For public discussion

PROPOSAL FOR A MODEL EU INSTRUMENT ON CORPORATE TAXPARENCY

May 2015

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I. EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In the today's global environment public knowledge about the ways through which capital flows represents a cornerstone of any modern democratic system. However, the reality is that authorities of member countries have currently little capability of developing an overall picture of global value chains. Tax avoidance, diversion of public money, financing of economic crime as well as state capture practices run little risk of being discovered and punished when carried out through opaque corporate and tax structures.

On the one hand, recent developments in corporate tax policy in the form of various incentives to businesses coupled with lack of coordination of national tax rules have resulted in a system in which some tax payers are not paying their fair share. Statutory corporate income tax rates in OECD member countries dropped on average 7,2 percentage points between 2000 and 2011, to an average 25,4%. Of the 61 countries surveyed in Ernst & Young's 2014 annual Tax Policy Outlook around the world, 10 have announced reductions in their statutory corporate income tax rate for the year ahead, three of them from the Nordic countries. Finland saw a reduction from 24,5% to 20% the year, the largest drop among surveyed countries. Corporate income tax accounts for just 21,8% of total business taxes in OECD countries, according to Ernst & Young research. This is lower than property taxes which account for 26,3%, and VAT and sales taxes, for 38,4%[1].

At the same time, tax has long been an area in which enterprises - especially multinational - could gain competitive advantage since reducing of tax burden represents a means to fulfil a duty to maximise returns for shareholders. The use of tax havens has steadily increased in the recent decades and continues to rise with no particular sign of slowing down[2]. The available evidence suggests that artificial profit-shifting has a sizeable effect in reducing corporate income tax payments and, hence corporate tax revenues. According to OECD data estimates of the amounts held offshore are as high as USD 1.9 trillion[3].

On the other hand, increased transparency of activities of companies, and in particular regarding profits made, tax on profit paid and subsidies received, is perceived as essential for regaining the trust of citizens following the banking and economic crisis. Mandatory reporting in that area is considered to be an important element of the corporate responsibility towards stakeholders and society in general.

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[1] Tax Insights for business leaders, no. 12, Focus – Transparency, Financial Times - Special Supplement, prepared by Ernst & Young, p. 37.

[2] "*As tax havens rose as a share of foreign profits (to 55 percent today) and foreign profits rose as a share of total US corporate profits (to about one-third), the share of tax havens in total US corporate profits reached 18 percent (that is, 55 percent of one-third) in 2013. That is a tenfold increase since the 1980s*." (Zucman, G., Taxing across Borders: Tracking Personal Wealth and Corporate Profits (Journal of Economic perspectives, Volume 28, No. 4, Fall 2014, p. 129).

[3] OECD Economic Surveys, United States, June 2014, p. 14.

Disclosure of the relevant information helps to better understand not only groups' structures, their activities and geographical presence, but also whether taxes on profit are being paid where the actual activity takes place.

At the end of the decade, 2009 G20 summit in London agreed to take action against tax havens and the 2012 G20 Meeting in Cannes issued Final Declaration referring to "the need to prevent base erosion and profit shifting". In the meantime in 2010 the U.S. passed Foreign Account Tax Compliance Act (FATCA) and OECD published substantially revised Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

The most recent impetus to tackle the problems of corporate opacity and tax avoidance was given in the 2013 declaration of G-8 leaders from Lough Erne. This declaration stipulated, amongst others, that companies should know who really owns them and tax collectors and law enforcers should be able to obtain this information easily in order to prevent companies from shifting profits across borders to avoid taxes, and multinationals should report to tax authorities in which countries they pay which amount of tax.

The implementation of principles laid down in 2013 Lough Erne declaration was conferred to Organisation for Economic Cooperation and Development. OECD's "Base Erosion – Profit Shifting" project (BEPS) outlined an action plan to combat the negative effects of corporate tax avoidance. This proposed Regulation complements and further develops some of the actions contained in this action plan, in particular Action 12 (Disclosure of aggressive tax planning) and Action 13 (Transfer Pricing Documentation and Country-by-Country Reporting).

2. RESULTS OF CONSULTATIONS WITH STAKEHOLDERS

[...to be performed and completed...]

3. THE PROBLEM OF OPAQUE CORPORATE AND TAX STRUCTURES LEADING TO TAX AVOIDANCE

3.1. Opaque corporate and tax structures

Globalisation is making it increasingly easy for multinational corporations to avoid corporate taxes by shifting corporate funds to low-tax or zero tax countries. Any company can establish a subsidiaries in almost any country in the world, create thus a corporation with multinational structure which can be opaque and enable shifting of profits and other corporate funds. Modern technology has also made it simpler to move funds to undeclared bank accounts in offshore tax havens.

Complex opaque corporate ownership structures represent a *conditio sine qua non* for implementation of successful global aggressive tax optimisation schemes. Due to the absence of harmonisation of the way in which corporate structures are recorded and made available to the authorities or the general public and lack of international cooperation between tax authorities of different states, multinational corporations can hide non-negligible profits in subsidiaries within the parts of their corporate structures which are invisible to tax authorities of EU Member States and are taxed at

the rates close to zero. Thus, profits of such multinational companies can be both untaxed and escape the control of tax authorities in high-tax countries. If the current trends are sustained, the corporate tax income could well become relatively much less important in the near future.

The key cause of the described problem is the asymmetry of information between multinational companies, on the one hand, and tax authorities, on the other hand. If the overall corporate ownership structure of a multinational corporation is not known, it is not possible to find out whether such multinational corporation generates profit or produces artificial losses, and hence know how much of corporate tax each of its subsidiaries paid in which jurisdiction. Without having a complete picture of corporate ownership structures of multinational corporations, including all parent companies and subsidiaries outside the EU within such a structure, tax authorities lack means to uncover global tax planning schemes of such corporations.

Shifting of corporate funds or profits through corporate ownership structures is carried out by various practices which include intragroup royalties, loans, management and consultancy fees etc. For example, subsidiaries within a group may be obliged to pay to its parent companies fees for using intellectual property, such as rights resulting from the use of intra-group IT systems, the correct value of which is difficult to assess, and thus easily move funds throughout the group structure. Or parent companies may finance their subsidiaries by intragroup loans - charging interests on these subsidiaries then represent another means of shifting of funds throughout corporate ownership structure into low or zero tax jurisdictions.

Unlike multinational corporations SMEs by nature cannot create opaque corporate ownership structures and consequently engage in corporate tax avoidance. They cannot hide parts of their corporate structures in non-transparent tax havens and make them invisible to tax authorities of states where they create their revenues. Hence, in turn, SMEs cannot shift funds through opaque corporate ownership structures from one jurisdiction to another and thus do not have a possibility to avoid corporate tax in countries where they operate and create revenues. As a result, SMEs can have significantly higher "tax costs" than multinational corporations which makes them less competitive.

Moreover, corporate tax avoidance is often associated with financing of corruption, conflict of interest and other criminal activities by public monies, ineffective international sanctions, increased transaction costs and inflated prices of public investments[4]. Also there is a link between illicit financial flows and opaque corporate structures.[5]

