



Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE 2)

31/05/2016

AMENDMENTS: 21

Jeppe Kofod, Michael Theurer

Report of the special committee on tax rulings and other measures similar in nature or effect (TAXE 2)

Motion for a resolution PE580.528 - 2016/2038(INI)

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Amendment 23
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 a (new)

Motion for a resolution

Amendment

33 a. Stresses that from the documents made available to TAX2, it becomes clear that the self-notification of potentially harmful measures by Member States, the criteria for identifying harmful measures as well as the unanimity principle for reaching decisions on harmfulness are outdated and ineffective;

Or. en

Amendment 24
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 b (new)

Motion for a resolution

Amendment

33 b. Highlights that with regard to the success of the Code Group the Commission noted in Room Document No 1 Annex 1 of the Code of Conduct Group Meeting of April 2006 that especially in some dependent and associated territories the proposed rollback included the introduction of a 0% rate or the complete abolition of corporate income tax and thus not every part of the work of the Code Group has resulted in a consistent or satisfactory outcome; calls, therefore, on the Member States to rectify this distortive situation;

Or. en

Amendment 25
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 c (new)

Motion for a resolution

Amendment

33 c. Underlines that the Commission noted in Room Document No 1 Annex 1 of the Code of Conduct Group Meeting of April 2006 that due to political compromises the Code Group has considered some rollback proposals adequate which could easily be considered as insufficient according to the principles of the Code; calls, therefore, on the Members States to re-assess systematically the compliance of rollback proposals with the Code criteria and to remedy shortcomings where needed;

Or. en

Amendment 26
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 d (new)

Motion for a resolution

Amendment

33 d. Notes that in the report from the Code Group to the Council of 7 June 2005 it was explicitly stated that in one case the Member State concerned had failed to implement the rollback as agreed; highlights that the Commission noted in Room Document No 1 Annex 1 of the Code of Conduct Group Meeting of April 2006 that despite this clear non-compliance the Council failed to take any action and the Member State concerned was not politically challenged or urged to comply with the Code principles and agreements; calls, therefore, on the Member States to introduce sanctions for non-compliance with decisions of the Code Group;

Or. en

Amendment 27
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 e (new)

Motion for a resolution

Amendment

33 e. Stresses that, in principle, the Code of Conduct should cover all economic sectors; highlights that the Commission noted in Room Document No 1 Annex 1 of the Code of Conduct Group Meeting of April 2006 that the Code Group agreed in 1999 to leave out regimes favouring the shipping sector as well as the assessment of collective investment vehicles; calls, therefore, on the Member States to examine harmful tax measures in all economic sectors;

Or. en

Amendment 28
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 f (new)

Motion for a resolution

Amendment

33 f. Regrets that several Member States refused to disclose their views on the future of the Code Group in Room Document No 1 Annex 1 of the Code of Conduct Group Meeting of April 2006 as regards transparency, mandate, scope and criteria of future work; notes that Hungary and Lithuania expressed reservations against amendments to the Code criteria; notes that Ireland and Poland opposed any extension of the scope of the Code on other areas of taxation;

Or. en

Amendment 29
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 g (new)

Motion for a resolution

Amendment

33 g. Highlights that in Room Document No 2 of the Code of Conduct Group Meeting of 11 April 2011 the Commission made several proposals for new areas of work such as expanding the work on mismatches, taxation of expatriates, taxation of wealthy individuals, review of REIT's and collective investment vehicles; notes that according to the minutes of the Code of Conduct Group Meeting of 11 April 2011, the Netherlands and Luxembourg opposed expanding the work on mismatches, France expressed reserves against work on expats, wealthy individuals and investment funds, the United Kingdom supported a focus on business tax rather than an extension;

Or. en

Amendment 30
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 h (new)

Motion for a resolution

Amendment

33 h. Stresses that according to Room Document No 5 of the Code of Conduct Group Meeting of 7 April 2015, the Commission noted that recent work of the Code Group including that on patent boxes has highlighted limitations in the scope of the Code and weaknesses in the mandate of the Code Group and

underlined that tackling complex challenges to fair taxation and safeguarding tax transparency requires more decisive action by the Code Group, and more rigorous monitoring to ensure that Member States respect their commitments;

Or. en

Amendment 31
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 i (new)

Motion for a resolution

Amendment

33 i. Underlines in this respect that several potentially harmful tax regimes have been under discussion for extremely long periods of time in the Code Group without material results as to their rollback and that several such files still remain undecided to date, for instance as regards significant elements of Gibraltar's tax code which has been under discussion since at least 11 April 2011 and is still not concluded; notes further that when comparing the Commission list of all tax regimes formally assessed by the Code Group with the respective meeting documents at the point of decision and thereafter, it is firstly in many cases unclear how a decision has been reached, e.g. why regimes for which there were grounds to suppose that they would be harmful were declared non-harmful in the end, and also, secondly, concerning those cases where attested harmfulness was the outcome of the assessment, whether the ensuing rollback procedures have been concluded satisfactorily by Member States; one among many examples in this category is the Isle of Man's retail tax scheme which was not judged harmful according to the 8

