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debt and development



Public country by country reporting: state of play in Europe

December 2017



Acknowledgements

This briefing is based on the report *Tax Games – the Race to the Bottom*, which was produced by civil society organisations in countries across Europe, including: Vienna Institute for International Dialogue and Cooperation (VIDC) (Austria); 11.11.11 (Belgium); Centre national de coopération au développement (CNCd-11.11.11) (Belgium); Glopolis (Czech Republic); Mellemlfolkeligt Samvirke – ActionAid Denmark (Denmark); KEPA (Finland); Netzwerk Steuergerechtigkeit (Germany); DemNet Foundation for Development of Democratic Rights (Hungary); Debt and Development Coalition Ireland (DDCI) (Ireland); Oxfam Italy (Italy); Re:Common (Italy); Latvijas platforma attīstības sadarbībai (Lapas) (Latvia); the Centre for Research on Multinational Corporations (SOMO) (Netherlands); Tax Justice Netherlands (Netherlands); Tax Justice Network Norway (Norway); Instytut Globalnej Odpowiedzialności (IGO) (Poland); International Centre for Research and Analysis (ICRA) (Poland); Ekvilib Institute (Slovenia); Oxfam Intermón (Spain); Diakonia (Sweden); Tax Justice UK (UK).

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The authors believe that all of the details of this report are factually accurate as of 8 November 2017.

Generous support for this report was provided by the Financial Transparency Coalition.



Public country by country reporting in Europe: state of play

Civil society organisations have long called for public insight into basic information about where corporations do business and what they pay in taxes in the countries where they operate – so-called public country by country reporting.

In April 2016, the European Commission came forward with a long-awaited proposal on the issue.¹ While the Commission's proposal does entail that more information would become publicly available, the proposal would unfortunately only require corporations to publish information on their operations in EU member states and countries blacklisted by the EU as 'non-cooperative' on tax matters.

Limiting information to EU countries and a subset of blacklisted countries is highly problematic for several reasons. Firstly, it would only give the public an incomplete picture of a large multinational's activities worldwide. Secondly, it would mean that multinationals would continue to be able to engage in profit shifting to low-tax jurisdictions that are not blacklisted by the EU. Lastly, developing countries would be especially disadvantaged by this proposal, as it would leave them in the dark about the activities of large multinationals operating in their jurisdictions.

Another problematic point is that the Commission's proposal would only apply to corporations with a turnover of at least €750 million per year. According to the OECD, only 10-15 per cent of the world's multinational corporations meet this threshold.²

In response to the Commission's proposal, EU member states issued an initial informal position that suggests limiting transparency even further.³ For instance, according to member states, reporting requirements should only cover corporations that are 'operating' in the EU. This significant change would allow letterbox companies, which often play a central role in the tax avoidance activities of large multinationals, to be excluded from the reporting obligation. Further proposed changes by the Council of EU Member States include an exception clause for corporations that only have one subsidiary in a country, due to the alleged risk of revealing commercially sensitive information. French civil society organisations have highlighted that for a multinational corporation such as Total, such an exception clause would allow the oil and gas giant to avoid reporting on its subsidiaries in 37 of the 98 countries where it has operations.⁴

Furthermore, some EU member states have proposed a change to the legal basis for the proposal, which would in effect exclude the European Parliament from the decision making, and would give member states the opportunity to veto the legislation⁵ – a move that would in all likelihood lead to a less ambitious outcome, or even no outcome at all. While the legal service of the Council of Member States has argued that this change to the legal basis would be appropriate,⁶ it has been rejected by the Legal Affairs Committee of the European Parliament⁷ and the Commission.⁸ To change the legal basis, a unanimity of member states would need to agree, and discussions on this topic remain ongoing.