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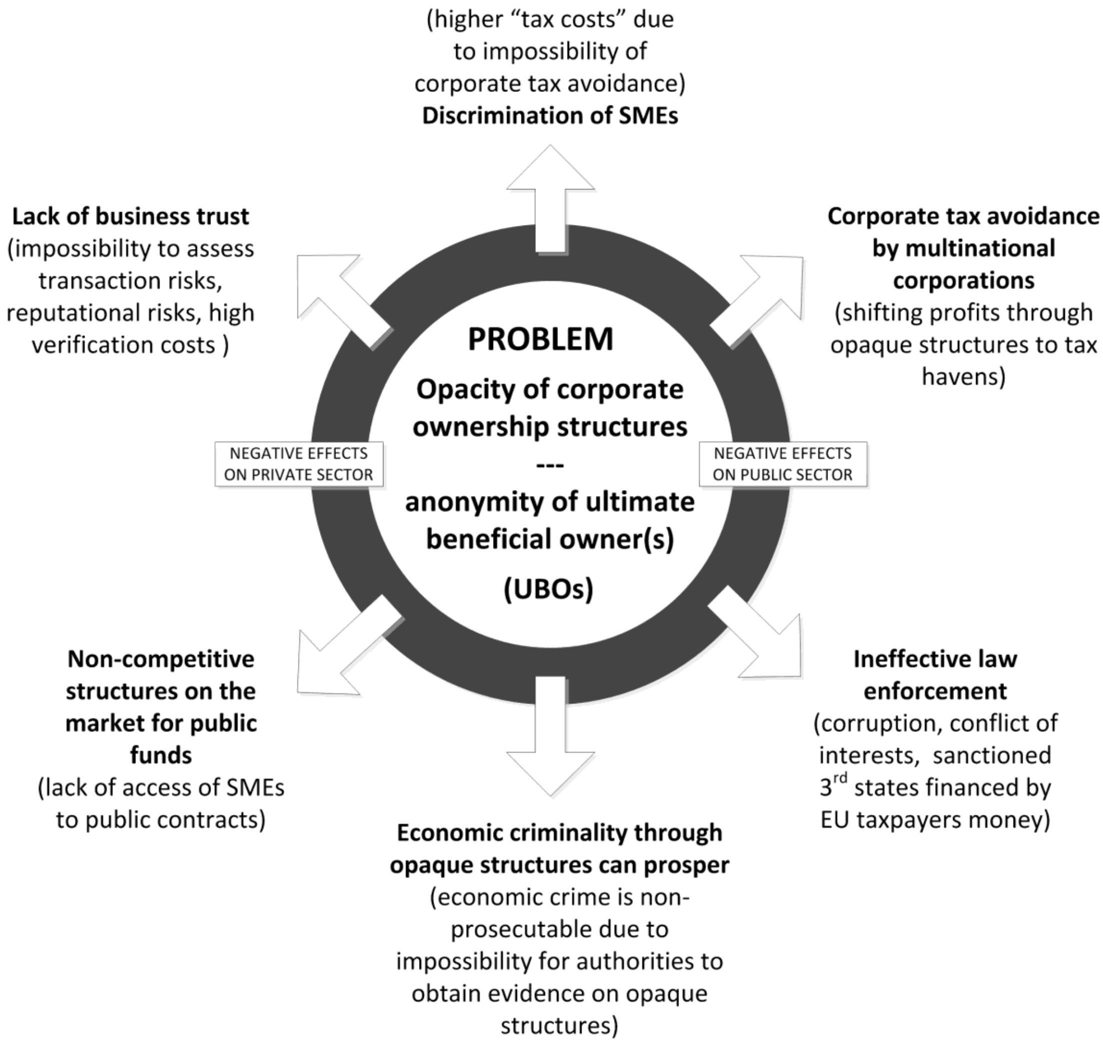
4 This association has been recently demonstrated in the Swissleaks affair where a bank facilitated both corporate tax avoidance practices as well as it helped to disguise proceeds from corruption, diversion of public money and financing of criminal activities.

5 "*Almost every economic crime involves the misuse of corporate vehicles [i.e. companies]*" (OECD: Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes, 2011). "*Slush funds are created for the collection and distribution of some huge sums of money that are required to participate in corrupt practices. […] More sophisticated methods typically use bank accounts abroad, preferably in the offshore countries that allow non-transparent management accounts and ensure the anonymity of the ultimate owners. […] These hidden funds, often containing vast resources, finance*



Aggressive tax planning practices reduce Member States' income from corporate tax collected from multinational corporations. Corporate tax avoidance by multinational conglomerates has as a consequence that states routinely try to replace missing revenues from corporate tax by income from other sources, often raising other taxes (such as VAT), which increases the tax burden for citizens and small local SMEs, which in turn hampers their competitiveness.

3.2. Shortcomings of existing solutions

Although recent years have seen a gradual move towards enhanced transparency of multinational corporations, transparency is still insufficient in at least two ways: first, regarding the corporate ownership structure of a multinational corporation. The ownership structure of the multinational corporation can be transparent - so that it is possible for the authorities or the public to see all entities within this structure up to the ultimate beneficial owner[6] - or opaque. The opacity makes it possible to hide parts of these corporate structures in non-transparent jurisdictions, including the

gray economy". (OECD: Bribery in Public Procurement: Methods, Actors and Counter Measures, 2007).

6 The ultimate beneficial owner can be a natural person (including beneficial owners of a fund-like or trust-like structure without legal personality) or a public entity, such as the state or municipality.

amount of profits or other corporate funds. If, on the one hand, multinational corporations may extend their corporate structure to almost any country on the globe, on the other hand, the authorities cannot follow corporate structures of multinational corporations to all countries since companies may establish subsidiaries in countries which do not provide other countries with information on corporate ownership or do not keep records of corporate ownership in the form accessible to the public or authorities.

Second, transparency is insufficient regarding the effective corporate tax rate paid by multinational corporations in individual jurisdictions where they are present. Opaque corporate ownership structures enable multinational corporations to hide profits or other corporate funds in low or zero tax jurisdictions. These structures function like a interconnected pipeline through which funds can be shifted from one jurisdiction to another. Profits generated in high revenue, but usually also highly taxed countries are moved along the lines of the corporate structure web to low tax countries. As a result, the EU subsidiary's taxable income is low, so it has only a little tax to pay, even if in such EU country the tax rate is relatively high, whereas the taxable income of the usually non-EU parent company in an offshore jurisdiction is high; yet, since the tax rate in the offshore country where the parent company concerned is based is low, also this parent company pays only very little in corporate tax, if any. Such aggressive tax planning practices reduce Member States' income from corporate tax collected from multinational corporations.

Due to opacity of ownership structures of multinational corporations it is impossible to see how much multinational corporations present in EU Member States effectively pay in corporate tax and in which countries and whether they do not engage in corporate tax avoidance practices. If a corporation creates a complex ownership structures involving a number of subsidiaries in different countries, it can shift corporate funds or profits throughout this structure among different subsidiaries. For tax authorities of EU Member States it is difficult or impossible - in particular if the ownership structure extends outside the EU Member States – to know the entire corporate ownership structure of such a multinational corporation. Hence, if tax authorities of member countries cannot see subsidiaries within the "invisible" part of corporate ownership structure, multinational corporations can shift corporate funds and profits to those subsidiaries to escape corporate tax obligations.

Despite its importance the arm's length principle in intragroup transfer pricing has limits due to incomplete picture of tax authorities over global corporate and tax structures of multinational corporations. In principle, intragroup transactions should be conducted at the market price of the goods and services traded, as if the subsidiaries were unrelated. In practice, arm's length pricing faces severe limitations. First, for a number of multinational companies, where the profits derive in part from synergies of being present across the globe, the very notion of arm's length pricing is conceptually flawed as there is no clear-cut way to attribute a portion of its income to any particular subsidiary. Second, it is not appropriate to expect source country tax authorities to have a detailed knowledge of the tax laws and financial accounting rules of many other jurisdictions, in order simply to evaluate the probative value of a taxpayer's claim that its intragroup dealings necessarily are at arm's-length by virtue of alleged symmetries in tax treatment for expense and income across the group's affiliates. Thus, the application of transfer pricing rules cannot be effectively

assessed by source country tax authorities unless the multinational corporation is transparent in relation to its corporate ownership and tax structure.

Given the impossibility to determine the effective corporate tax rate of multinational corporations it is difficult or even impossible to find out whether multinational corporations present in the EU shift corporate funds from countries where they make revenues to low-tax countries within the EU or to zero tax countries outside the EU. Hence, the current framework does not allow the tax authorities of Member States to establish whether multinational corporations present in the EU are engaged in aggressive tax planning practices leading to corporate tax avoidance.

At the same time, the impossibility to identify corporate ownership structures of multinational corporations and, hence their effective corporate tax rate, EU as well as Member States` public funds and contracts are attributed to companies which can be engaged in corporate tax avoidance. If a company which is a part of an opaque corporate structure of a multinational corporation receives public money it can without too much fear of being discovered shift those originally public funds through their opaque corporate structures to a low tax or even zero tax countries. Neither EU nor Member States‘ require companies receiving public monies to disclose their corporate ownership structure to see if this structure does not extend to a low or zero tax country and whether profits are not shifted there. Hence, under the current EU legislative framework taxpayers money paid out by public authorities to private companies can be relatively easily siphonned out to tax havens.

