

Chairman of the European Commission
Mr Jean-Claude Juncker
Rue de la Loi 200
B-1049 Bruxelles
Belgium

Den Haag, 20 December 2016

Subject: Reasoned opinion (subsidiarity) regarding the EU proposals for a Common Corporate Tax Base (CCTB) - COM (2016) 685 and a Common Consolidated Corporate Tax Base (CCCTB) - COM (2016) 683.

Dear Mr Juncker,

The House of Representatives of the Netherlands has examined the EU proposals for a Common Corporate Tax Base (CCTB) - (COM (2016) 685 and a Common Consolidated Corporate Tax Base (CCCTB) - COM (2016) 683 in terms of the principle of subsidiarity.

I am writing to inform you that the opinion of the House of Representatives with regard to the subsidiarity of the aforementioned proposals is negative. The House of Representatives agrees that tackling tax avoidance is important, but the House is of the opinion that the CC(C)TB proposals do not comply with the principle of subsidiarity. The House is not persuaded that actions taken by the EU by means of the CC(C)TB proposals offer any clear advantages over actions taken at a national level by the member states.

For a variety of reasons, the House of Representatives does not see any clear advantages in introducing the CC(C)TB initiatives that are currently proposed. Important arguments for a negative opinion in terms of the subsidiarity of the proposals are: that the proposals may have adverse effects on the Dutch economy; that the proposals will not prevent a race to the bottom; that the measures will probably do nothing or little to prevent tax avoidance and that, with these proposals, the different tax systems will continue to exist.

The annex sets out the contributions to the debate by the different parliamentary parties in which they explain their standpoints with regard to subsidiarity and other matters in greater detail. I would appreciate your taking these contributions into consideration in your reply to this letter.

A copy of this letter will also be sent to the European Parliament, the European Council and the Government of the Netherlands.

Yours sincerely,

Khadija Arib
Speaker of the House of Representatives

Annex: Contributions of the different parliamentary parties to the debate

The House of Representatives of the Netherlands has 150 seats. These seats are distributed as follows:

Volkspartij voor Vrijheid en Democratie - VVD (40)
Partij van de Arbeid - PvdA (35)
Socialistische Partij - SP (15)
Christen Democratisch Appel - CDA (13)
Partij voor de Vrijheid - PVV (12)
Democraten 66 - D66 (12)
ChristenUnie - CU (5)
GroenLinks - GL (4)
Staatkundig Gereformeerde Partij - SGP (3)
Partij voor de dieren - PvdD (2)
50PLUS (1)
Groep Kuzu/Öztürk - GrKÖ (2)
Groep Bontes/Van Klaveren - GrBvK (2)
Houwers (1)
Klein (1)
Monasch (1)
Van Vliet (1)

With regard to evaluating the proposals in terms of subsidiarity, eight parties made a contribution.

Standpoints regarding subsidiarity

The opinion of the **VVD representatives** with regard to the subsidiarity of the CCTB proposal is negative. These representatives want the Netherlands to remain in control of corporate taxation. Furthermore, the CCTB proposals do not contribute to the goals of strengthening the internal market or tackling tax avoidance. The Anti Tax Avoidance Directive (ATAD) that was adopted while the Netherlands chaired the EU has already led to an extensive package of anti-avoidance measures. Additionally, the CCTB proposal does not contribute anything extra to achieving the goal. The VVD representatives see the CCTB as a step towards a CCCTB and they do not want to be caught in this trap. The VVD representatives do not want to transfer any authorities related to corporate taxation to the EU. The CCTB only permits competition in terms of tax rates and precisely this would lead to a race to the bottom. The CCTB proposal would lead to the end of the Dutch participation exemption in its present form, while this was rescued not long ago in the ATAD proposals. The VVD representatives are of the opinion that the moment the CCTB road is taken, there will be no way back and then one would face similar problems to the present problems with an inflexible VAT system, in which (nationally) desired changes are almost impossible or take an extremely long time to achieve. The Commission says that it is only possible to set a common tax base at EU level to strengthen the internal market. In the view of the VVD representatives, the proposals do not show how a European solution provides added value for all actors involved in this issue.

