current situation. The elimination of tax avoidance opportunities would also reinforce citizens' confidence in the way companies are taxed and ensure a more level playing field in the internal market.

No further anti-tax avoidance action is required

The Chambre des Députés takes the view that no additional work is needed in fighting against tax avoidance since there is sufficient input in this field as a result of the agreed minimum standards in the recently adopted Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market[1] *and the pending proposal for a Council Directive amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries.*[2]

The Commission recalls that its Action Plan of June 2015 sets the context for the Directive against tax avoidance practices and the Common (Consolidated) Corporate Tax Base initiatives. The Directive only provided for immediate action to deal with urgent needs within the context of existing national tax systems. The Common Consolidated Corporate Tax Base will eliminate mismatches and loopholes between national systems which are exploited by tax avoiders. Transfer pricing, which accounts for around 70% of all profit-shifting, will be eliminated. Moreover, the Common (Consolidated) Corporate Tax Base sets objectives that also reach beyond anti-tax avoidance action: it is by itself a fully-fledged corporate tax

[1] Council Directive (EU) 2016/1164, OJ L 193, 19.7.2016, p. 1.
[2] COM(2016) 687 final.

system, which is designed to have a cross-border dimension and improve the functioning of the internal market. Indeed, an equally critical aspect of the proposals involves business facilitation, as part of which the new scheme is expected to promote growth and lead to job creation.

Parallel operation of two tax systems

The Chambre des Députés doubts whether the Common (Consolidated) Corporate Tax Base can meet the objective of reducing administrative burden, assuming that some companies which are not captured by the mandatory scope of the directive may decide to opt to apply it. Consequently, Member States' tax administrations will be encumbered with operating two corporate tax systems in parallel which would increase administrative costs.

It should be clarified that the argument of administrative simplicity is primarily relevant to taxpayers and in particular, to those with cross-border activity in the internal market because they will be given the opportunity to settle their tax obligations through one single corporate tax system. When it comes to tax administrations, it is inevitable that in the first years following the introduction of the Common (Consolidated) Corporate Tax Base, they may need additional resources but in the mid-term, tax administrations should be in a position to benefit from the reduction in workload related to transfer pricing compliance within the European Union.

Incompatibility with OECD initiatives

The Commission does not share the view that the proposals run counter to the initiatives undertaken by the Organisation for Economic Co-operation and Development (OECD). On the contrary, the CCCTB, once implemented, will make a major contribution to the fight against tax avoidance, in particular the erosion of corporate tax bases and profit shifting. It should therefore be seen as complementary to the OECD work in the same field. The OECD is an inter-governmental organisation which, in tax matters, makes recommendations (with the exception of the Multilateral Instrument) that States are called on to apply individually or on a bilateral basis (e.g. Double Tax Conventions). It follows that the OECD does not consider the specific features which are relevant to a single market, such as that of the European Union. Therefore, without ignoring the general political context around international taxation (e.g. the recent shift of policy priorities towards anti-tax avoidance), the Commission retains the authority to propose legislation – within the limits of its Treaty-based competence – in order to ensure a better functioning of the internal market.

Having said this, the Commission can confirm that the transfer pricing principles agreed at the OECD will continue to apply to relations with associated enterprises outside the tax consolidated group within the European Union and in third countries.

Regarding the interaction between the formulary apportionment and tax treaties, the Commission has examined this interrelation and came to the conclusion that there are no clashes which cannot be resolved through adjustments. In this regard, the Commission wishes to clarify that this interaction is primarily relevant to tax treaties with third countries, as the Common (Consolidated) Corporate Tax Base, in its capacity as secondary European Union law, would prevail over tax treaties between Member States.