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EU NEGOTIATIONS ON EUROPEAN COMMISSION'S PROPOSAL FOR PUBLIC COUNTRY BY COUNTRY REPORTING

Rua Leopoldo de Almeida, 9B
1750-137 Lisboa
PORTUGAL
(+351) 21 752 20 75
secretariado@transparencia.pt

TRANSPARENCIA.PT

From tax secrecy to tax transparency:

Introducing public country-by-country reporting (CBCR) that is fit for purpose

On 4 July 2017, the European Parliament adopted its draft report on *Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches* ('proposal')[1]. This was widely dubbed as a move to make country-by-country reporting (CBCR) of multinational enterprises public, though concerns remain about a loophole that would allow certain multinationals to keep some of their activities in the dark.

Comprehensively implemented, public CBCR would increase corporate and tax transparency by enabling citizens worldwide to follow the money. It will also contribute to ensuring that taxes are paid where they are due providing adequate revenue for critical public services.

The initial proposal from the European Commission (12 April 2016[2]) did not live up to these expectations. The European Parliament has recently managed to substantially improve the draft legislation and citizens now expect EU member states to amend the initial proposal in the same direction. Without these necessary changes the EU will miss a key opportunity to increase tax transparency in Europe and worldwide.

Here are the 3 key elements that must be improved if the EU is to pass public CBCR legislation that is fit for purpose.

1. Which countries must companies report on?

Country-by-country reporting means multinationals should report basic information and data for EACH country where they have operations.

Where are we now?

The initial proposal obliged multinationals to publicly report information on a country-by-country basis only for their operations in EU member states and in yet-to-be determined tax havens. The European Parliament rightly amended this loophole by requiring large multinationals to report information and data for each country of operation.

However, the European Parliament also included a so called 'corporate get-out clause' for multinationals, which would allow them to avoid the reporting requirement. According to this clause, companies would be allowed to receive a reporting exemption on the basis of protecting what they consider "commercially-sensitive information" and avoid the disclosure of that information for any tax jurisdiction. The clause requires national tax administrations to give multinationals prior authorisation on a yearly basis.[3]

What needs to change?

Public CBCR should provide the public with key information on the activities of multinationals, including the taxes paid on profits made in each country in which they operate. This can be achieved by:

- **agreeing with the European Parliament's position and requiring multinationals to publish data broken down on a country-by-country basis for each country and jurisdiction of operation, both inside and outside the EU; and**
- **dropping the corporate get-out clause adopted by the Parliament, which would threaten the quality of the information and be burdensome for tax administrations.**

[1] Available at http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2017-0284
[2] 2016/0107 (COD) http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0198&from=EN
[3] For more information, see *The European Parliament's 'get-out clause' for multinationals*: http://transparency.eu/get-out-clause/

2. What should companies report on?

The disclosure elements are critical for determining a company's economic activity, structure, and tax payments in EACH country where it operates. Each piece is meaningless on its own and only reveals useful information when disclosed alongside the others.

Where are we now?

The initial Commission's proposal left out many important elements – such as assets, sales and a full list of subsidiaries, among others – contrary to what the European Parliament adopted in its report on 4 July 2017. Lack of information on the economic activity and assets of a multinational company in a jurisdiction makes it nearly impossible to assess its activities and tax payments. Moreover, the European Parliament also improved the European Commission's proposal by including a requirement for a common reporting template available free of charge in an open data format, in a public register to be managed by the European Commission.

What needs to change?

Only a comprehensive reporting template in open data format can provide the public with the necessary information and would allow adequate accessibility and comparability of corporate reports. This can be achieved by:

- **keeping the European Parliament's requirement for a common reporting template, uploaded to a central register in open data format;**
- **including the elements, as adopted by the European Parliament, in the template[4], in particular:**

→ the name of the ultimate undertaking and, where applicable, the list of all its subsidiaries;
→ the number of employees on a full-time equivalent basis;
→ fixed assets other than cash or cash equivalents;
→ the amount of the net turnover, [turnover made with related parties and the turnover made with unrelated parties];
→ the amount of profit or loss before income tax;
→ the amount of income tax accrued (current year)
→ the amount of income tax paid

3. Who has to report?

The European Union already has a definition of large groups of companies (€40 million in annual consolidated turnover[5]). This would be the adequate threshold for companies covered by the public CBCR requirement.

Where are we now?

The initial proposal set a threshold for companies required to report at €750 million in annual consolidated turnover. This would, according to OECD's estimates, exclude 85-90 per cent of multinationals from reporting. While the European Parliament has adopted the same threshold in its final report, it also included a revision

[4] Directive 2013/34/EU - Article 48c – paragraph 2, as adopted by the European Parliament on 4 July 2017 http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2017-0284
(a) the name of the ultimate undertaking and, where applicable, the list of all its subsidiaries, a brief description of the nature of their activities and their respective geographical location; (b)the number of employees on a full-time equivalent basis; (ba) fixed assets other than cash or cash equivalents; (c) the amount of the net turnover, including a distinction between the turnover made with related parties and the turnover made with unrelated 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 recognized on taxable profits or losses of the financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction; (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 (ga) stated capital; (gb) details of public subsidies received and any donations made to politicians, political organisations or political foundations; (gc) whether undertakings, subsidiaries or branches benefit from preferential tax treatment, from a patent box or equivalent regimes.

