



TEXTS ADOPTED

P8_TA(2015)0457

Bringing transparency, coordination and convergence to corporate tax policies

European Parliament resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union (2015/2010(INL))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to the draft report of the special committee on tax rulings and other measures similar in nature or effect (2015/2066(INI) (the TAXE 1 special committee)),
- having regard to the final report of the Organisation for Economic Co-operation and Development (OECD)/G20 Final Base Erosion and Profit Shifting (BEPS) Project published on 5 October 2015,
- having regard to Rules 46 and 52 of its Rules of Procedure,
- having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Industry, Research and Energy (A8-0349/2015),

Key findings from LuxLeaks scandal

- A. whereas a consortium of journalists, the International Consortium of Investigative Journalists (ICIJ), on tax rulings and other harmful practices in Luxembourg (LuxLeaks) revealed in November 2014 that nearly 340 multinational companies (MNC) secured secret deals from Luxembourg that allowed many of them to slash their global tax bills to a minimum, to the detriment of Union public interest, while creating little or no economic activity within Luxembourg;
- B. whereas the revelations showed that some tax advisors have deliberately, and in a targeted fashion, helped MNC to obtain at least 548 tax rulings in Luxembourg between 2002 and 2010; whereas those secret deals feature complex financial structures designed to create substantial tax reductions;
- C. whereas, as a result of those tax rulings, a large number of companies have enjoyed effective tax rates of less than 1 % on the profits they have shifted into Luxembourg; whereas while benefiting from various public goods and services where they operate,

some MNC do not pay their fair share of tax; whereas close-to-zero effective tax rates for the profits generated by some MNC can hurt the Union and other economies;

- D. whereas in many cases Luxembourg subsidiaries handling hundreds of millions of euros in business maintain little presence and conduct little economic activity in Luxembourg, with some addresses being home to more than 1 600 companies;
- E. whereas the investigations carried out under the TAXE 1 special committee revealed that the practice of tax rulings does not exclusively take place in Luxembourg but is common across the Union; whereas the practice of tax rulings can be used legitimately to provide the necessary legal certainty for business and reduce the financial risk for honest firms, but is nevertheless open to potential abuse and tax avoidance and might, in providing legal certainty only to selected actors, create some degree of inequality between companies to which rulings have been granted and companies which do not use such rulings;
- F. whereas regard is had to the report from the OECD published on 12 February 2013 entitled ‘Addressing Base Erosion and Profit Shifting’ which proposed new international standards to combat BEPS;
- G. whereas regard is also had to the Communiqué issued following the Meeting of Finance Ministers and Central Bank Governors of the G20 which took place on 5 October 2015;
- H. whereas, with some laudable exceptions, national political leaders have not been sufficiently forthcoming in addressing the problem of tax avoidance in corporate taxation;
- I. whereas the European Union has made major steps towards economic integration such as the Economic and Monetary Union as well as the Banking Union and that Union-level coordination of tax policies within the limits of the Treaty of the Functioning of the European Union is an indispensable part of the integration process;

Corporate taxation and aggressive tax planning

- J. whereas corporate income tax revenue for the 28 Member States of the Union amounted to an average of 2,6 % of GDP in 2012¹;
- K. whereas, in a context where investment and growth are lacking, it is important to retain companies in or attract companies to the Union and whereas, therefore, it is crucial for the Union to foster its attractiveness to local and foreign businesses;
- L. whereas all tax planning should take place within the boundaries of the law and the applicable treaties;
- M. whereas aggressive tax planning consists of taking advantage of the technicalities of a tax system, or of mismatches between two or more tax systems or legal loopholes, for the purpose of reducing tax liability;

¹ http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_structures/2014/report.pdf

- N. whereas aggressive tax planning schemes often result in the use of a combination of international tax mismatches, very favourable specific national tax rules and the use of tax havens;
- O. whereas, unlike aggressive tax planning, tax fraud and tax evasion constitute above all an illegal activity of evading tax liabilities;
- P. whereas the most adequate response to aggressive tax planning appears to be good legislation, proper implementation thereof and international coordination as to desired outcomes;
- Q. whereas the overall loss in State revenues due to tax avoidance from corporate taxation is generally compensated for by either raising the overall level of taxation, cutting public services, or increased national borrowing, thereby damaging other taxpayers as well as the overall economy;
- R. whereas a study¹ estimates that revenue losses for the Union due to tax avoidance from corporate taxation could amount to around EUR 50-70 billion, a year, this figure representing the sum lost to profit shifting and whereas this study also estimates that revenue losses for the Union due to tax avoidance from corporate taxation could in reality amount to around EUR 160-190 billion if special tax arrangements, inefficiencies in collection and other such activities were taken into account;
- S. whereas the same study estimates corporate income tax efficiency to be 75 %, although the study also confirms that this does not represent the amounts that could be expected to be recovered by tax authorities, because a certain percentage of those sums would be excessively expensive or technically difficult to collect; whereas according to the study, if a complete solution to the problem of BEPS were available and implementable across the Union, the estimated positive impact on tax revenues for Member State governments would be 0,2 % of total tax revenues;
- T. whereas loss arising from BEPS represents a threat to the proper functioning of the internal market and to the credibility, efficiency and fairness of corporate tax systems within the Union; whereas the same study also makes clear that its calculations do not include estimates of activity within the shadow economy, and that the opacity of certain companies' structures and payments mean it is difficult to estimate the impact on tax revenues accurately, and therefore there may be a significantly larger impact than the report estimates;
- U. whereas the loss arising from BEPS also clearly demonstrates the lack of a level playing-field between those companies which operate only in one Member State, in particular SMEs, family businesses and self-employed persons, and pay their taxes there, and certain MNC which are able to shift profits from high tax to specific low tax jurisdictions and engage in aggressive tax planning, thereby reducing their overall tax base and placing additional pressure on public finances to the detriment of Union citizens and SMEs;

¹ European added value of legislative report on bringing Transparency, coordination and convergence to corporate tax policies in the European Union' by Dr Benjamin Ferrett, Daniel Gravino and Silvia Merler – To be published.