In the summer of 2017, the European Parliament adopted its position on the issue, and took a more ambitious line than the Commission and member states by expanding the list of reporting requirements, and by proposing that multinational corporations should report on their activities and tax payments in all countries where they do business.⁹ However, while the Parliament has previously supported full public country by country reporting without restrictions, some parliamentarians, in particular from the Conservative and Liberal groups, now introduced a new problematic 'corporate get out clause', which would allow corporations to ask for exemptions and keep selected parts of their data secret if they feel public disclosure can harm the business.¹⁰ Therefore, even the Parliament's position now includes a serious loophole.¹¹

The Council of EU Member States meanwhile continues to debate their negotiating position, preventing the commencement of negotiations with the Commission and the Parliament on what the final EU rules would look like. There is a strong risk that such continued political deadlock among member states could result in a long delay in adopting the final rules.

The value of corporate transparency

Full public country by country reporting was introduced for banks in the EU already in 2013.¹² Using this public data, Oxfam carried out an analysis of the top 20 EU banks in Europe and found, for instance, that the banks often do not pay any tax at all on the profits they book in tax havens.¹³ Oxfam's analysis further shows that the twenty biggest European banks register around 'one in every four euros of their profits in tax havens.'¹⁴ While tax havens account for approximately 26 per cent of the total profits made by the top 20 EU banks, these countries only account for seven per cent of the banks' employees.¹⁵ In fact, according to Oxfam's report, at least €682 million of the European banks' profits 'were made in countries where they employ nobody.'¹⁶

Oxfam's report led the centre-left Socialists & Democrats grouping at the European Parliament to send a letter to the European Commission asking it to launch an investigation into whether the practices revealed by Oxfam constituted a breach of fair competition practices in the EU.¹⁷ All this goes to show that making country by country reports public can allow civil society organisations and decision-makers a clearer picture about international money flows, and in turn inform public policy-making.

There is also growing recognition of the value that public country by country reporting would bring to, for example investors. Multinationals' approaches to taxation can have reputational impacts and represent financial risks, but under current disclosure rules shareholders frequently have little to no information available to them on the tax strategy of a corporation. Public country by country reporting would allow investors to identify corporations that enhance shareholder value through sound investments, rather than into corporations that rely on aggressive tax planning strategies. In April 2017, Norway's sovereign wealth fund, one of the largest of its kind in the world, announced new guidance that underlined that 'Public country-by-country reporting is a core element of transparent corporate tax disclosure. Our expectations fall into two main categories: boards should adopt appropriate and prudent tax policies, and companies should be transparent about where they generate economic value'.¹⁸

International decisions on secret country by country reporting

As part of the work on 'base erosion and profit shifting' (BEPS), the OECD and G20 have agreed to introduce secret country by country reporting, which only allows certain tax administrations to access the information.¹⁹

However, after the adoption of the BEPS outcome in 2015, new discussions emerged about whether BEPS prevents governments from taking more ambitious steps. For example, when the EU in 2016 initiated a process to introduce public country by country reporting for all sectors, some actors, including the OECD's Tax Director, Pascal Saint-Amans, started arguing that this would be a violation of BEPS, and instead advocated for keeping the information secret from the public.²⁰ While the argument that public transparency would be a violation of BEPS has been rejected by both civil society organisations²¹ and the European Commission,²² it is highly concerning that BEPS is being used as an argument to prevent transparency. Fortunately, as explained above, the EU debate has moved forward towards public country by country reporting despite these attempts to prevent it.

Recommendation

Governments and EU Institutions must allow the public to access the key corporate information necessary to ensure accountability and tax justice.

For this purpose, they should adopt full country by country reporting for all large multinational corporations, and ensure that this information is publicly available in an open data format that is machine readable and centralised in a public registry. This reporting should be at least as comprehensive as suggested in the OECD BEPS reporting template,²³ but cover all corporations that meet the EU definition of 'large undertaking'.

Methodology for country rating system for public reporting for multinational corporations

Together with over 20 partner organisations, Eurodad has mapped the positions of 18 European countries, as well as the European Parliament and the Commission, on the issue of public country by country reporting. The countries and institutions have been rated according to the following criteria:

Green

Countries and EU institutions that support full public country by country reporting.

