Centre for International Corporate Tax Accountability and Research

30th May 2023

Mr Jean-Pierre Hanin
Executive Director, Cofinimmo SA/NV

Dear Mr Hanin,

I write to you once again as Operations Coordinator of CICTAR, an organisation founded by trade unions and civil society organisations which conducts research into the structures and tax positions of multinational corporations around the world in order to better inform workers and their communities.

Further to my letter of 14th April, CICTAR will shortly be publishing a report about Cofinimmo and we would now like to give you the opportunity to respond to its findings in advance of publication.

Please do inform us of any comments you have on the outline of our findings, below. If you consider any specific finding to be factually inaccurate or misleading, please explain in as much detail as possible why this is so.

In order for us to incorporate your answers into our research we would be very grateful to receive any responses or comments by 12th June if possible.

Please do not hesitate to contact me for any additional information about our work or this letter.

Yours sincerely,

Toby Quantrill

Operations Coordinator

CICTAR

Forthcoming CICTAR report on Cofinimmo: main points

CICTAR's new report examines the business model, and associated public and profit costs, of private property investors in healthcare property, especially residential care homes for the elderly. It does so through a case study of the business of Cofinimmo. Our report notes that Cofinimmo is not unusual, either in its profit margins (in comparison to other large healthcare property investors), or in its overall business model. It makes no allegations of unlawful behaviour on the part of Cofinimmo, and notes that Cofinimmo's business model follows incentives created by European governments' policy in two areas: encouraging private investment in the provision of social care, and tax policy for real-estate investment trusts. We estimate that Cofinimmo's average operating profit margin on its healthcare property portfolio between 2017 and 2021 (inclusive) was nearly 96 per cent.

The level of 96% is before any allocation of overheads (lines "property management costs" and "corporate management costs" in the segment reporting in note 5 of the consolidated financial statements, as shown for example on page 250 of the Universal Registration Document 2022). These overheads are borne to provide services to the tenants and to ensure the functioning of the group. After allocation of these overheads to the healthcare segment, for example based on the share of the net rental income of the healthcare segment in the consolidated net rental income, the level falls to 82% (in 2022), coming from 85% in 2017. This level, between 80% and 85%, is customary for a typical Belgian RREC.

2. We note that operating profits may reflect unrealised gains in property values. Nonetheless, this is by any standards an exceptionally high profit margin.

The operating result (shown in Note 5 of the financial statements page 250 of the Universal Registration Document 2022) takes indeed into account unrealised gains (or losses) in property values on the lines "changes in fair value of investment properties" and "other result on the portfolio" (see question 1). High operating margin as shown in question 1 are common for property investors, especially when the lease contracts have a so called "double net" or "triple net" nature, allowing the tenant to manage the premises independently and in line with his own policies.

3. Cofinimmo's major tenants include Orpea, which has since February 2022 been the subject of widespread allegations of financial impropriety, mistreatment of residents, and systematic economizing of care costs and materials in the pursuit of higher profit margins. There is no suggestion that Cofinimmo is responsible for wrongdoing by Orpea staff or management. However, our report notes that one mechanism driving Orpea's economizing on care costs has been the comparatively large proportion of care homes' income that Orpea spends either on interest payments on acquisition debt, or on rental payments to third-party landlords, of which Cofinimmo is one.

The case of Orpea mainly focuses on France, where it is dealt with by the local authorities. As a reminder, as a regulated real estate company, Cofinimmo is in no way involved in the operation of the sites leased to healthcare operators. The occupancy rate is managed by the operator of the sites, and the rents are independent of the local occupancy rate or the financial performance, within the framework of long-term contracts.

4. To assess how much of the rents paid to Cofinimmo by its tenants (in all sectors) flows to the group's investors, we have compared its revenues (defined as "net rental income") to dividend payouts for the years from 2017 to 2021 (inclusive).

We estimate that 43 per cent of the revenues earned in these years were paid out as dividends. This is an exceptionally high ratio compared to those of selected large Belgian companies in other sectors in the same period, which were between 3 and 10 per cent.

The distribution policy is based on the legal framework of the Belgian public regulated real estate companies. The high pay-out ratio allows the taxation of the result through the withholding tax, as foreseen by the regulation.

5. The rapid expansion and profitability of Cofinimmo's portfolio of private healthcare properties, which are mainly care homes, reflect a) the group's very low costs of capital in recent years and b) the high profitability of the sector.