- V. whereas MNC use of aggressive tax planning practices conflicts with the principle of fair competition and corporate responsibility embodied in communication COM(2011)0681 since devising tax planning strategies requires resources which are only available to large firms and since this results in an absence of level playing field between SMEs and large corporations, which needs to be urgently addressed;
- W. whereas stresses further, that tax competition in the Union and vis-à-vis third countries can be in some cases harmful and can lead to a race to the bottom in terms of tax rates while improved transparency, coordination and convergence provides an effective framework to guarantee fair competition between firms in the Union and protect state budgets from adverse outcomes;
- X. whereas measures allowing aggressive tax planning are incompatible with the principle of sincere cooperation among Member States;
- Y. whereas aggressive tax planning is facilitated by increasing business complexity and by the digitalisation and globalisation of the economy, among other factors, leading to distortions of competition harmful to growth and to Union companies, in particular to SMEs;
- Z. whereas the fight against aggressive tax planning cannot be tackled by Member States individually; whereas non-transparent and uncoordinated corporate tax policies carry a risk for the fiscal policy of Member States, leading to unproductive outcomes like the increase of taxation of less mobile tax bases;
- AA. whereas the lack of coordinated action is causing many Member States to adopt unilateral national measures; whereas such measures have often proven ineffective, insufficient and in some cases even detrimental to the cause;
- AB. whereas what is needed is therefore a coordinated and multi-pronged approach at national, Union and international level;
- AC. whereas the Union has been a pioneer in the global fight against aggressive tax planning, notably in promoting progress at OECD level on the BEPS project; whereas the Union should continue to play a pioneering role as the BEPS project develops seeking to prevent the damage that BEPS can cause both to Member States and also to developing countries around the world; including ensuring action on BEPS and beyond BEPS issues of significance to developing countries such as those detailed in the report to the G20 Development Working Group in 2014;
- AD. whereas the Commission and the Member States shall ensure that the comprehensive OECD package of measures on BEPS is implemented as a minimum standard at Union level and remain ambitious; whereas it is of crucial importance that all OECD countries implement the BEPS project;
- AE. whereas the Commission should clearly set out how it will implement all 15 of the OECD/G20 BEPS project deliverables beyond and in addition to the areas for action already mentioned in this report, proposing as soon as possible an ambitious plan of legislative measures, so as to encourage other countries to follow the OECD guidelines and the Union's example in the implementation of the Action Plan; whereas the Commission should also consider the areas in which the Union should go further than the minimum standards which the OECD recommends;

- AF. whereas according to the Union treaties the power to legislate on corporate taxation is currently vested in the Member States, yet the vast majority of problems linked to aggressive tax planning are of a multinational nature;
- AG. whereas more coordination of national tax policies therefore represents the only feasible way to create a level playing field and avoid measures that favour large MNC to the detriment of SMEs;
- AH. whereas the lack of coordinated tax policies in the Union leads to significant cost and administrative burden for citizens and businesses operating in more than one Member State within the Union - even more so for SMEs - and results in unintended double taxation, double non-taxation, or facilitates aggressive tax planning and whereas such cases should be eliminated and therefore require more transparent and simpler solutions;
- AI. whereas specific attention in the design of tax rules and proportionate administrative procedures should be given to SMEs and family businesses, which are the backbone of the Union economy;
- AJ. whereas by 26 June 2017 a Union-wide register for beneficial ownership has to be operational, aiding in tracking down possible tax avoidance and profit shifting;
- AK. whereas the revelations of the LuxLeaks scandal and the work carried out by the TAXE 1 special committee clearly show the need for Union legislative measures to improve transparency, coordination and convergence within corporate tax policies in the Union;
- AL. whereas corporate taxation should be guided by the principle of taxing profits where they are generated;
- AM. whereas the European Commission and the Member States should continue to play a very active role in the international arena in order to work for the establishment of international standards based primarily on principles of transparency, exchange of information and abolition of harmful tax measures;
- AN. whereas the principle of 'Policy Coherence for Development', as set out in the Treaty on the Functioning of the European Union, requires the Union to ensure that all stages of policy-making in every field, including in relation to corporate taxation, do not militate against, and instead promote, the goal of sustainable development;
- AO. whereas a coordinated approach to corporate taxation system across the Union would enable tackling unfair competition and enhancing the competitiveness of Union companies, in particular SMEs;
- AP. whereas the Commission and Member States should further deploy electronic solutions in taxation-related procedures to reduce administrative burdens and simplify cross-border procedures;
- AQ. whereas the Commission should assess the impact of tax benefits granted to existing special economic zones in the Union; encourages, in this regard, the exchange of best practices between tax authorities;

Transparency

AR. whereas increased transparency in the area of corporate taxation can improve tax collection, make the work of tax authorities more efficient and is crucial for ensuring an increase in public trust and confidence in tax systems and governments, and this should be an important priority;

