EUROPEAN COMMISSION

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Dear President,

I would like to thank you for the reasoned opinion of the Camera Deputatilor on the Commission proposal for a Directive on a Common Consolidated Corporate Tax Base (CCCTB) {COM(2011)121}, in which you raise concerns in relation to the compliance of the proposal with the principle of subsidiarity. I would also like to thank you for the second opinion of the Camera Deputatilor, which concludes that the proposal complies with the principle of proportionality and provides some additional observations on the proposed legislation.

In responding to both Opinions, I will begin with some general remarks on the political context of this proposal and its compliance with the principles of subsidiarity and proportionality, before returning to the specific points raised in the Opinions in greater detail.

National corporate tax systems operate within a context of globalisation, international tax competition and companies which increasingly look beyond borders for market opportunities. However, the co-existence of 27 highly disparate sets of tax rules in the single market means that companies are faced with significant tax obstacles which may discourage and impede their cross-border activities. This divergence in national tax rules reduces the transparency of tax systems and creates obstacles in the internal market which give rise to significant distortions and compliance costs for businesses.

The situation is particularly acute for small and medium sized enterprises (SMEs), which often lack the resources to overcome these inefficiencies and therefore face strong disincentives to expand across borders. Without further action, there is a real risk that this situation will persist, creating unnecessary compliance costs in the single market.

In this context, the CCCTB proposal offers Member States the opportunity to consider corporate taxation from a more sustainable and transparent perspective, whilst allowing businesses to enjoy easier access to the single market. The Commission is convinced that only concerted action at the level of the European Union can address the challenges of corporate taxation in a single market in a systematic manner and thereby secure benefits for businesses and national public finances.

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The Commission has taken great care to ensure that this proposal respects fully the principles of subsidiarity and proportionality. The reasoning is set out in the explanatory memorandum and recitals to the Directive [COM(2011) 121 final], as well as in the accompanying impact assessment report (IAR) [SEC(2011) 315 final].

In the view of the Commission, the objectives which the proposed Directive seeks to achieve could not be attained by Member States acting alone. Given that the aim of the legislation is to tackle fiscal impediments to efficient cross-border operations resulting mainly from the fragmentation created by 27 disparate tax systems, further uncoordinated action by Member States would not address the fundamental problems and would risk perpetuating or exacerbating them.

The proposal sets out an option for companies of choosing a single set of rules for computing, consolidating and sharing the tax bases of associated enterprises across the Union. Considering the scale and effects of the proposed action, its objectives, to attenuate the distortions resulting from the current interaction of 27 national tax regimes and create more favourable conditions for cross-border investment in the single market, would be better achieved at Union level.

The rules set out in the proposal, such as relief for cross-border losses, tax-free internal group restructurings and the elimination of complex intra-group transfer pricing, address issues that are intrinsically cross-border in nature and could only be resolved within a context of common regulation. National initiatives are unlikely to be as effective at tackling these issues and may create further distortions in the market, notably double taxation or non-taxation. Common rules are also a prerequisite for creating a 'one-stop shop' for companies or groups of companies operating across the EU.

According to the IAR, the CCCTB is indeed expected to create more favourable conditions for cross-border investment in the internal market. It is estimated that it would allow substantial tax-related savings connected with the costs of establishing abroad through a medium sized subsidiary. A representative large parent would save around 62% of the estimated costs incurred in the current situation. The savings would reach 67% in the case of a medium-sized parent. Further, companies would be likely to derive considerable benefits from the reduction in compliance time and costs. Current costs are to be reduced by 7%, which is equivalent to up to EUR 0.7 billion across the EU. The possibility to offset losses across national borders within the same group could also lead to annual savings of EUR 1.3 billion for companies in the EU.

I would like to emphasise that the proposal is proprtionate to what is necessary to achieve the objectives of the Treaties.

It does not affect the Member States' sovereignty over the setting of their own corporate tax rates. The CCCTB proposal deals with harmonising the corporate tax base, which is a prerequisite for curbing the identified tax obstacles and rectifying the elements that distort the concept of a single market; it does not entail harmonisation of tax rates.

