Publishing corporate tax information
A proposal to amend Directive 2013/34 on the disclosure of income tax information by certain undertakings and branches

This briefing is one in a series of ‘Implementation Appraisals’ on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is likely to be amended or reviewed, as foreseen in the European Commission’s Annual Work Programme. Implementation Appraisals aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date – drawing on available input from the EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.

| EP committee responsible at time of adoption of the EU legislation: | Committee on Legal Affairs (JURI) |
| Date of adoption of original legislation in plenary: | 12 June 2013 |
| Deadline for transposition: | 20 July 2015 (Art 53) |
| Planned date for review of legislation: | By 21 July 2018 (Art 48) |
| Timeline for new amending legislation: | A proposal was published on 12 April 2016 |

1. Background
1.1 Overview of recent developments
Following the economic recession, and several tax-related revelations such as ‘Luxleaks’, the amount of tax paid by large businesses is coming under increasing scrutiny. To estimate the amount of tax revenue lost as a result of tax avoidance is, however, difficult and figures vary depending on the methodology used. A European Parliament study has estimated that around 50 to 70 billion euro per year is lost on account of corporate tax avoidance.¹

In 2013, G20 Leaders endorsed a plan put forward by the Organisation for Economic Cooperation and Development (OECD) for a series of measures to ensure that tax is paid where profits are made. The Base Erosion and Profit Shifting (BEPS) Action Plan contains 15 key priorities to tackle tax planning strategies. These will be addressed by OECD members that have signed up to the plan. The action plan was supported by G20 leaders at their meeting in late 2015. The 15 action points are wide-ranging but BEPS Action 13, which relates to transfer pricing and country-by-country reporting, is particularly relevant here.²

¹ European Parliamentary Research Service, Bringing transparency, coordination and convergence to corporate tax policies in the European Union: Assessment of the magnitude of aggressive corporate tax planning, September 2015.
² European Parliament Research Service Understanding the OECD tax plan to address ‘base erosion and profit shifting’ — BEPS, April 2016.

EPRS | European Parliamentary Research Service
Author: Gertrud Malmersjo
Policy Cycle Unit
PE 581.399
To use strategies to reduce tax is legal. The OECD defines tax avoidance as ‘the arrangement of a taxpayer’s affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law’. Tax evasion on the other hand is illegal and ‘the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from the tax authorities’. However, tax administrations sometimes investigate avoidance schemes and conclude that they in fact constitute evasion, often when it turns out that these schemes have no business purpose other than the reduction of tax.

In June 2015, the European Commission published its Corporate Taxation action plan containing five broad areas that aimed to:
- introduce a Common Consolidated Corporate Tax Base (CCCTB);
- ensure that tax is paid where profits are generated;
- create a better business environment;
- increase transparency; and
- improve EU coordination in the area of tax.

Subsequently, in January 2016, the Commission published an anti-avoidance package. This contained a variety of measures including a proposal for common rules against tax avoidance to ensure consistent implementation of BEPS across the EU. It also contained a proposal to ensure that large businesses submit country-by-country reports to national tax administrations and for these to exchange relevant information with each other in a timely manner. It is hoped that the increase in transparency will help Member States identify and tackle tax avoidance strategies more effectively.

Taxation is primarily a concern for Member States. EU legislation is limited in this area and aimed mainly at ensuring fair competition across all Member States. Legislation related to tax must be adopted unanimously by the Council, while the European Parliament is only consulted. However, in this case, the proposed legislative amendment relates to the Accounting Directive (Directive 2013/34), which falls under the co-decision procedure.

1.2 Corporate tax as a revenue stream

While there are significant variations in Member States' corporate tax rates, the average rate of corporate tax in the EU has generally been decreasing since the 1990s. As seen in the table below, in 1995 the average rate was 35% while in 2015 it was 22.8%. The recent economic recession did not affect this downward trend.