- (i) whereas increased transparency regarding the activities of large MNC, and in particular regarding profits made, taxes on profit paid, subsidies received and tax refunds, number of employees and assets held is essential for ensuring that tax administrations tackle BEPS efficiently; whereas a right balance needs to be struck between transparency, personal data protection and commercial sensitivity, as well as considering the impact on smaller businesses; whereas one vital form for this transparency to take is country-by-country reporting; whereas any Union proposals for country-by-country reporting should in the first instance be based on the OECD template; whereas it is possible for the Union to go further than the OECD guidelines and make such country-by-country reporting mandatory and public, and the European Parliament voted in favour of full public country-by-country reporting in its amendments adopted on 8 July 2015¹ on the proposal for a revised Shareholder Rights Directive; whereas the European Commission conducted a consultation on this subject between 17 June and 9 September 2015 in order to explore different options for the implementation of country-by-country reporting²; whereas 88 % of those who responded publicly to that consultation said that they supported public disclosure of tax-related information by enterprises;
- (ii) whereas the conduct of aggressive tax planning by corporations is incompatible with Corporate Social Responsibility; whereas some companies within the Union have already begun to demonstrate that they are fully tax compliant by applying for and promoting their ownership of a 'Fair Tax Payer' label³ and whereas such measures can have a strong deterrent effect and change behaviours, through the reputational risk for non-compliance such a label should be based on common criteria at European level;
- (iii) whereas increased transparency would be achieved if Member States inform each other and the Commission of any new allowance, relief, exemption, incentive or similar measure that could have a material impact on their effective tax rate; whereas such notification would help Member States in identifying harmful tax practices;
- (iv) whereas, despite the Council's recent agreement on amending Council Directive 2011/16/EU⁴ as regards the automatic exchange of tax rulings, there are still risks that Member States do not communicate sufficiently between themselves about the possible impact that their tax arrangements with certain companies might have on tax collection in other Member States; whereas national tax authorities should automatically exchange all tax rulings without delay after they have been issued; whereas the Commission should have access to tax rulings, through a

¹ Texts adopted of 8.7.2015, P8_TA(2015)0257.

² http://ec.europa.eu/finance/consultations/2015/further-corporate-tax-transparency/index_en.htm.

³ Such as the Fair Tax Mark: <http://www.fairtaxmark.net/>.

⁴ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC(OJ L 64, 11.3.2011, p. 1).

secure central directory; whereas tax rulings signed up to by tax authorities should be subject to greater transparency, providing that confidential information and business sensitive information is preserved;

- (v) whereas customs-free ports are reported to be used to hide transactions from tax authorities;
- (vi) whereas progress in the fight against tax evasion, tax avoidance and aggressive tax planning can only be monitored with a harmonised methodology that can be used to estimate the size of the direct and indirect tax gaps in all Member States, and across the Union as a whole; whereas an estimate of the tax gap should only represent the start of providing further information on tax matters;
- (vii) whereas the current Union-wide legal framework to protect whistleblowers is insufficient, and there exists significant variation between the ways in which different Member States provide protection for whistleblowers; whereas in the absence of such protection, those employees who hold vital information will understandably be reluctant to come forward and therefore that information will not be made available; whereas since whistleblowers helped to mobilise public attention on the issue of unfair taxation, Member States should consider measures that will protect such activity; whereas it would therefore be appropriate to offer Union-wide protection for whistleblowers who report suspected misconduct, wrongdoing, fraud or illegal activity to national or European authorities or, in cases of persistently unaddressed misconduct, wrongdoing, fraud or illegal activity that could affect the public interest, to the public as a whole; whereas such protection should be coherent with the overall legal system; whereas this protection should be effective against unjustified legal prosecutions, economic sanctions and discriminations;

Coordination

- AS. whereas the power to legislate on corporate taxation is vested in the Member States, yet the vast majority of problems linked to aggressive tax planning are of a multinational nature; whereas more coordination of national tax policies therefore represents the only feasible way to address the problems of BEPS and aggressive tax planning;
- (i) whereas a mandatory Union-wide Common Consolidated Corporate Tax Base (CCCTB) would be a major step towards solving those problems associated with aggressive tax planning within the Union and should be introduced as a matter of urgency; whereas the ultimate goal is a full, mandatory CCCTB possibly with a temporary exemption for SMEs which are not MNC and companies with no cross-border activity, and with a formula apportionment method based on a combination of objective variables; whereas until a full CCCTB is in place, the Commission is considering temporary measures to counteract profit shifting opportunities; whereas it is necessary to ensure that those measures, including the offsetting of cross-border losses, do not increase the risk of BEPS; whereas these measures are not a perfect substitute for consolidation and time would be necessary to make this new regime fully operational;
 - (ii) whereas despite the work of the Code of Conduct Group on harmful corporate taxation, aggressive tax planning measures continue to exist throughout the Union; whereas past attempts to strengthen the governance and mandate of the

Group, and to adjust and broaden the working methods and criteria set in the Code, with the aim of combating new forms of harmful tax practices within the current economic environment, have not been successful; whereas the Group's activities are characterised by a general lack of transparency and accountability; whereas therefore the efficiency and functioning of the Group need to be strongly reformed and made more effective and transparent, notably through the publishing of annual reports and minutes, including the indication of Member States' positions; whereas the Group should be able to take positions on issues arising from tax policies in more than one Member State without a small minority of Member States blocking recommendations;

