

ASSEMBLY OF THE REPUBLIC
EUROPEAN AFFAIRS COMMITTEE

OPINION

COM(2016)198 + SWD(2016)117 and SWD(2016)118

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches.

Pursuant to Article 7 of Law No 43/2006 of 25 August 2006 on the monitoring, examination and pronouncement by the Assembly of the Republic on matters relating to the construction of the European Union, as amended by Law No 21/2012 of 17 May 2012 and the guidelines for scrutiny of European initiatives approved on 8 January 2013, the European Affairs Committee received the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches [COM(2016)198 + SWD(2016)117 and SWD(2016)118].

Given its subject matter, the initiative was referred to the Committee for Budgetary and Financial Affairs and Public Administration, which analysed it and approved the corresponding report.

Whereas this initiative upholds the principle of subsidiarity, given that the objectives pursued can be adequately achieved only by taking measures at EU-level.

Whereas, lastly, the report presented by the Committee for Budgetary and Financial Affairs and Public Administration fully reflects the tenor of the initiative. This therefore serves to avoid repetition of analysis and consequent redundancy.

Given that there is no question of a breach of the principle of subsidiarity, it is proposed that the process of scrutiny be considered completed.

Palácio de S. Bento, June 2016

Isabel Pires
Rapporteur

Regina Bastos
President of the Committee

Committee for Budgetary and Financial Affairs and Public Administration

Report of the Committee for Budgetary and Financial Affairs and Public Administration COM(2016)198 + SWD(2016)117 SWD(2016)118

Rapporteur:
Cecília Meireles, Member of Parliament (CDS-PP)

**[Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2013/34/EU as regards disclosure of income tax information by certain
undertakings and branches]**

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PART I - INTRODUCTION

Pursuant to paragraphs 1, 2 and 3 of Article 7 of Law No 43/2006 of 25 August 2006 on the monitoring, examination and pronouncement by the Assembly of the Republic on matters relating to the construction of the European Union, as amended by Law No 21/2012 of 17 May 2012, the 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches' [COM (2016) 198 + SWD (2016) 117 and SWD (2016) 118 was referred to the Committee for Budgetary and Financial Affairs and Public Administration on 26 April 2016, given its subject matter, for examination and drafting of this report.

PART II - EXPLANATORY MEMORANDUM

1. General

- Objective of the initiative

The explanatory memorandum of the proposal begins by stating that a healthy Single Market needs a fair, efficient and growth-friendly corporate tax system, based on the principle that companies should pay taxes in the country where profits are generated. It is, however, also recognised that aggressive tax planning undermines this principle, and that small and medium-sized companies are particularly affected by this phenomenon.

The European Commission thus takes the view that, responding to calls from the G20 and elsewhere, greater transparency on the part of companies is needed to enable public scrutiny of whether tax is paid where profits are generated.

The central objective of the proposal is thus to achieve greater transparency to the public of undertakings' income tax information by means of country-by-country reporting for multinational enterprises. Thus, by promoting greater disclosure of income tax information, the initiative specifically seeks:

- 1) geographically to align tax on corporate income with real economic activity;

- 2) to develop corporate responsibility for social welfare through taxes;
- 3) to promote fairer tax competition within the Union through better informed public debate on the way to address the gaps in existing rules and distortions in the market.

• **Main aspects**

The proposal requires multinational enterprises (MNEs) to disclose publicly in a specific report the income tax they pay together with other relevant tax-related information. Whether headquartered in the EU or outside, MNEs with turnover of more than EUR 750m will need to comply with these additional transparency requirements. For the first time, not only European businesses but also non-European multinational companies doing business in Europe will have the same reporting obligations.

According to the European Commission, this proposal is in line with the scope of global OECD initiatives on tax transparency¹. The proposal focusses on corporate groups with a worldwide consolidated net turnover of more than EUR 750 million having activities in the EU by way of at least one establishment². The proposal does not impose any obligations on small and medium-sized companies, with the exception of medium-sized subsidiaries and branches of non-EU MNE groups with a consolidated turnover exceeding EUR 750 million, which will be subject to reporting requirements.

