

Opinion of the European Economic and Social Committee on the ‘Communication of the Commission to the Council, the European Parliament and European Economic and Social Committee: An internal market without company tax obstacles – achievements, ongoing initiatives and remaining challenges’

(COM(2003) 726 final)

(2004/C 117/10)

On 24 November 2003, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the ‘Communication of the Commission to the Council, the European Parliament and European Economic and Social Committee: An internal market without company tax obstacles – achievements, ongoing initiatives and remaining challenges’ (COM(2003) 726 final).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 14 April 2004. The rapporteur was Mr Cassidy.

At its 408th plenary session (meeting of 28 April 2004), the European Economic and Social Committee adopted the following opinion by 56 votes in favour and 14 votes against, with three abstentions.

1. Introduction

1.1 The Communication is an overview of the European Commission’s efforts to remove the tax obstacles affecting businesses operating across frontiers within the internal market. It is not a proposal for tax harmonisation. It is only concerned with the elimination of tax obstacles to cross-border business and to removing an obstacle to the smooth functioning of the internal market and removing tax related inefficiency arising from 15 different bases of assessment.

1.2 The European Economic and Social Committee (EESC) has been consulted on other Commission Communications on tax matters. In 2001, it was consulted on the Commission Communication on ‘Tax policy in the European Union – Priorities for the years ahead’ (COM(2001) 260 final). The rapporteur of the EESC opinion was Mr Morgan. It was generally supportive of the Commission’s tax policy objectives particularly in the need to coordinate corporate taxes to eliminate difficulties particularly for SMEs arising from national variations.

1.3 In 2002, the EESC published a further opinion again with Mr Morgan as the rapporteur on the Commission’s proposals concerning fiscal competition and company competitiveness. The EESC opinion particularly stressed the need to give priority to VAT, personal pensions and transfer pricing⁽¹⁾. Different national regulations prevent the creation of a ‘level playing field’ in corporate tax treatment between companies established in different Member States.

1.4 Also in 2002 an own initiative opinion (rapporteur: Mr Malosse, co-rapporteur: Mrs Sanchez-Miguel) very strongly urged the speeding up measures to avoid double taxation, particularly the proposal to set up a Joint EU Forum on transfer pricing. Furthermore it approved the aim of having an internal market free from tax barriers while stressing the importance of establishing common principles to encourage an internal market. The objective of a harmonised tax base for all EU

companies is compatible with the tax sovereignty of the EU’s Member States and regions because it preserves their power to fix the level of tax.

1.5 In 2003, the Committee issued an opinion on the Commission proposal for a Council directive amending a Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries in different member states (COM(2003) 462 final). The rapporteur-general was Mrs Polverini. The gist of the Committee opinion was to support the Commission’s proposals aimed at eliminating or at least reducing double or multiple taxation of profits distributed by a subsidiary in the State of a parent company or permanent establishment.

1.6 In 2003, the Committee gave a further own-initiative opinion on common principles of taxation, convergence of tax laws and the possibility of qualified majority voting on tax issues. The rapporteur was Mr Nyberg. The conclusion was that the following three issues be addressed:

- use the open method of cooperation to find the most efficient tax systems;
- introduce a common company tax base;
- use Qualified Majority Voting to establish minimum levels for the corporate tax rate.

2. The current communication

2.1 The Communication highlights the tax obstacles affecting businesses, particularly SMEs, operating across frontiers within the internal market. In spite of its earlier 2001 Communication, the tax obstacles identified then still largely exist. It recalls that it has submitted a number of specific proposals and initiatives aimed at removing specific tax obstacles.

⁽¹⁾ The prices charged for goods and services provided to companies belonging to the same group.

2.2 The Commission is continuing to work towards a more wide ranging, long term solution whereby companies would be allowed to use a single company tax base (taxable profits) for all their EU wide activities. The Commission believes that this is the only way of overcoming tax problems in the internal market in a systematic way.