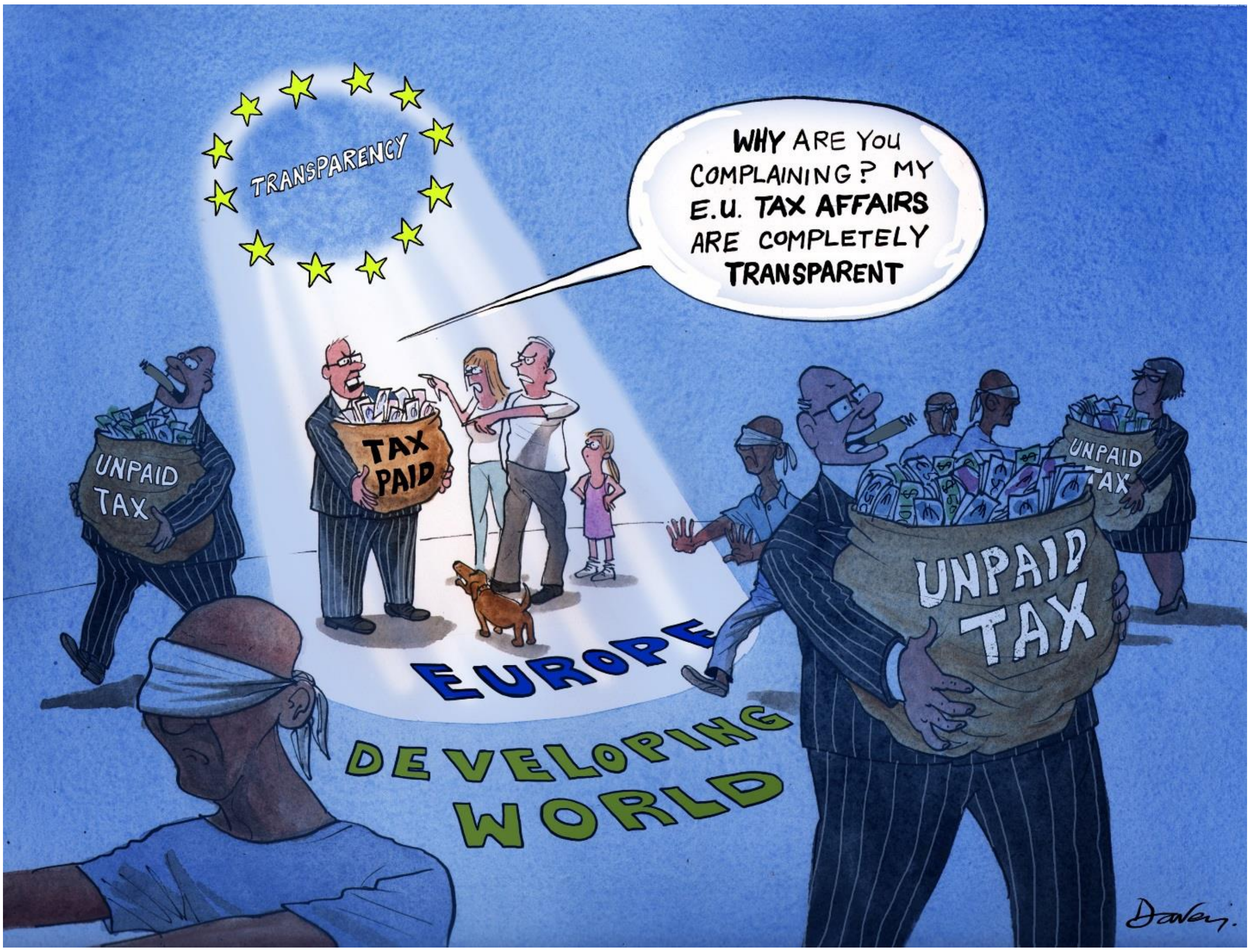
[5] Directive 2013/34/EU (Accounting Directive), Article 3 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0034

clause foreseeing an assessment of "*costs and benefits of lowering the consolidated net turnover threshold beyond which undertakings and branches are required to report on income tax information*".[6]

What needs to change?

A lower threshold would avoid that companies of significant size are omitted by the reporting requirement. It would also level the playing field among EU companies which already report on similar information. This can be achieved by:

- **committing to assess the costs and benefits of lowering the consolidated net turnover threshold four years after the adoption of the directive.**



More information in a [joint civil society organisations' Q&A] on the European Commission's legislative proposal on public CBCR

[6] Directive 2013/34/EU - Article 48i – paragraph 1, as adopted by the European Parliament on 4 July 2017 http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2017-0284