Table 1: Average corporate tax rate over time in the EU28

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>EU28 (average)</td>
<td>35%</td>
<td>32%</td>
<td>25.3%</td>
<td>23.2%</td>
<td>22.8%</td>
</tr>
</tbody>
</table>

Source: Taxation trends in the European Union 2015, Eurostat

When it comes to the proportion of corporate tax revenue in the EU28 as a percentage of GDP, there have been more fluctuations. While income from corporate tax is not as high as in the years before the 2008

---

3 OECD Glossary of Tax Terms
recession (it was 3.3% of GDP in 2007), the subsequent economic recovery has seen an increase in tax revenue representing 2.5% of GDP in 2012. The trend has been very similar in the euro area (EA18).

Figure 1: Corporate income tax as a percentage of GDP (weighted average)

1.3 The proposal to amend the Accounting Directive
The legislative amendment to the Accounting Directive (Directive 2013/34) relates to corporate tax information disclosure, and it adds to a previous legislative proposal published in January 2016 regarding information sharing between tax administrations. The Parliament, which was only consulted on that proposal, adopted its position in May 2016; the final act was published in June 2016. Like the previous proposal, the proposal relating to Directive 2013/34 looks to implement BEPS actions consistently across the EU. However, this proposal goes further than the OECD’s work. The countries signing up to the OECD’s action plan to combat tax avoidance agreed for large firms to submit country-by-country reports to national tax administrators. This proposal, however, would require the largest firms operating in Europe to make information about their tax and their profits by country publicly available. The proposal does follow the OECD recommendations on a turnover threshold for reporting, which is the same as the recently passed proposal on country-by-country reports to national tax authorities. This means that business groups with a global turnover of more than 750 million euro per year will need to submit an annual report on information such as taxes paid and accrued, profits made, number of employees, net turnover and the nature of their activities. The legislation will include both businesses headquartered in Europe (the ultimate parent will submit the report) and those operating in Europe but based outside, in which case the European subsidiary will report. Information on operations outside the EU will also be disclosed although generally on an aggregated level only. Member States are expected to introduce collective responsibility for the administrative, management and supervisory bodies to ensure that the reports are published, and infringements will be sanctioned with appropriate penalties. Banking groups will be exempt from this proposal as they already publish country-by-country reports containing a variety of financial and tax information. In addition, Directive 2013/34 already required the extractive and forest industry to publish their payments to government in relation to the exploitation of natural resources on a country-by-country basis, although they are not exempt from this proposal.

- The impact of the turnover threshold
  According to the European Commission’s own calculations in its Impact Assessment (IA) which was based on S&P Capital IQ data on large businesses, there are about 10,000 standalone multinational enterprises (MNEs) worldwide with a turnover exceeding 750 million euro and about

---

7 Eurostat (gov_a_tax_ag).
8 See Eurostat definitions on the euro area.
11 The CRD IV package provides global standards for banking and was introduced via the Capital Requirements Directive (CRD) 2013/36 and via Regulation 575/2013. It should be noted that there is a sunset clause in this CBCR legislation, although it will only apply if CBCR requirements in future legislation match or go beyond CRD IV.
12 A multinational company that provides financial and industry data and research.
6,500 MNE groups, with around 30% of these headquartered in the EU/EEA. According to the OECD, while the requirement to publish tax-related data would impact on only a minority (10-15%) of MNEs, they would represent around 90% of the turnover of all MNEs.\(^\text{13}\) In addition, the Commission estimates that only 10% or less of MNEs worldwide have no subsidiaries in the EU, so the vast majority of very large businesses would be affected by these rules.

Figure 2: Number of standalone MNEs and number of MNE groups by region

![Graph showing number of MNEs and MNE groups by region](image)