The opinion of the VVD representatives with regard to the subsidiarity of the CCCTB proposal is negative. These representatives want the Netherlands to remain in control of corporate taxation. Taxation falls under the sovereignty of the member states. The VVD

representatives feel that a shift from national to European level in the area of direct taxation is undesirable. In 2011, the European Commission already showed that the introduction of a CCCTB would have negative economic effects for the European Union and the member states. For these representatives, it is not clear why this loss of prosperity would not occur with the current proposals. The documents of the European Commission also do not show that there is added value for all the actors involved. The proposal would cost the Netherlands economic growth, jobs and tax revenues. The proposal may work well for large countries with manufacturing industries, but it is certainly not good for small countries with an open economy, such as the Netherlands. The CCCTB would be obligatory for companies with a turnover of more than 750 million euros; this would make implementing the proposal complex and difficult and thus costly because there would be two tax systems. The VVD representatives feel that there is no benefit from, or need for, the introduction of the consolidation and reallocation of profits at a European level. Agreements at OECD level already exist (that differ from this allocation key) regarding the mutual transfer pricing used as a basis for the international allocation of profit. The proposed allocation key also ignores the creation of value through intangible and financial assets and is thus again disadvantageous for more modern economies. The feeling among the general public is an increasing opposition to transferring more sovereignty to Brussels. With these proposals, the European Commission shows that it is insensitive to the criticisms expressed among the general public, and thus it fuels Euroscepticism. In its considerations, the Commission has not taken the social effects of this growing public dissatisfaction into account in any way at all.

In the opinion of the **PvdA representatives**, the current directives comply with the subsidiarity principle. They recognise that, in principle, the area of direct taxation is a matter reserved for individual member states. This does not detract from the fact that member states have large common interests in this area. There is a broad international consensus with regard to the undesirability of tax avoidance. There is also a broad consensus regarding the fact that tax avoidance can best be tackled internationally. Additionally, harmonisation contributes to better functioning of the internal market and helps to prevent undesirable competition among member states in the area of corporate taxation.

In the opinion of the PvdA representatives, the issue of tax avoidance is a matter that rightly attracts much attention. According to figures published by the OECD, governments miss out on up to USD 240 billion a year due to tax avoidance. On an initiative of the G20, an important political decision was taken. Tax avoidance would be tackled worldwide in a coordinated way. Under OECD leadership, the BEPS project was started. All the EU member states have aligned themselves with the outcomes of BEPS. This has produced results, in the form of the Anti Tax Avoidance Directive (ATAD).

The PvdA representatives note that BEPS has taught us that tax avoidance functions through differences in tax systems. This is certainly an important factor on the European continent. Very interconnected economies, low barriers to transnational capital flows and, at the same time, significant differences between tax systems lead to many opportunities for tax avoidance on the continent. These representatives point to the fact that the member states have unanimously recognised this by participating in the BEPS project and by adopting the ATAD directive together.

In the view of the PvdA representatives, the final element in reducing differences between tax systems would be a CCCTB. A first step towards this can be taken with a CCTB. The CCTB would further reduce the possibilities for misusing differences in qualification methods,

valuations, depreciation terms, etc. Tax avoidance in these ways is completely impossible with a CCCTB. Proposals that lead to a CCCTB are thus completely in line with the intention of the member states to tackle tax avoidance together. It is also in the interests of all member states that companies pay taxes as intended by the legislation and are no longer able to manipulate their tax burden.

The EU has a single internal market for goods and services. Obstacles between member states are removed as far as possible and competitive differences are also removed as far as possible. In the opinion of the PvdA representatives, the differences between profit tax systems are possibly the largest obstacle still present within the internal market. It matters in which member state the headquarters are located, it matters in which member state the sales office is located and it matters in which member state the surplus money is stored in. The fact that the headquarters are located in the Netherlands, the sales office in Ireland and the surplus money is in Belgium is a fact that is mainly driven by taxation. In the view of these representatives, this is clearly a distortion of the market. They completely agree with a further strengthening of the internal market to remove this distortion. A CCTB and a CCCTB would contribute to doing this.

The PvdA representatives also observe that a race to the bottom is underway in the area of corporate taxation. Countries are trying to attract commercial activity by competing on the rates and basis used for taxing profits. This is a zero sum game. The winner gets the commercial activity but this is at the cost of activity somewhere else. The loser is the ordinary taxpayer, who sees income from taxes on profits slowly reducing. This reduction must be compensated for by higher taxes on labour and consumption.

The PvdA representatives feel that this competition in the area of corporate taxation can only be halted through European cooperation. In particular, it is the small European states that play a leading role. The EU is pre-eminently able to create the conditions for a level playing field and is in some cases even able to impose these on surrounding countries with which it has an intensive trading relationship. It is in the interests of all member states to tackle harmful tax competition. The competitive struggle between the member states should be based on productivity-enhancing factors such as education, infrastructure and good governance. A CCTB and a CCCTB can contribute to this.

The **SP representatives** have a positive opinion concerning an EU minimum for the corporate tax base and rates. This could bring a halt to the race to the bottom. However, the underlying proposal differs from the standpoints of the SP representatives on some crucial issues. The Commission has chosen not to propose a minimum rate and a minimum basis, while this would enable member states to arrange their tax systems in accordance with their own wishes.

