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## How country-by-country reporting could have made Lux Leaks unnecessary

Carl Dolan · Tuesday, January 20th, 2015

The LuxLeaks saga moved up a couple of gears last week. First of all, a large number of MEPs broke ranks with their leadership to publicly back a European Parliament committee of enquiry into the so-called ‘sweetheart deals’ that Luxembourg concluded with hundreds of multinational companies to minimise their tax bill. The Parliament’s political decision-making body, the Conference of Presidents, has yet to formally approve the enquiry but the genie seems to be well and truly out of the bottle now, even if there are reports that EPP deputies are being put under pressure to withdraw their signatures. The enquiry will range more widely than the Luxembourg deals – many other EU countries have similar tax rulings in place – but there is the tantalising prospect of Jean-Claude Juncker testifying in front of MEPs on what he knew when he was Prime Minister.

Secondly, and perhaps more significantly, the Commission announced its preliminary findings into the state aid case it launched into Luxembourg’s tax deal with Amazon, indicating that the Grand Duchy had indeed breached EU state aid rules by giving favourable treatment to the tech company over its transfer-pricing policy.

The case focuses on the Luxembourg company that served as the headquarters of Amazon’s European operations, LuxOpCo, and in particular the royalties it paid to another Luxembourg company, Lux SCS, that were not subject to Luxembourg tax.

The net turnover of LuxOpCo in 2013 was 13.6 billion euros – about a fifth of Amazon’s total worldwide sales.

Amazon’s corporate structure in Europe

The deal on royalties (“transfer-pricing”) which allowed Amazon to keep tax payments to a minimum were signed off by the Luxembourg authorities in 2003 in a couple of weeks.

Much of the outrage over these and other revelations has been directed at the tax rulings or ‘comfort letters’ supplied by the authorities which ensure that companies are complying with the letter of the law. The European Parliament has agreed at least one report on the use of such tax rulings and the European Commission's competition authority will also investigate.

Less attention has been paid to the companies' obligations. As a basic accountability measure, Transparency International EU has been calling for corporate reporting legislation that would make it mandatory for multinational companies to report key financial information in every country where they operate. That information would include the whopping turnovers and minimal tax recorded by Amazon in Luxembourg, which would have raised a huge red flag long before Lux Leaks came anywhere near a newspaper, and would have spared whistleblower Antoine Deltour the criminal charges he is facing.

Country-by-country reporting for all European companies was agreed by EU heads of state in their special summit on tax avoidance and tax evasion in 2013 but EU officials and MEPs subsequently back-pedalled on that commitment once the issue was out of the media limelight. Only the EU banking sector, facing a huge regulatory backlash after the financial crisis, failed to escape and European banks are now compelled to disclose this information from 2015, following a Commission report that noted that there would be no negative consequences and some postive effects for the European economy.

Today we publish a report on the state of play with country-by-country reporting legislation in the EU that shows that a broad range of stakeholders – not only NGOs, but auditors, investors, regulators – agree on the merits of extending this kind of reporting to all corporate sectors.

Doing so would mean that we could have a debate on tax policy that is not driven by media leaks and EU investigations, but by transparent, comprehensive and uniform reporting of the facts. Who could disagree with that?

We will soon have an opportunity to find out. The European Parliament's Economic and Monetary Affairs committee will soon be discussing amendments to the Shareholders' Rights Directive which propose a full country-by-country reporting regime. The Parliament's Legal Affairs committee, which is taking the lead in reviewing this legislation, may then have an opportunity to show its support for this initiative in March. It could be a very fruitful spring for those seeking more corporate transparency.

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