The CCCTB proposal is also designed as an optional system. It does not oblige companies that do not intend to operate across borders to implement the common

rules and bear the associated costs. Naturally, national tax authorities will have to meet certain one-off financial and administrative costs for the purpose of switching to the new system. It is also true that administrations may choose to maintain their domestic corporate tax rules alongside the CCCTB, which would add to the current cost of running their tax systems. However, in both cases, it is expected that the mid-term positive impact of the CCCTB will outweigh the additional costs.

It is clear that these benefits could not be realised through an approach based on tax coordination alone. While the Commission has consistently promoted the coordination of national tax practices, experience has shown that this approach is slow and the results have hitherto been modest. Moreover, tax coordination typically addresses only specific, targeted issues and is not sufficient to address the wide variety of problems faced by companies in the single market.

The Commission is therefore convinced that the proposed CCCTB Directive represents the most proportionate response to the serious problems identified and is fully in line with the principle of subsidiarity.

Turning to the other specific points raised in the Opinions, the Camera Deputatilor takes the view that the IAR reveals 'insignificant or even nonexistent effects' of the introduction of the CCCTB.

The Camera Deputatilor considers that the Commission could have assessed more thoroughly the prospective CCCTB-related financial and administrative burdens for Member State authorities. Specifically, more detail could have been given on how the additional costs expected to be incurred from running two systems in parallel (i.e. the CCCTB and national corporate tax rules) would be offset as a result of dedicating fewer resources to transfer pricing and to the fight against tax planning practices. Finally, according to the Camera, the Commission's expectation of fewer mutual agreement procedures and disputes before the European Court of Justice (ECJ) is also considered to lack sufficient justification.

The Commission set out in the Impact Assessment Report accompanying the proposal its view that any additional burdens resulting from operating two systems in parallel are likely to be offset by gains made elsewhere. However, at this stage and despite the Commission's best efforts, it has been difficult to provide exhaustive and fully reliable quantitative estimation of the prospective reduction in costs which the CCCTB is likely to bring for national authorities. Member States, when requested by the Commission, were not in a position to provide data on their administration costs in the corporate tax field.

In this respect, I would like to set the results of the IAR in the appropriate context. Whilst market growth is one of the primary objectives underlying the CCCTB, the potential long-term beneficial effects stemming from cross-border business expansion in the form of setting up a subsidiary or branch in another Member State could not be fully captured in the model used to estimate the macroeconomic impacts. Moreover, as explained in the IAR, the working assumption adopted in the modelling exercise for the optional scenarios (i.e. CCTB and CCCTB), namely that only and all

multinationals opt in to the new system, might lead to an underestimation of the positive effects of the policy.

It is also worth reflecting that gathering quantitative evidence on the extent to which taxes act as a barrier to cross-border investment is a difficult task, as the potential additional investment which would take place in the absence of such barriers is not directly measurable. The claim that tax-related issues are perceived as a barrier which de facto limits, if not impedes, cross-border investment is substantiated in section 2.3 of the IAR, which reports on the results of the survey on international sourcing in Europe administered by Eurostat. According to this source, amongst the different types of barriers to international sourcing, taxation issues are considered 'very important' by around 12% of the respondents.

The Camera Deputatilor further considers the choice of the three factors which compose the formula as 'either unbalanced or non-equivalent or unfair' and this, in its view, has 'a negative impact on the revenues of some Member States, including Romania'. In order to preserve their tax revenues, Member States should be expected to respond by making adjustments, which may 'induce uncertainty and unpredictability'.

In the Commission's view, the factors do not a priori create inconsistencies. For instance, the fact that the labour factor takes into account the number of employees and payroll on an equal footing protects Member States with lower wage levels from being disadvantaged in the apportionment of the consolidated tax base. Neither are service-oriented economies expected to a priori lose as a result of the formula because fixed assets, which are understood to be of low value in service companies, are not the only factor to determine the allocation of revenues. They account for one third of the three-part formula.

The Commission believes that the three-factor formula presents a balanced approach to taxing income. It places weight on payroll and assets, which are naturally origin-oriented criteria, as well as sales by destination to reflect consumption. In designing the formula, the Commission has also benefited from the expertise of the US in the so-called 'Massachusetts formula' to ensure that the factors are robust enough to stand tax avoidance practices. In the Commission's view, assets, payroll and sales represent fair indicators for taxing income, as they reflect real economic activity. And they consist of data which is easily accessible in a company's accounts.