In the view of the SP representatives, the Commission's proposals will lead companies with a turnover of less than 750 million euros continuing to "shop" between tax systems. Their possibilities for "shopping" would even be increased because a new system of profit taxation would be set up that would permit companies to opt for it. The SP representatives do not feel that the proposals would not lead a reduction of "the distortions resulting from the current interaction of 28 national tax regimes" as the Commission intends to achieve.

The standpoint of the SP is therefore negative with regard to the subsidiarity of the proposals.

The opinion of **CDA representatives** with regard to the subsidiarity of the underlying EU proposals is negative. The proposals do not contribute to achieving the intended aim of tackling tax avoidance. After all, a step towards this has already been taken through the adoption of the Anti Tax Avoidance Directive. Furthermore, the underlying EU proposal may create new possibilities for tax avoidance if companies with a turnover of less than €750 million are given the ability to choose between the harmonised rules or the rules of national tax laws. As there is no clear tackling of tax avoidance, the only conclusion can be that the EU proposals represent a change to taxation laws, which fall under the national sovereignty of the member states. The view of these representatives concerning subsidiarity with regard to the distribution of profits over member states is also negative. In the opinion of the CDA representatives, it is not appropriate for the EU to make arrangements in this regard when OECD agreements have already been made about mutual transfer pricing. The EU proposals deviate from these agreements.

The PVV representatives feel that it has not been adequately shown that action by the European Union offers any advantages compared to actions taken by individual member states themselves.

It is the view of the PVV representatives that the introduction of the directives would not provide benefits to all the parties concerned. This means that a decision has to be taken that considers the advantages for one party and the disadvantages for another. With regard to this consideration, the PVV representatives note that the positive effect for the prosperity of the EU as a whole is very small. The PVV representatives observe that the introduction of the proposed directives would even have a negative impact on the GDP of the EU as a whole.

According to the European Commission's impact assessment of the previous proposal for a CCCTB directive, the introduction of the directive would lead to a reduction in GDP at EU level.

For the Netherlands, the proposed CCCTB directive would be disadvantageous for the general level of prosperity. For most member states it would mean a reduction in GDP. Based on the figures from 2011, the reduction in GDP for the Netherlands could be as much as 1.69%, which represents a deadweight loss of € 11 to 12 billion. The PVV representatives are concerned that the introduction of the proposed CCCTB directive would greatly reduce investment levels in the Netherlands.

The introduction of the proposed CCCTB directive will lead to lost budgetary revenues. The proposed reduction in the tax base will lead to reduced tax revenues in the Netherlands and other member states. In the view of the PVV representatives, such an encroachment on the budgetary positions of the member states always comes at an unfortunate moment in the light of the Stability and Growth Pact.

It is, therefore, the opinion of the PVV representatives that the proposal does not comply with the subsidiarity principle.

In the opinion of the PVV representatives, the actions of the EU go beyond those necessary to realise the objectives of the Treaty and are thus also not proportionate. They support their view with the following arguments:

The introduction of the new system will lead to high costs. It would also mean an additional task with regard to the taxation treaties that are based on the current system and not on the proposed situation with an extra system. The PVV representatives also regard this as being undesirable and not proportionate in view of the intended benefits.

In addition to the above, the proposed allocation key for the collective (transnational) consolidated profit is disadvantageous for member states with a large services sector because factors such as intangible and financial assets are not included in the allocation model. This would be disproportionately disadvantageous to the Netherlands and other countries.

The **D66 representatives** support a harmonised European tax base for corporate taxes. Therefore the opinion of these representatives with regard to the subsidiarity of CCTB is positive. That being said, the representatives have critical questions regarding the composition of the EU proposals for the CCTB and the CCCTB. For example, the CCTB uses a narrower base for corporate taxes than the current Dutch base and the base does not correspond with current tax treaties. The representatives also see challenging problems in implementing the proposal.

With regard to the proposal for a consolidated base, the CCCTB, the representatives have more reservations. The proposed allocation key used for the CCCTB is not advantageous for the Netherlands. An allocation key should take more account of smaller countries with an innovative services sector. Despite their critical view of the composition of the proposal, the D66 representatives also regard the subsidiarity of the CCCTB positively.

The D66 representatives support a European approach to tackling tax avoidance. The members believe that tax avoidance can only be tackled effectively at European level. Therefore the D66 representatives see no reason to show a yellow card in response to the CCTB or the CCCTB.