3.3. Limits of prescriptive rules

The choice of approach based on thousands of bilateral treaties over a multilateral agreement has created in the area of corporate taxation a web of inconsistent rules. Multinationals firms can exploit these inconsistencies to avoid taxes by carefully choosing the location of their affiliates - known as treaty shopping[7]. Hence, an incentive to carry out corporate tax avoidance practices will exist as long as corporate tax rates and corporate tax bases of individual countries in the world are different and multinational corporations can reap benefits from these differences. Prescriptive rules based on prohibitions enforced by administrative sanctions are prone to circumvention, especially at the international and EU level where there is no uniform tax enforcement authority.

Corporate tax avoidance practices make use of inconsistencies and loopholes resulting from lack of coherence of laws of different countries, but such practices are not per se illegal. Behaviour which is considered immoral, but does not violate legal rules sends a clear signal that the existing legal framework does not sufficiently addresses the problem of corporate tax avoidance. A situation where a certain behaviour is deemed immoral, but not illegal is a prima facie indication that law lags behind principles of fairness.

However, a large sovereignty of Member States in the fiscal area makes it very difficult to design prescriptive rules at the EU level which would be resistant to

[7] Zucman, p. 124.

circumvention which is at the heart of corporate tax avoidance practices. In practice, hard prescriptive rules can never resolve the problem of aggressive tax planning practices which are based on the respect of the letter of law and circumvention of its spirit or misuse of loopholes contained therein. Practices which are not illegal cannot be by definition proscribed or punished. Therefore, the more or less the only way to deal with aggressive tax practices is to take away the incentive to perform them.

Empirical studies confirm that a failure to effectively communicate the reasons for adopting a given tax strategy is a significant reputational risk for today's multinationals. A negative public perception of companies' tax affairs may damage their bottom line. A 2014 Ernst & Young study of tax risk and controversy showed that 89% of the largest companies surveyed are concerned about media coverage of the taxes some companies are paying[8].

4. BEHAVIOURALLY INFORMED APPROACH

Given the shortcomings of the existing solutions based on prescriptive rules an effective solution to the problem of aggressive corporate tax optimisation structures should be inspired by a behavioural approach. Application of behavioural economics to policy is increasingly common in certain policy areas in OECD countries, especially pensions, tax and consumer protection. Behavioural economics is influencing policy in a number of OECD countries, but most explicitly in the United States and the United Kingdom. Behaviourally informed interventions aim to assist rather than to prohibit certain decisions, in keeping with the idea of regulatory policy as an enabler and facilitator to achieve positive outcomes[9].

4.1. Transparency and positive motivational approach

The answer to the problem of information asymmetry and resulting negative effects is transparency[10]. On the one hand, tax administrations need more transparency to collect the information necessary to accurately assess whether laws are complied with and whether the appropriate amount of tax is paid; NGOs and media would like the information to be publicly available either than restricted only to tax administrations. On the other hand, business would wish to minimise the amount of sensitive information that is made available to its competitors about its results and operations. Therefore, positive motivation is necessary in order to influence the existing behavioural patterns.

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8 Ernst & Young,Tax Insights for business leaders, no. 12, Focus – Transparency, Financial Times - Special Supplement (November 2014), Safeguarding reputation: effective tax communications with stakeholders, p. 40.

9 Lunn, P., Regulatory Policy and Behavioural Economics, OECD 2014, p. 19 and 62.

10 "*The remedy begins with transparency: genuine transparency, in which tax authorities and policymakers have a clear and complete picture of the global tax planning structures of multinational firms, and the implications of those structures for generating stateless income. National governments should recognize their common interest and require their tax and securities agencies to promulgate rules providing a uniform world-wide disclosure matrix for actual tax burdens by jurisdiction*". (Kleinbard, E.D., Through a Latte Darkly: Starbucks's Stateless Income Planning, Tax Notes, June 2014, USC Gould School of Law, p. 1532-1533).

Similarly to the regulation of excessive risks taken by certain banks leading to the financial crisis - which consisted in taking away the incentive to take such risks by reducing the amount of their bonuses dependent on these risks - , the regulation of corporate tax avoidance practices should take away the impetus to engage in these practices. This can be achieved in two ways: first, by motivating those corporations which do not use aggressive tax optimisation scheme to voluntarily disclose their effective tax rate an creating a possibility to sell this information to consumers, and second, by obliging those corporations whose effective corporate tax rate is close to zero, i.e. corporations engaged in aggressive tax optimisation, to disclose this real rate to consumers.

With respect to the positive motivation, businesses which are both transparent as far as their ownership structure is concerned and give out what they should from their profits to the state deserve a reward. Acting correctly has to translate in a tangible competitive advantage - each company with transparent corporate structure which does not use aggressive tax avoidance practices, i.e. corporations whose effective corporate tax rate is close to the nominal corporate tax rate, should be allowed to use a distinctive mark to enhance its public image[11].

The obligatory disclosure approach can complement positive motivational incentives and *“help to fill the gap between the creation/promotion of aggressive tax planning schemes and their identification by the tax authorities”; “mandatory early disclosure rules […] have proven to be effective in providing governments with timely, targeted and comprehensive information on aggressive tax planning schemes, thus allowing timely policy and compliance responses”*[12]. For this purpose multinational enterprises should provide the information on their global allocation of the income, profits and taxes paid among countries according to a common template.

4.2. Realisation of corporate taxparency in eight steps

The correct mix of positive motivational rules and mandatory disclosure rules can be achieved in eight steps. First, the companies should disclose their corporate ownership structure up to the ultimate beneficial owners. This disclosure should include the future disclosure of ultimate beneficial owners under the prospective fourth Anti-Money Laundering Directive[13], but for being capable of contributing to effectively preventing corporate tax avoidance or other negative effects, such as corruption, financing of activities of criminals, terrorists or individuals from third states subject to international sanctions, it has to be wider.

Second, once all entities within the corporate ownership structure of multinational corporations are disclosed, whether for the public or the eyes of public authorities only, their effective tax rate consisting of amount of corporate tax paid and amount of profits (per jurisdiction) as well as their revenues (also per jurisdiction) shall be indicated. These information can be elicited from the financial accounts which

11 “Taxparency” could provide much needed solution for tax evasion, Parliamentary Magazine, 22 September 2014.

12 OECD, Report on Disclosure Initiatives - Tackling Aggressive Tax Planning Through Improved Transparency and Disclosure (2011).

13 Money laundering: Parliament and Council negotiators agree on central registers, European Parliament Press Release, 17 December 2014.

companies are obliged to establish and make public. Those corporations which publish consolidated financial accounts for the entire group should make a country-by-country report at least in respect of the amount of corporate tax paid, profits and revenues.

Third, once the corporate ownership structure of a multinational corporation is known as well as its effective corporate tax rate in each jurisdiction where it is present, an average of these rates should be established – the global effective corporate tax rate (GECTR).

Fourth, a benchmark indicating whether corporations pay their fair share to the states where they are present shall be established along with a tool to assess how this benchmark could be met would be established. An immoral level of GECTR shall be determined, for example, at 10%. In the history - during Middle Ages until the early modern times - the customary tax rate in the European cultural area was just 10%[14]. Also the lowest statutory corporate tax in the EU is at the level of 10% (Bulgaria).

Fifth, corporations with GECTR below 10% would be subject to obligatory disclosure: apart from the disclosure of their corporate ownership structure and GECTR to the public, they would have to indicate on any communication to consumers the amount of their GECTR. Most of consumers know at least either the amount at which they pay personal income tax or the level of VAT. Hence, they would be able to recognize that paying effectively 10% in corporate tax is low compared to the taxes they pay.

Sixth, corporations which would voluntarily disclose their corporate ownership structure and GECTR, including disclosure of effective tax rates in each country where they are present, and would have their GECTR at the level above 10% and above a level set out by individual Member States, would receive a reward – the right to use the taxparent mark. This mark would enhance the reputation of such company and provide it with a competitive advantage compared to non-transparent companies. Thus, consumers would be dissuaded from buying products from companies whose GECTR would be, for example, 4% (as such companies would not be eligible for the taxparent mark), and, on the other hand, would be incited to buy products from companies with a taxparent mark.

Seventh, those corporations which would find out that their GECTR is below 10% or which would like to increase their GECTR could be given a possibility to make a "top-up payment" to the EU budget to get above 10% or to get their GECTR at the level they desire. This "top-up payment" would allow them to raise their level of GECTR without having to restructure their corporate ownership and tax structure.