The cost of capital of Cofinimmo (and of all companies) evolves in line with financial markets conditions. It is nowadays much higher than in the previous years. The growth of Cofinimmo in recent years is a reflection of the numerous development projects achieved and underway. Cofinimmo actively participates in the extension and renewal of the health care real estate in Europe. These projects aim to provide healthcare operators and residents with modern, comfortable and accommodative buildings in line with current environmental standards.

6. This high profitability also reflects that Cofinimmo bears relatively few costs.

We remind you that we operate with a limited number of staff (currently approx. 160 employes), because Cofinimmo's management responsibilities are limited by law on the one hand, and by the lease contracts on the other.

7. Cofinimmo's profits are heavily reliant on public subsidy in the form of publicly-funded care home fees. Cofinimmo itself has noted that in Belgium, about half of the income of care-home operators (which pay rents to Cofinimmo) is from social security, while in France about 30 per cent comes from social security and public funds.

The way care homes are financed (by the residents, the insurances and/or the public authorities) doesn't have more implications for Cofinimmo as a landlord than for any other supplier of goods, services or financing.

8. Therefore, Cofinimmo's profits partly depend on European states continuing to subsidise much of the cost of private for-profit care.

See answer to question 7.

9. Cofinimmo pays next to no corporate income tax in Belgium due to the "public RREC" tax regime, and has enjoyed low taxation due to similar tax regimes in other countries, including France, the Netherlands and Italy.

This affirmation is not correct. The entry of an asset into this regime is subject to an upfront corporate income tax at the rate of 15% on the latent capital gains.

RREC like Cofinimmo are regulated and designed as pass through entity and therefore subject to limited corporate income tax (in countries where such a regime exists). With a high pay-out obligation, taxation occurs ultimately with the shareholders (see our note under 18).

10. The effect of these tax regimes on Cofinimmo's profits is very significant. For example, by comparing the accounts of the Dutch subsidiary Superstone NV for 2020 (when it was eligible for the Dutch "FBI" tax regime) and for 2021 when it was not, we estimate that the FBI regime saved Cofinimmo €2.74 million in Dutch profit taxes in 2019 and 2020 alone.

The Dutch FBI regime will be abolished after 2024.

11. We can infer that the combined effects of these and other special tax regimes in different European countries, applied to various parts of the group, has significantly cut its tax bill.

A RREC regime is not designed to avoid tax. RREC like Cofinimmo are regulated and designed as pass through entity and therefore subject to limited corporate income tax (in countries where such a regime exists). With a high pay-out obligation, taxation occurs ultimately with the shareholders (see our note under 18).

12. Cofinimmo's various holdings and subsidiaries in Germany appear to be mainly financed by related-party debt, creating a risk that some profits will avoid being taxed in Germany and, due to the public RREC regime, will not be taxed at group level in Belgium either.

The financings of the subsidiaries of Cofinimmo are at arm's length and in conformity with the law.

13. Certain German subsidiaries, which are not yet generating rental income for Cofinimmo, are incorporated in the district of Monheim-am-Rhein, creating a risk that future profits from these subsidiaries may avoid tax which would have been due, had they been incorporated in other parts of Germany where the local tax rate is higher.

We don't understand this affirmation. Even if paying tax could be lower in other district, it does not mean that we avoid tax.

14. Some of Cofinimmo's German subsidiaries note in their annual accounts that they are not subject to tax. We have been unable to determine why this is the case.

This mention is incorrect. All of our German subsidiaries are subject to the standard German corporate income tax.

15. Some of Cofinimmo's German healthcare assets (mostly not care homes) are owned by companies in Luxembourg which are subsidiaries of WelnesStone SA, also in Luxembourg. A combination of related-party loans from the former to the latter, and profit-participating loans to WelnesStone from Cofinimmo, may result in tax being avoided in Germany and Luxembourg which would have been due if these arrangements had not been used.

The financings of the subsidiaries of Cofinimmo are at arm's length and in conformity with the law.

16. Cofinimmo has reported that it has a broad base of institutional investors in Belgium, Germany, France, Luxembourg, the Netherlands, the United Kingdom, Switzerland, North American and other places, as well as retail investors in Belgium.

