



Vienna, October 31st 2018

Subject: Lack of progress of EU negotiations on European Commission's proposal for public country by country reporting

Dear Minister,

We, the undersigned Vienna Institute for International Dialogue and Cooperation (VIDC) and Coordination Office of the Austrian Episcopal Conference for International Development and Mission (KOO) are writing to you regarding the lack of ambition and progress of the discussions within the Council of the European Union on much-needed measures for public Country by Country Reporting (CBCR). As we approach the anniversary of the Paradise Papers, corporate secrecy and, consequently, aggressive tax avoidance by multinational companies (MNCs) remains a significant concern for the public in Austria – a concern which public CBCR would go a long way to addressing. However, with the European elections approaching in May 2019, a dialogue and ambitious decision looks increasingly unlikely, unless Austria and other EU Member States take action immediately.

More than two years after the legislative proposal was first presented by the European Commission on 12 April 2016, we express our strong concern that EU negotiations on rules to implement public country-by-country reporting (CBCR) have not progressed. The meeting of the **Competitiveness Council** on November 29th offers an important opportunity to reach agreement and we urge Austria, as the current Presidency of the Council of the European Union to **ensure this file is on the agenda**, and to **support an ambitious agreement and adoption of a 'general approach' without delay**.

While we have welcomed the Commission's proposal it contains several serious loopholes, which must be addressed to achieve meaningful transparency. Responsibility now lies with Austria and other EU governments to improve and strengthen the Commission's proposal to ensure that the directive has the effect of exposing and preventing large-scale corporate tax avoidance, by:

- Requiring MNCs to report on a country by country basis for all countries and tax jurisdictions. This is critical for determining a company's economic activity, structure, and payments in each country it operates in;
- Supporting public CBCR that covers all large multinational corporations in line with the EU threshold for a large undertakingⁱ;
- Supporting that CBCR reports be published in an open data format, and included in a public register managed by the European Commission;
- Removing the loopholes that allow MNCs to hide letterbox companies or avoid or delay reporting.

Tax scandals have shown how large corporations continue to conceal where they do business and how much they are paying in tax, despite the introduction of non-public CBCRⁱⁱ. In contrast, public CBCR would require large multinational companies to produce an annual *public* report disclosing where they do business, make profit and

how much they pay in taxes and other payments, for each country in which they operate. This important tool can effectively address secrecy surrounding multinationals' activities, providing policy makers, citizens, workers, journalists, shareholders, investors and tax authoritiesⁱⁱⁱ in both the EU and developing countries^{iv} with valuable information.

Public CBCR has already been introduced for banks in the European Union, and in a recent academic review of the measure, researchers Overesch and Wolff highlighted that *"multinational banks increased their tax expenses relative to unaffected other banks after Country-by-Country Reporting became mandatory"*. The study also found *"a pronounced response of those banks that were particularly exposed to the new transparency due to significant activities in tax havens"* and concluded that *"Country-by-Country-Reporting can be an additional instrument for policy makers to curb corporate tax avoidance"*^v.

As the European elections approach, European citizens need to see that this issue is taken seriously and that concrete and swift measures are taken to tackle unsustainable tax practices. As minister of Finance of Austria which holds the current Presidency of the Council of the European Union, we urge you to show leadership, by ensuring this file is on the agenda of the November meeting of the Competitiveness Council and supporting a meaningful agreement for real public CBCR and adoption of a 'general approach' without delay.

We remain at your disposal if you would like to receive more information, or would like to meet in person in order to discuss this issue further.



Mag^a Hannah Angerbauer (KOO)



Mag^a Martina Neuwirth (VIDC)

ⁱ Large undertakings are companies that exceed two of the three following requirements: 1. Balance sheet total 20m€, 2. Net turnover 40m€, and 3. 250 employees (Accounting Directive 2013/34/EU, Article 3(4)).

ⁱⁱ In October 2015, the OECD published Action 13 of the BEPS Action Plan on CBCR, a soft law legal instrument, which is not legally binding. In 2016, the EU adopted CBCR for EU tax administration in the DAC IV Directive which requires tax administration to automatically exchange the information. Public CBCR is separate legislation which shares some of the objectives of the DAC4 Directive and the OECD BEPS Action 13, contributing to the fight against base erosion and profit shifting, but has wider policy objectives, responding to the need for a greater public transparency.

ⁱⁱⁱ Public CBCR can support tax authority efforts to tackle tax avoidance by MNCs in a way which non-public CBCR cannot. Firstly, tax avoidance by multinational corporations is often not illegal, and it can therefore be difficult to stop it with prosecution. Secondly, pursuing corporate tax avoidance is often political and tax authorities are dependent on support from policy makers, which is often catalysed by public interest. Lastly, the existing information is strictly confidential. Therefore, the tax administrator cannot share information with the public or parliamentarians about the tax behaviour of a corporation. This confidentiality also limits the tax administrator's ability to discuss such situations with other experts and tax administrations. Public CBCR would allow tax administrators to benefit from public support for stopping corporate tax avoidance, while public scrutiny of information by journalists and civil society can help identify cases where multinational corporations are engaged in questionable tax practices.

^{iv} Developing countries are particularly impacted by tax avoidance, but the existing system of automatic information exchange means developing country tax administrators have significantly less access to key information about multinational corporations, which would be supplemented with data from public CBCR. UNCTAD estimate that developing countries lose US\$100 billion to tax avoidance annually, while BEPS/GDP losses typically 30% higher than OECD countries. Country specific information from public CBCR would help stakeholders in developing countries address harmful tax practices. Furthermore, country specific data would assist policy makers in the EU, in assessing the policy coherence for development of existing rules.

^v Overesch, Michael and Wolff, Hubertus, Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance (July 1, 2018). Available at SSRN: <https://ssrn.com/abstract=3075784> or <http://dx.doi.org/10.2139/ssrn.3075784>