TRANSPARENCY INTERNATIONAL | Czech Republic

TRANSPARENCY INTERNATIONAL EU

Brussels / Prague, 16 February 2021

Subject: Council discussions on European Commission's proposal for public Country-by-Country Reporting

Dear Minister Schillerová,

Transparency International Czech Republic and Transparency International EU are writing to you regarding the legislative proposal for public Country-by-Country Reporting (CBCR)[1] to call on you to **support an ambitious agreement** and **adoption of a 'general approach' without delay** during the upcoming Council discussions this week.

A spate of tax scandals has 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[2]. In contrast, public CBCR could effectively address the secrecy surrounding multinationals' business activities and tax planning practices, providing policy makers, citizens, workers, journalists, shareholders, investors and tax authorities in both the EU and developing countries with valuable information, as is already the case for the banking sector.

While political deadlock in the EU Council has so far prevented the adoption of EU legislation, the value of public CBCR in addressing tax avoidance by large MNCs and restoring confidence of European citizens has led to significant developments in other regions and on voluntary reporting. At present, legislators in the United States are also considering a legislative proposal to introduce public CBCR.[3] Additionally, business and investor communities have also supported public CBCR, with many large companies publishing this information voluntarily[4] and institutional investors with approximately US$90 trillion in assets under management advocating for mandatory public CBCR[5].

[1] European Commission (2016), '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', 2016/0107 (COD), 12 April 2016

[2] 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.

[3] US Congress, Disclosure of Tax Havens and Offshoring Act, H.R. 5933 / S.1609, https://www.congress.gov/bill/116th-congress/senate-bill/1609#:~:text=%2F22%2F2019

[4] 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

[5] UN PRI, Response to the OECD/G20 BEPS project public consultation document: Review of country-by-country reporting (BEPS Action 13), March 2020, https://www.unpri.org/policy/briefings-and-consultations

| Transparency International - Czech Republic | Sokolovska 260/143, 180 00 - Prague 8, Czech Republic |
| T: +420 224 240 895-7 | E: posta@transparency.cz | W: www.transparency.cz |

Last year, the world's largest voluntary sustainability reporting process, the Global Reporting Initiative, adopted a new standard introducing public CBCR for all reporting companies.[6]

Research has shown that existing public CBCR requirements for banks in the EU[7] have already dis-incentivised profit-shifting to low tax jurisdictions. 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.

We are aware that some Member States have proposed a change to the legal basis of the file, a change that has been rejected by the European Parliament Legal Affairs Committee[8] and the European Commission[9]. Since delivering its opinion in 2016, the Council Legal Service has twice addressed the issue of legal basis during Council discussions, noting that the requisite unanimity to change the legal basis has not materialised and highlighting that the choice to conclude discussions in Council is a political one. For the first time, the current compromise text contains the changes to the preamble written by the Council Legal Service, in order to clarify that the proposal's objectives relate to corporate reporting and provide Member States with assurance that the proposal can progress through ordinary legislative procedure.

The EU Council has already supported similar requirements through ordinary legislative procedure twice in 2013[10] and no concerns about the legal basis of sector-specific public CBCR were raised at that time or 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 understand that the new additions to the preamble drafted by the Council Legal Service have allayed the concerns of a number of Member States with respect to the legal basis and led to two Member States changing their position during the most recent technical discussions.

We call on Czechia to also reconsider its position, taking account of changes written by the Council Legal Service and contained in the current compromise text, and to support the adoption of a 'general approach'.

---

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

[7] 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

[8] 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

[9] "Public country-by-country reporting as tabled here today would not modify the fiscal rules applicable to companies as Mr. Minister already said. It would neither address the enforcement of such rules either at national or EU level, let alone outside the EU. Therefore we believe that the right of establishment enshrined in the treaties is the correct legal base. Companies are used to disclose information on taxes in their financial statements on this basis." Statement by Mr Jyrki Katainen, Vice-President for Jobs, Growth, Investment and Competitiveness, European Commission during Competitiveness Council meeting on 28 November 2019, https://www.consilium.europa.eu/en/meetings/compet/2019/11/28-29/

[10] Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV) and Accounting Directive 2013/34/EU:

| Transparency International - Czech Republic | Sokolovska 260/143, 180 00 - Prague 8, Czech Republic |
| T: +420 224 240 895-7 | E: posta@transparency.cz | W: www.transparency.cz |

Even though 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 regarding Member States' political will to tackle corporate tax avoidance beyond rhetorical statements, at a time when public spending is under heavy strain as a result of the Covid-19 pandemic.

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[11]. 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.

Czechia is estimated to lose $450 million in tax revenue (approximately 6% of its corporate tax revenue) to profit-shifting by multinationals[12] every year - money which is greatly needed to respond to the Covid-19 pandemic and fund public services. Responsibility now lies with Czechia and other EU governments to support the proposal put forward by the current Portuguese Presidency of the EU Council and to ensure that the Council agrees on a final negotiating position.

We urge Czechia to show your commitment to corporate transparency and accountability in the upcoming meetings by supporting a meaningful agreement for real public CBCR and adoption of a 'general approach' without delay.

Yours sincerely,

Petr Leyer, Director, Transparency International CZ

Michiel van Hulten, Director, Transparency International EU

[11] Civil society's key recommendations on how to improve and strengthen the Commission's proposal may be found in the following briefing note: https://transparency.eu/wp-content/uploads/2020/09/CBCR-recommendations-Council-final.pdf
[12] Torslov, Wier and Zucman, *The Missing Profits of Nations*, 2019. Available from https://missingprofits.world/

| Transparency International - Czech Republic | Sokolovska 260/143, 180 00 - Prague 8, Czech Republic |
| T: +420 224 240 895-7 | E: posta@transparency.cz | W: www.transparency.cz |