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The European Parliament's 'get-out clause' for multinationals

Alessandro · Wednesday, June 14th, 2017

On Monday night the European Parliament voted to give large multinationals a "get-out clause" on tax transparency. For the last few years tax has been one of the main topics on the EU's political agenda. After a series of scandals, which showed that large companies are using tricks to avoid paying tax in some countries and hide wealth offshore, political pressure has mounted to address this major issue.

Several key pieces of legislation have been adopted, such as the Anti-Tax Avoidance Directive, the directive on tax rulings transparency or the directive on automatic exchange of tax information, while other initiatives are currently being discussed.

One of them is a measure proposed by the European Commission, which would drastically improve tax transparency for big multinational groups operating in the European Union by requiring them to publicly disclose their tax-related information for each country where they have business activities.

The objective is to provide society at large with information about companies' activities and tax payments in their countries, shed a light on multinationals' profit shifting techniques as well as deter companies from engaging in aggressive tax planning schemes.

After a lengthy process dotted with delays, difficult negotiations and uncertainties, this week the European Parliament's draft report finally arrived to its voting session in the two relevant Committees on Legal and Economic Affairs.

Transparency International EU's main ask to the European Parliament was to extend the reporting scope for companies to all countries of operation as opposed to EU Member States and blacklisted tax havens only, as per the European Commission's original text. Many political groups supported this amendment in order to provide full transparency over multinationals' structures and taxes, and avoid profit shifting to continue in secrecy to countries not covered by the geographical scope of the directive. This basic but crucial principle was adopted in this week's vote. However, what was also adopted was a safeguard clause included at the last minute by the liberal and conservative political groups.

According to this clause, companies will be allowed to ask Member States to grant them an exemption on the basis of protecting "commercially-sensitive information" and avoid the disclosure of that information for any tax jurisdiction.

This clause includes a massive loophole in the text for several reasons:

- There is no clear definition of what is considered ‘commercially sensitive’, no clear scenario as to when this may happen and no clear rule regarding the conditions for granting this exemption to companies.
- Any Member State will be allowed to grant companies exemptions from reporting in any tax jurisdiction, be it inside or outside the EU. This may encourage aggressive tax competition between Member States, as it may lead to situations where companies transfer part of their activities to or create artificial structures in the most “generous” Member State in order to be exempted from disclosing information about their activities and payments in other jurisdictions.
- There is no time limit to this clause, as even if Member States may grant the reporting exemption only for one year, companies may re-apply for as many times as they wish, making it *de facto* an indefinite exemption. Also, the information would not be retroactively published after a certain period of time.

Such a loophole severely undermines the whole point of this legislation and as we said on Monday, makes it about as watertight as a sponge.

The European Parliament has one last chance to prove its commitment to real and unrestricted transparency. The current text will soon undergo a final vote in plenary. Our one and unequivocal call to all Members of Parliament in order to have a text that mandates meaningful public country-by-country reporting is to get rid of this get-out clause.

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