2. Relevant aspects

- Analysis of and opinion on substantive issues relating to the initiative

EU and non-EU multinational enterprises with a consolidated turnover of at least EUR 750 million are henceforth obliged to report country by country.

Such reporting will include information relating to all the activities of the undertaking and the ultimate parent undertaking, including activities of all affiliated undertakings consolidated in the financial statement in respect of the relevant financial year.

More specifically it must include: a) a brief description of the nature of the activities; b) the number of employees; c) the amount of the net turnover, which includes the turnover made with related parties; d) the amount of profit or loss before income tax; e) the amount of income tax accrued (current year) which is the current tax expense recognised on taxable profits or losses of the financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction³; f) the amount of income tax paid which is the amount of income tax paid during the relevant financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction; and g) the amount of accumulated earnings.

According to the Commission, digitalised reports facilitate access and processing by any interested party (whether an interested investor or members of civil society) and, for this reason, 'publication on the undertakings' website is required' in at least one of the official languages of the Union.

¹ In March 2015, the Commission announced a comprehensive list of initiatives in its Action Plan on a Fairer Corporate Tax System (COM(2015)302) and, as part of the subsequent Anti-Tax Avoidance Package, proposed to implement in the Union Action 13 of the OECD Action Plan endorsed by the G20 to fight base erosion and profit shifting (BEPS). This proposal complements the tax avoidance proposal, inasmuch as it will assist tax authorities in orienting their tax audits and in ensuring compliance.

² According to the Commission, companies whose consolidated turnover exceeds EUR 750 million are the best equipped to engage in 'tax planning' activities. This is the same threshold as that set out in the OECD's Base Erosion And Profit Shifting Package and in the Anti-Tax Avoidance Package.

³ The current tax expense shall relate only to the activities of an undertaking in the current financial year and shall not include deferred taxes or provisions for uncertain tax liabilities.

The Member States should introduce collective responsibility of the administrative, management and supervisory bodies for these reports.

It is estimated that at least 6 000 multinational companies will need to draw up a country-by-country report because they are active in the EU markets. Of those, around 2 000 companies are headquartered in the EU, i.e., only a fraction of the total 7.5 million European companies.

The working documents of the Commission services assessing the impact of this initiative conclude that it will not imply any costs or significant administrative burdens. The Commission takes the view that greater corporate tax transparency will not significantly affect growth and employment in the EU. It will, however, encourage enterprises to pay taxes where profits are indeed generated.

The Commission will monitor the implementation of the policy in cooperation with the Member States. Five years after the transposition date, the Commission will produce an evaluation of this Directive. The evaluation will examine the effectiveness, efficiency, relevance, coherence and added value in terms of public information of the proposal, including any significant impacts on undertakings or in third countries. The evaluation will also take into account new international developments.

- Implications for Portugal

Because Portugal is a European Union Member State, Directive 2013/34/EU will have to be transposed into Portuguese legislation having effect in the country.

3. Principle of subsidiarity

The legal basis for the initiative is Article 50 paragraph 1 of the Treaty on the Functioning of the European Union. (TFEU): 'In order to attain freedom of establishment as regards a particular activity, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall act by means of directives.'

With regard to the principle of subsidiarity (Article 5 paragraph 3 of the TFEU) the question in hand is a clear case in which the objectives will be better achieved at EU level than at national level by reason of the scale and effects of the planned action.

PART III - RAPPORTEUR'S OPINION

The rapporteur reserves the right to give her views in the course of debate.

PART IV - CONCLUSIONS

In view of the above, the Committee for Budgetary and Financial Affairs and Public Administration concludes that:

1. This initiative does not breach the principle of subsidiarity, insofar as the objective will be achieved more effectively by means of action at European Union level;
2. Our analysis of this initiative has not revealed any issues that require additional examination.
3. The Committee for Budgetary and Financial Affairs and Public Administration considers its examination of this initiative to be complete. Pursuant to Law No 43/2006 of 25 August 2006, as amended by Law No 21/2012 of 17 May 2012, this Opinion must be forwarded to the European Affairs Committee for the appropriate purposes.

Palácio de S. Bento, 18 May 2016

Isabel Pires
Rapporteur

Regina Bastos
President of the Committee