2.3 The EESC acknowledges the steps the Commission has taken *inter alia* for the revision of the Merger Directive 90/434/EC and the Parent/Subsidiaries Directive 90/435/EC.

3. Suggestions

3.1 The EESC has been supportive of the Commission in its efforts to eliminate distortions of the internal market arising from different rules and regulations on company tax treatment in the various member States. This problem can only become worse after the enlargement of the EU to include ten new Member States on 1 May 2004.

3.2 So, a new impetus is required towards consolidating the arrangements for corporate tax such as an agreement between Member States as to what is allowable and what is not allowable against national tax. The need for a common tax base is a priority.

3.3 The EESC hopes that Member States will acknowledge the difficulties of companies, especially SMEs. They do not have the resources to cope with 15 (soon to be 25) different rules. It believes that there is merit in the possibility of 'Home State Taxation' ⁽¹⁾ (HST) for SMEs perhaps with a turnover ceiling.

3.3.1 The Commission pilot project on 'Home State Taxation' provides a solution for cross-border activities of SMEs, making their fiscal administrative burden lighter. A test of an HST system could start on a bilateral basis and could eventually be widened to the whole of the EU following a positive evaluation.

3.4 A common European tax base is an important first step. The EESC believes that the International Financial Reporting Standards (IFRS) are too burdensome and should not be imposed on SMEs as they are principally intended for publicly quoted companies (IFRS rules could be a starting point for arriving at a tax base). The proposal of the Commission needs to be adapted in order to be applicable for SMEs. An adapted set of IAS/IFRS Standards, taking into account the specific needs of SMEs with respect to the administrative burdens and taxation, should be developed. A harmonised tax base and new accounting standard could lead to higher taxation. It should be

possible for those countries to counteract such a shift by changing its tax rates. Nor must the needs of the future 'European Company' (*Societas Europea*) be overlooked.

3.5 A further suggestion is that the multitude of double taxation agreements between Member States themselves and between Member States and third countries such as the USA is confusing and inconsistent - there is no uniformity. The EESC urges the European Commission to undertake a study of double taxation treaties in all sectors aimed at providing a guide of 'best practice' and finding a solution which is acceptable to all parties.

3.6 The Commission Communication puts forward an interesting suggestion that the principle of 'most favoured nation' between Member States might be required at some time in the future and it notes that first discussions with member states on this issue are to be held shortly.

3.7 The EESC is once again urging on Member States, the main influence, the need for an agreement which will allow and encourage SMEs especially to expand outside their home country and in the process create jobs, SMEs being the main creators of new jobs. The EESC firmly supports the Commission's desire to have agreement between Member States on the tax base for companies.

3.8 The lack of real progress in the EU decision-making process on corporate taxation leads to a shift from political decisions taken by the Council and the European Parliament to the ECJ. Also without political decisions there is a need for judicial decisions on the different taxations systems. The ECJ's jurisprudence ⁽²⁾ is beginning to have far reaching effects on tax systems notably on Member States' dividend tax systems. Without progress in the Council on taxation matters the EESC therefore hopes that the Commission will quickly produce its guidance on interpreting ECJ tax decisions.

3.9 The EESC could endorse enhanced cooperation between subgroups of member states who wish to make progress on tax issues as a way of getting round the present unanimity requirement.

3.10 Finally, the EESC acknowledges the difficulty faced by Member States changing their present systems. They need to be able to compare their existing tax take with their likely share under any new system. This will require open coordination between them and the need for trust and confidence between all of them.

Brussels, 28 April 2004.

The President
of the European Economic and Social Committee
Roger BRIESCH

⁽¹⁾ Tax rules in the home state for a company are used for all its tax payments but with the tax rates of each country where it has its activities.

⁽²⁾ A recent example: C-446/03 Marks & Spencer plc v. David Halsey (HM Inspector of Taxes) (UK) - cross-border compensation of losses.