- (iii) whereas the overall principle of corporate taxation in the Union should be that taxes are paid in the countries where a company's actual economic activity and value creation take place; whereas criteria should be developed to ensure that this occurs; whereas any use of 'patent box' or other preferential tax regimes must also ensure that taxes are paid in the place where value is generated, according to the criteria defined in BEPS Action 5, while also setting common European definitions for what qualifies as R&D promotion, and what does not, and for harmonising the use of patent and innovation boxes including advancing to 30 June 2017 the abolition of the old regime;
- (iv) whereas some Member States have unilaterally introduced Controlled Foreign Corporation (CFC) rules, in order to adequately ensure that profits parked in low or no tax countries are effectively taxed; whereas those rules need to be coordinated in order to prevent the diversity of national CFC rules within the Union from distorting the functioning of the internal market;
- (v) whereas Directive 2011/16/EU provides for cooperation between Member States on tax inspections and audits and encourages the exchange of best practices between tax authorities; whereas, however, the instruments provided for in that Directive are not effective enough and divergent national approaches to auditing companies contrast with the highly organised tax planning techniques of certain companies;
- (vi) whereas for automatic exchange of information in general and on tax rulings in particular to be effective, a common European Tax Identification Number regime is required; whereas the Commission should consider the setting up of a common European business register;
- (vii) whereas the Commission decided to prolong the mandate of the Platform for Tax Good Governance - which was due to expire in 2016 - as well as expand its scope and enhance its working methods; whereas the Platform can help deliver on the new Action Plan to strengthen the fight against tax fraud and tax evasion, facilitate discussions on Member States' tax rulings in light of the proposed new information exchange rules, and provide feedback on new anti-avoidance initiatives; whereas however the Commission needs to boost the profile, broaden the membership and increase the effectiveness of the Platform for Tax Good Governance;
- (viii) whereas the Commission should analyse and request the implementation of reforms to tax administrations within the European Semester process, to enhance the tax collection capacity of national and European-level tax administrations in

order for them to carry out their roles effectively and thus to foster the positive impact of effective tax collection and effective actions against tax fraud and tax evasion on Member States' revenues;

Convergence

AT. whereas improved coordination alone will not solve fundamental problems arising from the fact that different rules regarding corporate taxation exist in different Member States; whereas part of the overall response to aggressive tax planning must involve the convergence of a limited number of national tax practices; whereas this can be achieved while still preserving the sovereignty of Member States in relation to other elements of their corporate tax systems;

- (i) whereas aggressive tax planning practices may sometimes arise from the cumulative benefits of double taxation treaties concluded by different Member States, perversely resulting in double non-taxation instead; whereas the proliferation of double tax treaties signed up to by individual Member States with third countries may lead to opportunities for new loopholes; whereas, in line with Action 15 of the OECD/G20 BEPS project, there is a need to develop a multilateral instrument for amending bilateral tax treaties; whereas the Commission should be mandated to negotiate tax agreements with third countries on behalf of the Union instead of the current practice under which bilateral negotiations are conducted, which produce sub-optimal results; whereas the Commission should ensure that such agreements contain reciprocity provisions and prohibit any adverse impact on Union citizens and businesses, in particular SMEs, resulting from the extraterritorial application of third country legislation within the jurisdiction of the Union and its Member States;
- (ii) whereas the Union should have its own up to date definition of 'tax havens';
- (iii) whereas the Union should apply counter measures towards companies who make use of such tax havens; whereas this has already been called for in the European Parliament's Report on the Annual Tax Report 2014¹, which asked for the 'introduction of strong sanctions to prevent companies breaching or dodging tax standards, by refraining from granting EU funding and access to state aid or to public procurement to fraudulent companies or companies located in tax havens or countries distorting competition with favourable tax conditions; urges MSs to recover all types of public support given to companies if they are involved in breaching EU tax standards'; whereas Member States should also be subject to counter-measures in case they refuse to act to modify their harmful preferential tax regimes undermining the existence of a level-playing field in the Union;
- (iv) whereas a new binding definition of 'permanent establishment' is needed to ensure that taxation takes place where economic activity takes place and value is created; whereas this should be accompanied by minimum binding criteria to determine whether economic activity has sufficient substance to be taxed in a Member State in order to avoid the problem of 'letterbox companies', in particular regarding the challenges posed by the digital economy;

¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2015-0040+0+DOC+XML+V0//EN>

- (v) whereas the Commission's ongoing investigations into alleged breaches of the Union state aid rules have revealed an unhelpful lack of transparency regarding the way in which those rules should be applied; whereas to rectify this, the Commission should publish state aid guidelines to clarify how it will determine instances of tax-related state aid, thereby providing more legal certainty for companies and Member States alike; whereas in the framework of modernisation of the state aid regime the Commission should ensure effective ex-post control of the legality of granted state aid;
 - (vi) whereas one of the unintended effects of the Council Directive 2003/49/EC¹ is that cross-border interest and royalties income may be untaxed (or taxed at a very low level); whereas a general anti-abuse rule should be introduced in that Directive as well as in the Council Directive 2005/19/EC² and other relevant Union legislation;
 - (vii) whereas a Union-wide withholding tax or a measure of similar effect would ensure that all profits generated within, and due to leave, the Union are taxed at least once within the Union before they leave the Union's borders;
 - (viii) whereas the current Union framework on double taxation dispute resolution between Member States does not work effectively and would benefit from clearer rules and more stringent timelines, building on the systems already in place;
 - (ix) whereas tax advisors play a crucial role in facilitating aggressive tax planning, by helping companies to establish complex legal structures in order to take advantage of the mismatches and loopholes that arise from different tax systems; whereas a fundamental review of the corporate tax system cannot occur without investigating the practices of these advisory firms; whereas such an investigation must include consideration of the conflict of interest inherent in such firms, which simultaneously provide advice to national governments on setting up tax systems and advice to companies on how best to optimise their tax liabilities within such systems;
- AU. whereas the overall efficiency of tax collection, the notion of tax fairness and the credibility of national tax administrations are not undermined only by aggressive tax planning and BEPS activities; whereas the Union and Member States should take similarly decisive action to address the problems of tax evasion and tax fraud within both corporate and individual taxation as well as problems relating to the collection of taxes other than corporate taxes, in particular VAT; whereas those other elements of tax collection and administration represent a substantial part of the existing tax gap;
- AV. whereas the Commission should therefore also consider how it will address those wider issues, in particular the enforcement of VAT rules in the Member States and of their application in cross-border cases as well as the inefficiencies in the collection of VAT

¹ Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

² Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ L 58, 4.3.2005, p. 19).

