diakonia
MÄNNISKOR SOM FÖRÄNDRAR VÄRLDEN

19 November 2019

Subject: Competitiveness Council discussion on European Commission's proposal for public country by country reporting on November 28

Dear Ms. Magdalena Andersson, Minister for Finance, The Government of Sweden

(CC: The Committee on European Union Affairs in the Swedish Riksdag)

We, Diakonia and Eurodad – the European Network on Debt and Development, are writing to you regarding the upcoming discussion within the Council of the European Union on the much-needed measures for public Country by Country Reporting (CBCR). More than three years after the legislative proposal was first presented by the European Commission on 12 April 2016, we express our deep concern and regret that EU negotiations have not progressed. The meeting of the **Competitiveness Council** on November 28 offers an important opportunity to reach consensus and we urge Sweden to **support an ambitious agreement** and **adoption of a 'general approach' without delay**.

Tax scandals have shown how large multinational corporations (MNCs) continue to conceal where they do business and how much they are paying in tax, despite the introduction of non-public CBCR[i]. In contrast, public CBCR could effectively address the secrecy surrounding multinationals' activities, providing policy makers, citizens, workers, journalists, shareholders, investors and tax authorities[ii] in both the EU and developing countries[iii] with valuable information. Business and investor communities have also supported public CBCR and many large companies already publish this information voluntarily[iv]. This year, the world's largest voluntary sustainability reporting process, the Global Reporting Initiative, agreed a new standard introducing public CBCR for all reporting companies[v].

While we have welcomed the proposal to extend public CBCR to all sectors, the Commission's proposal contains several serious loopholes which must be addressed to achieve meaningful transparency[vi]. It is particularly important to ensure that multinational corporations report on a country by country basis for all countries where they operate, and that loopholes which allow corporations to delay or avoid reporting are not introduced into the proposal.

Despite the fact that the European Parliament has repeatedly called for progress on this issue, the EU Council has so far delayed negotiations with the Commission and the Parliament on what the final EU rules will look like. This deadlock risks sending a very negative signal to European citizens with regard to Member States' political will to tackle corporate tax avoidance beyond rhetorical statements.

As a proposal to oblige large MNCs to introduce greater detail in their corporate reporting, the European Commission introduced the proposal through ordinary legislative procedure. This conforms to the existing public country by country reporting for the financial sector[vii] and the similar corporate reporting requirements for the extractives and forestry sectors[viii].

We are aware that Sweden has together with some other EU Member States proposed a change to the legal basis of the file, a change rejected by the European Parliament Legal Affairs Committee[ix]. However, while the opinion of the Council Legal Service examines the legal basis and supports this change, it fails to consider the existing EU CBCR requirements in operation. The Council of EU Member States has already supported similar requirements through ordinary legislative procedure twice in 2013 and no concerns about the legal basis of sector specific public CBCR were raised at that time nor since transposition. The primary difference between the current proposal and those already in force is simply that it applies to all large MNCs, rather than a specific sector. **We therefore reject the Council Legal Service's flawed analysis and implore Sweden to progress discussions on the substance of the file and support a general approach.**

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Sweden is estimated to lose $2,263 million due to profit-shifting by multinationals[x] every year - money which is greatly needed to fund public services. Corporate secrecy and, consequently, aggressive tax avoidance by multinational companies remains a significant concern for the public in Sweden and other EU Member States – a concern which public CBCR would go a long way to addressing[xi].

Research has shown that existing EU public CBCR requirements for banks have already dis-incentivised profit-shifting to low tax jurisdictions[xii]. Public CBCR would also provide policy makers with data which can enable them to identify loopholes in the tax system and inform evidence-driven policy making to protect the national tax base.

Five years on from Luxleaks, European citizens need to see that corporate transparency is taken seriously and that concrete and swift measures are taken to tackle unsustainable tax practices[xiii]. We urge Sweden to show your commitment to transparency in the November meeting of the Competiveness Council by supporting a meaningful agreement for real public CBCR and adoption of a 'general approach' without delay.

Yours sincerely,

Jean Letitia Saldanha, Director Eurodad
Georg Andrén, Secretary General, Diakonia

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[i] In October 2015, the OECD published Action 13 of the BEPS Action Plan on CBCR. In 2016, the EU adopted CBCR for EU tax administration in the DAC IV Directive which requires tax administrations 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 greater public transparency.

[ii] 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, if the information is strictly confidential, the tax administrator's ability to discuss cases of tax avoidance with other experts and tax administrations is severely limited. 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.

[iii] 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. Country specific information from public CBCR would help stakeholders in developing countries address harmful tax practices.

[iv] For example, see Vodafone's annual accounts with reported on a country by country basis here: https://www.vodafone.com/content/index/about/sustainability/operating-responsibly/tax-and-our-contribution-to-economies.html

[v] GRI 207 standard, Global Reporting Initiative. https://www.globalreporting.org/standards/media/2369/item_04_-_final_version_of_gri_207_tax_2019.pdf

[vi] Civil society's key recommendations on how to improve and strengthen the Commission's proposal may be found in the following briefing note: https://drive.google.com/file/d/1wSlgRJnFD438nPQrHWItSmItDtSZ4c4U/view?usp=sharing

[vii] Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV).

[viii] Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (Accounting Directive).

[ix] European Parliament Committee on Legal Affairs, 'Opinion on the legal basis of the Commission 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 (COM(2016)0198 – C8-

0146/2016 – 2016/0107(COD)) ', 17 January 2017. Available from https://www.europarl.europa.eu/doceo/document/JURI-AL-597460_EN.pdf?redirect

[x] Torslov, Wier and Zucman, *The Missing Profits of Nations*, 2019. Available from https://missingprofits.world/

[xi] European Parliament Research Service findings based on Eurobarometer 85.1-2016 and 89.2 – 2018. See European Parliament, Delivering on Europe, Citizens' view on the current and future EU action, 2018, available from http://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2018/delivering_on_europe_citizens_views_on_current_and_future_eu_action/report .pdf and European Parliament, Survey: people reveal their priorities for the EU, 2016, available from http://www.europarl.europa.eu/news/en/headlines/eu-affairs/20160630STO34203/survey-people-reveal-their-priorities-for-the-eu

[xii] Overesch, Michael and Wolff, Hubertus, *Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance*, 2018. Available at SSRN: https://ssrn.com/abstract=3075784 or http://dx.doi.org/10.2139/ssrn.3075784

[xiii] Globally, corporate tax avoidance costs countries an estimated US$500 billion each year, while in the EU, the annual loss to profit shifting by multinational corporations is conservatively estimated to be €50-70 billion. Figures from Cobham, Alex, and Janský, Petr, *Global Distribution of Revenue Loss From Tax Avoidance: Re-Estimation And Country Results*, WIDER Working Paper 2017/55 Helsinki: UNU-WIDER, 2017 available from https://www.wider.unu.edu/sites/default/files/wp2017-55.pdf and European Parliament Research Service, *Bringing transparency, coordination and convergence to corporate tax policies in the European Union. I – Assessment of the magnitude of aggressive corporate tax planning*, September 2015, available from http://www.europarl.europa.eu/RegData/etudes/STUD/2015/558773/EPRS_STU(2015)558773_EN.pdf