SNAPSHOT

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# EU SPRINGS COUNTRY-BY-COUNTRY TAX TRANSPARENCY ON CORPORATES

**THE FIGHT AGAINST TAX EVASION WAS HIGH ON THE EUROPEAN COUNCIL'S AGENDA. HOWEVER, ONE POINT OF THE COUNCIL CONCLUSIONS SEEMED TO HAVE SLIPPED PAST MANY PARTICIPANTS AND WAS INTRODUCED WITHOUT DEBATE, WITH POTENTIAL FAR REACHING IMPLICATIONS FOR COMPANIES WITH LARGE CROSS BORDER OPERATIONS.**

The recent cases of large multinationals coming under fire both in the EU and in the US for their low taxes paid compared to the revenue generated in certain jurisdictions, has enhanced the already growing momentum to "fix" a broken international tax system. However, the latest proposal by the European Heads of State, has caught business and administrations by surprise.

The proposal to oblige companies to report country-by-country on their turnover and taxes paid was not explicitly discussed at the European Council meetings and so the question must be asked: did this proposal just slip through almost as an oversight, or were there political considerations at play? Considering the tough negotiations on other country-by-country reporting proposals, the stealthy nature of this decision by the European Council is astounding.

The political impetus appears not to have come from the Irish presidency, even though the Irish agreed to the conclusions. It is thought that the President of the European Council might have spearheaded the amendment, although whether it was pushed, by France or the UK, is still not clear.

## NEXT STEPS

Whatever the impetus, the Commission has indicated that it is in a hurry to introduce the proposal. Its just a question of how.

There are two legislative proposals currently under negotiation which could easily be amended to reflect this requirement. The first is the Accounting Directives which introduced country-by-country reporting for the extractive industries. Despite political agreement between the European Institutions being found on 9 April on this proposal, the text is not yet legally finalised by the Council and the EP.

The second possibility is more likely because the agreement on the Accounting directive was not easily found and most negotiators would be hesitant to reopen these talks. This option is the next amendment to the Accounting Directives with regard to non-financial reporting, proposed by the Commision on 16 April.

An amendment by the European Commission of its own proposal at this stage, would legally require a new legislative proposal from the Commission. This would take some time, even if fast tracked, as it would amongst others require an impact assessment. Another way for rapid progress is for a Member State in the Council, or an MEP in the European Parliament, to propose an amendment to the legislative text that is already under negotiation. This is real fast tracking, and the likely way in which this amendment will go.

MEP Sharon Bowles, Chair of the powerful ECON Committee in the European Parliament supports swift progress. She has already tweeted that "*country-by-country for ALL sectors helps ALL countries get the tax they deserve*". In the hearing in the May 27 EP she expressed her desire to expand country-by-country reporting obligations to large companies and groups as soon as possible through a change to the recently concluded, though not formally adopted, Accounting directive.

It looks like the real fast track approach will most likely be chosen. However, the Commission could be hesitant: a Council or Parliamentary amendment to legislative texts that are already under negotiation, means no impact assessment will be made. That could be a risky choice for a proposal that could have substantial impact for companies, and would fit uncomfortably in the smart regulation agenda of Barroso II.

Moreover, there is the potential downside for European integration. Despite the understandable objective to ensure adequate tax payments in the different jurisdictions, the proposal to force companies to report Member State by Member State on their activities seem intellectually to be at odds with the intention to create a single market. A solution would be to fully harmonise tax legislation at an EU level. Whether the Heads of State would want to go that far is questionable.

Finally, the proposal could be seen to be at odds with anticipated global initiatives on consolidated reporting for multinationals.

## THE DETAIL

The official Conclusions of the European Council of 22 May state on the 9th page under point 10 and subheading i: "*the proposal amending the Directives on disclosure of non-financial and diversity information by large companies and groups will be examined notably with a view to ensuring country-by-country reporting by large companies and groups*".

This wording is far from specific but was repeated by Commissioner Barnier in a speech on Thursday 23 May in Amsterdam at the Global conference on sustainability and reporting (GRI): "*Moreover, the largest banks will also have to disclose their profits, taxes and subsidies in each Member State and non-EU country where they operate. And in the line with yesterday's conclusion of the European Council we will expand these reporting obligations to large companies and groups*."

This seems to signify that the Commission intends to introduce a requirement for corporates to report the following:

a) *Name(s), nature of activities and geographical location;*
b) *Turnover;*
c) *Number of full time employees*
d) *Profit or loss before tax;*
e) *Tax on profit or loss;*
f) *Public subsidies received.*

## COUNTRY-BY-COUNTRY REPORTING

Country-by-country reporting is a legislative figure that first featured in the revision of the Accounting directive. The requirement that has been adopted in that directive is a requirement for large companies and public interest entities in the extractive industries to disclose payments to governments. This requirement, also introduced in the US, is intended to promote governments' accountability and good governance, basically reducing the chance of bribes being paid.

After this, a country-by-country reporting requirement regarding turnover and taxes paid was surprisingly introduced in the banking capital requirements directive (CRD IV), on the initiative of the European Parliament, however with a different aim. The recital to this proposal states: Increased transparency regarding the activities of institutions, and in particular regarding profits made, taxes paid and subsidies received, is essential for regaining the trust of EU citizens in the financial sector. Mandatory reporting in this area can therefore be seen as an important element of the corporate responsibility of institutions to stakeholders and society.
Important to note, however, is that this information will first only be confidentially disclosed to the European Commission. It will assess the "*potential negative economic consequences of the public disclosure of this type of information, including the impact on competitiveness, investment and credit availability and financial stability and report back to the Council and the European Parliament at the latest by 31 December 2014*". Thus it is not a certainty that this requirement will in fact become a public disclosure obligation.

## FTI CONSULTING

**Hans Hack**
*Senior Director*
*Financial Services*
Avenue Marnix 23 - 1000 Brussels
+32 (0)2 289 0875
Hans.Hack@fticonsulting.com

**Claire Harris**
*Senior Director*
*Competition*
Avenue Marnix 23 - 1000 Brussels
+32 2 289 0930
Claire.Harris@fticonsulting.Com