November 2013 meeting minutes despite serious doubts of its non-harmfulness expressed by several Member States;

Or. en

Amendment 32
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 33 j (new)

Motion for a resolution

Amendment

33 j. Highlights that according to Room Document No 5 of the Code of Conduct Group Meeting of 7 April 2015 the Commission made clear proposals to increase the effectiveness of the Code Group, in particular by (a) replacing the "broad consensus" for decision making through a formal majority voting system, (b) amending the Code criteria to include measures which provide for a level of taxation below a particular effective level, (c) amending the Code's mandate to commit Member States to effectively implement and monitor agreed rollback and standstill, (d) extending the geographical scope of the Code by systematically reviewing third country regimes beyond Member States' dependent and associated territories as well as Switzerland and Liechtenstein;

Or. en

Amendment 33
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 34

Motion for a resolution

Amendment

34. ***Urges the*** Member States to reform, as soon as possible, the criteria and

34. ***Deplores that, despite widely acknowledged failures and shortcomings***

governance *aspects* of the Code of Conduct Group, in order to increase its transparency and accountability and ensure the strong involvement of Parliament;

of the Code Group, Member States were not able to agree on urgently needed reforms of the Code Group at the ECOFIN in March 2016 and postponed any decision on serious reforms to 2017; urges, therefore, Member States to reform, as soon as possible, the criteria and governance of the Code of Conduct Group including its decision-making procedure, in order to increase its effectiveness, transparency and accountability and ensure the strong involvement of Parliament;

Or. en

Amendment 34
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 a (new)

Motion for a resolution

Amendment

35 a. Notes further that from the documents retrieved a pattern of systematic obstruction by some Member States in achieving material progress on fighting tax avoidance becomes clear; highlights that those documents show that political obstruction by Member States prevented in particular progress on harmful tax practices in the areas of patent boxes, inbound and outbound profit transfers, hybrid mismatches including profit participating loan agreements, the role of investment funds, administrative practices in particular tax rulings, and minimum effective taxation clauses;

Or. en

Amendment 35
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 b (new)

Motion for a resolution

Amendment

35 b. *Stresses, with respect to the above-mentioned categories and the documents retrieved by TAX2 in particular the following instances and observations; underlines however that the following list remains non-exhaustive due in particular to the unwillingness of Member States and the Commission to grant full transparency on the workings of the Code Group and other relevant working groups of the Council by making a large number of documents, including the most recent and most politically relevant, only available in a restricted reading room and hence precluding their content from any public debate and assessment such as in this report;*

Or. en

Amendment 36

Fabio De Masi, Sven Giegold

Motion for a resolution

Paragraph 35 c (new)

Motion for a resolution

Amendment

35 c. *As regards patent boxes, notes that the Netherlands, Luxembourg and, to a lesser extent, Belgium have opposed an encompassing assessment of all EU patent box regimes despite grounds to suppose the harmfulness of existing regimes against the Code criteria, as evidenced by the meeting minutes from 29 May, 22 October and 20 November 2013; regrets that Spain, the Netherlands, Luxembourg and the United Kingdom have further delayed the process of reforming patent box regimes by repeatedly introducing additional demands in the decision-making progress as evidenced, inter alia, by the meeting minutes from 3 June 2014;*

regrets, further, that despite commitments to fully adapt national legal provisions by 30 June 2016, very limited progress has been made by Member States in implementing into national law the modified nexus approach agreed by Ministers already in December 2014 and that some countries, such as Italy, have even introduced new patent box measures, incompatible with the modified nexus approach, after agreement on the latter was found, in order to benefit from the overly generous grandfathering provisions until 2021;

Or. en

Amendment 37
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 d (new)

Motion for a resolution

Amendment

35 d. As regards inbound profit transfers, welcomes the inclusion of provisions against inbound profit transfer abuse in the anti-tax avoidance directive (ATAD), as well as the guidance agreed upon by the Code of Conduct on the matter in November 2010; notes however that since the adoption of the guidance no tangible changes to Member States' frameworks have been produced, thus underlining the limitations of the Code Group's soft law approach, and regrets that for instance in room document 3 of the September 2013 Code meeting not a single Member State expressed support for a politically binding agreement on the matter while, during the elaboration phase of the agreed guidance, in particular the United Kingdom opposed any coordinated approach, as evidenced by the 25 May 2010 meeting minutes and re-iterated in room document 3 of 17

October 2012;

Or. en

Amendment 38
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 e (new)