The Camera Deputatilor also believes that, by pointing out that the proposal does not include a common rate, the proposal gives rise to the suspicion that the adoption of the Directive could be 'an important step towards a proposal for the harmonisation of profit tax rates'

The Commission notes that Article 115 TFEU provides a basis for directives to be adopted in the interest of the proper functioning of the single market. It is on basis that the Commission adopted the proposal in question with the aim to reduce the tax-related obstacles that businesses face when they operate in the single market. Indeed, national barriers to trade erode the integrity of the marketplace and obstruct the creation of a single market. Article 115 TFEU is deliberately formulated in an open-ended manner to cover, subject to more specific provisions such as Article 113 TFEU,

all areas in which action might be necessary for the purposes of the proper 'functioning of the internal market'. As the Commission explained, this aim did not justify the insertion of provisions into the proposal that would have affected the discretion of Member States regarding their national rate(s) of company taxation.

The main reason why the CCCTB is designed as optional relates to the fact that the system is primarily addressed to companies which already operate, or plan to expand their business, across borders and which face tax obstacles arising from the interaction of Member States' national corporate tax regimes. If the CCCTB were to be made a compulsory scheme, companies which do not intend to extend their commercial activities to another Member State would have to incur the cost of implementing a new tax system (i.e. the common rules) unnecessarily.

As regards the risks of 'forum shopping' attached to the concept of an optional CCCTB, the Commission is convinced that the system offers sufficient protection against abusive practices. First, the 'all-in all-out' rule makes it compulsory that companies consolidate if they have opted to subject themselves to the CCCTB framework and fulfil the requirements for forming a group (Article 55 in conjunction with Articles 104(1) and (2) and 4(6)). Second, both single companies and groups shall apply the system for at least 5 tax years (Article 105(1) first sentence).

Regarding the impact on tax revenues more generally, Member States' budgetary choices are likely to depend on a variety of factors. For instance, the number of companies to opt for the CCCTB may be one of the elements to consider in this regard. 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 tax instruments or applied tax rates.

The Camera Deputatilor believes that the positive effects of cross-border loss relief and the elimination of transfer pricing compliance obligations within the group are not 'the result of certain efficiency based net earnings but of an effective transfer of public funds into the profit accounts of the companies'.

In the field of cross-border losses, the fact that such losses cannot be surrendered across the border to another company of the same group creates a setting of over-taxation within the single market. This is clearly to the detriment of companies. Rectifying this situation can by no means be taken to mean that tax revenues are shifted from Member States to corporate taxpayers. It may also be worth noting that tax revenues collected from such 'overtaxed' income cannot be substantiated on efficiency grounds either. It is not thus economically justifiable that, within a single market, state budgets are sustained through measures which cause over-taxation. Finally, the elimination of transfer pricing compliance obligations would give rise to a similar reasoning.

The Commission notes that the present area of taxation falls under shared competence. Article 115 TFEU provides the legal base for measures in this area. It is on this basis that the Commission has adopted the present proposal, with the aim of reducing the tax-related obstacles that businesses face in the situations covered by the proposal. The CCCTB aims to enhance fair tax competition within the EU by making

it more transparent. To this end, it provides for a set of common rules for the tax base and leaves the rates to be determined by the Member States.

The Commission agrees that the principle of conferral is a cornerstone of European law and informs the division of competences since the creation of the Communities in the 1950s. Current Article 115 TFEU actually reproduces the wording of Article 94 of the Treaty on the European Community and can be traced in the Treaties as far back as 1957 (it appears as Article 100). I would also like to underline that Article 115 TFEU and its predecessors have so far served as legal bases for all EU Directives in the field of direct taxation. As a matter of fact, corporate tax Directives have thus always addressed problems of a cross-border nature with an impact on the internal market. And the CCCTB proposal for a Directive is no different in this respect.
I would like to thank you again for the Opinions of the Camera Deputatilor and I hope that these explanations serve to clarify the points raised in the Opinion. I look forward to continuing our political dialogue in the future.

Yours faithfully,

Maroš Šefčovič
Vice-President