This is correct. This also means that foreign institutional investors provided a significant part of the funds needed for the extension and renewal of the health care real estate in Europe. These projects aim to provide healthcare operators and residents with modern, comfortable and accommodative buildings in line with current environmental standards.

17. The European Real Estate Association has argued that REIT tax regimes, like Belgium's public RREC regime, "generally avail of a tax-neutral treatment." In other words, that the tax revenue foregone by Belgium due to the public RREC regime is recouped by taxing real-estate profits in the hands of investors.

A RREC regime is not designed to avoid tax. RREC like Cofinimmo are regulated and designed as pass through entity and therefore subject to limited corporate income tax (in countries where such a regime exists). With a high pay-out obligation, taxation occurs ultimately with the shareholders (see our note under 18).

18. We note that Cofinimmo's dividends to investors in Belgium are subject to a 30 per cent dividend withholding tax, which we understand to be a final tax. However, investors in other jurisdictions can enjoy significantly lower tax rates than this on their dividends, for example because there is no Belgian withholding tax for foreign investors on real-estate income earned outside Belgium (as much of Cofinimmo's rental income is); because they can benefit from the double taxation treaty between Belgium and Luxembourg, combined with low effective rates of taxation in Luxembourg itself; because they can enjoy a similar combination of treaty benefits and domestic tax exemptions which may apply in other countries; or because they are eligible foreign pension funds.

The affirmations in this paragraph are not correct. More than 95% of the shareholders of Cofinimmo are 30% withheld on their dividends and Cofinimmo has an obligation to distribute 80% of its net result reduced of the amounts used for the reimbursement of the debts, which ensures the withholding tax on dividend. Moreover in the areas where Cofinimmo cannot benefit from the RREC regime, its subsidiaries are taxed as others local companies subject to the standard taxation.

19. Therefore, it is highly likely that the public RREC regime, rather than being "revenue-neutral" for Belgium, amounts to a very large public tax subsidy to those of Cofinimmo's shareholders who can benefit from the situations identified in 15 above.

The assumptions on which this conclusion is based are not correct (see above).

20. Therefore, the tax systems of Belgium and other European countries offer what is, in effect, a public subsidy to Cofinimmo's profits from private healthcare, in addition to the subsidy provided to those profits by social security systems.

The assumptions on which this conclusion is based are not correct (see above).

21. This public subsidy, added to the additional costs of capital faced by private investors compared to European governments, means that the provision of private healthcare facilities by Cofinimmo and the care-home operators who are its partners is more expensive than public provision of the same facilities, to the same standards, would be.

The public authorities of each European member state determine the balance between public, non-for-profit and private in their nursing & care homes landscape. Seen the demographic challenges that lie ahead (ageing of population and increasing number of people that need high care), the need for adapted and modern infrastructure is undeniable and those will come from all actors active in the healthcare.

On its scale, Cofinimmo participates in the extension and renewal of the health care real estate in Europe. These projects aim to provide healthcare operators and residents with modern, comfortable and accommodative buildings in line with current environmental standards.

22. This extra cost is mostly profit for private investors.

See answer to question 21

23. Cofinimmo and other private investors in healthcare real-estate are incapable of meeting, and have no desire to meet more than a small part of the huge need for healthcare facilities across European countries which Cofinimmo itself identifies in its public reports.

See answer to question 21

24. Instead, Cofinimmo and similar investors will cherry-pick those healthcare assets in European countries which offer the highest profits to their shareholders, noting that those profits are based to a significant extent on public subsidy.

The way care homes are financed (by the residents, the insurances and/or the public authorities) doesn't have more implications for Cofinimmo as a landlord than for any other supplier of goods, services or financing.

25. Cofinimmo presents the growth of private investment in healthcare property in its reports as "a search for less costly solutions for society" (e.g. Universal Registration Document for 2021, Page 35).

Society is meant here in the sense of 'community', not in the sense of Cofinimmo as a company.

This presentation of the situation is misleading. More private investment in healthcare property will *increase* the costs to society, for the reasons set out in 18 above, because it must be paid for either out of public budgets or out of the fees paid by individuals. This increased cost will mostly flow as profit into the pockets of private investors.

We welcome your response and would request that this is sent by the 12th June 2023.

We commit to publish any response provided by you alongside the report.

If you have any further questions do not hesitate to get in touch using the contact details below.

Yours sincerely

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