(which in some Member States constitutes a major source of national income), VAT-avoidance practices and also the negative consequences of some tax amnesties or non-transparent 'tax forgiveness' schemes; whereas any such new measures should involve consideration of the balance of costs and benefits;

1. Requests the Commission to submit to Parliament by June 2016 one or more legislative proposals, following the detailed recommendations set out in the Annex hereto;
2. Confirms that the recommendations respect fundamental rights and the principle of subsidiarity;
3. Considers that the financial implications of the requested proposal should be covered by appropriate budgetary allocations;
4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission, the Council, and the governments and parliaments of the Member States.

ANNEX TO THE RESOLUTION

DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

A. Transparency

Recommendation A1. Mandatory, public country-by-country reporting for all sectors by MNC

The European Parliament calls once again on the European Commission to take all the necessary steps to introduce by the first quarter of 2016 comprehensive and public country-by-country reporting (CBC-R) for all MNC, in all sectors.

- This proposal should be developed on the basis of the requirements put forward by the OECD in its CBC-R data template published in September 2014 (Action 13 of the OECD/G20 BEPS project).
- When developing the proposal, the Commission should also consider:
 - the results of the Commission's consultation into CBC-R, conducted between 17 June and 9 September 2015, which examined different options for the possible implementation of CBC-R in the Union;
 - the proposals for full public CBC-R outlined in the revised Shareholder Rights Directive as voted for by the European Parliament on 8 July 2015¹ and the outcome of the ongoing trilogues on this Directive.

Recommendation A2. A new 'Fair Tax Payer' label for companies who engage in good tax practices

The European Parliament calls on the European Commission to bring forward a proposal as soon as possible on a voluntary European 'Fair Tax Payer' label.

- The proposal should include a European framework of eligibility criteria, under which the label could be awarded by national bodies.
- This framework of eligibility criteria should make clear that the 'Fair Tax Payer' label is only awarded to those companies that have gone above and beyond the letter of what is required of them under Union and national law.
- Companies should be motivated by this 'Fair Tax Payer' label to make paying a fair share of taxes an essential part of their corporate social responsibility policy, and to report on their stance on taxation matters in their annual report.

Recommendation A3. Mandatory notification of new tax measures

The European Parliament calls on the European Commission to bring forward a proposal as soon as possible on a new mechanism whereby Member States are compelled to inform other

¹ Texts adopted of 8.7.2015, P8_TA(2015)0257.

Member States and the Commission without delay if they intend to introduce a new allowance, relief, exemption, incentive or similar measure that could have a material impact on the effective tax rate in the Member State or on the tax base of another Member State.

- These notifications by Member States shall contain spillover analyses of the material impact of the new tax measures on other Member States and developing countries, to support the action of the Code of Conduct Group in identifying harmful tax practices.
- These new tax measures should also be included in the European Semester process, and recommendations should be made for follow-up.
- The European Parliament should receive regular updates about such notifications and the assessment carried out by the European Commission.
- Penalties should be envisaged with respect to Member States which fail to comply with such reporting requirements.
- The Commission should also consider whether it would be appropriate to oblige tax advisory firms to disclose to national tax authorities when they develop and begin promoting certain tax schemes intended to help companies reduce their overall tax liability, as currently happens within some Member States; and also consider whether the sharing of such information between Member States via the Code of Conduct Group would represent an efficient tool for improvements in the area of corporate taxation in the Union.

Recommendation A4. Automatic exchange of information on tax rulings to be extended to all tax rulings and to a certain extent made public

The European Parliament calls on the European Commission to complement Directive 2011/16/EU which includes elements of automatic exchange of information on tax rulings, by:

- extending the scope of the automatic exchange of information beyond cross-border tax rulings to include all tax rulings in the corporate tax area. Information provided must be comprehensive and in a mutually agreed format to ensure that it can be efficiently used by tax authorities in relevant countries.
- significantly increasing the transparency of tax rulings at the Union level, with due consideration given to business confidentiality and trade secrets and taking into account the current best practices applicable in some Member States by publishing, on an annual basis, a report summarising the main cases contained in the Commission's to be created secure central directory of tax rulings and advance pricing arrangements.
- the information in the report must be provided in an agreed, standardised form in order to allow the public to use it effectively.
- ensuring that the Commission plays a full and meaningful role in the mandatory exchange of information on tax rulings with the creation of a secure central directory accessible by the Member States and the Commission concerning all tax rulings agreed in the Union.
- ensuring that appropriate sanctions are applied to those Member States which do not

automatically exchange information on tax rulings as they should.

Recommendation A5. Transparency of customs-free ports

The European Parliament calls on the European Commission to bring forward a legislative proposal to:

- set a maximum time limit under which goods can be sold in customs-free ports, exempted from customs and excise duties and VAT;
- oblige customs-free ports authorities to immediately inform the relevant Member States' and third countries' tax authorities of any transaction carried out by their tax residents in customs-free ports premises.

Recommendation A6. Commission estimate of the corporate tax gap

The European Parliament calls on the European Commission to:

- create, on the basis of best practices currently used by Member States, a harmonised methodology, which should be made public and that can be used by the Member States to estimate the size of the direct and indirect corporate tax gaps, that is the difference between corporate taxes due and corporate taxes paid, in all Member States.
- work with Member States to ensure the provision of all the necessary data to be analysed using the methodology in order to produce the most accurate figures possible.
- use the agreed methodology and all the necessary data in order to produce and publish, biannually, an estimate of the direct and indirect corporate tax gaps across the Union.