Source: Commission SWD (2016) 117, based on data from S&P Capital IQ

The draft proposals from the OECD originally envisaged a less clear cut-off point regarding which businesses would be required to submit country-by-country reports to tax administrations. In its public consultation\(^\text{14}\) in January 2014, the OECD suggested that small and medium-sized businesses (SMEs) should provide some information on their cross-border transactions, though less than large businesses. To illustrate the impact on individual countries, a 2014 official estimate put the number of UK businesses affected by country-by-country reporting at 1,400, revised to around 400 businesses once the consolidated turnover of 750 million euro was agreed.\(^\text{15}\) In the Commission’s IA for the proposal, alternative threshold options were reviewed. In particular, it considered the threshold based on the definition of a large group in the very directive this proposal amends (Directive 2013/34). This definition describes a large group as such if it fulfils at least two of the following criteria: a balance sheet total of 20 million euro; a net turnover of 40 million euro; or an average of 250 employees. The Commission estimates that such an option would increase the number of EU groups required to report to at least 20,000. The IA argues that this would lead to impacts on businesses with little or no cross-border trade as well as potentially impacting some Member States disproportionately given the higher number of businesses with a large turnover in some countries such as Germany or the UK. Whether there would be any disproportionate effects based on sectors is not clear as the IA does not make any sector-based assessments.

**Tax-related information included in the proposal**

The proposal attempts to balance the need for detailed information to facilitate public scrutiny without disclosing business-sensitive information. The type of information to be disclosed, i.e. taxes paid and accrued, profits made, number of employees and net turnover does not include all components previously called for by the Parliament (see Section 3 of this briefing), which had suggested that large groups also disclose information related to the value of assets, sales and purchases, public subsidies received, as well as ‘essential elements of and information regarding tax rulings’\(^\text{16}\) and a breakdown of where its subsidiaries are within and outside the EU. As previously

\(^\text{14}\) Public Consultation: Discussion Draft on Transfer Pricing Documentation and CbC Reporting, OECD, January 2014.
\(^\text{16}\) European Parliament resolution of 8 July 2015.
mentioned, while non-EU operations will generally be presented in the aggregate, the current proposal includes a requirement for MNEs to set out detailed information about their operations in certain countries that 'refuse to respect good governance standards in taxation and pose specific tax challenges'.\textsuperscript{17} Steps for an EU-wide list on tax havens was set out in a previous communication.\textsuperscript{18}

In terms of stakeholder reactions, the reporting requirements have been particularly contentious with some tax transparency campaigning groups arguing that the details included do not go far enough to allow for proper scrutiny of large groups' tax affairs, and that detailed information on MNE groups needs to be available on a global basis, not just for the EU, to ensure a full picture of each business's activities.\textsuperscript{19} Other stakeholders, such as accountancy firms, have voiced concerns about the administrative burden of reporting requirements as well as the risk that the information made public could be misinterpreted. Some of the practicalities when it comes to reporting could also be clearer, they argued, for example how to deal with changes in group structure mid-year, or whether dividends are excluded.\textsuperscript{20} Others felt that the proposal could jeopardise the EU's competitiveness, as EU Member States would be alone in signing up for public disclosure.\textsuperscript{21}

A report from 2011, 'Transparency in Reporting Financial Data by Multinational Corporations', commissioned by the OECD Task Force on Tax and Development, reviews the issue of tax transparency. Although it relates mainly to developing countries, some of the main points have wider relevance. When it comes to holding businesses to account by scrutinising their tax payments, the report urges some caution owing to the complexities of tax law and the difficulties in interpreting data. The report raises the risk of misinterpretation and associated costs to businesses – both actual and in terms of reputation. It underlines that rigorous scrutiny would need to entail standardised and comparable data with clear definitions, and that any country-by-country reporting would need to be global to ensure information could be understood properly and would not create unfair competition. The paper also emphasised that public scrutiny as a compliance tool could only be complementary and that tax administrations having sufficient powers to take action was central to combatting tax avoidance.

In addition, the Swedish and Irish Parliaments issued reasoned opinions as they considered that the proposal was in breach of subsidiarity. See also the EPRS appraisal of the Commission’s IA for more details.

1.4 The evidence: some questions to consider

- Learning from previous experience – In 2013, country-by-country reporting was introduced in the banking sector, with 2014 being the first year of reporting. While there may be some scope to learn from the way the legislation was implemented (see Section 2 of this briefing), the change is too recent to properly assess the impact of the changes. To find evidence of potential profit shifting, tax data over several years will be needed to understand the long-term trends properly. The issue of implementation is also pointed out in a review of 26 banks' data commissioned by the Greens/EFA in the European Parliament.\textsuperscript{22} Although the report concluded that country-by-country data was useful, differences in reporting and in the interpretation of requirements had somewhat hampered the analysis.

