



EUROPEAN COMMISSION

Brussels, 02.04.2014  
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Dear President,

*The Commission would like to thank the Riksdag for its Reasoned Opinion concerning the Commission proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (the 'Parent Subsidiary' Directive){COM(2013) 814 final}.*

*In its Reasoned Opinion, the Riksdag raises concerns in relation to the compliance of the part of the proposal dealing with the introduction of a mandatory anti-abuse provision with the principles of subsidiarity and proportionality. The Riksdag also observes that the principle of Member States' taxation sovereignty must be safeguarded in the case of direct taxation.*

*The Commission would like to make some preliminary remarks on the Parent Subsidiary Directive and its objectives.*

*The objective of the Parent Subsidiary Directive is to put into place a common system of taxation for cross-border profits distributions between subsidiaries and parent companies of different Member States with the view to eliminate tax obstacles to cross-border grouping of companies in the EU and, therefore, ensure tax neutrality between national groups of parent and subsidiary companies and cross-border groups of parent and subsidiary companies. The achievement of these objectives was considered as necessary to contribute to the full establishment and proper functioning of the internal market and, as such, it enabled the EU to use its legislative power through the adoption of a Council directive.*

*Turning now to the specific points raised in the Reasoned Opinion, the Commission observes the following:*

*Member State's tax sovereignty in direct tax matters*

*In 1990, when Member States adopted the Parent Subsidiary Directive for the first time, or upon their accession to the European Union, if later, they accepted to waive part of their tax sovereignty recognising that removing tax obstacles to cross-border profits distributions was possible only through a coordinated action at the EU level.*

*Currently, Member States are confronted with the need to react to aggressive tax planning by some groups of companies operating cross-border which take undue tax advantages of the benefits granted by the Parent Subsidiary directive at the expenses of other taxpayers and of Member States' tax revenue.*

Mr Per WESTERBERG  
Speaker of the Riksdag  
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*It is exactly to protect the proper application of the Parent Subsidiary directive from abusive behaviours and reinstate the aimed tax neutrality between groups of companies operating domestically and cross-border that the Commission proposed to include a common mandatory anti-abuse provision in the directive.*

*The current situation distorts business competition and economic efficiency and, as such, compromises the broader objectives of the Treaties for an internal market.*

*It is on this premise that the Commission has always used Article 115 of the Treaty on the Functioning of the European Union (which corresponds to Article 94 of the Treaty establishing the European Community) as a legal basis for direct tax legislation or amendments to it.*

#### *The principle of subsidiarity*

*In the view of the Commission, the objectives which the proposed inclusion of a common mandatory anti-abuse rule in the Parent Subsidiary Directive seeks to achieve could not be attained by Member States acting alone.*

*As demonstrated in the Impact Assessment accompanying the proposal, the possibility to apply national or agreement-based provisions for the prevention of abuse, currently granted by the directive, has led to a variety of situations in Member States, exposing the Directive to the risk of being abused if the anti-abuse provisions are less stringent or non-existing in some Member States. The different level of national anti-abuse protection favours tax behaviours which channel investments through the Member States with the weakest anti-abuse provisions or where no such rules exist (so called 'directive shopping').*

*In addition, Member States' existing domestic anti-abuse measures cover a wide variety of forms and targets, having been designed in a national context to address the specific concerns of Member States and features of their tax systems; as such they are not tailored to the specific type of transactions covered by the Parent Subsidiary directive.*

*Given that the aim of the proposed anti-abuse provision is to ensure the efficiency of the directive by granting a uniform level of anti-abuse protection within all the 28 Member States, further uncoordinated action by Member States would not address the fundamental problems and would risk perpetuating or exacerbating them.*

*Considering the scale and effects of the proposed action, its objectives – to prevent the risks resulting from the current applicability of different national anti-abuse tax regimes not specifically tailored to the transactions covered by the directive and not always in place – would be better achieved at Union level.*

#### *The principle of proportionality*

*The Commission believes that the proposed common anti-abuse provision does not go further than what is necessary to achieve the objectives of the planned measure because it only targets arrangements falling within the scope of the Parent Subsidiary Directive aimed at unduly taking advantages from the benefits of the Directive. It is therefore focused on serving the aims of the specific legislative instrument at stake and not at imposing anti-abuse rules of a general applicability to Member States.*

*The Commission hopes that these clarifications address the concerns raised by the Riksdag and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*