Eighth, it could be established that companies receiving public funds from the EU or Member State budgets or companies active in socially sensitive sectors (such as gambling) could not get these public funds or a licence if they would not make the disclosure of their corporate ownership structure and GECTR or alternatively, if their GECTR would not be above 10%, in other words, if they did not have the taxparent mark.

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[14] In Latin: decenia, in English: tithe, in French: dixième, in German: das Zehnt, in Czech: desátek.

5. LEGAL ELEMENTS OF THE PROPOSAL

5.1. LEGAL CONTEXT

5.1.1. Disclosure of corporate ownership structures and ultimate beneficial owners

Under the existing state of EU law, Directive 2009/101/EC which enumerates which information companies have to disclose to the public via the commercial, company or other public register, does not oblige companies to communicate to public authorities keeping those either their direct shareholders or ultimate beneficial owners.

In future, the fourth Anti-money Laundering Directive will for the first time oblige EU Member States to create and maintain central registers listing information on the ultimate beneficial owners of corporate and other legal entities, as well as trusts. These central registers were not envisaged in the European Commission's initial proposal[15], but were included by the European Parliament in the legislative procedure. The central registers would be accessible to the competent authorities and their financial intelligence units (without any restriction), to "obliged entities" (such as banks conducting their "customer due diligence" duties), and also to the public, whose access may be subject to online registration of the person and to the payment of a fee to cover administrative costs.

5.1.2. Disclosure of turnover, profits and tax on profit

The Accounting Directive 2013/34/EU defines, inter alia, the structure of financial documents which have to be maintained and disclosed by companies. Annex V of this Directive which establishes the template for the profit and loss account includes the indication of turnover, profits and tax on profits[16]. Furthermore, the Accounting Directive requires the Commission to review the reporting regime under the Directive and consider whether it would be appropriate to include additional payment information such as effective tax rates and recipient details such as bank account information[17]. Its Article 48, fourth sub-paragraph, as amended by Directive 2014/95/EU, refers to profits, tax on profit and public subsidies received as the minimum elements of the possible future EU country-by-country report template. By 21 July 2018 the Commission should produce a report on the practice of large companies in Member States in this area.

The fourth Capital Requirement Directive 2013/36/EU indicates that increased transparency regarding the activities of institutions, and in particular regarding profits made, taxes paid and subsidies received, is essential for regaining the trust of citizens of the Union in the financial sector[18]. Mandatory reporting in that area can therefore be seen as an important element of the corporate responsibility towards stakeholders and society. The aforementioned information required to be published

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15 COM (2013) 45 final (5 February 2013).

16 Line 1 (net turnover), line 14 (tax on profits or loss) and Line 15 (profit or loss after taxation) of the profit and loss account template set out in Annex V of the Accounting Directive 2013/34/EU.

17 Recital 52 of the Accounting Directive.

18 Recital 52 of the Capital Requirements Directive IV.

by the Directive is a part of, where possible, of the annex to the annual financial statements or, where applicable, to the consolidated financial statements of the institution concerned and shall be done as of 1st of January 2015[19].

5.2. LEGAL BASIS

The proposal is based on Articles 50 (1) and 114 Treaty on the Functioning of the European Union since it regroups and reformulates information which are made obligatorily public by the Accounting Directive 2013/34/EU and Directive 2009/101/EC as well as the future fourth Anti-money Laundering Directive.

5.3. NECESSITY, SUBSIDIARITY AND PROPORTIONALITY

The conditions of disclosure of corporate ownership structures vary significantly in the EU, both in terms of (i) whether the subjects of disclosure should be all undertaking or only undertakings contracting with public institutions, or (ii) whether direct or ultimate beneficial owners should be disclosed, or (iii) shareholders with any interest or qualified interest only. The lack of disclosure of information about corporate ownership structures and global effective corporate tax rate leads, amongst others, to discrimination of SMEs and deficiencies in the proper functioning of the EU internal market.

A single European system of registration corporate ownership structures, including the information on global effective corporate tax rate, would improve the accessibility of information about corporate structures of entities established in the EU for all types of public authorities, including tax authorities, authorities charged with control of money flows, public prosecution authorities etc[20]. Regarding the corporate tax related aspects, given, on the one hand, the global character of opaque corporate structures used for tax avoidance and on the other hand, the limited powers of tax authorities of individual Member States vis-à-vis multinational corporations with global presence, the EU level appears to be the most appropriate venue to address the described problems[21].

The future Directive on exchange of tax rulings among tax authorities of EU Member States, if adopted, does not address the corporate tax avoidance in substance and, moreover, will not be capable of contributing to the resolution of other related problems, such as corruption, state capture or problems with law enforcement[22].

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19 Art. 89 of the Capital Requirements Directive IV.

20 "*The OECD made some proposals in its 2011 report, Tackling Aggressive Tax Planning through Improved Transparency and Disclosure, but much of the OECD's earlier work on transparency was aimed at tax shelter promoter disclosure or secret financial accounts. As the OECD's current Base Erosion and Profit Shifting report stresses, it is now time to emphasize transparency with regard to the effective tax rates of multinational enterprises*". (Kleinbard, E.D., p. 1531).

21 "*We clearly see that European countries taken individually are totally incapable of controlling the corporate tax which is more and more evaded by multinational corporation, in particular the U.S. ones. This is a situation which cannot be sustained forever*." Un cadastre financier du monde. Interview of Vincent Slits with Thomas Piketty, La Libre, 11 October 2013.

22 Even if this planned Directive entered into force, it will not anyhow restrict multinational corporations from engaging in corporate tax avoidance practices. The fact that an administrative decision confirming that a aggressive tax optimisation structure is in line with tax laws of that Member State is communicated to other Member States does not anyhow help to any of the authorities to have more

The aspects covered by this proposal do not lead, directly or indirectly, to harmonisation of statutory corporate tax rates or tax bases of Member States. They merely regroup and reformulate the information which undertakings are already obliged to publish under other pieces of existing EU legislation, in particular the Accounting Directive 2013/34/EU and the future fourth Anti-Money Laundering Directive.

6. RESULTS OF COST & BENEFITS ASSESSMENT

The costs of the taxparent disclosure are ring-fenced whereas the benefits for both business environment and public interest are potentially unlimited. The costs of disclosure underlying the attribution of the taxparent mark are close to zero whereas potential gains for companies from attracting new customers thanks to the taxparent mark are possibly infinite.

For economic operators, the costs of making the initial taxparent disclosure consisting in completing the information about the corporate ownership structure and the global effective corporate tax rate into the taxparent web application would take from cca 15 minutes for micronenterprises to several hours for large multinational group of companies. The annual costs of keeping the information about corporate ownership structures updated in case of their changes would take at maximum four times the initial amount given the fact that the update can be performed at the end of each three months – however, since it is more likely that only parts not the entire structure would change the time costs of upkeeping would very likely be lower than four times the initial registration time. Moreover, the amount of time spent with registration would always be proportionate to the complexity of the corporate ownership structure which is mostly related to the size of the undertaking: for small enterprises the costs would therefore be in range of minutes, for larger corporations in range of hours. In any case, the costs would negligible for undertakings of any size.

Most importantly, however, under the taxparent solution even the very small and proportionate costs of disclosure could be turned into profits for entrerprises which following that disclosure received the taxparent mark. The benefit for enterpriseswould be generated by attracting new customers thanks to the taxparent mark[23]. Thus, the firm would recuperate the costs of taxparent disclosure by increased sales to customers due to the competitive advantage procured by the taxparent mark.

For Member States, the costs would be zero since they would not be obliged to maintain the taxparent web application; those Member States which would decide to use the taxparent web application to fulfil the role of the public register of ultimate beneficial owners under Art. 29 of the future fourth Anti-money Laundering

information about the corporate and tax structure of the multinational corporation, in particular if the structure extends outside the EU. Or the company may decide to go forward with its aggressive tax structure even without requesting such confirmatory administrative decision (as companies have to do today in 6 Member States where advanced tax rulings are not being issued).

23 The accuracy of this claim would be tested on the basis of information collected during the trial period in which the taxparent mark will be attributed on the voluntary basis only.

Directive would, in addition, make savings of public funds since they would not have to spend additional resources for creating and maintaining those public registers[24].