Motion for a resolution

Amendment

35 e. As regards outbound profit transfers, re-iterates the particular pertinence of coordinated measures against untaxed profit outflows into zero or low tax third countries in a common market which grants privileges such as exemptions from withholding taxes for financial flows circulating inside the market; strongly deplores that Member States have not taken any serious initiative to remedy this problem as evidenced by the outright failure to agree on any follow-up to the work of the anti-abuse sub group at the 25 May 2010 Code meeting and by the complete lack of provisions regarding outbound payments in the anti-tax avoidance directive (ATAD); is concerned that this is due to pressure by specific Member States as exemplified by the statements of Belgium and the Netherlands at the 15 May 2009 meeting according to which they object to any initiative aimed at coordinating defence measures against untaxed outbound profit transfers;

Or. en

Amendment 39
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 f (new)

Motion for a resolution

Amendment

35 f. *As regards hybrid mismatches, welcomes the inclusion of provisions against hybrid mismatch abuse in the anti-tax avoidance directive (ATAD), as well as the outcomes in terms of guidance agreed upon by the Code of Conduct Sub-Group in September 2014 as well as April and July 2015, but notes at the same time that repeated and systematic initiatives by certain Member States prevented a much earlier agreement on these harmful practices, which have been under active debate in the Code Group since at least 2008, thereby significantly increasing the on-going fiscal damage created by the recurrent use of those schemes for aggressive tax planning purposes; regrets that in particular the Netherlands, Luxembourg and Belgium, as well as Malta and Estonia to a lesser extent, have for long delayed swift collective action by asserting that hybrids should not dealt with under the Code at all, as evidenced by meeting minutes of 15 May and 29 June 2009 as well as 25 May 2010, and minutes of the anti-abuse sub group of 25 March and 22 April 2010;*

Or. en

Amendment 40
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 g (new)

Motion for a resolution

Amendment

35 g. *As regards investment funds, is concerned that work streams in the Code of Conduct Group on the role of various types of funds in harmful tax practices have come to a halt since September 2011, where Member States agreed to*

discontinue the discussion about these schemes' alleged and potential harmfulness, as evidenced by the 13 September meeting minutes; regrets the initiatives taken by the United Kingdom, Luxembourg and the Netherlands during the Code meetings of 11 April and 26 May 2011 which effectively pushed the group to not pursue this field of action further;

Or. en

Amendment 41
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 h (new)

Motion for a resolution

Amendment

35 h. As regards administrative practices, notes the failure of Member States to exchange information on rulings as reported in the publicly available Annex of Room Document No. 2 of the Code of Conduct Group Meeting of 4 March 2010 according to which no Member State had spontaneously and systematically exchanged information about its rulings in the past; notes that another monitoring exercise of the Code of Conduct Group reported in the publicly available Room Document No 4 of the Code of Conduct Group Meeting of 10 September 2012 showed that in practice no information on rulings had been exchanged on a spontaneous basis; highlights that, therefore, Member States did not comply with the obligations set out in Council Directives 77/799/EEC and 2011/16/EU since they did not spontaneously exchange tax information, even in cases where there were clear grounds, despite the margin of discretion left by those directives, for expecting that there may be tax losses in other Member States, or that tax savings may result from

artificial transfers of profits within groups; stresses that the Commission did not fulfil its role of guardian of the Treaties, as established in Article 17(1) TEU, by not acting in this matter and taking all necessary steps to ensure that they comply with their obligations, in particular those set out in Council Directives 77/799/EEC and 2011/16/EU, despite evidence to the contrary;

Or. en

Amendment 42
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 i (new)

Motion for a resolution

Amendment

35 i. As regards minimum effective taxation clauses, regrets the failure of Member States to agree, since the release of the respective Commission proposal in 2011, on a revision of the Interest and Royalties Directive ensuring that privileges granted in the single market with the aim of preventing double taxation do not in reality lead to zero or almost zero taxation; is concerned that following several Member States' interventions the December 2015 ECOFIN conclusions do not go beyond inviting the High Level Working Party on Tax Questions (HLWP) to look into the matter further, instead of committing to prompt and effective action;

Or. en

Amendment 43
Fabio De Masi, Sven Giegold

Motion for a resolution
Paragraph 35 j (new)

35.j. Concludes that, based on this non-exhaustive list of instances evidenced by the documents made available to TAX2, Member States violated their obligation for sincere cooperation enshrined in Article 4(3) of the Treaty on European Union and that the Commission was aware of the non-compliance of certain Member States with the principle of sincere cooperation; stresses that the violation of Union law by Member States as well as non-action of the Commission against the violation of Union law by Member States need a follow up, inter alia through political reforms in Council and Commission as well as through public debate in Parliament in order to hold accountable the responsible governments and persons;

Or. en