European Economic and Social Committee

ECO/405
Anti-tax-avoidance package

Brussels, 28 April 2016

OPINION

of the
European Economic and Social Committee
on the
Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation
COM(2016) 25 final - 2016/0010 (CNS)
and the
Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market
COM(2016) 26 final - 2016/0011 (CNS)

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On 9 and 10 February 2016, the Council decided to consult the European Economic and Social Committee, under Articles 113 and 115 of the Treaty on the Functioning of the European Union, on the

> *Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation*
> COM(2016) 25 final - 2016/010 CNS
> and the
> *Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market*
> COM(2016) 26 final - 2016/011 CNS.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 14 April 2016.

At its 595th plenary session, held on 27 and 28 April 2016 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 126 votes with 7 abstentions.

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1. **Conclusions and recommendations**

1.1 The EESC welcomes the Commission's initiative which proposes to implement the rules set out in the OECD's BEPS action plan uniformly across the Member States. This initiative helps combat aggressive tax planning, a practice used by some multinational corporations which erodes Member States' tax bases by an estimated EUR 50 to 70 billion each year.

1.2 The Committee takes the view that, in order to safeguard the competitiveness of European businesses, the attractiveness of the EU as an investment location and the consistency of the international tax system in this period of slow and fragile post-crisis economic recovery, the measures taken should align with what has actually been agreed at OECD level and implemented by other international partners.

1.3 In the Committee's view it is important to strive to establish a genuine level playing-field and a uniform system that is implemented in the same way in all Member States. The risk of fragmentation should be contained, since this could now compromise the effectiveness of the measures proposed.

1.4 The EESC considers that financial corporations should not be excluded from the scope of the anti-tax-avoidance directive. The EESC recommends that the Commission and the Member States step up international negotiations in the framework of institutions such as the OECD or the G20, to ensure uniform implementation at EU and OECD levels and also explore whether and how the proposed rules can also be applied to financial corporations.

1.5 The EESC supports the proposal and suggest that Member States should agree to settlement through staggered payments only when the transfer is not intended solely to reduce the corporation's tax bill.

1.6 The EESC recommends that the switch-over clause should be applied directly to all taxpayers who have generated income in jurisdictions acknowledged to be tax havens.

1.7 The EESC supports the rules on controlled foreign companies set out in the proposal for a directive.

1.8 Given that aggressive tax planning is largely carried out by large multinational corporations, the EESC considers that the anti-tax-avoidance directive and the directive on administrative cooperation should not apply to SMEs.

1.9 Given the requests from civil society organisations for greater transparency with regard to the taxation of multinational corporations, the EESC recommends that the Commission include in the provisions of the directive on administrative cooperation the requirement that Member States disclose the reports on financial results which will be subject to the automatic exchange of information.

1.10 The EESC urges the Commission to finish drawing up the list of countries or regions which refuse to apply good governance standards in tax matters. The EESC considers that this list should be flanked by penalties applicable to corporations which continue to operate in these jurisdictions.

1.11 The EESC recommends that the Commission and the Member States set a shorter deadline for implementing these rules which implement the commitments made during the negotiations on the OECD's BEPS process uniformly across the EU.

1.12 Given the potential impact on the investment climate in Europe, the EESC would have welcomed an impact assessment in the draft directive, as is standard practice in proposals where substantive changes are proposed.

2. The European Commission proposal

2.1 In January 2016, the European Commission presented the anti-tax-avoidance package, part of the Agenda for fairer, more transparent and more effective corporate taxation[1].

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1 http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/anti_tax_avoidance/timeline_without_logo.png

2.2 The package comprises an umbrella communication[2] setting out the political, economic and international backdrop to the fight against aggressive tax planning, and the main components of the package: a proposal for an anti-tax-avoidance directive[3], a proposal for a directive amending the directive on administrative cooperation[4] (DAC), a Commission recommendation on tax treaties[5] and a communication on the EU's external strategy[6] on cooperation with third countries in the area of tax governance.

2.3 The umbrella communication sets out the political, economic and international backdrop to the anti-tax-avoidance package. The package includes measures to transpose parts of the OECD's BEPS (Base Erosion and Profit Shifting) action plan as well as some additional new measures at EU and Member-State levels.

2.4 The proposal for an anti-tax-avoidance directive lays down rules against tax avoidance practices that directly affect the functioning of the internal market. They address deductibility of interest, exit taxation, a switch-over clause, a general anti-abuse rule, controlled foreign company rules, and a framework to tackle hybrid mismatches.

2.5 The proposal for a directive amending the directive on administrative cooperation contains measures to implement Action 13[7] of the OECD's BEPS action plan in the Member States. These address improving the mechanism for the automatic exchange of information between Member State tax administrations and include information on year-end results for multinational corporations among the types of information to be exchanged.

2.6 The Commission recommendation included in the anti-tax-avoidance package addresses reinforcing the provisions of the tax treaties signed by the Member States in order to reduce aggressive tax planning practices.

2.7 The Commission communication on the external strategy sets out a tighter and more consistent framework for relations with third countries in the area of tax good governance.

3. **General and specific comments**

3.1 The Committee takes the view that, in order to safeguard the competitiveness of European businesses, the attractiveness of the EU as an investment location and the consistency of the international tax system in this period of slow and fragile post-crisis economic recovery, the

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2 COM(2016) 23 final

3 COM(2016) 26 final

4 COM(2016) 25 final

5 C(2016) 271 final

6 COM(2016) 24 final

7 http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm

measures taken should align with what has actually been agreed at OECD level and implemented by other international partners.