- Reputation as a driver of behaviour – While the increased transparency will increase insight and debate, it is also expected to indirectly increase compliance, on the basis of the assumption that reputation will drive behaviour. The evidence base for this claim is more varied. While there have been some high-profile cases relating to corporate taxes paid by some companies, these have

\textsuperscript{17} See proposal to amend Directive 2013/34.
\textsuperscript{18} COM (2016) 24.
\textsuperscript{19} See for example the letter to President Juncker from Transparency International, or Tax Research UK's comments on the Commission’s proposal.
\textsuperscript{20} See for example the PWC briefing on the Commission’s proposal.
\textsuperscript{21} See for example Business Europe’s press release.
generally concerned customer facing businesses, the effect of reputation on business-to-business (B2B) firms is less clear. The academic paper 'Public Pressure and Corporate Tax Behaviour' cited in the Commission's IA, evaluates the extent to which public pressure can affect companies' tax strategies. The paper compares tax receipts before and after the revelation that several FTSE100 companies did not comply with UK rules obliging them to disclose the location of all their subsidiaries. The paper concludes that the scrutinised businesses' tax expenses did increase. However, the study also noted that there is still little available evidence on how businesses respond to public scrutiny, a view echoed by a 2011 report by the Oxford University Centre for Business Taxation for the OECD's Informal Task Force on Tax and Development.

•Factors that may influence tax planning strategies – One of the Commission's own studies looks at the potential role of legislation in the area of tax planning, identifying potential weaknesses in Member States' legislation (see Section 2). In a series of interviews with heads of tax of large businesses in the UK, commissioned by its national tax administration, interviewees gave some details about how tax strategies are set and what factors may be influential. The study showed that the overall company culture and, in particular, the risk appetite of shareholders and of the business's chief executive was key to defining a tax strategy. Risk-averse businesses were generally more responsive to public pressure and regulation, and also tended to be more likely to have formalised tax strategies. Changes to management could mark a clear change in tax strategy. The OECD, in its report on tax intermediaries, also points to the individual business as the one setting its tax strategy and deciding its risk levels. Interest in the role that tax intermediaries can play in tax planning is evidenced by a UK parliamentary inquiry in 2015 that recommended that more legislation be brought in to regulate intermediaries. A 2015 OECD report on tax administrations noted the lack of regulation of tax professionals' activities in relation to tax and that this was 'particularly prevalent among many advanced European economies'. It also noted that many countries failed to provide a comprehensive service for tax professionals.

2. Global and EU-level reports, evaluations and studies

2.1 EU institution reports
Below is a selection of some of the most recent and most relevant reports produced for the European institutions on this subject:


This paper looks at the role of the financial sector in tax planning and looks at some areas such as the use in aggressive tax planning of location (tax havens for example), transfer pricing, capital flow and also hidden ownership as some of the main tools. The report makes a range of recommendations concerning aggressive tax planning on both the demand and supply sides. These include: ensuring that legislation is consistent; that there are general anti-abuse rules in place; that the relationship between tax administrations and the taxpayer is cooperative and transparent; that administrations can exchange information effectively; and that tax administrations can challenge tax agents and, for example, publish information about schemes that are considered aggressive tax planning schemes.


This study aims to improve understanding of tax law and practices in Member States, and to ascertain the extent to which some countries may be more exposed to aggressive tax planning (ATP). ATP here refers to the exploitation of loopholes in the tax system or mismatches between several tax systems to reduce or

24 Exploring large business tax strategy behaviour, commissioned by Her Majesty’s Revenue and Customs, July 2015.
25 Tax Administration 2015, OECD.
avoid paying tax. Building on the OECD’s work to identify company structures that could lead to ATP, the study identifies 33 indicators that could directly or indirectly facilitate aggressive tax planning. The study found significant variations between Member States, but noted that all Member States displayed some ATP indicators. For example, around half of Member States had no taxation or favourable taxation of dividends and/or lacked rules on Controlled Foreign Corporations (CFC).\(^\text{26}\) However, the vast majority of Member States (26/28) also had some anti-avoidance rules in place to counter ATP. The study recommended further analysis to determine whether stricter anti-avoidance rules were needed.

