



Mr Pedro Siza Vieira

Minister of State for the Economy
and the Digital Transition of Portugal,
Chair of the EU Competitiveness Council
Rua da Horta Seca, n°15
PT – 1200-221 Lisboa

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Interinstitutional Negotiations on Public Country-by-Country Reporting ('Public CbCR')

Dear Minister,

BusinessEurope supports the on-going fight against tax fraud and evasion and we agree with the principle that businesses should be taxed in line where profits are generated. We have also provided our support to the BEPS-project and the on-going global tax negotiations at the OECD. Given the need to support the work of tax authorities across the globe, we were disappointed with the recent decision of the Council to support the Commission's proposal to amend directive 2013/34/EU, putting in place public CbCR, particularly given the risk that this undermines OECD co-operation on the exchange of information and may harm the on-going negotiations on a new global corporate tax system.

We believe that the priority going forward should be to ensure that public CbCR limits the misinterpretation and competitiveness risks related to the disclosure of sensitive commercial information by honest taxpayers, and targets those situations where there may be a real risk of harmful tax practices. We thus welcome both the Council and Parliament's recognition of this through their provision of a safeguard clause, which should be an essential core element of any agreement. Whilst a time-limit of six years for the non-disclosure of commercially sensitive information is a welcome step forward, it may not provide sufficient protection as some data can remain sensitive over a longer period of time (e.g. companies in R&D-intensive industries with long product-life cycles). As a minimum, if we are to provide long-term certainty for businesses, it is essential that the safeguard clause is strengthened by allowing a business to either renew the provision after six years upon approval by the tax authorities (based on harmonized and detailed guidance), or to disclose the information of the preceding six years through an arithmetic average (a yearly renewal procedure would not provide such certainty).

To further ensure the protection of commercially sensitive information, we strongly support the aggregation of data for a company's operations in non-EU countries. In addition, we encourage the European Parliament and Council to explore the option that businesses do not disclose information for jurisdictions where they only have very limited activity. For example, it would be possible to have aggregated data for those entities operating inside the EU, which represent less than a certain percentage of the company's EU-wide turnover to protect commercial information as much as possible, while ensuring further transparency in those jurisdictions where a company is largely active.



We also remind all actors of the dangers of disclosing certain information which go beyond the Commission's original proposal. For example, the disclosure of fixed assets was excluded from the Commission proposal as the impact assessment deemed such information contained 'high competitiveness and misinterpretation risks'. For similar reasons, the distinction between the turnover with related and unrelated parties was also not included in the Commission's proposal as it 'would uncover to competitors information inherently connected to a group's structures and affairs'. Going beyond any of the data required by the Commission's proposal will only increase the already high competitiveness risks for European companies.

At the same time, we encourage all actors during the interinstitutional negotiations to assess the significant work that is being undertaken at the OECD on a global minimum corporate tax rate ('Pillar 2'). When such a global rate is agreed, which would ensure a minimum level of tax on all foreign income of a company, the introduction of public CbCR should be re-evaluated in this context. In addition, before concluding negotiations, we urge all actors to follow-up on statements from major non-EU trading partners, who have expressed their strong concern about public CbCR, to avoid a situation whereby an EU-implementation of public CbCR causes the breakdown of the wider BEPS Action 13 consensus and other global tax initiatives.

We hope for your understanding on these fundamental concerns to ensure as much as possible that public country-by-country reporting is workable and proportionate and not administratively burdensome and we remain at your disposal should you wish to discuss these issues further.

Yours sincerely,

Markus J. Beyrer