

## Views on the European Commission's proposal for the publication of country-by-country reports

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Referring to:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches		
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### Summary

Insurance Europe supports the European Commission's efforts to promote fair and efficient corporate taxation at both EU and global levels. However, Insurance Europe does not believe that a good case has been made that the Commission's [proposal](#) to introduce a public country-by-country-reporting of tax disclosures via a suggested amendment to the Accounting Directive (2013/34/EU) would achieve these objectives. The current proposal actually undermines the objectives of the multilateral agreement on the automatic exchange of country-by-country reports between national tax authorities. As proposed, it may also harm the competitiveness of the EU.

### General comments

Insurance Europe supports the European Commission's proposal to amend the Administrative Cooperative Directive (DAC) to include provisions for the automatic exchange of country-by-country reports between national tax authorities ("DAC4"). This represents full alignment with the Organisation for Economic Cooperation and Development (OECD) recommendations in Action 13 of the Base Erosion and Profit Shifting (BEPS) Action Plan and will ensure appropriate levels of transparency toward tax authorities. In order to facilitate country-by-country reporting, Insurance Europe believes it is essential that the contents of the reports for the purposes of the DAC are identical to those of the OECD BEPS Action 13. This would allow multinational enterprises to fulfil intra-EU and extra-EU reporting requirements by filling in and submitting a single template.

On 12 April 2016, the European Commission published a separate proposal with a proposed amendment to the Accounting Directive (2013/34/EU) that makes the publication of country-by-country reports (CBCR) mandatory. Insurance Europe questions the alleged benefits of such a proposal and remains of the opinion that the case has not been made for the EU to introduce additional EU transparency requirements that go beyond the OECD's BEPS recommendations.

On the contrary, the proposal might even be counterproductive for the European economy. It would not combat aggressive tax planning, harmful tax regimes and tax fraud, but would potentially harm the competitiveness of the EU vis-à-vis other global jurisdictions. Working towards a greater degree of harmonisation and offering guidance and tools to enable the effective implementation of international standards in the EU would be a more effective way to achieve these objectives. Insurance Europe, therefore, reiterates its strong concerns regarding proposals for the potential extension of mandatory publication of CBCR to further concerned entities.

Finally, Insurance Europe believes that the suggested public disclosure of reports on income tax information would not provide meaningful information to interested parties, as it would ignore the existing differences between accounting rules and the non-harmonised tax regimes in different Member States and globally.

### Comments on specific provisions of the proposal

As highlighted above and as a matter of principle, Insurance Europe does not support the Commission's initiative to mandate the publication of CBCR via the proposed amendment to the Accounting Directive. No good case has been made that this proposal would achieve fair and efficient corporate taxation. In addition to the above, Insurance Europe has several specific concerns regarding the text of the Commission's proposal:

- **Information to be published:** Article 48c (2) of the [public CBCR proposal](#) foresees the publication of several information items. Insurance Europe believes that these should be identical in content to the corresponding information items as part of the CBCR report that must be submitted to tax authorities for the purposes of Administrative Cooperation Directive (DAC4) ( under Article 8aa(3)(a) of the adopted [Council general approach](#)). The same should apply to the data sources used.
- **Unsuitable additional disclosure requirements:** Article 48c (4) of the public CBCR proposal requires an overall narrative providing explanations on material discrepancies between the amounts of tax accrued and paid. Such a requirement does not appear either in the OECD Action 13 final recommendations or in DAC4. This would further increase the compliance burden for companies, which would have to produce different templates for CBCR reporting under the two legislative acts. In addition, the difference between "accrued" and "paid" should not be assumed to be known by the targeted audience. Therefore, Article 48c (4) should be deleted.
- **Problematic publication timeline:** Article 48b (1) of the public CBCR proposal, read in conjunction with Article 48b (6) requires the annual publication of CBCR information (i.e. no later than 12 months after the balance sheet date and for capital-market oriented undertakings no later than four months after the balance sheet date). This requirement significantly differs from the one in DAC4 (Article 8aa (4) of the adopted Council general approach), which states that the communication shall take place "within 15 months after the last day of the fiscal year of the MNE Group to which the CbC report relates". To ensure consistency and to minimise the compliance burden for companies, the (public) CBC report for the purposes of the Accounting Directive should be published and made available at the earliest at the same time with the CBC report for the purposes of DAC4 (i.e. within 15 months after the last day of the reported fiscal year).
- **Need for clarity regarding the scope of the independent check:** The wording of Article 48f of the public CBCR proposal should not be construed to mean that statutory auditors should also verify the content of the CBC reports, but rather only check if the report has been published and was made available according to the provisions of this proposal. The text of this article should be improved to clarify this more explicitly.
- **Need for flexibility in the approach to determine the information to be reported:** The requirement in Article 48c (3) of the public CBCR proposal for the information attributed to the activities in each jurisdiction to be "the sum of the information relating to such activities of each affiliated undertaking and their branches in that tax jurisdiction" would be disproportionate, as it would imply using a "bottom-up" approach exclusively. This would differ from the provisions of DAC4, which allow flexibility to adopt a "bottom-up", "top-down" or a hybrid approach. If the provisions of the public CBCR proposal and of DAC4 are not aligned, companies (which mostly have tended to

choose a top-down approach through a consolidation system for the purposes of DAC4) would have to build new processes from scratch to comply with the bottom-up requirement as well. This has to be avoided.

- **Need to protect commercially sensitive information:** Under a public CBCR reporting regime, companies should be allowed to withhold information where it is reasonable for them to believe that disclosing such information could have a material negative impact on their competitiveness vis-à-vis their competitors. A similar clause exists in the Directive 2014/95/EU of 22 October 2014, amending the Accounting Directive as regards disclosure of non-financial and diversity information by certain large undertakings and groups. A review at EU level could verify that the reasons invoked for withholding information are justified but these reasons should also be kept confidential.
- **Need for materiality thresholds:** The content of CBC reports disclosed to the public would be determined by accounting systems and principles. As such, this content will contain a level of materiality (relative to the reporting entity) below which separate reporting is not required. Tax returns submitted to a tax authority can contain more detail (down to a granular level), but any public disclosure requirements related to CBC reports should allow for an entity specific level of materiality below which it is not necessary to publish and make available disaggregate data.

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