In relative terms, in relation to the prospective national public register of ultimate beneficial owners under Art. 29 of the upcoming fourth Anti-money Laundering Directive, the registration of corporate ownership structures, including the ultimate beneficial owners, in the taxparent web application would be much cheaper compared to the registration in those national registers, in particular for companies with cross-border holdings within the EU. For example, a company with subsidiaries in 10 other EU Member States would have to file the same information concerning the change of its ultimate beneficial owner eleven times (in 11 Member States where the parent company and the subsidiaries are registered) whereas it would have to do so only once in the taxparent web-application; if the company had subsidiaries in all 28 Members States, it would have to make 28 registrations of the same ultimate beneficial owner to national public registers of all 28 Member States whereas under the taxparent web application it would have to do so again only once.

Apart from the monetary benefits, such as increased income for the EU public budget (see below), more level playing field between SMEs and multinational corporations and lower transaction costs, which however, cannot be reasonably quantified, the proposed Regulation would generate a number of positive intangible benefits: for example, reduction of losses resulting from economic criminality since a significant portion of prosecution of criminal acts cannot be succesfully accomplished due to the impossibility to obtain information about corporate structures, in particular from non-EU countries[25]; also, the more comprehensive and more reliable the information on corporate ownership structures is, the more effective the economic sanctions against third-country individuals could be. Furthermore, the mere threat of ownership disclosure would most probably prevent numerous cases of corruption and conflict-of-interest from being realised.

Last but not least, thanks to better information on competitive structures of the market for public funds, and resulting more intensive competition on this market, savings of public funds could be expected. These savings would either materialise in the form of reduction of public spending on public works or that the public institution would get more added value for the same amount of money spent. Ultimately, the corporate structure disclosure would enhance trust in the business environment, thus helping to stimulate economic growth.

7. BUDGETARY IMPLICATIONS

The proposed Regulation will not imply any costs for the EU budget. The proposed Regulation, provided that current paragraph 9 of Article 6 is kept in its current wording, can create additional income to the EU budget. However, the amount of

[24] For the sake of completeness: the enforcement of rules regarding the protection of the taxparent mark which should be carried out by Member States through the system of sanctions which shall be effective, proportionate and dissuasive would entail some additional inifinitesimal costs for Member States.

[25] The UK law enforcement authorities indicate savings in investigation up to 50% should they have the possibility to quickly find out the complete corporate ownership structure of companies. Czech public prosecution authorities estimate savings in this respect of up to 25%.

this additional income cannot be predicted in advance. For example, if a multinational corporation with then overal global profits of EUR 1 billion found out that its global effective corporate tax rate is 5% - which not only would not allow it to receive the taxparent mark, but also would force it to make the obligatory disclosure of this rate – and such corporation would desire to increase this effective tax rate to, let’s say 15%, in order to have the right to receive the taxparent mark, it would make in the given year a special additional payment of 10% of its global profit, that is EUR 100 million, into the EU budget.

II. LEGAL PROVISIONS

PROPOSAL OF A MODEL EU INSTRUMENT ON CORPORATE TAXPARENCY

PREAMBLE

[…introductory provisions to be inserted…],

Whereas:

(1) The possibility to create opaque corporate and tax structures across jurisdictions makes it difficult to develop an overall picture of global value chains.

(2) Opacity of corporate and tax structures undermines trust in business environment, leads to discrimination of small and medium enterprises, illicit financial flows and state capture. These issues concerning the nature of the company are of systemic character and can be found in a number of Member States‘ laws.

(3) The adverse effects of corporate and tax structure opacity hamper the proper functioning of the internal market and weaken law enforcement effectiveness in the Union.

(4) In order to rectify those deficiencies in the functioning of the internal market as well as to prevent lowering of law enforcement effectiveness in the Union, it is necessary to adopt a broad-based framework of horizontal nature capable of dealing with the problem of opaque corporate and tax structures with the aim of increasing transparency and avert misuse of these structures.

(5) Circumvention of legal rules which is at the very heart of corporate tax avoidance makes it difficult to effectively tackle this problem by prescriptive rules, in particular in a situation of lack of coordination in tax enforcement at the Union level. Therefore, a behaviourally informed legislative intervention the aim of which is to assist rather than to prohibit certain acts is necessary.

(6) The aim of this *model instrument* is, on the one hand, to motivate undertakings by means of positive publicity to have transparent corporate structure and to pay fair share to society, and on the other hand, to discourage undertakings by means of negative publicity from creating opaque corporate and tax structures.

(7) This *model instrument* should apply to legal persons, entities or other arrangements in which an ultimate beneficial holder can have a participation directly or indirectly so that a complex corporate structure capable of being opaque can thus be created (conglomerates). The opacity of complex corporate structures of such conglomerates represents a vehicle for carrying out aggressive tax planning as well as other harmful practices, such as corruption, conflict-of-interest, state capture, financing of activities of criminals, terrorists and individuals of third state subject to international sanctions.

(8) Taxparent disclosure is a voluntary communication of information which, if made public, can result in granting of the taxparent mark. Since the taxparent disclosure includes all the information required to be disclosed in the public register under Article

29 of Directive [*...insert the number of the fourth Anti-money Laundering Directive when adopted...*] any Member State may decide that the application through which taxparent disclosure was performed can fulfil the role of those public registers.

(9) The global effective corporate tax rate serves to calculate the amount of corporate tax effectively paid by the group in all jurisdictions where it is present in relation to its profits generated in all jurisdictions where it is present in order to determine the effective rate at which the group is taxed and make it possible to assess whether it is engaged in profit shifting, base erosion or similar tax avoidance practices.

(10) Public disclosure of corporate and tax structures contributes to foster awareness of public about the ways in which capital flows and saves surveillance and enforcement costs of competent authorities.

(11) Corporations or groups of corporations made the taxparent disclosure available to the public should be allowed to use a distinctive mark to enhance their public image and receive a tangible competitive advantage.

(12) To avoid that groups with low global effective corporate tax rates which would like to raise these rates have to restructure their corporate and tax structures, a possibility for these groups to easily increase their rate by making a top-up payment to the budget of a Member State or the European Union should be established. This top-up payment should add-up to the amount of tax on profit paid by the group for the purpose of calculation of the global effective corporate tax rate.

(13) Given the fact that the global effective corporate tax rate displayed on the taxparent mark is derived from profits which are not available in situations where a group or corporation is in loss, it is necessary to provide for a special version of the taxparent mark in order to allow also those groups or corporations to benefit from this mark.

(14) Groups with undertakings which receive benefits from public budgets or contract or otherwise interact with public institutions should be subject to special reinforced transparency regime to ensure that public funds are used effectively and efficiently.

(15) Groups with undertakings operating in specific sectors, such as arms trading, nuclear fuel or waste processing or with activities producing negative social effects, like gambling or providing of offshore services should be subject to a special reinforced taxparent regime.

(16) Sanctions for improper use of the taxparent mark should prevent future use of this mark. Where public funds or public licences are involved, they should also entail prohibition of further access to these funds or licensed activities. Moreover, Member States should lay down rules on penalties applicable to infringements of this *model instrument* and ensure that they are enforced. Those penalties must be effective, proportionate and dissuasive.

(17) This *model instrument* implements the country-by-country reporting obligation by enabling entities subject to this obligation to use the taxparent web application as a means to deliver the required country-by-country report.

[…relevant final recitals to be inserted…]

CHAPTER 1 – SCOPE

Art. 1 – Subject matter

With a view to ensuring proper functioning of internal market, preventing profit shifting and base erosion as well as safeguarding effective law enforcement this *model instrument* lays down rules for transparency of corporate and tax structures.

Art. 2 – Scope

(1) This *model instrument* shall apply to conglomerates with at least one controlled undertaking registered in a Member State.

(2) This *model instrument* shall not apply to conglomerates including at least one entity referred to in Annex 1, Part A, point 4, letter b).

(3) Corporations directly owned or controlled by ultimate beneficial holders which are not a part of any conglomerate shall be subject to the provisions of this *model instrument* if the identity of their ultimate beneficial holder(s), turnover, profit and tax on profit is not disclosed to the public.

(4) Any corporation can voluntarily adhere to the regime provided for under this *model instrument* by way of registration in the application referred to in Annex 3. Such adherence entails an obligation to comply with all provisions of this *model instrument*.

