

Opinion submitted by the Standing Committee on Energy, Commerce, Industry and Tourism of the House of Representatives of the Republic of Cyprus with regard to the Commission's proposal for a Council Directive on a Common Corporate Tax Base [COM (2016) 685] and the proposal for a Council Directive on a Common Consolidated Corporate Tax Base [COM (2016) 683] – executive summary in English

The Standing Parliamentary Committee on Energy, Commerce, Industry and Tourism (hereinafter “the Committee”) examined the above proposals with regard to their substance, their legal basis and the legal framework provided by the Treaty of the European Union with regard to the principle of subsidiarity and proportionality.

In the framework of scrutiny over the proposals, the Committee invited the executive (Ministry of Finance) to provide the necessary information regarding the developments at the EU level as well as its position on the subject matter. Interested parties were also invited to explain their position.

Following the examination of the two proposals, the Committee in its Opinion mainly states the following:

The proposals restrict the autonomy of EU member states to make their own decisions regarding their tax systems. The tax system of each member state (the member states' rules on the calculation of the tax base together with the tax rate) does not only affect the tax income, but is also affected by its economic and social policy. Conversely, a possible reduction of the tax income will have a negative impact on the social policy pursued by the member states. In its CCCTB proposals, the European Commission does not take into account the specific advantages and disadvantages of the economic situation of each member state or its current and future needs. Simply preserving the right to set the tax rate is not enough. At this point, the Committee shares the concerns forwarded by other EU Parliaments regarding the particularities of their countries.

The CCCTB proposals may also have a negative impact on foreign investments, employment and the GDP of certain member states. Even though the European Commission's impact assessment presents an overall positive impact on the EU as a whole, it is inconclusive with regard to the extent to which each member state shall be affected. It is reasonably expected that both CCTB and CCCTB shall have a negative impact on small and open economies as is the case of Cyprus.

Furthermore, the Committee kindly points out that an additional tax system will increase both the complexity and the administrative cost of member states' tax authorities, given that the group of companies that do not fall within the scope of the CCTB proposal (and the CCCTB proposal in case it

is finally adopted) will continue to apply the national tax rules for the purpose of calculation of the tax base.

In relation to the above, the European Commission is of the opinion that the compliance cost for companies and tax administrations will be reduced as a result of the CCCTB package. This position, however, is based on the assumption that *both* proposals will be finally adopted. No sufficient assessment is provided with regard to the reduction of the compliance cost in the case where only the CCTB proposal is finally enacted.

Moreover, it has not been sufficiently proven that the aim of reducing the administrative burden for multinational companies cannot be achieved through measures at the national level or the cooperation between EU member states. Other instruments, such as the EU Code of Conduct on Business Taxation, the Anti-Tax Avoidance Directive (ATAD) 2016/1164/EU and the “BEPS” Action Plan of OECD are also available to combat tax avoidance. The ATAD Directive in particular, has not even reached its first revision stage which is planned for 2020.

The Committee is also of the opinion that, since member states will not be in full control of their company tax system (with regard to those companies falling within the scope of the EU proposals), they will not be able to develop sufficient individual response if such a need occurs under future developments. As a result, their competitiveness will be severely damaged. Moreover, in case there is a future need to amend an adopted CCTB Directive, achieving unanimity will prove to be an extremely difficult task, since the developments at a local or international level will probably have a different impact on every single member state. Thus, it is highly probable that certain international companies will transfer their activities outside the EU.

Further to the above, according to the Committee, the balance achieved through bilateral agreements with third countries on the avoidance of double taxation may be disturbed, since the CCCTB package was not taken into account at the stage of the adoption of these agreements. As a result, there may be a need on the one hand to renegotiate existing agreements and on the other hand to take into account two parallel tax systems when entering into future agreements.

The European Commission has failed to provide sufficient justification with regard to the compliance of the proposals with the principles of subsidiarity and proportionality. As previously mentioned, an impact assessment is provided only with regard to the adoption of both proposals. However, the absence of an impact assessment document in relation only to the first proposal (CCTB) does not clearly prove that an EU action shall have better results or does not go beyond what is strictly necessary to achieve its objectives. The necessity for action at the EU level is neither substantiated by

qualitative and quantitative indicators nor is it based on a detailed statement taking into account the economic and administrative burden to be imposed as required by Article 5 of Protocol (No2) of the Treaty, and therefore is not sufficiently proven.

The Committee also considered the issue of the legal basis of the two proposals. In this regard, its conclusion was that the smooth functioning of the EU internal market is not the primary objective of the two proposals and therefore Article 115 TFEU should not be used as a legal basis. This is quite obvious upon examination of the relevant Commission documents the Committee had before it. More specifically, the primary objective is to increase the fairness of tax systems and create a level-playing field as a result of effectively removing incentives for aggressive tax planning in the EU. This, according to the European Commission, would ensure that corporations pay their fair share of the tax burden and enhance taxpayer morale. Thus, the Committee notes that the EU, without actually having the legal background of the Treaties, is given the authority to set out rules on the consolidation of tax systems for companies of certain size *at the present time*. It is the opinion of the Committee that if Article 115 TFEU wrongfully constitutes the legal basis for the establishment of a common base for company taxation, it shall become a negative precedent for future use so as to broaden the scope of the proposals which clearly affect issues falling within the competence of EU member states.

The Committee also raises the question regarding the necessity for the adoption of the two proposals, taken into account the European Commission's White Paper on the Future of Europe [(COM) 2017 2025]. The mere fact of the existence of several scenarios on the future of Europe may lead to the conclusion that the adoption of the two proposals is not strictly necessary.

It is further noted that the executive and all interested parties invited, share the arguments included in the Opinion of the House Standing Committee on Energy, Commerce, Industry and Tourism as stated above. In particular, all the participants in the Committee meetings expressed their serious concerns on the potential negative impact the proposals may have on the economy of the Republic of Cyprus as well as other EU member states.

For the reasons stated above, the Committee expresses its *disagreement* with the content and the objective of the legislative proposals, calls upon the EU institutions to take seriously into consideration the legitimate concerns based on the particularities of the economy of the Republic of Cyprus as well as other EU member states and further expresses the opinion that the proposals should be *withdrawn*.