The anti-tax-avoidance directive

3.2 In the Committee's view it is important to strive to establish a genuine level playing-field and a uniform system that is implemented in the same way in all Member States. The risk of fragmentation should be contained, since this could now compromise the effectiveness of the measures proposed.

3.3 The proposal for a directive calls for the uniform implementation across the Member States of the rules set out in the OECD's BEPS action plan[8], which aims to combat aggressive tax planning at global level. As it has pointed out in previous opinions[9], the EESC welcomes the Commission's initiative and supports its efforts to combat aggressive tax planning, a practice used by some multinational corporations which erodes Member States' tax bases by an estimated EUR 50 to 70 billion each year.

3.4 The EESC endorses proposed rules limiting the deductibility of interest payments in the corporate sector. However, it is important that the EU rules are in line with OECD rules and their implementation in the United States and other significant economic jurisdictions. An internationally-coordinated approach would help curb the aggressive tax planning activities of certain multinational corporations that pay "inflated" interest to subsidiaries located in low-tax jurisdictions. The EESC recommends that the Commission and the Member States step up international negotiations in the framework of institutions such as the OECD or the G20, to ensure uniform implementation at EU and OECD levels and also explore whether the proposed rules can also be applied to financial corporations.

3.5 As regards the rules on exit taxation, the EESC supports the proposal and suggests that Member States should agree to settlement through staggered payments only when the transfer is not intended solely to reduce the corporation's tax bill.

3.6 The EESC recommends that the switch-over clause should be applied directly to all taxpayers who have generated income in jurisdictions acknowledged to be tax havens.

3.7 The EESC supports the rules on controlled foreign companies set out in the proposal for a directive.

3.8 Given the damage done to Member States' tax bases by aggressive tax planning, the EESC recommends that the Commission and the Member States set as short a deadline as possible for implementing the directive in respect of those elements which are in line with

8 http://www.oecd.org/ctp/beps-actions.htm

9 See EESC opinion *The fight against tax fraud and tax evasion*, OJ C 198, 10.7.2013, p.34

commitments made in the BEPS process as part of the OECD/G20 agreements. The EESC considers the three-year deadline set by the proposal for a directive to be excessive.

3.9 Given the potential impact on the investment climate in Europe, the EESC would have welcomed an impact assessment in the draft directive as is standard practice in proposals where substantive changes are proposed.

Directive amending the Directive on administrative cooperation (DAC)

3.10 Given the serious impact of tax fraud and tax evasion, the EESC endorses the rules laid down by the proposal for a directive amending the Directive on administrative cooperation. Reports on corporations' financial results are included in the categories of information subject to automatic exchange of information between Member State tax administrations, which will enhance the effectiveness of this instrument which is used to combat tax fraud, tax evasion and aggressive tax planning.

3.11 The EESC considers that the reports referred to in the proposal for a directive should not be demanded from SMEs – where they would impose a disproportionate cost impact – but remain limited to the category of large multinational corporations referred to in the proposal. Limiting this requirement to multinational corporations with a consolidated revenue exceeding a certain amount could prove counterproductive and discriminatory.

3.12 The changes proposed by the proposal for a directive promote the uniform transposition of Action 13 of the OECD's BEPS action plan across the Member States. The EESC endorses the Commission's position whereby aggressive tax planning can only be combated at global level.

3.13 Given the repeated requests from civil society organisations for greater transparency with regard to the taxation of multinational corporations, the EESC recommends that the Commission include in the provisions of the directive the requirement that Member States disclose the data presented in the reports which will be subject to the automatic exchange of information.

Commission recommendation on tax treaty abuse

3.14 The Commission recommendation aims to transpose Actions 6 and 7 of the OECD's BEPS action plan which propose changes to the Model Tax Convention with a view to reducing the possibility of abuse by multinational corporations.

3.15 The EESC supports the two anti-abuse clauses proposed by the Commission in the recommendation. Including these clauses in the treaties signed by the Member States both with other Member States and with third countries will significantly reduce the possibility that revenue generated by multinational corporations will evade taxation through treaty shopping.

Communication on an external strategy for effective taxation

3.16 The Commission communication comprises the external EU strategy on effective corporate taxation, in view of the global nature of tax evasion and aggressive tax planning. The EESC endorses the approach taken by the Commission.

3.17 The Commission proposes to coordinate the approach taken by the Member States to third countries, as regards issues linked to tax transparency. The EESC endorses the Commission's position, given that piecemeal implementation of standards of tax good governance by the Member States with regard to third countries has not delivered convincing results in the fight against aggressive tax planning.

3.18 Given the pace of change in the global tax environment, the EU's criteria for tax good governance need to be updated. The Commission has proposed new criteria for tax good governance in Annex I to the communication. The EESC welcomes the Commission's initiative and encourages the Council to approve the new criteria.

3.19 The EESC has endorsed[10] the notion of an EU list of jurisdictions which refuse to apply good governance standards in tax matters. Currently, most Member States have their own systems of lists and penalties for financial transactions involving these jurisdictions. The EESC considers that an EU list with clear criteria for identifying uncooperative jurisdictions and penalties uniformly applicable by all Member States would be a much more effective instrument for combating tax evasion and aggressive tax planning. The EESC therefore endorses the measures set out by the Commission in this strategy.

Brussels, 28 April 2016.

The President
of the
European Economic and Social Committee

Georges Dassis

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10 See EESC opinion *Tax transparency package*, OJ C 332, 8.10.2015, p. 64