**General assessment of potential economic consequences of country-by-country reporting under CRD IV, prepared for the Commission, September 2014**

This study attempts to estimate the potential economic impacts of the public disclosure of tax information in banking. The study included econometric and legal implementation analyses as well as a survey of relevant stakeholders, although only 35 of a potential 156 responses to the survey were received. The report noted that it was too early to properly assess the legislative changes. So far, no real negative impacts arising from the changes could be detected. In general, so far, the impacts had been neutral. However, some uncertainties in relation to the implementation of the legislation were reported, including inconsistencies in the interpretation of the terminology used in financial accounting compared with the legislation; use of different methods of consolidation; lack of clarity in terms of treatment when the taxing jurisdiction and the location of an activity were different; and no preventative measures to stop double reporting (parent companies and its subsidiaries reporting in different Member States).

**2.2 Other reports**


This report outlines standardised guidance on transfer pricing\(^\text{27}\) and a template for country-by-country reporting including the specific data to report, such as income and taxes paid. Two ‘files’ are required to facilitate national tax administrations' risk assessment of transfer pricing activities. The 'master file' aims to provide high-level information about the business’s global operations. The 'local file' will provide information on an individual country level and also on intra-business transactions. The report stresses that national tax administrations should ensure that any sensitive information contained within these reports are kept confidential. The reporting tools themselves will be reassessed by 2020 at the latest.

**Spillovers in International Corporate Taxation, Policy Paper, International Monetary Fund (IMF), May 2014**

This is an IMF policy paper looking at ways to address spillovers, i.e. the effects of one country’s tax policies on other countries. The paper intends to add to the debate and to complement initiatives such as the OECD’s BEPS action plan. The paper notes that the current tax system is struggling to keep up with challenges such as globalisation and digitalisation as it is based on taxing by income source and residence which are becoming less relevant or more complex. In particular, it looks more in-depth at some of the proposals aimed at improving the tax system such as a set minimum tax, a worldwide tax system and in particular, at formula apportionment (FA). Under an FA a business’s profits would be allocated across countries based on a formula related to sales, capital, employees, etc. Tax would then be paid on the profits, based on this allocation. The paper points out that while an FA can address inter-business transactions so reducing the benefits of transfer pricing for example, it can lead to other unintended consequences. The impact on countries will differ substantially depending on the definitions used to allocate tax, i.e. sales measures based on the residence of the seller or the purchaser. The paper concludes that spillovers are not adequately addressed under current international tax structures and that many of the alternatives such as FAs, will not necessarily benefit developing countries and that hybrid solutions combining an FA with other methods merit additional study.

---

\(^{26}\) According to the OECD tax glossary CFCs are companies, usually located in low tax jurisdictions, that are controlled by a resident shareholder. CFC legislation is usually designed to combat the sheltering of profits in companies resident in low- or no-tax jurisdictions. An essential feature of such regimes is that they attribute a proportion of the income sheltered in such companies to the shareholder resident in the country concerned. Generally, only certain types of income fall within the scope of CFC legislation, i.e. passive income such as dividends, interest and royalties.

\(^{27}\) According to the OECD glossary: ‘A transfer price is the price charged by a company for goods, services or intangible property to a subsidiary or other related company. Abusive transfer pricing occurs when income and expenses are improperly allocated for the purpose of reducing taxable income.’
3. European Parliament position/MEPs' questions

3.1 The Parliament
Parliament has voiced its support for more tax transparency and country-by-country reporting in a series of resolutions.

On the subject of tax transparency, the Commission’s proposal on 'Mandatory automatic exchange of information in the field of taxation', which relates to the exchange of information between Member States' tax administrations, was examined by Parliament in May 2016. This was a consultative procedure only as Directive 2011/16/EU, which was subject to amendment, does not fall under the co-legislative procedure. The Parliament put forward its view in a resolution which included some proposed amendments on 12 May 2016. Importantly though, the proposal contained a threshold for submitting country-by-country reporting to tax administrations that was set in line with the OECD’s recommendations: MNE groups with a consolidated turnover of 750 million or above. This part of the proposal was not amended by Parliament.