The **ChristenUnie representatives** have considered the proposed proposals of the Council for a common corporate tax base (CCTB) and a common consolidated corporate tax base (CCCTB). These representatives recognise the fact that tax avoidance is a transnational problem that calls for a transnational approach. Therefore these representatives see added value in European agreements. These representatives are critical of the way tax avoidance is tackled in the proposed directives. Here, it should be noted that their criticisms of the CCCTB are of a more fundamental nature than their criticisms of the CCTB. The European offsetting of the accrued profits and losses of companies with multinational operations, as is proposed in CCCTB, goes too far for these representatives and is an irresponsible infringement of the subsidiarity principle. Although the CCTB needs improvement, in the view of the ChristenUnie representatives it is not incompatible with the subsidiarity principle. These representatives feel that further harmonisation of profit taxes is unavoidable to combat tax avoidance and halt a race to the bottom in profit taxes. In the opinion of these representatives, a yellow card is warranted for the CCCTB, but not for the CCTB.

The opinion of the **GroenLinks representatives** with regard to the subsidiarity of the EU proposals for a CCTB directive and the proposal for a CCCTB directive is positive. These representatives wish to emphasise to the European Commission that the Dutch government's standpoint is very different from the standpoint of the GroenLinks representatives, and they distance themselves from the Dutch government's negative standpoint regarding subsidiarity.

Like the Commission, the GroenLinks representatives view tax avoidance as a pre-eminently transnational problem. One could argue that the sovereignty of the individual member states is currently under pressure, because profits are easily shifted over borders, while it is difficult for systems to respond, which results in the base being eroded already. Allowing tax avoidance to continue impairs the decision-making abilities of member states. This calls for an international approach, and the EU is the logical institution to do this.

The GroenLinks representatives also believe that it is a logical consequence of the extensive integration of the internal market that the harmonisation of the regulations regarding the sale of products also leads to the harmonisation of the regulations regarding the revenues from these sales.

Furthermore, in the view of the representatives it is strange to have a negative standpoint regarding the subsidiarity of directives that apply to revenues, while the EU already imposes far-reaching rules regarding expenditures and budgetary balance within the framework of the SGP. It seems to these representatives no more than logical that rules are made regarding the revenue side.

The representatives also judge the proportionality positively. The Dutch government regards the directives as being unnecessary and leading to too many extra rules. However, these representatives do see a necessity and consider the measures to be in fact proportionate. The level at which tax avoidance is presently occurring makes robust regulations and clear coordination urgent and necessary. Notwithstanding the above, the representatives wonder whether it would not be wise to simplify the introduction of the directives, for example, by removing the optionality available to companies from the proposal.

However, the GroenLinks representatives do have a number of substantive criticisms of the directives. It seems logical to them to include base levels in the directives, for example in the rate. They ask whether the Commission would not think this wise to prevent a race to the bottom. Additionally, they also see a need for further specification of the allowance for the costs of R&D expenditure as well the allowance for equity.

The GroenLinks representatives are also critical of the allocation key within the CCCTB directive. They are looking forward to alternative proposals from the Commission that, for example, provide for intangible assets and services. These representatives ask how the Commission views the feasibility of implementation – whether all member states are sufficiently capable of implementing tax regulations such as these. While the representatives have a positive standpoint regarding the subsidiarity of the CCCTB directive, they believe that much work is needed in terms of its content.

Standpoints regarding the legal basis

With regard to the legal basis, the **VVD representatives** wish to explicitly note that these directives require unanimity in the Council to be adopted.

The **PvdA representatives** regard Article 115 of the TEU as the proper basis for these proposals. As explained above, the CCTB and the CCCTB can contribute to the better functioning of the internal market.

In the opinion of the **SP representatives**, the current proposal falls within the scope of Article 115 of the TEU.

The **CDA representatives** are of the opinion that the European Commission is using the correct legal basis.

The **PVV representatives** are of the opinion that the TEU does not provide any legal basis for introducing these proposals. The TEU, in its entirety, does not provide any basis for measures in the area of direct taxation. Direct taxation falls under the sovereignty of the member states. The TEU does include, in Articles 110 to 113, provisions regarding indirect taxation. However, these proposals concern corporation tax, which is regarded as direct taxation.

Article 115 of the TEU does not provide a solid legal basis for the proposed directives because it concerns the functioning of the internal market and not direct taxation. Even if the behaviour the proposed directives aim to tackle is taken into account, a direct effect on the functioning of the internal market is required. In particular, there is no direct effect as required by Article 115 of the TEU.

The representatives also explicitly remark that possible applicability of Article 115 means that the directive must be adopted unanimously by the Council.

The **D66 representatives** take a positive view with regard to the legal basis for both EU proposals.

The **ChristenUnie representatives** have no comments regarding the invocation of Article 115 of the TEU for both directives.

The **GroenLinks representatives** take a positive view with regard to the legal basis and agree with the opinion of the European Commission. It seems logical to them that if the functioning of the internal market is supposed to fall under a single rule book, the taxation of the same market should also be included. In their view, as in the Commission's, this would make the system more resistant to aggressive fiscal strategies. They see these proposals as an improvement to the functioning of the internal market.