



Opinion statement

Dear Sir/Madam,

CFE Tax Advisers Europe has published two [Opinion Statements](#) concerning the EU Commission consultations concerning the proposed Council Directive: “Business in Europe: Framework for Income Taxation (BEFIT)” and the proposed Council Directive on Transfer Pricing.

These corporate tax reform proposals aim to reduce the administrative burden for taxpayers and authorities with a harmonised corporate tax base and simplified Transfer-Pricing administration, according to the European Commission. CFE supports measures that aim to reduce administrative complexity and improve the ease of doing business in Europe, however we query the need for BEFIT, the legal basis as chosen by the Commission (Article 115 of the Treaty on Functioning of the European Union), and the potential breach of the EU’s fundamental principles of subsidiarity and proportionality. CFE also remarks that insufficient attention has been paid to the unpredictable impact of BEFIT on public finances of the Member States and, whilst the objective of BEFIT is to

decrease complexity, compliance costs and legal uncertainty, the opposite seems to be the case.

CFE in its [Opinion Statement](#) sets out detailed remarks concerning the BEFIT proposal, which we believe need to be taken into account before this directive could be subject to a vote for adoption. Of course, these remarks are not exhaustive, but we believe are of fundamental importance to the successful implementation and acceptance of BEFIT in the long term:

- The legal basis chosen by the EU for the BEFIT Directive does not seem to be in line with EU law. The formulations provided by the European Commission are not sufficient in CFE's view to satisfy the legal basis to demonstrate that the aims of the initiative cannot be sufficiently addressed by the Member States themselves.
- The timing for the BEFIT proposal is not appropriate bearing in mind the implementation process of Pillar Two. The proposal needs further development to be synchronised in line with the process of implementation of Pillar Two. The interaction of BEFIT and the minimum tax rules would increase complexity to an unprecedented level, which would result in significant compliance costs and potentially make the EU a less attractive place to do business.
- Also, the timeframe for implementation is very short considering the impact on Member States and the enterprises involved. The directive outlines many legislative adjustments and needs to be more coherent in the broader perspective.
- CFE is concerned the tax administrations of Member States are not able and capable (yet) to deliver all launched initiatives on time, and would choose instead to opt for a standard implementation with reference to the guidelines, which ultimately creates legal uncertainty for the taxpayers and companies involved.
- The administrative costs for affected companies should not be underestimated, bearing in mind the three different tax filings in a year that would need to occur: Pillar Two, BEFIT and national filings. Also, knowing

that this directive currently foresees a timeline of seven years after implementation, CFE urges the Commission to clarify up-front what the sustainable solutions will be, particularly given there is a risk that the temporary solution could become the permanent one, if BEFIT is adopted.

- The BEFIT rules also contain a set of tax adjustments to the financial accounting statements with certain tax depreciation rules and raises timing and quantification issues. To prevent mismatches, and to contribute to the reduction of administrative burdens, the adjustments should align as much as possible with the adjustments under the Pillar Two rules. One possible method of simplification would be to specify the use of IFRS as a starting point for everyone within BEFIT.

In relation to Transfer Pricing proposal, CFE in its [Opinion Statement](#) recommends a number of factors to be taken into consideration by the European Commission. CFE supports simplification, but it is not in favour of parallel standards as proposed by the Transfer Pricing Directive. This directive makes legal relationships intra-EU versus non-EU more complicated. Furthermore, it would be extremely challenging to codify the ambulatory, dynamic and evolving OECD Guidelines in EU legislation that would need to be implemented in the different national legislations of the Member States. Therefore, CFE considers that the legal basis of the Transfer Pricing Directive is not in line with the EU law, is not in line with the subsidiarity principle, and is therefore disproportionate. CFE is of the view that the explanations and formulations given by the European Commission do not adequately satisfy the legal basis and do not demonstrate that the aims of the initiative cannot be sufficiently addressed by Member States themselves.

CFE invites you to read the Opinion Statements and remain available for any queries you may have.

[CFE Opinion Statement on the EU Commission BEFIT Proposal](#)

CFE Opinion Statement on the EU Commission Transfer Pricing Proposal