Recommendation A7. Protection of whistleblowers

The European Parliament calls on the European Commission to bring forward a legislative proposal as follows:

- Protect whistleblowers who act in the public interest only (and not also for money or any other personal agenda) in order to expose misconduct, wrongdoing, fraud or illegal activity in relation to corporate taxation in any Member State in the European Union. Such whistleblowers should be protected if they report suspected misconduct, wrongdoing, fraud or illegal activity to the relevant competent authority, and should also be protected if, in cases of persistently unaddressed misconduct, wrongdoing, fraud or illegal activity in relation to corporate taxation that could affect the public interest, they report their concerns to the public as a whole;
- Ensure that the right to freedom of expression and information is preserved in the European Union;
- Such protection should be coherent with the overall legal system and be effective against unjustified legal prosecutions, economic penalties and discriminations;
- Such a legislative proposal should take as its basis Regulation (EU) No 596/2014 of the European Parliament and of the Council¹ and take into account any future Union

¹ Regulation (EU) No 596/2014 of the European Parliament and of the Council of

legislation in this area;

- Such a legislative proposal could also take into consideration the Council of Europe's 'Recommendation CM/Rec(2014)7¹ on the protection of whistleblowers' and notably the definition of whistleblower 'as any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector'.

B. Coordination

Recommendation B1. Introduction of a Common Consolidated Corporate Tax Base

The European Parliament calls on the European Commission to bring forward as soon as possible a legislative proposal for the introduction of a common consolidated corporate tax base:

As a first step, by June 2016, a mandatory Common Corporate Tax Base (CCTB) in the Union, possible with a temporary exemption for small- and medium-sized enterprises which are not MNC and companies with no cross-border activity, in order to have only one set of rules for companies operating in several Member States to calculate their taxable profits.

As a second step, as soon as possible and certainly no later than the end of 2017, a mandatory CCCTB, taking into due consideration the range of different options (factoring in the costs, for example, of incorporating small- and medium-sized enterprises and companies with no cross-border activity);

The CCCTB should be based on a formula apportionment method which reflects the real economic activities of companies and does not unduly advantage certain Member States.

During the interim period between the introduction of mandatory CCTB and that of full CCCTB, a set of measures to reduce profit shifting (mainly via transfer pricing) including as a minimum a Union anti-BEPS legislative proposal. These measures should not include a temporary cross-border loss offset regime unless the Commission can guarantee that it will be transparent and will not create the possibility of misuse for aggressive tax planning.

The Commission should consider to what extent it would be necessary to produce a single set of generally accepted accounting principles in order to prepare the underlying accounting data to be used for CCCTB purposes.

Any proposal for either CCTB or full CCCTB should include an Anti-Avoidance Clause.

Recommendation B2. Strengthen the mandate and improve transparency of the Council's Code of Conduct Group (Business Taxation)

The European Parliament calls on the Commission to bring forward a proposal to incorporate the Code of Conduct Group into the Community method, as a Council Working group, with the participation of the European Commission and the European Parliament as observers.

16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1)

¹ http://www.coe.int/t/dghl/standardsetting/cdcj/Whistleblowers/protecting_whistleblowers_en.asp

- The Code of Conduct group (CoC Group) shall become more transparent, more effective and more accountable, including through:
 - regular provision, updates and publication of its oversight of the extent to which Member States meet the recommendations set out by the CoC Group in its six-monthly progress report to finance ministers;
 - regular provision, updates and publication of a list every two years of harmful tax practices;
 - regular production, provision and publication of its minutes, including increased transparency in the process of drafting recommendations, notably with an indication of representatives of Member States' positions;
 - The appointment of a political Chair by the Ministers for Finance;
 - The appointment by each Member State of a high level representative and a deputy in order to raise the profile of the body;
- The tasks of the CoC Group shall include:
 - identifying harmful tax practices in the Union;
 - proposing measures and timelines for the elimination of harmful tax practices, and monitoring the results of the recommendations/measures proposed;
 - reviewing the reports on spillover effects of new tax measures provided by Member States as stipulated above, and assessing whether action is required;
 - proposing other initiatives focused on tax measures in the external policy of the Union;
 - improving enforcement mechanisms against those practices which facilitate aggressive tax planning.

Recommendation B3. Patent box and other preferential regimes: Linking preferential regimes to where value is generated

The European Parliament calls on the European Commission to continue providing guidance to Member States on how to implement patent box regimes, in line with the "modified nexus approach" so as to ensure that they are not harmful.

- This guidance should make clear that preferential regimes, such as patent boxes, must be based on the "modified nexus approach", as defined in the OECD BEPS Action 5, meaning that there must be a direct link between the tax benefits and the underlying research and development activities.
- Extensive patent boxes schemas with no link to geographical origin and 'age' of know-how should be considered as harmful practices.
- If, within 12 months, Member States are not applying this new approach consistently, the Commission should bring forward a binding legislative proposal.

- The Commission should bring forward proposals for common European standards and definitions on what qualifies as the promotion of research and development, and what does not, and for harmonising the use of patent and innovation boxes including advancing to 30 June 2017 the abolition of the old regime by shortening the timing of grandfathering rules;

Recommendation B4. Controlled Foreign Corporation

The European Parliament calls on the European Commission to bring forward a legislative proposal:

- to provide a Union coordinated framework for CFC rules, in order to ensure that profits parked in low or no tax countries are effectively taxed and to prevent the diversity of national CFC rules within the Union from distorting the functioning of the internal market. This framework should ensure full use of CFC legislation beyond situations of wholly artificial arrangements. This shall not prevent individual Member States from introducing stricter rules.

