

To: Taxation Working Group

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Meeting: 14 November 2017

Reference: ECO-TAX-17-051

Subject: Public CBCR

## Objective

For information and discussion

## Input requested

- Participants will be asked to exchange views and share any relevant information on the public CBCR proposal and to advise on next steps in terms of secretariat engagement.

## Background and latest developments

On 12 April 2016, the European Commission [published a proposed amendment](#) to the Accounting Directive regarding the public disclosure of income tax information by certain undertakings and branches. The measure aims to increase tax compliance and avoid tax evasion, in line with the EU's [Action Plan](#) for Fair and Effective Corporate Taxation in the EU. These additional transparency requirements would apply to any multinational company - whether European or not - that it is currently active in the EU single market, has a permanent presence in the EU and has global revenues exceeding 750 million EUR a year.

Insurance Europe finalised a position paper (See [ECO-TAX-16-070](#)) on the proposal in June 2016, in which it opposed the Commission's initiative to mandate the publication of CBC reports via the proposed amendment to the Accounting Directive, given that no good case has been made that this proposal would achieve fair and efficient corporate taxation. On the contrary, the proposal might be counterproductive for the European economy and harm Europe's global competitiveness. Insurance Europe also said that the suggested public disclosure of CBC reports would not provide meaningful information to interested parties, as these would ignore the existing differences between accounting rules and the non-harmonised tax regimes in different Member States and globally.

The disputes that initially existed over the legal basis for the proposal have been resolved, and therefore the CBCR proposal continues to be discussed in both the European Parliament and Council under the ordinary legislative procedure. Only a qualified majority will be required for the Council to adopt the proposal.

## European Parliament

Based on its position paper, Insurance Europe actively engaged in June with key MEPs in the ECON committee, aiming to make sure that the EP negotiating position was as close as possible to the Council presidency compromise. On 4 July, the European Parliament's plenary [adopted its position](#) on the EC proposal for public country-by-country reporting (CBCR), based on a joint ECON-JURI report. The approved text will now serve as the Parliament's official position in trilogue negotiations with the Council. The most important elements of the Parliament's position are:

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- The 750 million EUR turnover threshold for reporting is maintained (there had been several attempts by political groups to lower it to 40 million EUR)
- In addition to the information that should be disclosed according to the Commission's proposal, the Parliament adds new items such as fixed assets other than cash or cash equivalents, stated capital and details of public subsidies received and any donations made to politicians.
- A waiver giving multinationals the right to withhold information that could put their commercial interests at risk (maintained after repeated attempts by the S&D, GUE and Green groups to remove it from the text before the final vote). The European Parliament has directed the European Commission to form guidelines to assist Member States in defining cases where the publication of information shall be considered seriously prejudicial.

### Council of the EU

Council discussions on the CBCR proposal are ongoing. Further Council Working Party meetings have taken place in the second half of the year (the last one scheduled under the Estonian presidency took place on 11 October), but progress has been quite slow. A new [Council presidency compromise](#) dated 27 October was published. The most notable changes compared to the Commission's proposal are:

- The introduction of recital 9a and Article 48c(3a) which recognise that "*publicly disclosing data to be included in the report on income tax information could in certain cases be seriously prejudicial to commercial position of an undertaking, since it would make it possible for competitors not subjected to similar transparency to draw significant conclusions about its current activities. Therefore, undertakings should have a possibility to defer disclosing certain information for a limited number of years, provided they clearly disclose the deferral and give a reasoned explanation for it in the report*". These additions are very similar to the waiver included by the European Parliament in its negotiating position, meaning that the waiver will almost certainly be included in the final legislation.
- Article 48f is clarified to state that "*Member States may require that, where the financial statements of an affiliated undertaking governed by the law of a Member State are required to be audited by one or more statutory auditor(s) or audit firm(s), the statutory auditor(s) or audit firm(s) state(s) in the audit report whether the undertaking is required to draw up a report on income tax information in accordance with Article 48b*". This improved language would resolve an issue raised by Insurance Europe in its position paper, namely that the wording of the article should not be construed to mean that statutory auditors should also verify the content of the CBC reports.

The secretariat understands that the Council will not reach a general approach before the end of 2017. The Council's negotiating position is therefore not yet final, and needs to be agreed before trilogue discussions can begin. Generally, member states are less in favour of making CBCR report public. However, the Council has indicated that a compromise with the EP is necessary, and may decide to allow for publication, with appropriate safeguards.

### Next steps

- **Early 2018:** Council to finalise general approach on the EC proposal
- **2018 (TBC):** Start of trilogue negotiations