

MEETING OF THE
ACCOUNTING DIRECTIVE COMMITTEE
24 MAY 2016
SUMMARY MINUTES

1. Approval of the draft agenda

The Members approved the agenda of the meeting, as well as the minutes of the previous meeting.

2. Commission's update

The Commission services updated orally the Members on the worldwide situation as regards the adoption of reporting requirements that can be regarded as potential candidates for equivalence on the Country-By-Country Reporting (CBCR). Members were also updated on the legislative proposal adopted by the Commission on 12 April 2016 on CBCR on income tax information.

3. Analysis of CBCR reporting requirements in Canada

The Chair reminded that the Canadian government has expressly indicated their interest in an equivalence decision of the EU in respect of their Country-By-Country Reporting for extractive industries. Based on working documents, the Commission services presented their analysis of the Canadian reporting requirements. This analysis is the result of extensive contacts with officials of the relevant Canadian Ministries.

The analysis shows that for eight of the nine criteria set in Article 46 of the Accounting Directive, the Canadian legislation and the Accounting and Transparency Directives can be considered as achieving substantially similar effects. As regard the targeted undertakings, the Canadian Act could be considered as partially equivalent to the Accounting and Transparency Directives, as the Canadian provisions are narrower in scope in that they concern solely undertakings in the extractive sectors whereas the EU approach encompasses undertakings in the logging industry.

Several Members concurred with the analysis of the Commission services. One Member required several clarifications on a number of points. Firstly, on the extent with which banks and insurers are covered by the Canadian reporting requirements. Secondly, on a potential difference between legislations in terms of target recipients of payments when these are State owned entities. Finally, on how the time gap in terms of archiving should be dealt within the Equivalence Act. Another Member remarked that the Canadian law does not cover the logging industries. Another Member enquired as well about differences in the archiving period.

The Commission services indicated that one cannot expect to have exactly the same rules as the EU in a third country. The Commission believed that these slight differences should not prevent a positive assessment on the analysis on a possible equivalence. As regards logging, the Chair reminded that equivalence would be granted only as regards extractive activities (partial equivalence). The Canadian law reflects international focus on extractive activities. As regards the archiving period, the Commission services observed that the European provisions (10 years as per

Transparency Directive, national legislation otherwise) would apply because of the obligation to publish the equivalent report in the EU pursuant to Article 46 of the Accounting Directive. Hence, EU archiving rules would apply. The Commission services also underlined that the undertakings should be subject directly or indirectly to a third country legal obligation to report in order to be able to use the equivalent third country reporting requirement, hence potentially addressing gaps reported by certain Members in the scope of the reporting requirement.

4. Equivalence decision: draft legal act

The Commission presented a draft legal act granting equivalence as regards the Canadian reporting requirements and indicated that the text had been validated by the Commission Legal Service. It was proposed to grant only partial equivalence, covering only the extractive sector. In this respect, it is proposed to address the dual sector approach on the equivalence by having two separate annexes as regards the equivalence, one regarding the extractive sector, and the other one regarding the logging sector. The Commission services drew the attention to several points: (i) the legal obligation, both under EU / Member State law and the third country reporting requirements that is necessary in order for a company to be able to use the equivalent third country reporting; (ii) the obligation to still file the report in a EU business register; (iii) the review clause; and (iv) the reference to potential indirect legal obligation.

One Member State enquired whether the same legal Act would be used over time. The Commission confirmed that the Act would be used as well for future equivalence decisions about other jurisdictions or other aspects. It indicated that the recitals relating to the amended Act would however remain in the amending Act.

An observer enquired whether the Commission considered implications on listed companies and whether there would be guidance or Q&As to explain the reporting requirements. The Commission services opined that this Act should be a stand-alone and sole document available to users.

One member and one observer raised the need to clarify the reference to an indirect legal obligation in order to ascertain legal certainty and enforcement. The Chair confirmed that the Commission services will strive to clarify the Recitals in this respect.

The Chair saw broad support for the equivalence, and the drafting of the equivalence decision. The chair proposed to have a vote on the 27th of June, based on a slightly improved text of the Recitals.

5. AOB

One Member enquired about the possible other countries to be on the list. The Chair replied that for now, only the US is considering drafting a CBCR requirement for extractive industries. There were no additional remarks. The Chair thanked the participants and closed the meeting.