Recommendation B5. Improving Member States' coordination on tax controls

The European Parliament calls on the European Commission to bring forward a proposal to amend the Directive 2011/16/EU, in order to:

- ensure more effective simultaneous tax audits and controls where two or more national tax authorities decide to conduct controls of one or more persons of common or complementary interests;
- ensure that a parent company and its subsidiaries located in the Union are audited by their respective tax authorities at the same period of time, under the leadership of the tax authorities of the parent company, in order to ensure efficient flows of information between tax authorities. As part of this:
 - tax authorities should regularly exchange information on their investigations in order to ensure that groups do not benefit from mismatches or loopholes in the combination of various national tax systems.
 - time limits to exchange information on ongoing audits should be reduced to a minimum.
 - tax authorities of a company should systematically inform the tax authorities of the other entities within the same group regarding the outcome of a tax control;
 - no decision regarding the outcome of a tax control by a tax authority should be taken before informing the other tax authorities concerned.

Recommendation B6. The introduction of a common European Tax Identification Number

The European Parliament calls on the European Commission to bring forward a proposal for a European Tax Identification Number.

- The proposal shall be based on the outline for a European Tax Identification Number in the Commission's Action Plan on the fight against tax fraud and tax evasion of 2012

(action 22)¹, and the outcome of the subsequent consultation of 2013².

C. Convergence

Recommendation C1. A new approach to international tax arrangements

The European Parliament calls on the European Commission to bring forward a legislative proposal to allow the Union to speak with one voice in relation to international tax arrangements.

- The Commission should be mandated to negotiate tax agreements with third countries on behalf of the Union instead of the current practice under which bilateral negotiations are conducted, which produce sub-optimal results, especially for developing countries.
- The Commission has to ensure that such agreements contain reciprocity provisions and prohibit any adverse impact on the citizens of the Union and businesses, in particular SMEs, resulting from the extraterritorial application of third country legislation within the jurisdiction of the Union and its Member States.
- A common Union multilateral tax agreement should be introduced to replace the multitude of bilateral tax agreements agreed between Member States themselves and with other countries.
- All new international trade agreements concluded by the Union should include a clause on good tax governance.
- All international tax arrangements shall foresee an enforcement mechanism.

Recommendation C2. Create a common and cogent definition of 'tax havens'

The European Parliament calls on the European Commission to bring forward a proposal to establish, in cooperation with the OECD and the United Nations among others, cogent criteria to define 'tax havens'.

- Those criteria should be based on comprehensive, transparent, robust, objectively verifiable and commonly accepted indicators, further developing the good governance principles as defined by the Commission in its communication of 2009 'Promoting Good Governance in Tax Matters'³: Exchange of information and administrative cooperation; Fair tax competition; and transparency.
- Those criteria should cover concepts such as banking secrecy, recording of ownership of companies, trusts and foundations, the publication of company accounts, capacity for information exchange, efficiency of tax administration, promotion of tax evasion, existence of harmful legal vehicles, prevention of money laundering, automaticity of information exchange, existence of bilateral treaties, and international transparency commitments and judicial cooperation.
- On the basis of those criteria, the Commission should put forward a revised list of tax havens, which would replace its interim list as put forward in June 2015.

¹ COM(2012)0722.

² <https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0201:FIN:EN:PDF>

- This list of tax havens should be linked to the relevant taxation legislation as a reference point for other policies and legislation.
- The Commission should review the list on at least a biannual basis, or upon the justified request of a jurisdiction on the list.

Recommendation C3. Counter-measures towards companies who make use of tax havens

The European Parliament calls on the European Commission to bring forward a proposal for a catalogue of counter-measures the Union and Member States should apply as shareholders and financiers of public bodies, banks and funding programmes, to be applied to companies which use tax havens in order to put in place aggressive tax planning schemes and therefore do not comply with Union tax good governance standards.

- Those counter-measures should include:
 - being banned from accessing state aid or public procurement opportunities at Union or national level
 - being banned from accessing certain Union funds
- This should be achieved, inter alia, by:
 - amending the European Investment Bank (EIB) Statute (Protocol No. 5 annexed to the treaties) to ensure that no EIB funding can go to ultimate beneficiaries or financial intermediaries which make use of tax havens or harmful tax practices¹
 - amending the Regulation (EU) No 2015/1017 of the European Parliament and of the Council² to ensure that no EFSI funds can go to such companies³
 - amending Regulations (EU) No 1305/2013⁴, (EU) No 1306/2013⁵, (EU) No 1307/2013⁶ and (EU) 1308/2013 of the European Parliament and of the Council¹

¹ http://www.eib.org/attachments/general/governance_of_the_eib_en.pdf

² Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

³ http://ec.europa.eu/priorities/jobs-growth-investment/plan/docs/proposal_regulation_efs_i_en.pdf

⁴ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

⁵ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

⁶ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council

to ensure that no CAP funding can go to such companies

- continuing the process of State Aid Modernisation to ensure that Member States do not provide State Aid to any such companies²
- amending the Regulation (EU) No 1303/2013 of the European Parliament and of the Council³ to ensure that no money from the five European Structural and Investment Funds (European Regional Development Fund, European Social Fund, Cohesion Fund, European Agricultural Fund for Rural Development, European Maritime and Fisheries Fund) can go to any such companies
- amending the Agreement Establishing the European Bank for Reconstruction and Development (EBRD) to ensure no EBRD funding can go to any such companies⁴
- forbidding the conclusion of trade agreements by the Union with jurisdictions defined by the Commission as 'tax havens'

The Commission shall check whether existing trade agreements with countries identified as tax havens can be suspended or terminated.

