

CECOP reaction to the European Commission's proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT)

January 2024

1 Introduction

CECOP supports the Commission's BEFIT proposal to develop a single European corporate tax law (COM/2023/532 final) based on the fundamental principles of a common tax base. However, it draws attention to a number of issues, the economic components that risk leading to unequal treatment of social economy actors and cooperatives concern in particular:

- a. profits generated by cooperatives and allocated to the statutory activity or assets and never distributable to the members, not even after the dissolution of the cooperative (in some countries they are called "indivisible reserves")
- b. dividends of cooperative societies, which are also provided by Article 66, Council Regulation (EC) 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) ("The statutes may provide for the payment of a dividend to members in proportion to their business with the SCE, or the services they have performed for it").

These issues have already been brought to the attention of the Commission during the years of discussion on the CCCTB initiative.

2 Profits not distributed and allocated to statutory activities

As to the treatment of the profits of cooperatives that are 'definitively' destined to the statutory activity or to the patrimony (and that can never be distributed to the members, not even after the dissolution of the entity = "indivisible reserves") the law of some Member States recognises this speciality in the regulation of corporate income tax. The income (or a part of it) is exclusively earmarked for the activity carried out by the entity and the proprietary shareholders may never take possession of it, either during the life of the company or upon its dissolution or transformation. The "absolute and definitive non-distributability" is guaranteed by the obligation to devolve the residual assets upon dissolution to the State, to non-profit organisations or to the cooperative mutualistic funds.

The obligation to reinvest the wealth produced in the social activity and the impossibility for members to take possession of it, even after the "death" of the enterprise, results in a "limited tax capacity", i.e. a reduced ability to contribute to public expenditure through the tax system. For these reasons, co-operatives are treated differently for corporate tax purposes in some member states.

The exemption schemes for cooperatives' profits were also recognised under the so-called Pillar 2.

3 The dividends

The tax deductibility of the dividends from corporate income tax has been considered compatible with the Treaty by both the European Commission (Communication of 18 June 2008, State aid infringement procedure E1/2008) and the Court of Justice (judgment of 8 September 2011, cases C-78 to C-80/08). This treatment (deduction of reversions from the cooperative's income), since it corresponds to an operating principle of the tax system, must also be recognised in the BEFIT proposal (provided that the deductibility is also provided for in the Member State's tax law).

4 Conclusion and proposal for amendment

Therefore, with regard to the Proposal for a COUNCIL DIRECTIVE on Enterprises in Europe: Framework for the taxation of income (BEFIT) COM/2023/532 final, the cooperative movement urges the Commission to adapt and amend the rules on the regime of non-distributed profits and that on deductible expenses (Art. 48) in order to take into account the specific nature and particular objectives pursued by cooperatives, distinguishing them appropriately from multinationals and other profit-making enterprises (as was already done when drafting directive 2523/2023 on the global minimum tax).

Therefore, in order to ensure the necessary coordination between the BEFIT and the specific tax rules applicable to cooperatives in different Member States, and not to frustrate the aims of the EU Commission Communication of 9 December 2021 and the EU Council Recommendation of 27 November 2023, no. 1344, the following amendment is proposed:

- **Preamble:** In this amendment, we are using the term “benefits or dividends” as formulated in Art. 66 of Regulation (EC) 1435/2003. More precisely, cooperative societies have the “purpose” of ensuring the so-called “mutualistic advantage” to their members in relation to third parties, which corresponds to the notion of “benefits or dividends”.

In Article 48(1), after subparagraph (h), add the following:

“h-bis) earnings retained to a reserve by cooperatives and cooperatives consortia, provided that the reserve is not distributable to the members even after the extinction of the company, as well as the benefits or dividends granted by the same subjects to their own members in proportion to their mutualistic relationships, whenever the exemption or the deductibility are allowed by national rules;”