**European Parliament Resolution of 12 May 2016 on mandatory automatic exchange of information in the field of taxation**

In its resolution, Parliament called for the Commission to be given access to the information exchanged between Member States in order to monitor adherence to competition rules. Parliament's amendments put more emphasis on tackling tax avoidance than the original proposal, and it also suggested explicitly extending reporting to tax settlements and tax credits, and called for practical steps to penalise non-reporting MNEs. The resolution also included an amendment calling for Member States to make sure that they had sufficient resources within their tax administrations to deal with the automatic exchange of information. It called for aggregated information to be included on public subsidies received, the value of assets and their maintenance costs, sales and purchases made by the Group, along with the information suggested in the proposal, i.e. 'the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates'. However, it also asked for the possibility of exemption from reporting in cases where this could lead to disclosure of commercially sensitive information.

The proposal included an obligation for Member States to communicate their assessment of how the automatic exchange of information was working, with Parliament asking the Commission to subsequently inform the Council and Parliament on progress made. The Parliament also suggested that an aggregated summary of the country-by-country reports should be published.

**European Parliament Resolution of 16 December 2015 on bringing transparency, coordination and convergence to corporate tax policies**

In this resolution, Parliament called for MNEs to submit mandatory, public, country-by-country reporting for all sectors, and for automatic exchange of information on tax rulings to include all tax rulings and for some of it to be made public. It also asked Member States to increase coordination and cooperation on tax-related matters and for a Member State to inform other Member States of any new tax measure that may impact on their tax base. In addition, the resolution also called for the introduction of a Common Consolidated Corporate Tax Base, a European Tax Identification Number and for a 'Fair Tax Payer' label for those businesses following good practice in taxation matters.

In February 2015, the Parliament set up an ad-hoc Special Committee on Tax Rulings (TAXE1) which met with a range of stakeholders including several national administrations and MNEs. Its first report resulted in a resolution by Parliament on 25 November. The Committee has continued under a new mandate as TAXE2. The report of the Committee was adopted in June and the issue will be debated in plenary in July 2016.
European Parliament Resolution of 25 November 2015 on tax ruling and other measures similar in nature and effect

In terms of transparency, the Parliament reiterated its support for country-by-country reporting and its belief that MNEs should disclose aggregate information about their profit/loss, taxes on profit/loss, number of employees, assets held, and basic information about tax rulings by a Member State and by a non-EU country. It stressed the importance of ensuring that this information be made publicly available. However, it asked for non-MNEs to be exempt from this requirement and for care to be taken to ensure that any publication requirements did not disadvantage EU firms. In addition, it called for Member States to implement more comprehensive country-by-country reporting procedures for tax administrations where tax returns and intra-group transactions could be included, while also arguing that a better dispute resolution framework and harmonised accounting standards were needed for the system to be efficient.

In March 2016, the European Commission issued a joint follow-up to the resolutions of 16 December and 25 November 2015. It clarified that it would submit proposals on country-by-country reporting and on public transparency, but stated that the notification of new tax measures by one Member State to others was best achieved via non-legislative measures. In terms of harmonising accounting standards, the Accounting Directive was revised in 2013 to simplify and clarify financial statements and no more changes were expected. Any harmonisation under the CCCTB would involve the computation of the tax base only. The Commission stated that current legislation already made it clear that national rulings with a potential impact on cross-border trade were subject to automatic exchange of information. To add all national rulings would not be effective as most rulings would not be relevant but would present a substantial administrative burden for individual Member States.

European Parliament Resolution of 8 July 2015 on long-term shareholder engagement and the corporate governance statement

The Parliament adopted a series of amendments to the Commission's proposals relating to Directive 2007/36 (shareholder engagement) and Directive 2013/34 (corporate governance). The amendments included an obligation for 'large undertakings' to disclose a series of information in the notes to their financial statements, country by country, including non-EU countries. This information included: turnover; number of employees; value of assets and their maintenance costs, sales and purchases; profits/loss before tax; tax on profit/loss; and public subsidies received. In addition, the parent company should provide a country-by-country list of its subsidiaries and publicly disclose key information relating to tax rulings. 'Undertakings of which the average number of employees on a consolidated basis during the financial year does not exceed 500 and which, on their balance sheet dates, have on a consolidated basis either a balance sheet which does not exceed a total of 86 million euro or a net turnover which does not exceed EUR 100 million shall be exempt from this obligation'.