Art. 3 – Definitions

For the purpose of this *model instrument*:

1. 'Ultimate beneficial holder' means the person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial holder shall at least include:

    (a) in the case of corporate entities:

        (i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a corporation listed on a regulated market that is subject to disclosure requirements consistent with Union legislation or subject to equivalent international standards; a percentage of 5 % plus one share shall be deemed sufficient to meet this criterion;

        (ii) the natural person(s) who otherwise exercises control over the management of a legal entity;

    (b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

        (i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 5% or more of the property of a legal arrangement or entity;

(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(iii) the natural person(s) who exercises control over 5% or more of the property of a legal arrangement or entity;

(c) in the case of public entities, entities over which no other entity or other beneficial holder exercises control.

2. ‘links’ or ‘link’ shall mean a situation in which two or more natural or legal persons or entities or arrangements are linked by participation or control. A situation in which two or more natural or legal persons, other entities or arrangements are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a link between such persons, other entities or arrangements;

3. ‘participation’ shall mean holding of interest or membership of 5% or more of the voting rights or capital of a legal person, other entity or arrangement;

4. ‘control’ shall mean a relationship enabling to exercise, directly or indirectly, a dominant influence in other legal person or a similar relationship between any natural person and a other legal person, entity or arrangement;

5. ‘corporation’ means a profit-oriented legal person;

6. ‘undertaking’ means a profit-oriented legal person or other entity or arrangement;

7. ‘conglomerate’ means a network of linked corporations, undertakings, other legal persons, entities or arrangements, in which ultimate beneficial holder has a direct participation or which the ultimate beneficial holder directly or indirectly controls, including direct participations held by controlled corporations, undertakings, other legal persons, entities or arrangements;

8. ‘group’ means a network of linked undertakings registered in a public register directly or indirectly controlled by an ultimate beneficial holder; ultimate beneficial holder is, however, not part of the group for the purpose of calculation of the global effective corporate tax rate or, if applicable, the sanctions under Article 9 (1);

9. ‘corporate structure‘ means a network of links within the conglomerate, including persons, entities or arrangements within that network ;

10. ‘public entity‘ means a state, regional or municipal or other local organisation or an entity or a unit emanating from such an organisation or a state;

11. ‘disclose‘ or ‘disclosure‘ means to make information available to the competent authorities of Member States;

12. ‘global effective corporate tax rate‘ means the ratio of (i) the amount of tax on profit of the group and (ii) the amount of profit of the group, evidenced and calculated in accordance with Annex 2.

CHAPTER 2 – TAXPARENT REGIME

Art. 4 – Taxparent disclosure

(1) Any controlled corporation can disclose the corporate structure of the conglomerate as well as the global effective corporate tax rate of the group to which it belongs, including their constitutive elements and, if it does so, has to keep them accurate and up to date in accordance with the conditions set out in Annexes 1 and 2. Taxparent disclosure may also be performed by a controlled undertaking registered in the public register of a Member State if within the group there is no controlled corporation registered in any Member State of the European Union.

(2) Taxparent disclosure shall be carried out via an application referred to in Annex 3. A Member State may decide that this application fulfils the role of public register under Article 29 of Directive [*insert the number of the future Anti-Money Laundering Directive when adopted*].

(3) Taxparent disclosure can be performed by any controlled corporation or, if applicable, by a controlled undertaking registered in a public register of a Member State within the group on behalf of all other legal persons, entities or arrangements within the conglomerate under the conditions set out in Annexes 1 and 2.

Art. 5 – Taxparent mark

(1) Without prejudice to second paragraph, any controlled undertaking within the group, which is a part of a conglomerate in respect of which taxparent disclosure was performed, is entitled to use the taxparent mark provided that the taxparent disclosure was made public and the global effective corporate tax rate of the group is above 10%.

(2) If all controlled enterprises within the group are registered exclusively in Bulgaria, such group is entitled to receive taxparent mark via any of its controlled corporations if in respect of the conglomerate of which such group is a part the taxparent disclosure was performed, made public and the global effective corporate tax of such group is above 8%.

(3) Granted taxparent mark shall be:

(a) a part, in an interactive form, of the homepage of the official website of the group or of at least a controlled undertaking registered in a public register of a Member State within the group concerned in accordance with the conditions set out in Annex 4 Part A;

(b) linked to the web application referred to in Annex 3 according to the specifications referred to therein;

(c) phrased:

(i) in at least the official language or languages of the Member State corresponding to the country code top-level domain contained in the domain name of the internet website of which the taxparent mark is a part, if country code top-level domain is used, or

(ii) in the language of the internet website of which the taxparent mark is a part if generic top-level domain for such website is used, or

(iii) in at least the official language or languages of the Member State where at least one active controlled undertakings of group using a certified taxparent mark sticker is present;

(d) used for the period of time when the published documents containing the information referred to in Annex 2 Part B in respect of all controlled undertakings within the group are true, accurate and up-to-date.

(4) Taxparent mark can also be used in the form of a certified sticker in accordance with the conditions set out in Annex 4 Part A.

(5) The taxparent mark shall be the only marking which attests the transparency of corporate structure and the global effective corporate tax rate.

(6) Taxparent mark shall be displayed in a way that its form as well as the information it contains are visible, easily discernible and sufficiently distinguishing for an ordinary consumer. The affixing of markings, signs or inscriptions which could have an influence on the meaning or form of the taxparent mark shall be prohibited. Any other marking, sign or inscription may be affixed in the proximity of the taxparent mark only if the visibility, legibility, meaning or form of the taxparent mark is not thereby impaired.

(7) Other conditions of use, the contents and the form of the taxparent mark are set out in Annex 4.

(8) A group wishing to raise its global effective corporate tax rate or the amount of tax on profit paid in the European Union can make via any of its controlled undertakings a special top-up payment. The amount of such top-up payment is added to the amount(s) of tax on profit paid by the group for the purpose of calculation of its global effective corporate tax rate or the amount of tax on profit paid in the European Union. The top-up payment shall be paid to:

(a) the Member State in respect of which the taxparent mark was obtained, or

(b) the European Commission if taxparent marks in respect of more Member States were obtained, or

(c) the Member State selected for the top-up payment if the taxparent mark was not obtained and if neither proceedings which may result in sanctions referred to in Article 9 (1) took place,

(d) the Member State whose authorities initiated proceedings which may result in sanctions referred to in Article 9 (1).

Art. 6 – Taxparent mark for groups in loss

A group in loss can obtain via any of its controlled corporations registered in a public register of a Member State a special version of the taxparent mark referred to in Annex 4 Part B if within the taxparent disclosure the amount of loss instead of profit is disclosed. Paragraphs 3 to 7 of Art. 5 shall apply *mutatis mutandis.*

Art. 7 – Public taxparent disclosure without the right to obtain taxparent mark

(1) Without prejudice to Art. 5 (2), a group whose global effective corporate tax rate established in accordance with the conditions set out in Annex 2 is below 10% shall make taxparent disclosure available to the public via any of its controlled corporation registered in a public register of a Member State. Such disclosure does not give the right to obtain the taxparent mark.

(2) Any controlled corporation within the group subject to the obligation under paragraph 1 shall indicate in a visible, easily discernible and sufficiently distinguishing manner on any communication made to the consumer in accordance with the provisions Annex 5 the global effective corporate tax rate of the group to which it belongs.

Art. 8 – Additional taxparent disclosure conditions in certain sectors

Notwithstanding the provisions of Art. 7, taxparent disclosure shall be obligatory for a group with at least one controlled undertaking which is registered in a public register of a Member State and which fulfils at least one of the following conditions:

(a) receives public funds, including EU funds, in any form;

(b) is engaged in contractual, other bilateral or unilateral relation with public institution or entity which receives public funds, including EU funds, in any form,

(c) is active in at least one of the following sectors:

(i) gambling services,

(ii) security services,

(iii) disposal with nuclear fuel or waste,

(iv) trade in arms,

(v) off-shore services, in particular creation of corporate structures reaching to countries with tax on profits set at the statutory rate below 10%.

CHAPTER 3 – FINAL PROVISIONS

Art. 9 – Sanctions

(1) An undertaking which upon request did not provide through the application referred to in Annex 3 or otherwise public authority of a Member State with the information referred to in Article 4 in situation when it was obliged to do so under this *model instrument,* shall be sanctioned unless it was able to prove that it did so within 10 days following such request and its global effective corporate tax rate was above 10 %. The sanction may include a monetary sanction up to the 10 % of the net turnover of the undertaking or the group to which the undertaking belongs.

