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EU Council: Stop watering down tax transparency proposals

Alessandro · Friday, January 6th, 2017

Not that long ago the word "tax" for most people would mean something rather boring and technical, for only accountants and lawyers to deal with. This has changed dramatically in recent years. Scandal after scandal, starting with Offshore Leaks in 2013, expanding with Swissleaks and Luxleaks, ending with the Panama Papers and the Bahamas Leaks of 2016, that's not to mention all the scandals involving individual multinational companies, tax has become the new hot topic in Brussels and beyond.

Policy makers have finally realised that something has to be done about multinationals using all kind of tricks to avoid paying their taxes. The European Commission recently came forward with a new legislative proposal requiring big multinationals operating in the EU to publish a geographical breakdown of their basic financial data – referred to as public country-by-country reporting (CBCR). This measure would ensure a basic level of corporate and tax transparency by enabling citizens to have an overview on multinationals' activities, and contribute to ensure that taxes are paid where economic activities actually take place.

Despite civil society's efforts to improve the current proposal, just before Christmas the Slovak EU Presidency published a compromise text on the proposal. This document, instead of improving the proposal, waters it down even further and weakens many of its provisions.

In particular, the Slovak Presidency introduced a *comply-or-explain* system for non-EU headquartered companies falling under the scope of the legislation, i.e. either they comply with the legislation or they have to explain why they cannot do so. A common concern regarding public CBCR for companies' operations in all countries is that EU subsidiaries of non-EU multinationals won't be able to force their parent companies headquartered outside of the EU to disclose their CBC data, making the enforcement of the legislation cumbersome. This is the official reason for having proposed public CBCR legislation only for multinationals' operations in the EU and in tax havens. What this means is that for the rest of the world, companies would only be required to publish a global figure, which will allow multinationals to continue shifting their profits out of the EU, while still keeping citizens in the dark.

In order to overcome this issue of extraterritoriality the Netherlands had suggested to include a *comply-or-explain* clause for non-EU multinationals. According to the Dutch proposal, non-EU headquartered companies with subsidiaries or branches in the EU, when filing their CBC reports, would be allowed to say that they can't disclose information from their parent companies based outside of the EU, but have to explain why. Despite not being perfect, this proposal was a step into the right direction, as it allows to move towards a more comprehensive reporting and overcome the geographical limitation included in the Commission's proposal. That means, that the very least EU companies would have to report on their operations worldwide.

However, the Slovak Presidency took a potentially good proposal and used it to water down the text instead of improving it, which was the objective of the Dutch suggestion. In fact, the *comply-or-explain* clause was included, but the reporting obligation was not extended beyond the EU. What this means in practice is that now non-EU headquartered multinationals will be able to avoid scrutiny and accountability for their operations in tax havens outside of the EU.

Also of concern is the new clause introduced by the Slovak Presidency, which provides companies with the possibility to withhold information *"when its nature is such that it would be seriously prejudicial to the commercial position of the undertaking"*. However, it is not specified what would be considered as 'prejudicial', leaving it at the discretion of Member States and companies. Moreover, the very high threshold for multinationals to fall under the scope of the legislation (a turnover of at least €750 million) remains, but now companies need to have such high turnover for two consecutive years in order to be required to report.

As demonstrated by the recent JunckerLeaks, which revealed how Commission President Juncker blocked the EU's efforts to tackle corporate tax avoidance in his previous role as Luxembourg's Prime Minister, EU Member States are the main opponents to more transparency in the financial system. In the face of all the recent leaks and tax scandals, they are still reluctant to ensure basic corporate accountability and provide citizens with clear information on what big companies pay in taxes. Instead, they choose to maintain the status quo of secrecy. Ultimately, the only ones benefiting from this are big multinationals, while the public, small companies and citizens are the ones losing out.

As the European Parliament is about to start working on its report on this file, we urge it to adopt a strong position on this important matter to counter the Council's unambitious and conservative position. How many more scandals will it take before EU Member States get serious about tax avoidance?

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