3.2 MEPs' written questions

MEPs have asked a range of questions on tax transparency and country-by-country reporting. Topics have included, more specifically, queries around the timing and content of forthcoming legislation in the area of tax transparency, cases related to specific firms, 'Luxleaks' and the 'Panama papers', and the situations in particular Member States.²⁸

Written question by Neena Gill, April 2016

With regard to the Commission's proposals on country-by-country reporting and the fact that Member States would decide on how to sanction non-compliant businesses, Ms Gill asked whether or not there would be any guidelines available to Member States on what sanctions to apply, and whether the

Commission had any estimates in terms of how much country-by-country reporting could reduce tax avoidance.

At the time of writing, the Commission had not yet responded to this question.

**Written question by Louis Michel**, March 2016
This question related to the use of tax havens and the practice of channelling profits through tax havens to avoid paying taxes in countries with higher tax rates and how the Commission intended to combat this as neither the BEPS action plan nor the CCCTB programme addressed this.

**Answer given by Mr Moscovici on behalf of the Commission**, June 2016
Mr Moscovici replied that the Commission was aware of the complex tax structures some companies used to minimise their tax payments and that tackling tax avoidance was a priority for the Commission, as set out in its 2015 Action Plan and further evidenced by recent legislative proposals including public country-by-country reporting. A common EU list of non-cooperative countries outside the EU would help tackle tax havens and the BEPS action plan would be an effective tool in terms of tackling international tax avoidance.

**Written question by Miguel Viegas**, February 2016
This question related to the potential impact of public scrutiny of MNEs' tax-related activities and the research undertaken by the Commission in this area. Mr Viegas asked, more specifically, why an external firm had been appointed and who they were.

**Answer given by Lord Hill on behalf of the Commission**, April 2016
Lord Hill explained that as part of the Commission's overall work on tax transparency, an Impact Assessment and a public consultation had been launched in 2015 and that, in addition, various experts and interested parties had been consulted in a variety of ways. A study had also been carried out in 2014 on the impact of country-by-country reporting for banks. This work had been conducted by PWC following a public procurement process. No other external studies had been commissioned on the impact of publicising corporate tax information.

**Written question by Karol Karski**, April 2015
This question related to what action the Commission was planning to ensure that large MNEs in the EU published data on their profit, taxes and subsidies, and whether there was a need for a 'tax transparency institution' to be created to oversee the smooth running of the international tax system.

**Answer given by Mr Moscovici on behalf of the Commission**, July 2015
The Commissioner pointed out that there was already legislation requiring some sectors such as the extractive industry to submit country-by-country reporting. An impact assessment was being prepared on the subject and, once it was ready, the Commission would decide on what action it will take. However, any potential legislation could only apply in the EU. There was no plan to set up a monitoring body relating to tax transparency.

**4. EU wide consultations and surveys and citizens' petitions**

The Commission ran a public consultation on Further Corporate Tax Transparency between June and September 2015. In total, 422 responses were received and 282 of the respondents were happy for their answers to be published, i.e. two thirds of respondents. The vast majority of these were either private individuals, NGOs, or industry associations. Although several large accountancy firms responded to the consultation, fewer than 10 businesses responding had a turnover that exceeded 750 million euros. The Commission's consultation summary of all responses showed that at least half of the respondents were private individuals. A big divide could be detected in the answers between NGOs who favoured more transparency and businesses who preferred the status quo.
In 2012, a Eurobarometer survey: 'Europeans, the European Union and the Crisis' contained one question relating to taxation. The focus of the survey was the economic crisis and this may have influenced the responses somewhat. Respondents were asked to give their views on whether the EU should take action on five specific measures to improve the financial and economic system. In total, 88% of the respondents favoured tougher rules on tax avoidance and tax havens, 81% agreed that a tax on banks' profit should be introduced, 76% that rules for credit ratings agencies should be stricter, 63% were for a tax on financial transactions and 45% wanted to see the introduction of European bonds. The survey was undertaken in all Member States in November 2012 using a statistically representative sample.