(2) An undertaking which obtained the taxparent mark on the basis of providing false or inaccurate information or information which were not up-to-date or made an improper use of the taxparent mark shall not be entitled to continue to use it or receive it for the period of five years from the moment when the illicit use was discovered.

(3) An undertaking referred to in Art. 7 (1) which has failed to fulfil any of its obligations set out under Article 7 shall not be entitled to receive or use the taxparent mark for the period of five years from the moment when the latest ommission or violation was discovered and for the same period shall be barred from the access to public funds in any Member State as well as to EU funds.

An undertaking referred to in Art. 8 which has not performed the taxparent disclosure shall not be entitled to receive or use the taxparent mark for the period of five years from the moment when the latest ommission or violation was discovered and for the same period shall be barred from the access to public funds in any Member State as well as to EU funds or from the activity referred to in Article 8 (c), as applicable.

(4) Member States shall ensure the necessary protection to the taxparent mark as well as to the system of its attribution and shall take appropriate action in the event of its improper use. Member States shall also provide for penalties for infringements of this *model instrument*, which may include criminal sanctions for serious infringements, and shall take all action necessary for their enforcement. Those penalties shall be effective, proportionate and deterrent.

Art. 10 – Entry into force

[…date to be added…]

ANNEX 1 – CORPORATE STRUCTURE DISCLOSURE

PART A - DESCRIPTION OF THE CORPORATE STRUCTURE

1. The description of the corporate structure of a conglomerate shall contain information about all of its linked corporations, enterprises, other legal persons, entities or arrangements, public corporations and natural persons in which ultimate beneficial holder has a direct participation or which the ultimate beneficial holder directly or indirectly controls, including direct participations held by controlled corporations, enterprises, other legal persons, entities or arrangements. Without prejudice to point 2) those information shall include in respect of:

(a) corporations:

(i) name,

(ii) address, including the name of the state,

(iii) identification number, if attributed,

(iv) legal form,

(v) name, address and an internet address of the public register where the corporation is registered;

(b) undertakings other than corporations:

(i) name,

(ii) address, including the name of the state, if any,

(iii) identification number, if any,

(iv) legal form,

(v) name, address and an internet address of a public register where the enterprise is registered; or

(c) legal persons other than corporations,

(i) name,

(ii) address, including the name of the state,

(iii) identification number, if attributed,

(iv) legal form,

(v) name, address and an internet address of the public register where the legal person is registered;

(d) entities or arrangements other than undertakings:

(i) name, if any,

(ii) address, if any,

(iii) identification number, if any,

(iv) legal form,

(v) information regarding beneficiaries, if any, in the extent and form defined in respect of the relevant person, entity or other arrangement under this point 1.,

(vi) name, address and internet address of a public register or a person subject to rules against money laundering as an obliged person or equivalent where the entity or arrangement is registered or where memorandum of association is kept,

(vii) name and address of the person authorised to determine beneficiaries,, if the beneficiary is not identified under point (vi),

(viii) name and address of the bank to which the document referred to under point (vi) was deposited, including the date and number of the deposit contract concluded with such a bank.

(e) natural persons:

(i) name;

(ii) month and year of birth;

(iii) country of residence;

(iv) if represented by a proxy, also information referred to under points (i) – (iii) with the indication whether when exercising the function of proxy the proxy acts within an activity in respect of which statutory duty of confidentiality applies;

Even if public taxparent disclosure is made, the identity of natural person(s) within the corporate structure shall not disclosed to the public if those persons opted for non-disclosure of their identity unless their identity as direct or indirect holders has to be disclosed under other pieces of the Union legislation or Member States‘ laws or laws of third countries.

(f) public entities:

(i) name,

(ii) nature of the public institution,

(iii) address of its headquarters, including the name of the state,

(iv) identification number, if any,

(v) name, address and the internet address of the public register where it is registered, if applicable,

(vi) name of the state from which it emanates,

(vii) name of the public institution or department exercising ownership powers in the public entity on behalf of the state, if applicable.

(g) participations of more than 5%:

(i) amount of the participation,

(ii) nature of the participation, in particular whether it is encumbered,

(iii) information regarding the holder of the participation in the extent and form defined in respect of the relevant person, entity or other arrangement under this point 1),

(h) participations of less than 5%, an overall amount of those participations with the indication of the overall highest amount of such participations during the reporting period with the number of holders of such participations accompanied by a declaration of honour that to none of the holders of such participations an amount of profits higher than 5% was paid out during the reporting period;

(i) participations whose holder is unknown despite an exercise of reasonable efforts to identify such a holder, an overall amount of those participations which may not exceed in total 5 % with the indication of the overall highest amount of such participations during the reporting period, accompanied by a declaration of honour that no profits or other corporate or similar funds are paid out to such unknown holders during the reporting period.

If encumbered, the information shall contain in addition the information referred to under letters (a) – (f), as applicable about the person in whose favour the security was created.

2. The description of corporate structure does not have to include information on the identity of holders of participations which:

(a) acquired participations through regulated markets or recognised multilateral trading facilities or equivalent schemes of third states;

(b) are held through collective investment fund or pension fund or similar scheme subject to regulatory surveillance a member country unless this scheme is a closed-end fund the units of which cannot be repurchased or redeemed on the markets or trading facilities referred to under letter a) or equivalent schemes regulated by third states,

(c) are held by a bank or an insurance company subject to regulatory surveillance of a member country of the Organisation for Co-operation Economic Development,

(d) are employee(s) who are direct holders of participations of legal persons, other entities or arrangements which employ them.

3. Participations referred to under point 2), letters a) and d) shall be included in the corporate structure in the form of a sum indicating the total amount of those participations continuously on a quarterly basis; provision of point 6, letter b) shall apply *mutatis mutandis* in respect of these participations.

4. In respect of participations referred to under point 1, letters e), h), i) and under point 2, next to the amount of such participation in the description of the corporate structure the following expressions shall be added, as applicable:

(a) acquired through regulated markets or recognised multilateral trading facilities or equivalent schemes regulated by third states;

(b) held by bank or insurance company regulated by a member country,

(c) held by a collective investment fund or pension fund or an equivalent scheme regulated by a member country,

(d) held by employees,

(e) information not disclosed by the natural person,

(f) held by holders with participations of 5 % or less,

(g) held by non-identifiable holders.

5. In the description of the corporate structure controlling enterprises shall be distinguished by the expression „controlling“ added next to each such enterprise; if those enterprises are controlling enterprises due to the fact that they act in concert with other enterprises, they shall indicate an expression "acting in concert" next to the previous expression.“ The following rights shall not be taken into account when determining whether certain person holds a "controlling" participation:

   (a) rights attaching to participation held on behalf of a person outside the group; or

   (b) attaching to participation:

      (i) held by way of security, provided that the rights in question relating to the participation are exercised in accordance with the instructions received, or

      (ii) held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

6. The changes to the corporate structure referred to in point 1 shall be provided in respect of changes affecting participations of:

   (a) more than 5% or their holders, at the latest at the end of each three months calendar period within which the first such change occurred,

   (b) less than 5 %, including the participations held by unknown holders, at the latest at the end of period of 12 months since the performance of the last taxparent disclosure within which the first such change occurred.

7. In addition to information included in the corporate structure description, the following information may be entered into the taxparent web application in respect of subjects referred to in point 1), letters (a) – (d):

   (a) amount of public subsidies received,

   (b) number of employees,

   (c) reference to the website with published report on corporate responsiblity.

8. The information on corporate structure shall be provided through the interactive form in the framework of the web application referred to in Annex 3.

PART B - EVIDENCE OF THE CORPORATE STRUCTURE

1. Without prejudice to point 6, no evidence of information within the corporate structure description is required in respect of holders and participations which:

   (a) do not exceed 10 %, or

   (b) are referred to in Part A, point 1, letter h) and i) and point 2), letters a) and d).

2. The information about participations and their holders other than that referred to under point 1 shall be evidenced, as appropriate, by:

   (a) an excerpt from a public register; or

   (b) an excerpt from a securities account maintained by a person entitled to keep securities accounts or ensure their custody; or

   (c) a document issued by a bank stipulating that paper certificates allowing for transfer or other disposal with participations were iredeemably deposited with such a bank, or

   (d) a document in the form of a notarial deed.

3. Financial institutions issuing documents referred to under point 2, letters b and c) shall be supervised by a public body of:

   (a) a Member State of the European Union, or

   (b) a member country with full membership rights of the Organisation for Economic Co-operation and Development, or

   (c) a state which ratified the United Nations Convention against Corruption.