Yellow

Countries and EU institutions that have taken a neutral position. Yellow is also used to categorise countries or EU institutions with positions that are unclear or somewhere between positive and negative.

Red

Countries and EU institutions that are actively speaking against public country by country reporting. At the EU-level, this category also includes countries which argue that the European Parliament should not have a say on the issue, and that a final decision must be a unanimous decision by the EU member states (i.e. countries that argue that the legal basis of the proposal should be changed, so that it becomes a 'tax file'). It also includes countries and institutions which argue that multinational corporations should report on their activities in some countries, but not others.

Details and references regarding the positions of each individual country or institution can be found in the report *Tax Games – the Race to the Bottom*.²⁴

Symbols



Arrows: Show that a country seems to be in the process of moving from one category to another. The colour of the arrow denotes the category being moved towards.



Restricted access sign: Shows that the position of the government is not available to the public, and thus the country has been given a yellow light due to a lack of information.



EUROPEAN PARLIAMENT



The European Parliament is advocating for public registers of beneficial owners of companies, as well as all trusts and similar legal structures in the EU.



EUROPEAN COMMISSION



The European Commission has launched a proposal that would require multinational corporations to publish country by country data from some countries but not others. This conflicts with the fundamental idea of public country by country reporting, which is to obtain a full overview from all countries where a corporation is operating. The proposal is therefore, in reality, not country by country reporting.



AUSTRIA



The Conservative party, which recently won the election in Austria, has repeatedly spoken out against public country by country reporting.



BELGIUM



The official position of the Belgian government is unclear. However, the Belgian Finance Minister has repeatedly spoken out against public country by country reporting.



CZECH REPUBLIC



The Czech Republic supports changing the legal basis of the European Commission's proposal on public country by country reporting, which would mean that the European Parliament would be excluded from the negotiations and a final decision would require unanimity among EU member states. In reality, this would result in an unambitious outcome.



DENMARK



Denmark supports the position of the European Commission.



FINLAND



Finland supports the position of the European Commission.



GERMANY



The former German government spoke out against public country by country reporting, and at the moment there are no indications that any new government will take a different position.



HUNGARY



Hungary's position on public country by country reporting is unclear.



IRELAND



The Irish government supports changing the legal basis of the European Commission's proposal on public country by country reporting, which would mean that the European Parliament would be excluded from the negotiations and a final decision would require unanimity among EU member states. In reality, this would result in an unambitious outcome.



ITALY



Italy's position on public country by country reporting is unclear.



LATVIA



The Latvian government would like to change the legal basis of the proposal, so that the European Parliament is excluded from the negotiations and a final decision would require unanimity among the EU member states. In reality, this would result in an unambitious outcome.



LUXEMBOURG



The government of Luxembourg is against public country by country reporting and would like to change the legal basis of the proposal, so that the European Parliament would be excluded from the negotiations and a final decision would require unanimity among the EU member states. In reality, this would result in an unambitious outcome.



NETHERLANDS



The previous Dutch government supported full public country by country reporting, but the public announcements from the new government suggest that they instead support the position of the European Commission.



NORWAY



The position of Norway is unclear since the Parliament has voted for public country by country reporting, but the government has not followed up.



POLAND



Although Poland has taken concrete steps towards increased corporate transparency at the national level, its position on the issue of public country by country reporting at EU level is currently unclear.



SLOVENIA



Slovenia supports full public country by country reporting.



SPAIN



The position of Spain is currently unclear.



SWEDEN



The Swedish government would like to change the legal basis of the proposal, so that the European Parliament would be excluded from the negotiations and a final decision would require unanimity among EU member states. In reality, this would result in an unambitious outcome.



UNITED KINGDOM



The UK government states that it supports public country by country reporting on a global level, but its position on public country by country at an EU level is unclear.

