



**Tithe an
Oireachtais**
**Houses of the
Oireachtas**

**An Comhchoiste Um Airgeadas, Caiteachas Poibli Agus Athchóiriú, Agus
Taoiseach**

Tuairim Réasúnaithe

COM(2023)532 Togra le haghaidh TREOIR ÓN gCOMHAIRLE maidir le Gnó san
Eoraip: Creat le haghaidh Cánachas Ioncaim (BEFIT)

Eanáir 2024

Joint Committee on Finance, Public Expenditure And Reform, And Taoiseach

Reasoned Opinion on

COM(2023)532 Proposal for a COUNCIL DIRECTIVE on Business in Europe:
Framework for Income Taxation (BEFIT)

January 2024

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1. Introduction

1. The principle of subsidiarity is defined in Article 5(3) of the Treaty on European Union (TEU) as follows:

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.

Article 5(3) also gives specific responsibility to national parliaments to ensure that EU institutions apply the principle in accordance with Protocol 2 on the application of the principles of subsidiarity and proportionality.

2. The test established by Article 5(3) TEU is, in effect, a “comparative efficiency” exercise, involving a “*necessity*” test and a “*greater benefits*” test:
 - i. *Necessity* - Is action by the EU necessary to achieve the objective of the proposal? Can the objective of the proposal only be achieved, or achieved to a sufficient extent, by EU action?
 - ii. *Greater Benefits* - Would the objective be better achieved at EU level – i.e. would EU action provide greater benefits than action at Member States level?
3. To assist national parliaments in their evaluation of subsidiarity compliance, Article 5 of Protocol 2 provides explicitly that

“Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States...”

4. Therefore, any new draft legislative act:
 - i. must be supported by a sufficiently ‘detailed statement’ to allow a judgment to be made by national parliaments on its compliance with the principle of subsidiarity;
 - ii. must clearly satisfy both the *necessity* and *greater benefit* tests; and
 - iii. must, under the principle of conferral set down in Article 5(2) of the TEU, show that the Union is acting ‘*only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein.*’

2. Scrutiny by the Committee

5. The Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach (“the Committee”) scrutinised the following proposal at two meetings, on 13 December 2023 and 24 January 2024:

COM(2023)532 Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT)

6. At its meeting on 13 December 2023, the Committee agreed that COM(2023)532 warranted further scrutiny. It was subsequently agreed to invite further detailed briefing from the Department of Finance outlining any potential issues of subsidiarity and details of potential alternative methods to achieve the objectives of this proposal, in order to ascertain the implications of these proposals for Ireland.

3. Decision of the Committee

7. Following the Committee’s consideration of these matters, it agreed to submit a Reasoned Opinion on this proposal as listed above at its meeting on the 31 January 2024.

8. Due to the time constraints imposed by the subsidiarity deadline, the Committee have not had the opportunity to hold public briefings on the matter prior to the deadline but reserve the right to carry out further scrutiny outside of this timeframe and may submit further contributions on this package of proposals.

4. Opinion of the Joint Committee

9. The Committee has had specific regard to the Treaty provisions and is of the opinion that this proposal **does not comply with the principle of subsidiarity**. The reasons are set out in the following paragraphs: -

COM(2023)532 BEFIT Proposal

10. The Committee supports towards efforts to simplify taxation systems and reduce the complexity of doing business in Europe.
11. However, such proposals must bring with them benefits that outweigh the cost and complexity of introducing them and be balanced with the need to retain the competence of individual Member States in the area of taxation and the ability for Member States to determine their own tax base.
12. The Committee emphasises that Ireland's position remains that matters of direct taxation are a Member State competence under the treaties, and tax harmonisation is contrary to that principle.
13. In their published impact assessment, the Commission argues that the BEFIT proposal is necessary to reduce compliance costs for businesses that must currently deal with multiple Member States' tax systems, improve market access and support EU competitiveness.
14. However, it does not appear clear to the Committee that the overall effect of this proposal would lead to simplification for businesses and indeed, may lead ultimately to greater complexity.
15. In particular, the proposed directive could lead to considerable complexity for tax administrations and business already grappling with the

implementation of the OECD Two-Pillar Solution to Tax Challenges
Arising from the Digitalisation of the Economy.