As far as the business perspective is concerned, PWC runs an annual survey of over 1 000 CEOs worldwide. Its 2013 survey had a particular focus on tax with CEOs being asked which stakeholders had a significant influence on their business strategy. Customers and clients were most influential with 80% saying they had a significant influence while 50% said the same about governments and regulators and 45% about industry competitors. Around a third of CEOs felt that creditors/investors and employees were very influential while 12% said the same about the media and 5% about non-governmental organisations. Their analysis also showed that corporate tax made up around 36% of the total tax rate for businesses.

5. European Economic and Social Committee and Committee of the Regions

The European Economic and Social Committee (EESC) issued its opinion on 28 April 2016 on the Commission's proposal on rules against tax avoidance and mandatory automatic exchange of tax information between Member States. The EESC welcomed a uniform way of implementing tax avoidance measures and urged that any measures agreed should be in line with the OECD's proposal so that they could be implemented by other international partners to ensure fair competition. The EESC called on the Commission to complete the list of countries that did not apply good tax governance and asked for Member States to 'disclose the data presented in the reports which will be subject to the automatic exchange of information'.

In its opinion of 13 October 2015 on the Tax Transparency Package, the Committee of the Regions (CoR) welcomed the initiative, although it added that territorial or administrative subdivisions should also be allowed to request information on tax and that the Commission should provide them with the necessary training to be able to scrutinise the data properly. The CoR suggested that MNEs should also be obliged to disclose cross-border rulings and cross-border arrangements in advance, on a country-by-country basis, to ensure equal competition and that customers should be able to hold businesses to account for their tax strategies.

6. Conclusions

The current proposal on publishing corporate tax data is part of a broader effort to tackle tax avoidance and increase tax transparency. The proposal is closely connected to the recently adopted changes to Directive 2011/16 on the automatic exchange of information among national tax authorities. Country-by-country reporting to tax administrations is included in the OECD's action plan for tackling tax avoidance. However, while the present proposal applies the same turnover threshold and covers the same businesses as the OECD plan, it goes somewhat further as it adds an obligation to disseminate tax information publicly.

Parliament has long called for tax information to be made public, however, this proposal does not go as far as Parliament had recommended in previous resolutions on the topic, particularly, in terms of the data that will be made public.

---

There is already some EU-wide experience of making corporate tax-related data public with the recent decision to mandate the banking sector to publish tax-related data. The full impact of this measure is still unclear as several years of data will be needed to properly track tax planning behaviour. However, the Commission's evaluation on the subject has not yet found any negative impacts of publishing tax-related data.

When it comes to what public scrutiny would achieve, there is not as yet an abundance of evidence on the effect of potential reputation-related damage on large businesses' tax strategies. Public disclosure will centre on businesses' tax payments within the EU, which means that it will not necessarily be possible to gain an overview of a business's total tax position. This will have some effect on the analysis that can be made of businesses' tax-related information. However, the proposal sends a strong message in relation to the need for additional transparency.

7. Other sources of information
EPRS:
- Bringing transparency, coordination and convergence to corporate tax policies in the European Union:
  - Assessment of the magnitude of aggressive corporate tax planning
- Tax transparency: openness, disclosure and exchange of information
European Commission:
- Taxation papers
Eurostat:
- Taxation Trends in the European Union 2015
- Taxation Trends in the European Union 2014
OECD:
- Base Erosion and Profit Shifting
- Revenue statistics
Oxford University Centre for Business Taxation:
- http://www.sbs.ox.ac.uk/faculty-research/tax
World Bank:
- Tax revenue statistics

To contact the Policy Cycle Unit, please e-mail: EPRS-PolicyCycle@ep.europa.eu
The opinions expressed in this document are the sole responsibility of the author(s) and do not represent an official position of the European Parliament. Reproduction and translation of this document for non-commercial purposes are authorized, provided the source is acknowledged and the publisher is given prior notice and sent a copy.