4. If the submitted evidence is a document referred to under point 2, letters (b) or (c) issued by financial institutions with their registered office in a state referred to under point 3, letter c) which is not at the same time a state or country referred to in point 3, letters (b) and (c), the corporation which submitted this evidence shall deliver in addition a waiver of confidentiality in respect of the information contained in the submitted document which shall be countersigned by a person or persons entitled to act on behalf of the financial institution keeping the securities account or the deposit and include information referred to in point 7, letter (c) in respect of this financial institution observing the provision of letter e) of that point. The countersignature shall oblige the financial institution, upon request, to provide confirmation of the accuracy of this information in the web application referred to in Annex 3.

5. If the submitted evidence are documents referred to under point 2, letter (d) issued by a notary the corporation which submitted this evidence shall deliver in addition a waiver of confidentiality in respect of the information contained in the submitted document which shall be countersigned by a person or persons entitled to act on behalf of the notary and include information referred to in point 7, letter (c) and letter (e) in respect of the notary observing the provision of letter e) of that point. The countersignature shall

oblige the notary, upon request, to provide confirmation of the accuracy of this information in the web application referred to in Annex 3.

6. Evidence about participations which exceed 5%, but stay below 10% shall be upon request made readily available and submitted to the application referred to in Annex 3 under the same conditions as other documents.

7. Documents referred to under points 2, 4, 5 and 6 shall:

   (a) be submitted together with the information which they substantiate;

   (b) not be older than three months from the date when they are submitted;

   (c) indicate a date and place of their issuance, the name, identification number, if any, the email and the address of the registered office of their issuer;

   (d) be issued or submitted to the taxparent web application in an electronic form; if issued by persons registered in a public register of a Member State of the European Union as a an electronic copy of a paper document they do not have to legalised or apostilled;

   (e) be in English or be accompanied by an English translation and, if made public for the purposes of obtaining the taxparent mark, next to the original language version they shall be issued or translated into the official language of the Member State for which the taxparent mark is claimed, if the language of the original document is different from the official language of the Member State for which the taxparent mark is claimed; in the latter case the translation into English is not necessary.

   If these documents do not contain the information referred to under this point, such information shall be attached in a separate document which shall comply with the requirements set out under this point.

7. The accuracy and completeness of documents submitted is under the responsibility of the corporation which submits these documents.

8. By completing the taxparent disclosure, the registered undertaking indicates on behalf of the conglomerate that it takes responsibility for:

   (a) the accuracy of the corporate structure as well as for the evidencing documents,

   (b) having obtained the consent of the natural persons in respect of information referred to under point 3, letter d), if such information are disclosed.

9. The evidence of the corporate structure shall be provided through the interactive application available at www.taxparency.eu in the form defined therein.

ANNEX 2 – THE GLOBAL EFFECTIVE CORPORATE TAX RATE

PART A – INFORMATION TO BE DISCLOSED REGARDING THE GLOBAL EFFECTIVE CORPORATE TAX RATE

1. In addition to the information required to be disclosed in Annex I the following information shall be disclosed in respect of:

   (a) any undertaking registered within the EU within the group:

   (i) amount of net turnover defined in Annex V or VI of Directive 2013/34/EU,

   (ii) amount of profit defined in Annex V or VI of Directive 2013/34/EU,

   (iii) amount of tax on profit defined in Annex V or VI of Directive 2013/34/EU;

   (b) any controlled undertaking registered outside the EU within the group:

   (i) amount of net turnover equivalent to those defined in Annex V of Directive 2013/34/EU,

   (ii) amount of profit equivalent to that defined in Annex V or VI of Directive 2013/34/EU,

   (iii) amount of tax on profit equivalent to that defined in Annex V or VI of Directive 2013/34/EU.

   Alternatively, it is possible to indicate each of the amount in an aggregate way that indicates each of the amounts in respect of each country in which the group is present.

2. If in respect of corporation or undertaking referred to in point 1, letter a) or b), no tax on profit or loss or a similar tax is levied, the amount of tax levied on the profits paid to direct controlling holders shall be disclosed.

3. If the amount referred to in point 1, letter a), indent (iii) or letter b), indent (iii) include also the amount of deferred tax on profit, next to the amount of tax on profit it shall be indicated the amount of deferred tax and the amount of tax on profit without the amount of the deferred tax on profit.

4. If applicable, the amount of top-up payment referred to in Article 5 (8) shall be disclosed next to the information referred to under points 1 and 2.

5. In respect of any controlled legal person other than undertaking amount of net turnover, or amount of similar net revenue shall be disclosed.

6. The amounts referred to under previous points shall be indicated in the currency corresponding to the currency in which those amounts are indicated in the documents referred to in Part B of this Annex. If such currency is not euro, next to the amount in such currency the amount in euros should be indicated converted at the rate valid at the date when those amounts were entered into the application referred to in Annex 3.

PART B – EVIDENCE TO BE PROVIDED

1. Information referred to in Part A shall be evidenced by the latest and up-to-date:

   (a) annual financial accounts duly published in a public register of the respective state, or

   (b) annual report duly published in a public register of the respective state.

2. If the information referred to in Part A, point 1, letter a), indent (iii) or letter b), indent (iii) or in point 3 cannot be evidenced by the documents referred to under the preceding point, they shall be evidenced by:

   (a) an excerpt(s) from a bank account from which the tax on profit (or loss) or the additional top-up payment was paid indicating at least:

      (i) the bank account holder,

      (ii) the beneficiary of the payment,

      (iii) the amount of the payment,

      (iv) the currency in which the payment was made,

      (v) the information that the payment serves for paying the tax on profit (or loss) or the additional top-up payment; and

   (b) waiver of confidentiality in respect of the information referred to under the previous letter countersigned by a person or persons entitled to act on behalf of the bank keeping the bank account referred to under the previous letter obliging this bank, upon request, to provide confirmation of the accuracy of this information in the application referred to in Annex 3.

3. If information referred to under Part A cannot be evidenced by the documents referred to under points 1 and 2 or the information in these evidencing documents do not match the information referred to under Part A, those information shall be evidenced by way of declaration of honour adding the missing information or explaining how those information relate to the information contained in documents referred to under points 1 and 2.

PART C – CALCULATION OF THE GLOBAL EFFECTIVE CORPORATE TAX RATE

1. Formula for the calculation of the global effective corporate tax rate:

The amount of tax on profit of each undertaking within the group, including the additional top-up payment, if applicable, divided by the amount of profit of each undertaking within the group.

2. [Further details to be available later at www.taxparency.eu].

ANNEX 3 – TAXPARENT WEB APPLICATION

[To be available at www.taxparency.eu].

ANNEX 4 – TAXPARENT MARK

PART A – TAXPARENT MARK

A. The visual form

[To be available at www.taxparency.eu]

B. The detailed conditions of use

[To be available at www.taxparency.eu]

PART B – SPECIAL TAXPARENT MARK VERSION FOR GROUPS IN LOSS

A. The visual form

[To be available at www.taxparency.eu]

B. The conditions of use

[To be available at www.taxparency.eu]

PART C – RULES FOR THE ATTRIBUTION OF FILLED STARS TAXPARENT MARK

1. The rules for the attribution of the filled stars on the taxparent mark are set out in the following table:

SUM OF AMOUNTS OF TAX ON PROFIT PAID BY CONTROLLED CORPORATION IN ALL THE MEMBER STATES OF THE EUROPEAN UNION WHERE THEY ARE PRESENT	NUMBER OF FILLED STARS TO BE ATTRIBUTED ON THE TAXPARENT MARK
EUR 999 and less	Zero
EUR 1 000 to EUR 9 999	One
EUR 10 000 to EUR 99 999	Two
EUR 100 000 to EUR 999 999	Three
EUR 1 000 000 to EUR 9 999 999	Four
EUR 10 000 000 to EUR 99 999 999	Five
EUR 100 000 000 to EUR 999 999 999	Six
EUR 1 000 000 000 and more	Seven

2. [Further details to be available later at www.taxparency.eu].

ANNEX 5 – DISCLOSURE TEXT

The text which a controlled corporation referred to in Art. 7 (2) shall indicate on any communication made to the consumer or the general public shall read as follows:

"My global effective corporate tax rate is [0-9%]."