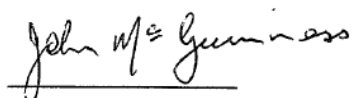
16. The Committee considers that these factors call into question the case for the proposal, and its accordance with the principle of subsidiarity.
17. The Committee notes that Ireland's position has consistently been that tax competition is an important policy tool, particularly for smaller Member States, provided that competition is fair and based on substance.
18. The proposed BEFIT Directive would appear to replace a large part of domestic tax laws with an EU corporate tax system over which individual member states would have only very limited control.
19. The Committee observes that formulary apportionment of profits, if introduced, would also likely lead to a considerable redistribution of corporate tax revenues across the EU and would be likely to benefit larger Member States at the expense of smaller ones such as Ireland.
20. However, this remains difficult to assess as no specific approach has been put forward as part of the proposal.

5. Recommendation of the Committee

The Committee agreed this Report under Dáil Standing Order 133 and Seanad Standing Order 116 on 31 January 2024.

The Committee, pursuant to Standing Orders recommends the reasoned opinion contained in Section 3 above for agreement by Dáil and Seanad Éireann.

Yours sincerely,





A handwritten signature in black ink, reading "John McGuinness", written over a horizontal line.

John McGuinness, T.D.
Chair to the Committee
31 January 2024

APPENDIX 1 - Membership

Membership of the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

Deputies

 CATHAOIRLEACH	 LEAS-CHATHAOIRLEACH			
John McGuinness Fianna Fáil	Bernard Durkan Fine Gael	Richard Boyd Barrett People Before Profit-Solidarity	Rose Conway-Walsh Sinn Féin	Pearse Doherty Sinn Féin
				
Damien English Fine Gael	Steven Matthews Green Party	Jim O'Callaghan Fianna Fáil	Peadar Tóibín Aontú	

Senators

				
Maria Byrne Fine Gael	Pat Casey Fianna Fáil	Aidan Davitt Fianna Fáil	Alice-Mary Higgins Independent	Marie Sherlock Labour Party

Membership History:

- Mick Barry, Sep 2020 – May 2023
- Michael D'Arcy, Sep 2020 – Sep 2020
- Mairéad Farrell, Sep 2020 – April 2023
- Neale Richmond, Sep 2020 – Jan 2023

APPENDIX 2 – Terms of Reference of the Committee

Functions of the Committee – derived from Standing Orders [DSO 95; SSO 71]

- (1) The Select Committee shall consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—
 - (a) legislation, policy, governance, expenditure and administration of—
 - (i) a Government Department, and
 - (ii) State bodies within the responsibility of such Department, and
 - (b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.
- (2) The Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—
 - (a) stand referred to the Committee by virtue of these Standing Orders or statute law, or
 - (b) shall be referred to the Committee by order of the Dáil.
- (3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—
 - (a) for the accountability of the relevant Minister or Minister of State, and
 - (b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.
- (4) The Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—
 - (a) consents to such consideration, or
 - (b) has reported on such accounts or reports.
- (5) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—
 - (a) the Committee Stage of a Bill,
 - (b) Estimates for Public Services, or

- (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.
- (6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.
- (7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.
- (8) Where the Select Committee proposes to consider—
 - (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
 - (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

- (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.
- (9) The Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—
 - (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman

report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 94; SSO 70]

- (1) It shall be an instruction to each Select Committee that—
- (a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;
 - (b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;
 - (c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)1; and
 - (d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (i) a member of the Government or a Minister of State, or
 - (ii) the principal office-holder of a State body within the responsibility of a Government Department or
 - (iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

- (2) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.