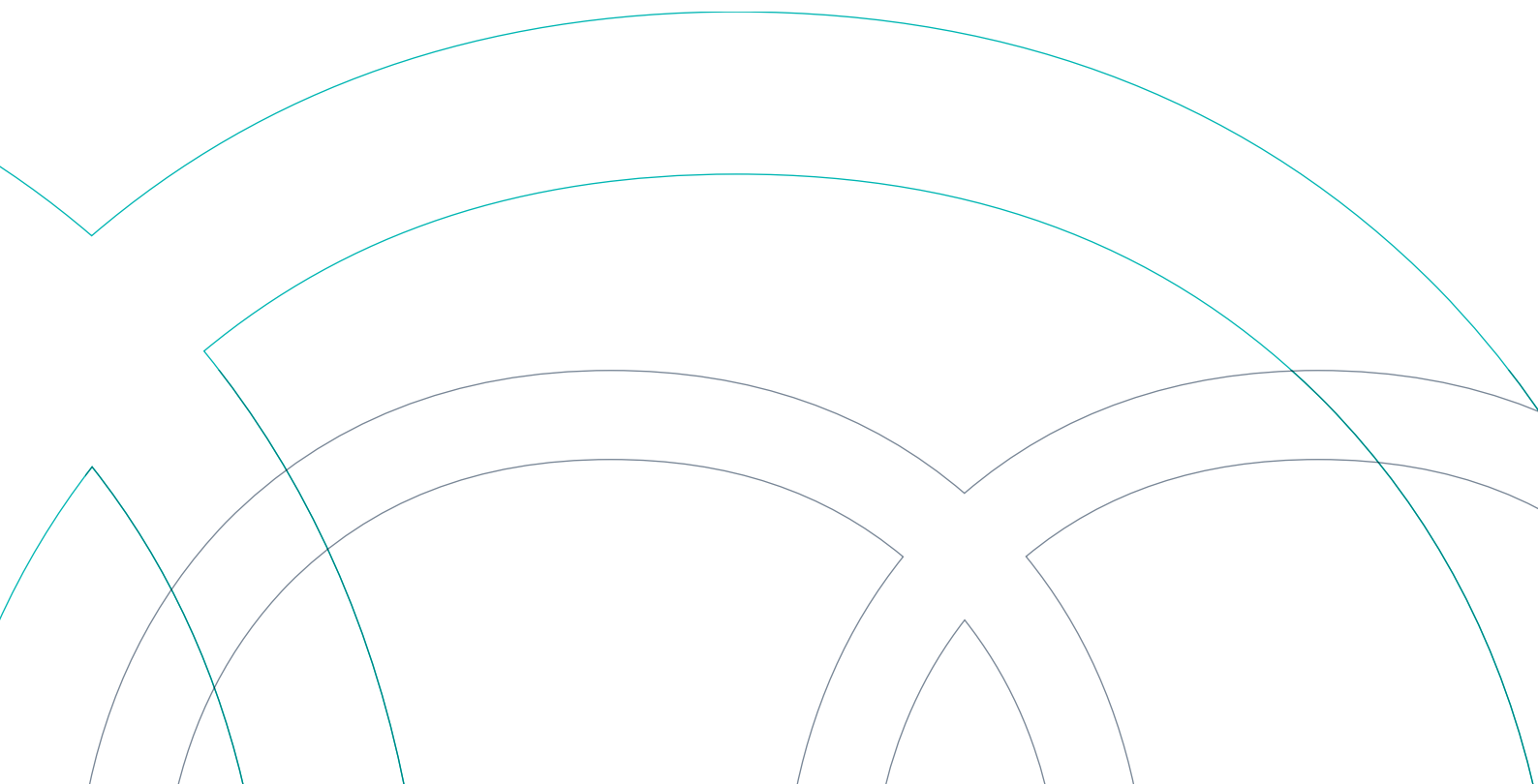
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Eurodad

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