



To: Mr Maroš Šef ovi
European Commission Vice-President
Rue de la Loi 200
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Belgium

Place and Date The Hague 29 April 2011

Concerns Reasoned opinion (subsidiarity) on the proposal for a Council Directive concerning a
Common Consolidated Corporate Tax Base (CCCTB) – COM(2011) 121

Our reference Nr. 32728-3

- Courtesy translation -

Dear Mr Šef ovi ,

In accordance with the established procedure, the Dutch House of Representatives has examined the above proposal for compatibility with the principle of subsidiarity. This involved the application of Article 5 of the Treaty on European Union and Protocol 2 of the Treaty of Lisbon regarding the application of the subsidiarity and proportionality principle.

The purpose of this letter is to inform you of the position taken by the Dutch House of Representatives. Copies of this letter have been sent to the European Parliament, the Council and the government of the Netherlands.

The House of Representatives received with interest notification of the proposal for a Council Directive concerning a Common Consolidated Corporate Tax Base (after this: the proposed CCCTB) (COM(2011) 121).

The House of Representatives is of the opinion that the above proposal does not comply with the principles of subsidiarity and proportionality. The House of Representatives therefore objects to the proposal. Please find a reasoned opinion in the enclosure.

Yours sincerely,

Gerdi A. Verbeet
President of the Dutch House of Representatives

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Reasoned opinion

Subsidiarity

The House of Representatives is of the opinion that there is insufficient proof that there are any benefits to be derived from action taken by the European Union in comparison with action taken by the individual member states. The House of Representatives is therefore of the opinion that the proposal does not comply with the principle of subsidiarity.

Prosperity in the EU as a whole

The introduction of the proposed CCCTB would not result in benefits for every party, which makes it necessary to consider the benefits for one party against the disadvantages for another. In making this consideration, the House of Representatives notes that the increase in prosperity for the EU as a whole would be very limited. The House of Representatives notes that the introduction of the proposed CCCTB would actually have a negative impact on the Gross Domestic Product (GDP) in the EU as a whole. The European Commission impact assessment indicates that the introduction of the proposed CCCTB would be expected to lead to a decline in GDP at EU level of 0.2%.

Prosperity in the individual member states

For a number of member states, including the Netherlands, the introduction of the proposed CCCTB would be detrimental to the overall level of prosperity. For most member states, the proposed CCCTB would mean a decline in GDP. In the case of the Netherlands, the decrease could be as much as 1.69%, which amounts to a loss in prosperity of €11 to €12 billion. The House of Representatives is also concerned that any introduction of the proposed CCCTB is expected to cause the level of investment in the Netherlands to fall by 1.84%.

Budgetary erosion and fiscal sovereignty of member states

The introduction of the proposed CCCTB will lead to budgetary erosion. The proposed reduction of the tax base will - ceteris paribus – lead to a decrease in taxation revenues in the Netherlands and in other member states. Given the precarious budgetary position in which member states find themselves, the timing of such a proposal is unfortunate.

In its explanatory notes to the proposal, the European Commission states that the effect of the Directive on the revenues of the member states will ultimately depend on the policy choices they make with regard to any possible changes to the combination of taxes levied or the rates of taxation that are applied. In the opinion of the House of Representatives, this solution means that the European Commission is encroaching indirectly onto the territory of setting taxation rates, a matter that falls under the sovereignty of member states.

In the area of taxation, the House of Representatives advocates caution, for reasons of practicality and principle, on the part of the European institutions. The House of Representatives regards this proposal, with its shift of direct taxation from national to European level, as undesirable.

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Continuation of letter

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Proportionality

The House of Representatives is of the opinion that the actions of the EU go further than is necessary for the purpose of achieving the objectives of the Treaty and therefore believes that the proposal is not proportional.

The primary reason for this is the fact that the proposal would lead to two different systems for corporate tax. For the member states, it would mean an increase in operational costs, as both systems would have to be maintained. The financial and administrative burdens that this would entail would only be proportional if there were substantial benefits to be had. In the view of the House of Representatives, this is not the case.

In addition, the introduction of a new system would involve high costs. There would also be the extra work in relation to taxation treaties, which are based on the current system rather than the proposed situation with an extra system. This, too, is considered undesirable by the House of Representatives and not proportional in comparison to the intended benefits.

Moreover, the proposed basis of apportionment for common (cross-border) consolidated profits works against member states with a large service industry, because factors like intangible and financial assets are not included in the apportionment model. The Netherlands would be among those countries put at a disproportionate disadvantage.

Legal basis

Opinions in the House of Representatives about the legal basis differ.

Some groups in the parliament regard Article 115 of the Treaty on the functioning of the European Union as an appropriate legal basis for the proposed CCCTB because it concerns the functioning of the internal market. At the same time, they refer emphatically to the fact that this means the Directive must be approved unanimously by the Council.

Other parliamentary groups are of the opinion that the Treaty provides no legal basis for introducing this proposal, and emphasise that the Treaty as a whole makes no provision for measures in the area of direct taxation. They also emphasise that the sovereignty of the member states prevails in the matter of direct taxation.



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Final remark

The above observations relate to the position of the political groups that represent a large majority of the House of Representatives.

Some other political groups see the potential benefits of introducing the proposed CCCTB. They point out that businesses that are active in several Member States could suffice with one tax system. This reduces the administrative burden of these businesses with 7%. Also this would prevent double taxation of companies or the situation that they just do not pay taxes. This is positive from the perspective of simplification of taxation as well as the prevention of avoidance schemes. Furthermore the proposed CCCTB could be a good instrument for stopping the dreaded “race-to-the-bottom” of Member States in relation to the corporate tax. According to these political groups more research on this topic is desirable.

An other political group notes that Member States can adapt the applied corporate tax rates in order to neutralize budgetary effects.

Some political groups evaluate the proposed CCCTB as proportional as businesses that are active in several Member States may choose to participate in the scheme, while other businesses are not burdened. According to these political groups the reduction of the administrative burdens is many times bigger than the increase in execution costs of the Taxation Authority.