Recommendation C4. Permanent Establishment

The European Parliament calls on to the European Commission to bring forward a legislative proposal to:

- adjust the definition of 'permanent establishment' so that companies cannot artificially avoid having a taxable presence in Member States in which they have economic activity. This definition should also address situations in which companies which engage in fully dematerialised digital activities, are considered to have a permanent establishment in a Member State if they maintain a significant digital presence in the economy of that country;
- introduce a Union definition of minimum "economic substance" covering also the digital economy so as to ensure that companies are genuinely creating value and adding

Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

¹ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

² <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0026+0+DOC+XML+V0//EN>

³ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

⁴ <http://www.ebrd.com/news/publications/institutional-documents/basic-documents-of-the-ebrd.html>

to the economy of the Member State in which they have a taxable presence.

The foregoing two definitions should form part of a concrete ban on so-called 'letter box companies'.

Recommendation C5. Improving the Transfer Pricing framework in the EU

The European Parliament calls on the European Commission to bring forward a legislative proposal:

- to develop, based on its experience and on analysis of the new OECD principles on transfer pricing, specific Union Guidelines setting out how the OECD principles should be applied and how they should be interpreted within the Union context, so as to:
 - reflect the economic reality of the internal market;
 - provide certainty, clarity and fairness for Member States and for companies operating within the Union;
 - reduce the risk of misuse of the rules for profit shifting purposes.

Recommendation C6. Hybrid mismatches

The European Parliament calls on the European Commission to bring forward a legislative proposal to either:

- harmonise national definitions of debt, equity, opaque and transparent entities, harmonise the attribution of assets and liabilities to permanent establishment, and harmonise the allocation of costs and profits between different entities within the same group; or
- prevent double non-taxation, in the event of a mismatch.

Recommendation C7. Change the Union state aid regime as it relates to tax

The European Parliament calls on the European Commission to bring forward a proposal at the latest by mid-2017 for:

- state aid guidelines that clarify how the Commission will determine instances of tax-related state aid, thereby providing more legal certainty for businesses and Member States, taking into consideration the fact that, in other sectors, such guidelines have proven to be highly effective in putting a stop to and pre-empting practices in Member States which are in conflict with Union state aid law; an effect which can only be achieved via a high degree of detail in the guidelines, including numerical thresholds.
- publicly identifying tax policies that are not consistent with state aid policy in order to give companies and Member States guidance and improved legal certainty; for this purpose the Commission shall reallocate resources to DG Competition so that it can act effectively on any issues of illegal state aid (including selective tax advantages).

The European Parliament also calls on the European Commission in the longer term to assess the possibility of modifying the existing rules in order to prevent the amounts recovered following an infringement of Union state aid rules being returned to the Member State which

granted the illegal tax-related aid, as is currently the case. As an example, the recovered state aid could be allocated to the Union budget or to the Member States which have suffered from an erosion of their tax base.

Recommendation C8. Amend Council Directives 90/435/EEC¹, 2003/49/EC and 2005/19/EC and other relevant Union legislation and introduction of a general anti-abuse rule

The European Parliament calls on the European Commission to bring forward a proposal

- Following the introduction of a General Anti-Abuse Rule (GAAR) into Directive 90/435/EC, to proceed as soon as possible with the introduction of a GAAR into Directive 2003/49/EC and to bring forward proposals for a GAAR to be introduced into the Directive 2005/19/EC and other relevant Union legislation.
- To include such a GAAR in any future Union legislation that covers tax matters or has tax implications.
- In relation to Directive 2003/49/EC, in addition to the introduction of a GAAR, also remove the requirement for Member States to give beneficial treatment to interest and royalty payments if there is no effective taxation elsewhere in the Union.
- In relation to Directive 2005/19/EC, in addition to the introduction of a GAAR, also introduce additional transparency obligations and - if these changes prove insufficient to prevent aggressive tax planning - introduce a minimum tax provision as the requirement for the use of "tax advantages" (such as, no taxation of dividends) or other measures of similar impact.

Recommendation C9. Improving cross-border taxation dispute resolution mechanisms

The European Parliament calls on the European Commission to bring forward a proposal by summer 2016

- To improve the current mechanisms to resolve cross-border taxation disputes in the Union, not only focusing on cases of double taxation but also double non-taxation. The aim is to create a coordinated Union approach to dispute resolution, with clearer rules and more stringent timelines, building on the systems already in place.
- The work and decision of the dispute resolution mechanism should be transparent so as to reduce any uncertainty for corporations in the application of tax law.

Recommendation C10. Introduce a withholding tax or a measure of similar effect in order to avoid profits leaving the Union untaxed

The European Parliament calls on the European Commission to bring forward a proposal by summer 2016 to introduce a withholding tax or a measure of similar effect, to ensure that all profits generated within the Union, and due to leave, are effectively taxed within the Union before they leave the Union's borders.

¹ Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 225, 20.8.1990, p. 6).

D. Other measures

Recommendation D1. Additional measures to address the tax gap

The European Parliament calls on the European Commission to also focus on other factors beyond aggressive tax planning and BEPS activity which contribute to the existing tax gap, including:

- investigating sources of low efficiency regarding tax collection, including VAT collection;
- investigating sources of tax unfairness or weak credibility of tax administrations in the areas other than corporate taxation;
- setting principles for tax amnesties, including the circumstances in which they would be appropriate and those in which other policy options would be preferable, as well as a requirement for Member States to inform the Commission in advance of any new tax amnesty, in order to eliminate the negative consequences of these policies on future tax collection;
- proposing a minimum level of transparency for 'tax forgiveness' schemes and discretionary tax breaks run by national governments;
- giving Member States more freedom to consider companies' tax compliance, and in particular systematic cases of non-compliance, as a factor when issuing procurement contracts;
- ensuring that tax authorities have full and meaningful access to central registers of beneficial ownership for both companies and trusts, and that those registers are properly maintained and verified;

This can be achieved by Member States swiftly transposing the fourth Anti-Money Laundering Directive, ensuring broad and simplified access to information contained in central registers of beneficial owners, including to civil society organisations, journalists and citizens.